Message from the House No. 45

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. 773. An act relating to approval of amendments to the charter of the city of Burlington.

In the passage 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. 58. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Message from the House No. 46

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. 771. An act relating to approval of amendments to the charter of the town of Stowe.

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

The Governor has informed the House that on the March 30, 2010, he approved and signed bills originating in the House of the following titles:

- **H. 598.** An act relating to sorting early voter absentee ballots.
- **H. 607.** An act relating to codifying and amending the charter of the Chittenden County Transportation Authority.
- **H. 761.** An act relating to authorization of High-Speed Intercity Passenger Rail Program grants.

Bills Referred

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

H. 771.

An act relating to approval of amendments to the charter of the town of Stowe.

To the Committee on Government Operations.

H. 773.

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

To the Committee on Government Operations.

Consideration Resumed; Consideration Postponed

S. 294.

Consideration was resumed on Senate Committee bill entitled:

An act relating to identification in electioneering communications and penalties for campaign finance violations.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator White on behalf of the Committee on Government Operations?, on motion of Senator Shumlin, action on the bill was postponed until the next legislative day.

Recess

On motion of Senator Shumlin the Senate recessed until the fall of the gavel.

Called to Order

At 10:30 A.M. the Senate was called to order by the President.

Consideration Resumed; Bill Amended; Third Reading Ordered S. 247.

Consideration was resumed on Senate bill entitled:

An act relating to bisphenol A.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Health and Welfare?, Senator Lyons moved to amend the recommendation of amendment of the Committee on Health and Welfare as follows:

<u>First</u>: By striking out the *second* recommendation of amendment in its entirety and inserting in lieu thereof the following: In Sec. 2, 18 V.S.A. § 1512, in subdivision (a)(4), by adding at the end of the subsection a new sentence to read as follows: The term shall not include commercial water

cooler jugs until such time as a reasonable alternative is identified by the office of the attorney general.

<u>Second</u>: By adding a new section to be numbered Sec. 3 to read as follows:

Sec. 3. AVAILABILITY OF ALTERNATIVE CONTAINERS FOR USE IN WOMEN, INFANTS, AND CHILDREN (WIC) PROGRAM

The department of health shall identify as soon as possible one or more bisphenol A-free containers, including cans, for use in Vermont's women, infants, and children (WIC) program. No later than January 15, 2012, the department shall report to the house committees on human services and on judiciary and the senate committees on health and welfare and on judiciary with respect to the availability of bisphenol A-free containers for use in the WIC program.

Thereupon, pending the question, Shall the recommendation of amendment of the Committee on Health and Welfare be amended as recommended by Senator Lyons?, Senator Racine moved to amend the *first* recommendation of amendment of Senator Lyons by striking out the following: "until such time as a reasonable alternative is identified by the office of the attorney general"

Which was agreed to.

Thereupon, the recurring question, Shall the recommendation of amendment of the Committee on Health and Welfare be amended as recommended by Senator Lyons, as amended?, was agreed to on a roll call, Yeas 25, Nays 3.

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: Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Kitchel, Lyons, MacDonald, Mazza, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr, White.

Those Senators who voted in the negative were: Ashe, Illuzzi, McCormack.

Those Senators absent and not voting were: Kittell, Miller.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Health and Welfare, as amended?, Senators Nitka and Sears moved to substitute an amendment for the recommendation of amendment of the Committee on Health and Welfare, as

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) According to a 2009 article in the *American Journal of Public Health*, bisphenol A (BPA) is a synthetic estrogen that was originally considered for use in managing challenging pregnancies. Low-dose exposure to BPA has been linked to breast cancer, prostate cancer, recurrent miscarriages, early onset puberty, reduced sperm count, delayed development, heart disease, diabetes, and obesity.
- (2) According to a 2006 article in the journal *Environmental Research*, over 90 percent of the more than 100 government-funded studies of low-dose exposure to BPA have demonstrated adverse health effects.
- (3) According to the Centers for Disease Control and Prevention, more than 90 percent of Americans have detectable levels of BPA in their bodies, and children have higher concentrations of BPA in their bodies than do adolescents or adults.
- (4) According to Frederick vom Saal, professor of biological sciences at the University of Missouri–Columbia, approximately seven billion pounds of BPA is produced globally each year for use in baby bottles, dental sealants, compact discs, water bottles, food cans, and a wide variety of other items.
- (5) According to the nonprofit organization Environment and Human Health, Inc., BPA is one of the most frequently detected industrial chemicals in groundwater and is also found in landfill leachate, surface water, sewage, sludge, and treated wastewater discharge.
- (6) According to William Hoyle of the North American Metal Packaging Alliance, Inc., at least 53 percent of infants born in Vermont relied on the Women, Infants, and Children (WIC) program in 2009.
- (7) According to information provided by the Vermont Public Interest Research Group, alternatives to BPA already exist and the use of BPA should be limited in order to protect the health of the citizens and environment of Vermont.

Sec. 2. 18 V.S.A. § 1512 is added to read:

§ 1512. BISPHENOL A

(a) As used in this section, "child's container or utensil" means an empty baby bottle, spill-proof cup, or reusable utensil intended by the manufacturer primarily for use by a child three years of age or younger.

- (b) Beginning July 1, 2010, no person or entity shall manufacture, sell, or distribute in commerce in this state any child's container or utensil that contains bisphenol A.
- (c) 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.

Sec. 3. IMPLEMENTATION IN OTHER JURISDICTIONS AND AVAILABILITY OF ALTERNATIVE CONTAINERS

The department of health, in consultation with interested stakeholders, shall monitor and evaluate the implementation of bans on bisphenol A in consumer products in other states and municipalities, including the impact on those states' Women, Infants, and Children (WIC) programs. The department shall also identify as soon as possible one or more bisphenol A-free containers for use in Vermont's WIC program. No later than January 15, 2012, the department shall report to the house committees on human services and on judiciary and the senate committees on health and welfare and on judiciary its findings and recommendations with respect to expanding the scope of Vermont's bisphenol A ban, the impacts on WIC programs, and the availability of bisphenol A-free containers.

Which was disagreed to on a roll call, Yeas 12, Nays 16.

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: Bartlett, Campbell, Flory, Hartwell, Mazza, Mullin, Nitka, Scott, Sears, Shumlin, Starr, White.

Those Senators who voted in the negative were: Ashe, Ayer, Brock, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Illuzzi, Kitchel, Lyons, MacDonald, McCormack, Racine, Snelling.

Those Senators absent and not voting were: Kittell, Miller.

Thereupon, the recurring question, Shall the bill be amended as recommended by the Committee on Health and Welfare, as amended?, was agreed to on a roll call, Yeas 26, Nays 2.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Racine, Scott, Shumlin, Snelling, Starr, White.

Those Senators who voted in the negative were: Flory, Sears.

Those Senators absent and not voting were: Kittell, Miller.

Thereupon, the question, Shall the bill be read the third time?, was agreed to on a roll call, Yeas 25, Nays 1.

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, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Racine, Scott, Shumlin, Starr, White.

The Senator who voted in the negative was: Sears.

Those Senators absent and not voting were: Flory, Kittell, Miller, Snelling.

Consideration Postponed

Senate bill entitled:

S. 288.

An act relating to the Vermont recovery and reinvestment act of 2010.

Was taken up.

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

Adjournment

On motion of Senator Shumlin, the Senate adjourned, to reconvene on Tuesday, April 6, 2010, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 58.

TUESDAY, APRIL 6, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Rebecca Clark of Montpelier..

Pledge of Allegiance

Pages Ethan Reichsman and Samantha Robertson then led the members of the Senate in the pledge of allegiance.

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. 59. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, April 9, 2010, it be to meet again no later than Tuesday, April 13, 2010.

Bill Passed; Title Amended

Senate bill of the following title was read the third time and passed:

S. 138. An act relating to credit card fees.

Thereupon, pursuant to Senate Rule 40, the title of the bill was amended by the Secretary to read as follows:

An act relating to unfair business practices of credit card companies and fraudulent use of scanning devices and re-encoders.

Consideration Postponed

Senate bills entitled:

S. 294.

An act relating to identification in electioneering communications and penalties for campaign finance violations.

S. 288.

An act relating to the Vermont recovery and reinvestment act of 2010.

Were taken up.

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

Third Reading Ordered

H. 658.

Senator Choate, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to the issuance of certificates of need for home health agencies and addressing patient transportation services in certificate of need applications.

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 H. 539.

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

An act relating to amending the charter of the town of Hartford.

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. CHARTER APPROVAL

Notwithstanding the provisions of section 2645 of Title 17, the general assembly approves the amendment to the charter of the town of Hartford as provided in this act.

- Sec. 2. 24 V.S.A. App. chapter 123A § 401(e) is amended to read:
 - (e) Charter review.
- (1) The selectboard and school board shall <u>may</u> appoint a charter review committee of registered voters of the town to review its charter and recommend changes as the committee finds necessary or advisable for the purpose of improving the operation of the town and school district.
- (2) The charter shall be reviewed not less than three years after its initial adoption and subsequently every five years unless amended by a town meeting vote.
- (3) The committee shall submit a written report of recommendations to the selectboard and school board not later than one year after the appointment of the committee.

- (4)(3) Recommendations shall be warned for a vote at the next Australian ballot town meeting.
- (5)(4) The selectboard and school board shall provide funds for the committee in their budgets for any year when a charter review committee is appointed.

Sec. 3. 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, and the proposal of amendment was agreed to, 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. 695.

Senator Racine, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to definition of premises for award of liquor license.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 1, 7 V.S.A. § 2(15), in the fourth sentence, by striking out the following: "includes any licensed establishment that is" and inserting in lieu thereof the following: includes up to two licensed establishments that are

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, 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 forthwith.

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

Proposal of Amendment; Third Reading Ordered H. 765.

Senator Choate, for the Committee on Agriculture, to which was referred House bill entitled:

An act relating to establishing the Vermont agricultural innovation authority.

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. 6 V.S.A. §§ 2961 and 2962 are amended and §§ 2962a and 2962b are added to read:

§ 2961. CREATION OF AGRICULTURAL DEVELOPMENT COMMISSION DEFINITIONS

- (a) There is established within the agency of agriculture, food and markets the agricultural development commission, which shall be composed of the secretary of agriculture, food and markets, commissioner of forests, parks and recreation or his designee, the director of extension service, and director of research at the University of Vermont or their designees and four members appointed by the governor from a list of ten names, five to be submitted to him by the committee on agriculture of the house and five to be submitted to him by the committee on agriculture of the senate. The public members shall be appointed for terms of two years. The secretary of agriculture, food and markets shall be chairman.
- (b) The commission shall be attached to the agency of agriculture, food and markets for administrative support. In addition, the commission may use the services and staff of any department to assist it in the performance of its duties. The secretary of agriculture, food and markets may appoint a person from within the agency of agriculture, food and markets to serve as executive director to the commission.
- (c) Public members of the commission shall receive \$30.00 per diem and necessary expenses incurred while in the performance of their duties As used in this subchapter:
 - (1) "Center" means the Vermont agricultural innovation center.
- (2) "Value-added agricultural product" means any agricultural commodity or product that has been changed, produced, or segregated such that the market for the product has expanded and where the greater portion of

the revenue derived from the value-added activity accrues to the producer of the commodity or product.

§ 2962. COMMISSION; POWERS AND DUTIES ESTABLISHMENT OF VERMONT AGRICULTURAL INNOVATION CENTER

The commission may develop policies and recommend procedures for the implementation of coordinated educational, regulatory, research and promotional programs in agriculture. In addition, the commission may:

- (1) Develop a five year continuing agriculture development program for the state which shall be updated biennially;
- (2) Encourage lending institutions to expand their agricultural lending activities:
- (3) Identify those institutional forces which impede agricultural expansion and make recommendations for the removal of those impediments;
 - (4) Assist individuals and organizations in their agricultural efforts;
- (5) Make recommendations to the agency of agriculture, food and markets and the agricultural experiment station on areas where research might prove most beneficial to agriculture in Vermont;
- (6) [Repealed.] (a) The Vermont agricultural innovation center is hereby established.
- (b) The Vermont agricultural innovation center shall be administered by a board consisting of 13 members selected as follows:
- (1) The secretary of agriculture, food and markets, who shall serve as chair; and
 - (2) The following 12 members appointed by the governor:
- (A) One representative from each of the two largest membership-based agricultural organizations in Vermont;
- (B) One member from each of the four highest grossing commodities produced in Vermont as determined on the basis of annual gross cash sales. These four commodity groups presently include the dairy industry, the maple industry, the livestock, and the produce industry;
- (C) Six members with knowledge of or experience in the production or marketing of value-added agricultural products.
- (c) The Vermont agricultural innovation center's powers are vested in the board, and a quorum shall consist of seven members. No action of the board shall be considered valid unless the action is supported by a majority vote of

the members present and voting and then only if at least seven members vote in favor of the action.

- (d) Members of the board shall be appointed for staggered terms of three years. Any vacancy occurring among the members of the board shall be filled by the governor for the unexpired portion of the term. A board member may be reappointed, but no member, except the secretary of agriculture, food and markets, may serve for more than six consecutive years.
- (e) Board members whose membership is not supported by their employer or association may receive per diem and reimbursement for travel as provided in 32 V.S.A. § 1010 to the extent that funds are available.

§ 2962a. PURPOSE; POWERS AND DUTIES

- (a) To achieve the purposes of this subchapter, the Vermont agricultural innovation center shall:
- (1) Promote agriculture and the business of agriculture in Vermont, including the production or marketing of value-added agricultural products.
- (2) Coordinate with federal and state agencies and private sources to make financial resources available to the center for distribution of financial assistance for the promotion of agriculture, including the production or marketing of value-added agricultural products.
- (3) Administer federal grant monies for the production or marketing of value-added agricultural products. Grant monies shall be administered in accordance with their terms which may include:
- (A) Technical assistance, including technical, engineering, and product research services;
- (B) Assistance in marketing, market development, and business planning, including advisory services with respect to leveraging capital assets;
- (C) Organizational, outreach, and development assistance to increase the viability, growth, and sustainability of businesses engaged in the production or marketing of value-added agricultural products;
- (D) Studies that analyze the feasibility of facilities, including processing facilities, for use by potential producers or marketers of value-added products in order to determine the size that optimizes construction and other cost efficiencies.

(b) The agricultural innovation center may:

(1) consult, contract, or coordinate with the Vermont economic development authority or other agricultural funders to provide financial assistance for purposes authorized by this subchapter;

- (2) support the establishment of partnerships for the promotion and development of agriculture in the state, including the production or marketing of value-added agricultural products;
- (3) support local initiatives to produce or market value-added agricultural products;
- (4) pursue and coordinate access to regional and local revolving loan funding and all state, federal, and private funding that is available for the development of agriculture and value-added agricultural products;
- (5) receive and accept grants, gifts, loans, or contributions from any source subject to the provisions of 32 V.S.A. § 5;
- (6) use the services and staff of the agency of agriculture, food and markets to assist in the performance of the center's duties with the concurrence of the secretary of agriculture, food and markets;
- (7) contract for support, technical, or other professional services necessary to complete the work of the center.

§ 2962b. INTERAGENCY COOPERATION AND ASSISTANCE

Other departments and agencies of state government shall assist and cooperate with the center and shall make available to it information and data as needed to assist the center in carrying out its duties. Nothing in this section shall be construed to waive any privilege or protection otherwise afforded to the data and information under exemptions to the public records act or under other laws due solely to the fact that the information or data are shared with the center pursuant to this section.

Sec. 2. RECODIFICATION

- 6 V.S.A. chapter 162 is recodified as follows:
 - (1) §§ 2961–2962b shall be subchapter 1 which is added to read:

Subchapter 1. Vermont Agricultural Innovation Center

(2) §§ 2963–2965 shall be subchapter 2 which is added to read:

Subchapter 2. Generally

And that after passage the title of the bill be amended to read:

An act relating to establishing the Vermont agricultural innovation center.

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, and third reading of the bill was ordered.

Bill Passed

Senate bills of the following title was read the third time and passed:

S. 247. An act relating to bisphenol A.

Third Readings Ordered

H. 639.

Senator McCormack, for the Committee on Finance, to which was referred House bill entitled:

An act relating to motor vehicle insurance for volunteer drivers.

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. 766.

Senator Flanagan, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to preventing duplication in certain public health records.

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; Bill Committed

H. 237.

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

An act relating to governance of the Vermont state hospital.

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. 18 V.S.A. chapter 174 is added to read:

CHAPTER 174. VERMONT STATE HOSPITAL GOVERNANCE

§ 7251. VERMONT STATE HOSPITAL GOVERNING BOARD

- (a) The Vermont state hospital shall be governed by a board comprising no more than nine voting members appointed by the secretary of human services. A majority of the board shall be members of the public and shall include at least one individual who has received services from the Vermont state hospital or from a designated hospital, to be selected in consultation with groups representing mental health consumers, and at least one family member of an individual who has received services from the Vermont state hospital or from a designated hospital, to be selected in consultation with groups representing families of mental health consumers. The remainder of the board shall be ex officio voting members of the executive branch, except that the executive director and the medical director of the Vermont state hospital; the commissioner and deputy commissioner of disabilities, aging, and independent living; and any individual employed by the division of licensing and protection in the department of disabilities, aging, and independent living shall be nonvoting members if serving on the board and shall be in addition to the voting members of the board.
- (b) Members of the governing board who are not state employees are entitled to compensation pursuant to 32 V.S.A. § 1010.
- (c) The governing board shall be considered a public agency for purposes of subchapters 1 and 2 of chapter 5 of Title 1 and shall meet a minimum of six times each year.
- (d) As used in this section, "family member" shall have the same meaning as in 33 V.S.A. § 6302(2).

§ 7252. GOVERNING BOARD DUTIES

Notwithstanding the provisions of 3 V.S.A. § 3089 or 3303:

- (1)(A) The governing board established pursuant to this chapter shall have legal authority and responsibility for the operations of the Vermont state hospital as an institution, except that it shall delegate its authority to the commissioner of mental health for the following duties:
- (i) hiring and firing the executive director of the Vermont state hospital;
 - (ii) establishing the budget for the Vermont state hospital; and
 - (iii) signing contracts on behalf of the Vermont state hospital.

- (B) The governing board shall be entitled to review relevant information and make recommendations to the commissioner regarding the duties specified in subdivisions (A)(i), (ii), and (iii) of this subdivision (1).
- (2) The board shall enact bylaws to govern its execution of the following duties:
- (A) reviewing the quality and effectiveness of care and of management operations at the Vermont state hospital;
 - (B) ensuring an effective grievance process;
 - (C) approving all Vermont state hospital policies;
 - (D) developing and adopting a conflict-of-interest policy;
 - (E) evaluating its own performance annually;
- (F) ensuring that patients, staff, family members, and visitors receive notice of the existence, role, and meetings of the governing board, including methods for contacting the board; and
 - (G) ensuring compliance with the provisions of 42 C.F.R. 482.12.
- (3) The governing board shall submit an annual report to the governor, the house committee on human services, the senate committee on health and welfare, and the mental health oversight committee regarding the state of the hospital and the patients therein. The department of mental health shall make the report available on its website.
- (4) The governing board shall solicit annual reports from Vermont Legal Aid and Disability Rights Vermont regarding the care of patients at the Vermont state hospital and shall include these reports as appendices to the annual report submitted pursuant to subdivision (3) of this section.

§ 7253. GOVERNING BOARD ACCESS TO VERMONT STATE HOSPITAL

Members of the governing board shall have reasonable access to all parts of the units of the Vermont state hospital, including patient living areas, and shall be provided with opportunities to interview patients. Such access shall be sufficient to ensure effective governing board oversight of the operations of the Vermont state hospital while maintaining patient privacy.

§ 7254. PATIENT REPRESENTATIVE

The patient representative for the Vermont state hospital shall submit quarterly reports to the governing board regarding hospital conditions, patient complaints and their resolution, and systemic issues. The reports shall be

included with the annual report submitted pursuant to subdivision 7252(3) of this title.

Sec. 2. 18 V.S.A. § 7401 is amended to read:

§ 7401. POWERS AND DUTIES

Except insofar as this part of this title specifically confers certain powers, duties, and functions upon others, the commissioner shall be charged with its administration. The commissioner may:

* * *

- (5) supervise the care and treatment of patients at the Retreat in the same manner and with the same authority that he supervises patients at the Vermont State Hospital:
- (6) provide for the hospitalization of mentally ill patients in designated hospitals or institutions of Vermont or negotiate and enter into contracts which shall incorporate safeguards consistent with this part of this title, with any hospital or institution for the care and treatment of patients in any other state;
- (7)(6) prescribe the form of applications, records, reports, and medical certificates required by the statutes, and the information to be contained therein and to supply them to physicians and probate courts;
- (8)(7) require reports from the head of a hospital or other institution concerning the care of patients;
- (9)(8) visit each hospital or institution and review methods of care for all patients;
- (10)(9) investigate complaints made by a patient, his or her attorney, or an interested party on his or her behalf;
- (11)(10) establish rates, charges, and fees for the care of patients in hospitals and determine ability to pay, liability for payments, and amounts to be paid and bill for and collect those amounts with the aid of the attorney general;
- (12)(11) receive gifts and bequests of real and personal estate made for the use and benefit of any state hospital, and invest any moneys so received in safe interest-bearing securities in the corporate name of the hospital;
- (13)(12) delegate to any officer or agency of Vermont any of the duties and powers imposed upon him or her by this part of this title. The delegation of authority and responsibility shall not relieve the commissioner of accountability for the proper administration of this part of this title;

- (14)(13) plan and coordinate the development of community services which are needed to assist mentally ill persons and children and adolescents with a severe emotional disturbance to become as financially and socially independent as possible. These services shall consist of residential, vocational, rehabilitative, day treatment, inpatient, outpatient, and emergency services, as well as client assessment, prevention, family, and individual support services and such other services as may be required by federal law or regulations;
- (15)(14) contract with community mental health centers to assure that individuals who are mentally ill or children and adolescents with a severe emotional disturbance can receive information, referral, and assistance in obtaining those community services which they need and to which they are lawfully entitled;
- (16)(15) contract with accredited educational or health care institutions for psychiatric services at the Vermont State Hospital state hospital;
- (17)(16) ensure the provision of services to children and adolescents with a severe emotional disturbance in coordination with the commissioner of education and the commissioner for children and families in accordance with the provisions of chapter 43 of Title 33;
- (18)(17) ensure the development of community-based prevention and early intervention services for children and adults and ensure the coordination of these services throughout all parts of the public and private health care delivery systems;
- (19)(18) ensure the development of chronic care services, addressing mental health and substance abuse, for children and adults and ensure the coordination of these services with other chronic care initiatives, including the Blueprint for Health, and the care coordination and case management programs of the office of Vermont health access;
- (20)(19) ensure the coordination of mental health, physical health, and substance abuse services provided by the public and private health care delivery systems;
- (21)(20) ensure the coordination of public mental health and substance abuse services with mental health and substance abuse services offered through the private health care delivery system, including services offered by primary care physicians.

Sec. 3. GOVERNING BODIES FOR RESIDENTIAL PSYCHIATRIC FACILITIES

It is the intent of the general assembly that a governing board separate from the governing board of the Vermont state hospital shall be established for any

residential psychiatric facility owned and operated by the state that is a facility separate and independent from the Vermont state hospital.

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 pending the question, Shall the bill be amended as recommended by the Committee on Government Operations?, Senator Shumlin, moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Appropriations with the report of the Committee on Government Operations *intact*,

Which was agreed to.

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. 138, S. 247, H. 695.

Senate Concurrent Resolution

The following joint concurrent resolution, 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, is hereby adopted on the part of the Senate:

By the Committee on Agriculture,

S.C.R. 47.

Senate concurrent resolution honoring Vermont Food Education Every Day (VT FEED) as an innovative partnership facilitating statewide farm to school programs emphasizing the importance of food and nutrition education for the health of our communities.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until one o'clock in the afternoon on Wednesday, April 7, 2010.

WEDNESDAY, APRIL 7, 2010

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 47

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. 689**. An act relating to the Uniform Common Interest Ownership Act.
- **H. 790**. An act relating to capital construction and state bonding.

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

The House has adopted House concurrent resolutions of the following titles:

- **H.C.R. 299.** House concurrent resolution congratulating the 2010 Albert D. Lawton Intermediate School Vermont MATHCOUNTS competition championship team.
- **H.C.R. 300.** House concurrent resolution congratulating Representative Carolyn Branagan on being named the 2010 Vermont Mother of the Year.
- **H.C.R. 301.** House concurrent resolution in memory of U.S. Army 2nd Lt. Joseph Douglas Fortin of St. Johnsbury.
- **H.C.R. 302.** House concurrent resolution congratulating the 2010 Mount Anthony Union High School Patriots Division I championship boys' Nordic ski team.
- **H.C.R. 303.** House concurrent resolution congratulating the 2010 Mount Anthony Union High School Patriots championship wrestling team.
- **H.C.R. 304.** House concurrent resolution congratulating the 2010 Mount Anthony Union High School Patriots Division I championship girls' Nordic ski team.
- **H.C.R. 305.** House concurrent resolution congratulating the 2010 Norwich University Cadets ECAC East women's ice hockey championship team.
- **H.C.R. 306.** House concurrent resolution congratulating Craftsbury Academy student Mael Le Scouezec on winning the 2010 Vermont State Individual Spelling Bee.

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

The House has considered concurrent resolution originating in the Senate of the following title: **S.C.R. 47.** Senate concurrent resolution honoring Vermont Food Education Every Day (VT FEED) as an innovative partnership facilitating statewide farm to school programs emphasizing the importance of food and nutrition education for the health of our communities.

And has adopted the same in concurrence.

Message from the Governor

A message was received from His Excellency, the Governor, by David Coriell, 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 April, 2010 he did not approve and *allowed to become law without his signature* a bill originating in the Senate of the following title:

S. 117. An act relating to the date of the primary election.

Text of Communication from Governor

The text of the communication from His Excellency, the Governor, whereby he allowed to become law *without his signature* **Senate Bill No. S. 117** to the Senate is as follows:

April 7, 2010

The Honorable David A. Gibson Secretary of the Senate State House 115 State Street, Drawer 33 Montpelier, VT 05633

Dear Mr. Gibson:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I will allow **S. 117**, An Act Relating to the Date of the Primary Election, to become law *without my signature* for the reasons stated herein.

The very essence of a representative democracy is that those represented participate in the electoral process. It is the responsibility of elected officials to assure an electoral system that encourages such participation. Vermont's electoral process has long honored that responsibility.

But now, in the guise of assuring that the votes of our brave men and women in the military are counted, as of course they should be, the Legislature has passed S. 117, which in all likelihood will discourage voter participation.

For the past 95 years Vermont has held its primary election on the second Tuesday in September. That date has served us well and assured that while

much of the primary campaigning may have been over the summer months, the election itself would be held "post Labor Day," and after summer vacations. S. 117 would have us hold the primary in August, when Vermonters often enjoy their hard-earned vacations and surely are not focused on an election.

It need not have happened. Neither the Secretary of State nor the Legislature properly explored alternatives to moving the date. In the 21st century, new technologies, such as the electronic transmission of ballots, can ensure that all Vermonters, military and civilian alike, receive their ballots, cast them and have them counted without changing the primary date. In a letter to Vermont's Secretary of State dated November 6, 2009, the Federal Voting Assistance Program of the U.S. Department of Defense reported that service members and overseas voters visited by six state election officials in the Middle East, Asia and Europe found "a strong preference for, and almost universal access to, email or internet voting procedures." Although the use of technology should be our goal, there are other options, such as counting absentee ballots mailed prior to the election for a period of time beyond Election Day, available during the short term. There is simply no need to change the date.

The argument that Vermont is strictly bound by federal law to change the date of our primary is not borne out by the actions of others. Of the 10 other states with primary elections on or later than Vermont's, only Minnesota has acted to change the date of its primary. The concern that the federal government will ignore the provisions of the law that authorize the grant of a waiver, or will somehow dictate to the states when to hold its election during the law's first year of implementation, does not appear to be shared by nine other states.

Further, most would agree that our election season is already too long. It is no secret that the two-year term for Governor has created an almost perpetual campaign. Even before those elected in 2008 were sworn in, some candidates had already announced their intentions to run for higher office in the next election. For statewide offices the solution is to follow the suit of 48 other states by changing to a four-year term.

But for local races, where a four-year term is not realistic, moving the primary earlier will force candidates to decide earlier and campaign earlier – extending the already long campaign season.

Finally, changing election law which affects a current, on going election is a practice we have sought to avoid in the past. This sentiment was echoed by the Secretary of State with respect to whether the campaign finance laws should be amended this session in her statement that "it's not been the tradition to make a change in an election year."

Already many candidates for state and local office are seeking petition signatures to compete in their party's primary on forms provided by the Secretary of State that will be inaccurate once this bill becomes law. Many locations and web postings have advertised September 14th as the date of the primary election as well. While I would expect that when this law goes into effect, efforts will be made to clarify the new primary date, there is ample room for confusion among potential candidates and the public.

In regards to the legislative intent to eliminate the opportunity of an individual to run as an independent after running and losing a party primary election, a close reading of the bill suggests that, through error or otherwise, this purpose was not accomplished. S. 117 allows independent candidates to file for the general election up until three days after the primary election.

Despite these objections I am letting S. 117 go into law without my signature. It is evident that there is not the will this year to make our longstanding September primary work. I greatly regret that and encourage the Legislature and the next Secretary of State to carefully analyze the impact of the summer primary on voter participation. I would hope that creative and innovative approaches can be taken to maximize voter participation while ensuring the integrity of our electoral system.

Sincerely, /s/ James H. Douglas James H. Douglas

Governor

JHD/dmc

Bills Referred

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

H. 689.

An act relating to the Uniform Common Interest Ownership Act.

To the Committee on Judiciary.

H. 790.

An act relating to capital construction and state bonding.

To the Committee on Institutions.

Joint Resolution Placed on Calendar

J.R.S. 60.

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

By All Members of the Senate,

J.R.S. 60. Joint resolution honoring women veterans and requesting that state and federal officials work cooperatively to assure that women veterans receive the recognition, the health care services and other support services they need and deserve.

Whereas, March is Women's History Month, and

Whereas, women have served honorably and with courage in all of America's wars and conflicts since the American Revolution, and

Whereas, the United States military has evolved from a predominantly male force to a force of over 14 percent women who are currently serving on active duty and nearly 17 percent serving in the Reserves and National Guard, and

Whereas, the number of women veterans is expected to be nearly two million by 2020 and will constitute more than 10 percent of the veteran population, and

Whereas, given that an unprecedented number of women are serving in the military and participating in Operation Enduring Freedom and Operation Iraqi Freedom, the United States Department of Veterans Affairs (VA) is working to provide consistent, comprehensive and high-quality health care and benefits to women veterans of all eras, and

Whereas, there is now a growing need to improve health care services for women veterans, to ensure clinicians are properly trained to provide primary care and gender-specific care to women of all ages, and to identify innovative courses of treatment and solutions to administrative obstacles that are unique to women veterans, and

Whereas, with a rapidly increasing number of women serving in the military today and returning from deployments as seasoned veterans, some with exposure to combat, VA facilities and veterans' service organizations are working to ensure that the postdeployment mental and physical health needs unique to women veterans are also met, and

Whereas, women deserve to be acknowledged for their military service and treated with equal respect, not only during Women's History Month but throughout the year, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly encourages the Vermont Office of Veterans Affairs and its women veterans coordinator to work in conjunction with the National Foundation for Women Legislators, Inc. and the Center for Women Veterans at the United States Department of Veterans Affairs, to reach out to all women veterans in Vermont and to encourage them to bring their specific needs and concerns to the attention of state and federal officials, so that state legislators and state and federal officials can work together to identify unique issues impacting women veterans and to consider policy solutions that will improve the quality of life for women veterans in Vermont, *and be it further*

Resolved: That the General Assembly honors all of the women in this state who have heroically answered their call to duty and recognizes the important role women have played in shaping this great nation, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the director and to the women veterans coordinator at the Vermont Office of Veterans Affairs, the United States Veterans Health Administration's women veterans program manager in White River Junction, and the National Foundation of Women Legislators, Inc. in Washington, D.C.

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

Senate Resolution Placed on Calendar

S.R. 21.

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

By Senators Miller, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr and White,

S.R. 21. Senate resolution honoring Dr. Nina Lynn Meyerhof for her international leadership as an educator and peace advocate.

Whereas, Dr. Nina Lynn Meyerhof is a distinguished international educator and peace advocate who works to bring the diverse "human family into holistic communication and mutual understanding," and

Whereas, the breadth of her professional activities is truly remarkable as she has traveled to nearly 50 nations, including Brazil, Ghana, Holland, India, Nepal, Spain, Switzerland and Thailand, often in concert with the United Nations and other leading international organizations, as a leader and facilitator of educational and intercultural programs designed to promote peace, and

Whereas, for Dr. Meyerhof, "peace is more than the absence of war," rather "it is a state of Being," and

Whereas, she graduated from the City College of New York, earned master's degrees in special education from Columbia University Teachers' College and in counseling from Keene State College, and she completed her formal education at the University of Massachusetts, which awarded her a certificate of advanced graduate studies in school psychology and a doctorate in educational policy, research and administration, and

Whereas, Dr. Meyerhof, who for many years resided in Newfane, served as the special education coordinator for the Windham Southeast Supervisory Union, and

Whereas, seeking to combine her interests in education and promoting peace and holistic communities, Dr. Meyerhof founded and is the president of South Burlington-based Children of the Earth, an educational nonprofit group that the United Nations has designated an official nongovernmental organization which promotes "global consciousness and cooperation, multi-cultural understanding, spiritual values, ethical living skills, and social responsibility," and

Whereas, under Dr. Meyerhof's leadership, Children of the Earth offers leadership programs focused on peace-making, educational workshops at national and international forums, and an international network of peace-building coalitions and the organization was a key player in the formation of the Vermont Peace Academy, and

Whereas, on September 11, 2001, Dr. Meyerhof happened to be in New York City and helped organize a "Kids Korner" at the Red Cross Amory and the pier as "a safe haven for the children of all the victims," and

Whereas, Dr. Meyerhof has authored or co-authored several books on topics related to peace and education and is the recipient of international awards for her work as a peace advocate, now therefore be it

Resolved by the Senate:

That the Senate of the State of Vermont honors Dr. Nina Lynn Meyerhof for her international leadership as an educator and peace advocate, *and be it further*

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to Dr. Nina Lynn Meyerhof at Children of the Earth in South Burlington.

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

Bill Recommitted

S. 294.

Senate bill entitled:

An act relating to identification in electioneering communications and penalties for campaign finance violations.

Was taken up.

Thereupon, pending the question Shall the bill be amended as moved by Senator White on behalf of the Committee on Government Operations?, on motion of Senator Shumlin, the bill was recommitted to the Committee on Government Operations.

Bill Passed in Concurrence with Proposal of Amendment

H. 539.

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

An act relating to amending the charter of the town of Hartford.

Bills Passed in Concurrence

House bills of the following titles were severally read the third time and passed in concurrence:

- **H. 639.** An act relating to motor vehicle insurance for volunteer drivers.
- **H. 658.** An act relating to the issuance of certificates of need for home health agencies and addressing patient transportation services in certificate of need applications.
- **H. 766.** An act relating to preventing duplication in certain public health records.

Third Reading; Consideration Postponed

House bill entitled:

H. 765.

An act relating to establishing the Vermont agricultural innovation authority.

Was read the third time.

Thereupon, pending the question, Shall the bill pass in concurrence with proposal of amendment?, on motion of Senator Choate consideration of the bill was postponed until the next legislative day.

Consideration Postponed

Joint Senate resolution entitled:

J.R.S. 47.

Joint resolution strongly urging the Republic of Turkey to recognize the right to religious freedom for all its residents and to end all discriminatory policies directed against the Ecumenical Patriarchate of the Orthodox Church.

Was taken up.

Thereupon, on motion of Senator Shumlin, consideration of the joint resolution was postponed until Tuesday, April 13, 2010.

S.R. 17.

Senator Miller, for the Committee on Economic Development, Housing and General Affairs, to which was referred joint Senate resolution entitled:

Senate resolution urging Congress to authorize alternative waivers to the 21-year-old minimum drinking age that do not entail federal highway funding penalties for states.

Reported recommending that the joint resolution be amended by striking out the resolution in its entirety and inserting in lieu thereof the following:

Senate resolution relating to underage drinking.

Whereas, in 1984, Congress enacted Public Law 97-364, which in Sec. 101(a) added 23 U.S.C. § 408(f)(6) to the United States Code that established the statutory basis for the federal penalty that withholds ten percent of a state's federal highway funding if the state's drinking age is lower than 21, and

Whereas, the current ten percent highway funding penalty prevents an open public debate about the effects of the 21-year-old drinking age as it impacts unlawful, unsupervised consumption of alcohol, and

Whereas, given the constitutional authority of states to regulate alcohol within their borders, Congress should work with the states to find solutions to address the growing problem of unsupervised, underage consumption and overconsumption of alcohol, and

Whereas, each state has unique qualities and residents that make a one-size-fits-all solution difficult, and each state should have the opportunity to develop a comprehensive program that addresses its unique situation, and now therefore be it

Resolved by the Senate:

That the Senate of the State of Vermont urges Congress to authorize the states to address the problems associated with underage consumption of alcohol by obtaining waivers from federal law to avoid triggering federal highway funding penalties, *and be it further*

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to the Vermont Congressional delegation.

And that when so amended the resolution ought to be adopted.

Thereupon, pending the question, Shall the joint resolution be amended as moved by the Committee on Economic Development, Housing and General Affairs?, Senator Scott, moved that the rules be suspended and that the bill be committed to the Committee on Transportation, *intact*.

Thereupon, pending the question, Shall the bill be committed to the Committee on Transportation, *intact*?, Senator Scott requested and was granted leave to withdraw his motion.

Thereupon, pending the question, Shall the joint resolution be amended as moved by the Committee on Economic Development, Housing and General Affairs?, on motion of Senator Shumlin consideration of the bill was postponed until the next legislative day.

Bill Amended; Third Reading Ordered

S. 88.

Senator Racine, for the Committee on Health and Welfare, to which was referred Senate bill entitled:

An act relating to health care financing and universal access to health care in Vermont.

Reported recommending 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) The escalating costs of health care in the United States and in Vermont are not sustainable.
- (2) Health care costs are hurting Vermont's families, employers, local governments, nonprofit organizations and the state budget, with serious economic problems as the consequence.
- (3) The cost of health care in Vermont is estimated to increase by \$1 billion, from \$4.9 billion to \$5.9 billion, by 2012.

- (4) Vermont's per-capita health care expenditures are estimated to be \$9,463.00 in 2012, compared to \$7,414.00 per capita in 2008.
- (5) The average annual increase in Vermont per-capita health care expenditures from 2009 to 2012 is expected to be 6.3 percent. National per-capita health care spending is projected to grow at an average annual rate of 4.8 percent during the same period.
- (6) From 2004 to 2008, Vermont's per-capita health care expenditures grew at an average annual rate of eight percent compared to five percent for the United States.
- (7) At the national level, health care expenses are estimated at 18 percent of GDP and are estimated to rise to 34 percent by 2040.
- (8) Vermont's health care system covers a larger percentage of the population than that of most other states, but still about seven percent of Vermonters lack health insurance coverage.
- (9) In 2008, 15.4 percent of Vermonters with private insurance were underinsured, meaning that the out-of-pocket health insurance expenses exceeded five to 10 percent of a family's annual income depending on income level or that the annual deductible for the health insurance plan exceeded five percent of a family's annual income. Out-of-pocket expenses do not include the cost of insurance premiums. Most Vermonters are a job loss away from being uninsured.
- (10) Vermont's health care reform efforts to date, including Dr. Dynasaur, VHAP, Catamount, the Blueprint for Health, health information technology, and the department of health's wellness and prevention initiatives have been beneficial to thousands of Vermonters, and hold promise for helping to provide access and to control costs in the future.
- (11) Testimony received by the senate committee on health and welfare and the house committee on health care makes it clear that the current best efforts described in subdivision (10) of this section will neither provide insurance coverage for all Vermonters nor significantly reduce the escalation of health care costs.
- (12) It is clear that only structural reform will provide all Vermonters with access to affordable, high quality health care as a human right.
- (13) As this state has done before in so many areas of public policy, Vermont must show leadership on health care reform.

* * * HEALTH CARE SYSTEM DESIGN * * *

Sec. 2. PRINCIPLES FOR HEALTH CARE REFORM

The general assembly adopts the following principles as a framework for reforming health care in Vermont:

- (1) It is the policy of the state of Vermont to ensure universal access to and coverage for health services for all Vermonters. All Vermonters must have access to comprehensive, quality health care. Systemic barriers must not prevent people from accessing necessary health care.
- (2) The health care system must be transparent in design, efficient in operation, and accountable to the people it serves. The state must ensure public participation in the design, implementation, evaluation, and accountability mechanisms in the health care system.
- (3) Primary care must be preserved and enhanced so that Vermonters have care available to them; preferably, within their own communities. Other aspects of Vermont's health care infrastructure must be supported in such a way that all Vermonters have access to necessary health services and that these health services are sustainable.
- (4) Vermont's health delivery system must model continuous improvement of health care quality and safety and, therefore, the system must be accountable in access, cost, quality, and reliability.
- (5) A system for eliminating unnecessary expenditures; reducing administrative costs; reducing costs that do not contribute to efficient, quality health services; and containing all system costs must be implemented so that health care spending does not bankrupt the Vermont economy.
- (6) The financing of health care in Vermont must be sufficient, fair, sustainable, and shared equitably.
- (7) State government must ensure that the health care system satisfies the principles in this section.

Sec. 3. GOALS OF HEALTH CARE REFORM

Consistent with the adopted principles for reforming health care in Vermont, the general assembly adopts the following goals:

- (1) The purpose of the health care system design proposals created by this act is to ensure that individual programs and initiatives can be placed into a larger, more rational design for access to, the delivery of, and the financing of health care in Vermont.
- (2) Vermont's primary care providers will be adequately compensated through a payment system that reduces administrative burdens on providers.

- (3) Health care in Vermont will be organized and delivered in a patientcentered manner through community-based systems that:
 - (A) are coordinated;
 - (B) focus on meeting community health needs;
 - (C) match service capacity to community needs;
- (D) provide information on costs, quality, outcomes, and patient satisfaction;
- (E) use financial incentives and organizational structure to achieve specific objectives;
 - (F) improve continuously the quality of care provided; and
 - (G) contain costs.
- (4) To ensure financial sustainability of Vermont's health care system, the state is committed to slowing the rate of growth of total health care costs and preferably to reducing health care costs below today's amounts.
- (5) Health care costs will be controlled or reduced using a combination of options, including:
- (A) increasing the availability of primary care services throughout the state;
- (B) simplifying reimbursement mechanisms throughout the health care system;
- (C) reducing of administrative costs associated with private and public insurance and bill collection;
- (D) reducing the cost of pharmaceuticals, medical devices, and other supplies through a variety of mechanisms;
- (E) aligning health care professional reimbursement with best practices and outcomes rather than utilization;
- (F) efficient health facility planning, particularly with respect to technology; and
 - (G) increasing price and quality transparency.
- (6) All Vermont residents, subject to reasonable residency requirements, will have universal access to and coverage for health services that meet defined benefits standards, regardless of their age, employment, economic status, or their town of residency, even if they require health care while outside Vermont.

- (7) A system of health care will provide access to health services needed by individuals from birth to death and be responsive and seamless through employment and other life changes.
- (8) A process will be developed to define packages of health services, taking into consideration scientific and research evidence, available funds, the values and priorities of Vermonters, and federal health care reform if enacted.
- (9) Health care reform will ensure that Vermonters' health outcomes and key indicators of public health will show continuous improvement across all segments of the population.
- (10) Health care reform will reduce the number of adverse events from medical errors.
- (11) Disease and injury prevention, health promotion, and health protection will be key elements in the health care system.

Sec. 4. VERMONT HEALTH CARE BOARD

- (a) Definitions. As used in this act:
- (1) "Health care professional" means an individual, partnership, corporation, facility, or institution licensed or certified or authorized by law to provide professional health care services.
- (2) "Health service" means any medically necessary treatment or procedure to maintain, diagnose, or treat an individual's physical or mental condition, including services provided pursuant to a health care professional's order, services to assist in activities of daily living, services for mental health conditions, drug and alcohol abuse treatment, and prescription drugs.
- (3) "Hospital" shall have the same meaning as in 18 V.S.A. § 1902 and may include a hospital located outside Vermont.
- (4) "Hospital service" means any health service received in a hospital and any associated costs for professional services.
- (5) "Preventive care" means screening, counseling, treatment, or medication determined by scientific evidence to be effective in preventing or detecting disease.
- (6) "Primary care" means health services provided by health care professionals specifically trained for and skilled in first-contact and continuing care for individuals with signs, symptoms, or health concerns, not limited by problem origin, organ system, or diagnosis. Primary care services include health promotion, preventive care, health maintenance, counseling, patient education, case management, and the diagnosis and treatment of acute and chronic illnesses in a variety of health care settings.

(7) "Vermont resident" means an individual domiciled in Vermont as evidenced by an intent to maintain a principal dwelling place in Vermont indefinitely and to return to Vermont if temporarily absent, coupled with an act or acts consistent with that intent. The health care board shall establish specific criteria to demonstrate residency.

(b) Vermont health care board.

- (1) Within 30 days of enactment, the Vermont health care board is created and shall have the powers and duties established by this section. The board shall consist of five members who have demonstrated expertise in health care systems or health care system design. The governor shall appoint two members of the board. The speaker of the house, and the president pro tempore of the senate shall each appoint one member. The fifth member shall be chosen by a majority of the appointed members. All appointments shall be completed no later than 30 days after enactment.
- (2) A person in the employ of or holding any official relation to any health care provider or insurer, or engaged in the management of a health care provider or insurer, or owning stock, bonds, or other securities thereof, or who is, in any manner, connected with the operation of a health care provider or insurer shall not be a member of the board. In addition, no board member shall render professional health care services or make or perform any business contract with any health care provider or insurer if such service or contract relates to the business of the health care provider or insurer, except contracts made as an individual or family in the regular course of obtaining health care services.
- (3) The office of legislative council shall provide the board with administrative support, including technical support for budget management, payroll and fiscal matters, clerical staff, and office space. The board shall contract with outside consultants to provide expertise necessary to do the analysis and design required by this act. The legislative council and joint fiscal office shall provide the board with legal and fiscal support.
- (4) The board shall be considered a public body pursuant to 1 V.S.A. § 310 and shall be subject to the access to public records requirements in 1 V.S.A. §§ 315–320. After the public oversight panel publicly reports its proposals to the general assembly as required in Sec. 5 of this act, the board may be subject to public access requests for material relied upon in making its proposals with redactions of proprietary or confidential information as needed.
 - (5) The board shall cease to exist on June 30, 2011.
- (c) The Vermont health care board is authorized to seek matching funds to assist with carrying out the purposes of this act. In addition, it may accept any

and all donations, gifts, and grants of money, equipment, supplies, materials, and services from the federal or any local government, or any agency thereof and from any person, firm, or corporation for any of its purposes and functions under this act and may receive and use the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

Sec. 5. HEALTH CARE SYSTEM DESIGN AND IMPLEMENTATION PLAN

- (a)(1) By January 1, 2011, the Vermont health care board shall propose to the general assembly and the governor at least three design options and an implementation plan for creating and integrating a health care system that meets the principles and goals outlined in Secs. 2 and 3 of this act. One option shall include the design of a government-administered and -financed health benefits system decoupled from employment, which prohibits insurance coverage for the health services provided by this system and allows for private insurance coverage of supplemental health services only. Each design option shall include sufficient detail to allow the governor and the general assembly to consider the adoption of one design during the 2011 legislative session and to achieve implementation of the new system no later than July 1, 2012.
- (2) The board shall review and consider the findings and reports from previous studies of health care reform in Vermont, including the Universal Access Plan Report from the health care authority, November 1, 1993; reports from the Hogan Commission; relevant studies provided to the state of Vermont by the Lewin Group; and studies and reports provided to the joint legislative commission on health care reform. In addition, the board shall consider existing health care systems in other states or countries as models.
- (3) The board, the agency of human services, and the department of banking, insurance, securities, and health care administration shall collaborate to ensure the board and its employees or consultants have the information necessary to create the design options. The board shall engage with interested parties, such as health care providers and professionals, patient advocacy groups, and insurers, as necessary in order to have a full understanding of health care in Vermont.
- (4) By December 1, 2010, the board shall release a draft of the design options to the public and provide 15 days for public review and the submission of comments on the design options. The board shall review and consider the public comments and revise the draft design options as necessary prior to the final submission to the general assembly and governor.
- (b) Each of the design options shall include the following components as further described in Sec. 6 of this act:

- (1) general administration of services;
- (2) packages of health services, including cost-sharing;
- (3) coordinated local delivery system;
- (4) health system planning and public health;
- (5) budgets;
- (6) payment methods;
- (7) process for payment amounts;
- (8) financing;
- (9) Medicaid and Medicare waiver proposals;
- (10) a method to address compliance of the proposed design options with the Employee Retirement Income Security Act (ERISA), if necessary; and
- (11) redesign of state agencies administering or regulating health care, health care professionals and providers, and other health-related services, if necessary to implement the efficient administration or oversight of the health care system.
- (c) The Vermont health care board shall include in the proposal an analysis of each design option as compared to the current state of health care in Vermont, including the costs of providing health care to the uninsured and underinsured in Vermont, any potential savings from creating an integrated system of health care, the impacts on the current private and public insurance system, potential fiscal impacts to individuals and businesses, impacts on the state's economy, and the pros and cons of each design option and of no changes.

Sec. 6. HEALTH CARE SYSTEM DESIGN COMPONENTS

<u>In creating the design options, the Vermont health care board shall consider</u> the following components for each option:

- (1) General administration of services. The board shall make a recommendation, where appropriate to the design option, on:
- (A) the overall administrative design to insure all Vermonters have access to and coverage for affordable, quality health services through a public or private, single-payer, or multi-payer system;
- (B) methods for administering payment for health services, which may include administration by a government agency, under an open bidding process soliciting bids from insurance carriers or third-party administrators, through private insurers, or a combination.

(C) enrollment processes.

- (D) the application of the standards and procedures in the pharmacy best practices and cost control program established by 33 V.S.A. §§ 1996 and 1998, and other mechanisms to promote evidence-based prescribing, clinical efficacy, and cost-containment, such as a single statewide preferred drug list, prescriber education, or utilization reviews.
- (E) appeals processes for decisions made by entities or agencies administering coverage for health services.

(2) Packages of Health services.

- (A) Covered services. Each of the design options shall include access to and coverage for primary care, preventive care, chronic care, acute episodic care, and hospital services. A design option may include more than one package of health services with the associated cost of each package and may include coverage for additional health services, such as home- and community-based services, services in nursing homes, or dental or vision services.
- (B) Cost-sharing. Each of the design options shall consider options to provide for affordable, income-sensitive cost-sharing.

(3) Coordinated, local delivery systems.

- (A) The design options shall ensure that the delivery of health care in Vermont is coordinated in order to provide health services to the citizens of Vermont, to improve health outcomes, and to improve the efficiency of the health care system by ensuring that health care professionals, hospitals, health care facilities and home- and community-based providers offer patient care in an integrated manner designed to optimize patient care at a lower cost and to reduce redundancies in the health care delivery system as a whole. The design options shall consider and include building on the delivery system initiatives that are part of the Blueprint for Health, such as the medical home pilot projects.
- (B) The Vermont health care board shall include in each design option a recommendation for the improvement of the organization of the health care delivery system, including:
- (i) mechanisms in each region of the state to solicit public input; conduct a community needs assessment for incorporation into the health resources allocation plan; plan for community health needs based on the community needs assessment; develop budget recommendations and resource allocations for the region; provide oversight and evaluation regarding the delivery of care in its region; and other functions determined to be necessary in

managing of the region's health care delivery system or furthering cost-containment.

(ii) a regional entity organized by health care professionals and providers to coordinate health services for that region's population, including developing payment methodologies and budgeting, incentive payments, and other functions determined to be necessary in managing the region's health care delivery system or furthering cost-containment.

(4) Health system planning and public health.

- (A) The Vermont health care board shall include in each of the design options an evaluation of the existing mechanisms for health system and facility planning and assessing quality indicators and outcomes, and of public health initiatives, including the health resource allocation plan, the certificate of need process, the Blueprint for Health, the statewide health information exchange, services provided by the Vermont Program for Quality in Health Care, and community prevention programs.
- (B) The board shall include recommendations for changes to existing mechanisms to ensure compatibility with the design options.
- (5) Budgets. The Vermont health care board shall include in each option a recommendation for amending the unified health care budget as provided for in subdivision (A) of this subdivision (5) and to develop a global budget for a facility, provider, or part of the health care system as appropriate to that option and as provided for in subdivision (B).

(A) Unified health care budgets.

- (i) The purpose of the unified health care budget is to establish a statewide spending target within which costs are controlled, resources directed, and quality and access assured.
- (ii) The Vermont health care board shall propose recommendations to revise the unified health care budget provided for in 18 V.S.A. § 9406, including consideration of cost-containment mechanisms or targets, anticipated revenues available to support the expenditures, and other appropriate considerations.
- (iii) The board shall also propose recommendations on how to align the unified health care budget with the health resource allocation plan under 18 V.S.A. § 9405; the hospital budget review process under 18 V.S.A. § 9456; and the proposed global budgets and payments, if applicable and recommended in a design option.
- (B) Global budgets. The board shall recommend whether a global budget is appropriate to ensure cost-containment by a health care facility,

health care provider, a group of health care professionals, or a combination as appropriate to that option. The board shall also recommend the appropriate process and considerations for developing a global budget, including circumstances under which an entity may seek an amendment of its budget, and any changes to the hospital budget process in 18 V.S.A. § 9456.

(6) Payment methods.

- (A) The Vermont health care board shall include a recommendation for the payment methods to be used for each health care sector which provides health services under each design option. The payment methods shall be aligned with the goals of this act and shall provide for cost-containment, provision of high quality, evidence-based health services in a coordinated setting, patient self-management, and healthy lifestyles.
 - (B) The board shall consider the following payment methods:
 - (i) periodic payments based on approved annual global budgets;
 - (ii) capitated payments;
- (iii) incentive payments to health care professionals based on performance standards, which may include evidence-based standard physiological measures, or if the health condition cannot be measured in that manner, a process measure, such as the appropriate frequency of testing or appropriate prescribing of medications;
- (iv) fee supplements if necessary to encourage specialized health care professionals to offer a specific, necessary health service which is not available in a specific geographic region;
 - (v) diagnosis-related groups;
- (vi) global payments based on a global budget, including whether the global payment should be population-based, cover specific line items, provide a mixture of a lump sum payment, diagnosis-related group (DRG) payments, incentive payments for participation in the Blueprint for Health, quality improvements, or other health care reform initiatives as defined in 3 V.S.A. § 2222a; and
 - (vii) fee for service.
 - (7) Process for determining payment amounts.
- (A) The Vermont health care board shall recommend a process for determining payment amounts with the intent to ensure reasonable payments to health care professionals and providers and to eliminate the shift of costs between the payers of health services by ensuring that the amount paid to health care professionals and providers is sufficient. Payment amounts should

- provide reasonable access to health services, provide sufficient uniform payment to health care professionals, reduce unnecessary care, and encourage the financial stability of health care professionals.
- (B) When considering the payment methods in subdivision (6)(A) of this section, the Vermont health care board shall make recommendations for the appropriate process for each of the design options, including:
- (i) Negotiations with hospitals, health care professionals, and groups of health care professionals;
- (ii) Establishing a global payment for health services provided by a particular hospital, health care provider, or group of professionals and providers. In recommending a process for determining a global payment, the board shall consider the interaction with a global budget and other information necessary to the determination of the appropriate payment, including all revenue received from other sources. The recommendation may include that the global payment be reflected as a specific line item in the annual budget.
- (iii) Negotiating a contract including payment methods and amounts with any out-of-state hospital or other health care provider that regularly treats a sufficient volume of Vermont residents, including contracting with out-of-state hospitals or health care providers for the provision of specialized health services that are not available locally to Vermonters.
- (iv) Paying the amount charged for a medically necessary health service for which the individual received a referral or for an emergency health service customarily covered and received in an out-of-state hospital with which there is not an established contract;
- (v) Developing a reference pricing system for nonemergency health services usually covered which are received in an out-of-state hospital or by a health care provider with which there is not a contract.
- (C) To facilitate negotiation of payment amounts, the board may recommend the utilization of one or more health care professional bargaining groups provided for in 18 V.S.A. § 9409, consisting of health care professionals who choose to participate and may propose criteria for forming and approving bargaining groups, and criteria and procedures for negotiations authorized by this section. In authorizing the activities provided for in this section, the intent of the general assembly is to displace state and federal antitrust laws by granting state action immunity for actions that might otherwise be considered to be in violation of state or federal antitrust laws.
- (8) Financing. The board shall include an estimate of any additional costs for providing access to and coverage for health services to the uninsured and underinsured, any estimated savings from streamlining the administration

of health care, and financing proposals for sustainable revenue necessary for funding the system.

- (9) Medicaid and Medicare waiver proposals. The board shall propose how to redesign the Global Commitment to Health Medicaid Section 1115 and the Choices for Care Long-Term Care waiver to be consistent with each design option in order to maximize federal participation and funding in the health care system. The board shall also include a proposal for a Medicare waiver where appropriate to the design option to ensure the participation of Medicare in all or part of the system proposed by that option.
- (10) Employee Retirement Income Security Act (ERISA). The board shall propose a strategy to seek an ERISA exemption from Congress if necessary for one of the design options. In addition, assuming the absence of an ERISA exemption, the board shall consider how to design each option in compliance with ERISA.
- (11) Evaluation of state agencies. The board shall evaluate redesigning the structure of state agencies administering or regulating health care, health care professionals, health care providers, or health insurers, or involved in other health-related services, such as public health or health resource planning. The purpose of the evaluation shall be to ensure the appropriate and efficient operation of state government and to ensure a single locus of responsibility for the health care system and for health care reform.

Sec. 7. APPROPRIATIONS

The amount of \$300,000 is appropriated from the general fund to the office of legislative council in fiscal year 2011 for the health care board to accomplish the purposes of this act.

Sec. 8. EFFECTIVE DATE

This act shall take effect upon passage.

And that when so amended the bill ought to pass.

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported that the bill be amended as recommended by the Committee on Health and Welfare with the following amendments thereto:

<u>First</u>: In Sec. 1(12), by striking out the words "<u>as a human right</u>" at the end of the sentence

<u>Second</u>: In Sec. 2(1), by inserting at the end of the subdivision, the following sentence: <u>All Vermonters must receive affordable and appropriate health care at the appropriate time in the appropriate setting, and health care costs must be contained over time.</u>

<u>Third</u>: By striking out Secs. 4 through 8 in their entirety and inserting in lieu thereof new Secs. 4 through 16 to read as follows:

Sec. 4. 2 V.S.A. § 901 is amended to read:

§ 901. CREATION OF COMMISSION

- (a) There is established a commission on health care reform. The commission, under the direction of co-chairs who shall be appointed by the speaker of the house and president pro tempore of the senate, shall monitor health care reform initiatives and recommend to the general assembly actions needed to attain health care reform.
- (b)(1) Members of the commission shall include four three representatives appointed by the speaker of the house, four three senators appointed by the committee on committees, and two nonvoting members appointed by the governor, one nonvoting member with experience in health care appointed by the speaker of the house, and one nonvoting member with experience in health care appointed by the president pro tempore of the senate.
- (2) The two nonvoting members with experience in health care shall not be in the employ of or holding any official relation to any health care provider or insurer, or engaged in the management of a health care provider or insurer, or owning stock, bonds, or other securities thereof, or who is, in any manner, connected with the operation of a health care provider or insurer. In addition, these two members shall not render professional health care services or make or perform any business contract with any health care provider or insurer if such service or contract relates to the business of the health care provider or insurer, except contracts made as an individual or family in the regular course of obtaining health care services.

* * *

Sec. 5. APPOINTMENT; COMMISSION ON HEALTH CARE REFORM

Within 15 days of enactment, the speaker of the house, the president protempore of the senate, and the committee on committees shall appoint members of the joint legislative commission on health care reform as necessary to reflect the changes in Sec. 4 of this act. All other current members, including those appointed by the governor, shall continue to serve their existing terms.

Sec. 6. HEALTH CARE SYSTEM DESIGN AND IMPLEMENTATION PLAN

(a)(1) By February 1, 2011, the joint legislative commission on health care reform established in chapter 25 of Title 2 shall propose to the general assembly and the governor at least two design options, including

- implementation plans, for creating a single system of health care which insures all Vermonters have access to and coverage for affordable, quality health services through a public or private single-payer or multipayer system and that meets the principles and goals outlined in Secs. 2 and 3 of this act.
- (2) One option shall include the design of a government-administered and publicly financed "single-payer" health benefits system decoupled from employment which prohibits insurance coverage for the health services provided by this system and allows for private insurance coverage only of supplemental health services.
- (3) Each design option shall include sufficient detail to allow the governor and the general assembly to consider the adoption of one design during the 2011 legislative session and to initiate implementation of the new system through a phased process beginning no later than July 1, 2012.
- (4) The proposal to the general assembly and the governor shall include a recommendation for which of the design options best meets the principles and goals outlined in Secs. 2 and 3 of this act in an affordable, timely, and efficient manner.
- (b) No later than 45 days after enactment, the commission shall propose to the joint fiscal committee a recommendation, including the requested amount, for one or more outside consultants who have demonstrated experience in health care systems or designing health care systems that have expanded coverage and contained costs to provide the expertise necessary to do the analysis and design required by this act. The joint fiscal committee may accept, reject, or modify the commission's proposal.
- (c) In creating the design options, the consultant shall review and consider the following:
- (1) the findings and reports from previous studies of health care reform in Vermont, including the Universal Access Plan Report from the health care authority, November 1, 1993; reports from the Hogan Commission; relevant studies provided to the state of Vermont by the Lewin Group; and studies and reports provided to the commission.
- (2) existing health care systems or components thereof in other states or countries as models.
- (3) Vermont's current health care reform efforts as defined in 3 V.S.A. § 2222a.

- (4) the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010; Employee Retirement Income Security Act (ERISA); and Titles XVIII (Medicare), XIX (Medicaid), and XXI (SCHIP) of the Social Security Act.
- (d) Each design option shall propose a single system of health care which maximizes the federal funds to support the system and is composed of the following components, which are described in subsection (e) of this section:
- (1) a payment system for health services which includes one or more packages of health services providing for the integration of physical and mental health; budgets, payment methods, and a process for determining payment amounts; and cost reduction and containment mechanisms;
 - (2) coordinated local delivery systems;
 - (3) health system planning, regulation, and public health;
 - (4) financing and proposals to maximize federal funding; and
- (5) a method to address compliance of the proposed design option or options with federal law.
- (e) In creating the design options, the consultant shall include the following components for each option:
 - (1) A payment system for health services.
- (A) Packages of health services. Each design shall include one or more packages of health services providing for the integration of physical and mental health:
- (i) all of which shall include access to and coverage for primary care, preventive care, chronic care, acute episodic care, hospital services, prescription drugs, and mental health services;
- (ii) one or more may include coverage for additional health services, such as home- and community-based services, services in nursing homes, or dental or vision services;
- (iii) one or more may be modeled after the health services offered under Medicaid; and
 - (iv) all of which shall include a cost-sharing proposal.
- (B) Administration. The consultant shall include a recommendation for:

- (i) a method for administering payment for health services, which may include administration by a government agency, under an open bidding process soliciting bids from insurance carriers or third-party administrators, through private insurers, or a combination.
 - (ii) enrollment processes.
- (iii) integration of the pharmacy best practices and cost control program established by 33 V.S.A. §§ 1996 and 1998 and other mechanisms, to promote evidence-based prescribing, clinical efficacy, and cost-containment, such as a single statewide preferred drug list, prescriber education, or utilization reviews.
- (iv) appeals processes for decisions made by entities or agencies administering coverage for health services.
- (C) Budgets and payments. Each design shall include a recommendation for budgets, payment methods, and a process for determining payment amounts. The consultant shall consider:
- (i) amendments necessary to current law on the unified health care budget, including consideration of cost-containment mechanisms or targets, anticipated revenues available to support the expenditures, and other appropriate considerations, in order to establish a statewide spending target within which costs are controlled, resources directed, and quality and access assured.
- (ii) how to align the unified health care budget with the health resource allocation plan under 18 V.S.A. § 9405; the hospital budget review process under 18 V.S.A. § 9456; and the proposed global budgets and payments, if applicable and recommended in a design option.
- (iii) recommending a global budget where it is appropriate to ensure cost-containment by a health care facility, health care provider, a group of health care professionals, or a combination. Any recommendation shall include a process for developing a global budget, including circumstances under which an entity may seek an amendment of its budget, and any changes to the hospital budget process in 18 V.S.A. § 9456.
- (iv) payment methods to be used for each health care sector which are aligned with the goals of this act and provide for cost-containment, provision of high quality, evidence-based health services in a coordinated setting, patient self-management, and healthy lifestyles. Payment methods may include:
- (I) periodic payments based on approved annual global budgets;

(II) capitated payments;

- (III) incentive payments to health care professionals based on performance standards, which may include evidence-based standard physiological measures, or if the health condition cannot be measured in that manner, a process measure, such as the appropriate frequency of testing or appropriate prescribing of medications;
- (IV) fee supplements if necessary to encourage specialized health care professionals to offer a specific, necessary health service which is not available in a specific geographic region;

(V) diagnosis-related groups;

(VI) global payments based on a global budget, including whether the global payment should be population-based, cover specific line items, provide a mixture of a lump sum payment, diagnosis-related group (DRG) payments, incentive payments for participation in the Blueprint for Health, quality improvements, or other health care reform initiatives as defined in 3 V.S.A. § 2222a; and

(VIII) fee for service.

- (v) what process or processes are appropriate for determining payment amounts with the intent to ensure reasonable payments to health care professionals and providers and to eliminate the shift of costs between the payers of health services by ensuring that the amount paid to health care professionals and providers is sufficient. Payment amounts should provide reasonable access to health services, provide sufficient uniform payment to health care professionals, reduce unnecessary care, and encourage the financial stability of health care professionals. The consultant shall consider the following processes:
- (I) Negotiations with hospitals, health care professionals, and groups of health care professionals;
- (II) Establishing a global payment for health services provided by a particular hospital, health care provider, or group of professionals and providers. In recommending a process for determining a global payment, the board shall consider the interaction with a global budget and other information necessary to the determination of the appropriate payment, including all revenue received from other sources. The recommendation may include that the global payment be reflected as a specific line item in the annual budget.
- (III) Negotiating a contract including payment methods and amounts with any out-of-state hospital or other health care provider that regularly treats a sufficient volume of Vermont residents, including contracting

- with out-of-state hospitals or health care providers for the provision of specialized health services that are not available locally to Vermonters.
- (IV) Paying the amount charged for a medically necessary health service for which the individual received a referral or for an emergency health service customarily covered and received in an out-of-state hospital with which there is not an established contract;
- (V) Developing a reference pricing system for nonemergency health services usually covered which are received in an out-of-state hospital or by a health care provider with which there is not a contract.
- (VI) Utilizing one or more health care professional bargaining groups provided for in 18 V.S.A. § 9409, consisting of health care professionals who choose to participate and may propose criteria for forming and approving bargaining groups, and criteria and procedures for negotiations authorized by this section.
- (C) Cost-containment. Each design shall include cost reduction and containment mechanisms, which may include a fee assessed on insurers combined with a global budget to streamline administration of health services.
- (2) Coordinated local delivery systems. The consultant shall propose a local delivery system to ensure that the delivery of health care in Vermont is coordinated in order to provide health services to the citizens of Vermont, to improve health outcomes, and to improve the efficiency of the health care system by ensuring that health care professionals, hospitals, health care facilities and home- and community-based providers offer patient care in an integrated manner designed to optimize patient care at a lower cost and to reduce redundancies in the health care delivery system as a whole. The consultant shall consider the following models:
- (A) mechanisms in each region of the state to solicit public input; conduct a community needs assessment for incorporation into the health resources allocation plan; a plan for community health needs based on the community needs assessment; develop budget recommendations and resource allocations for the region; provide oversight and evaluation regarding the delivery of care in its region; and other functions determined to be necessary in managing the region's health care delivery system or furthering cost-containment.
- (B) a regional entity organized by health care professionals and providers to coordinate health services for that region's population, including developing payment methodologies and budgeting, incentive payments, and other functions determined to be necessary in managing the region's health care delivery system or furthering cost-containment.

- (3) Health system planning, regulation, and public health. The consultant shall evaluate the existing mechanisms for health system and facility planning and for assessing quality indicators and outcomes and shall evaluate public health initiatives, including the health resource allocation plan, the certificate of need process, the Blueprint for Health, the statewide health information exchange, services provided by the Vermont Program for Quality in Health Care, and community prevention programs.
 - (4) Financing, including federal financing. The consultant shall provide:
- (A) an estimate of any additional costs for providing access to and coverage for health services to the uninsured and underinsured, any estimated savings from streamlining the administration of health care, and financing proposals for sustainable revenue necessary for funding the system, including by maximizing federal revenues.
- (B) a proposal to the Centers on Medicare and Medicaid Services to waive provisions of Titles XVIII (Medicare), XIX (Medicaid), and XXI (SCHIP) of the Social Security Act if necessary to align the federal programs with the proposals contained within the design options, or to promote the simplification of administration, cost-containment, or promotion of health care reform initiatives as defined by 3 V.S.A. § 2222a; and
- (C) a proposal to participate in a federal insurance exchange established by the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 or for a waiver from these provisions when available.
- (5) A method to address compliance of the proposed design option or options with federal law, including the Employee Retirement Income Security Act (ERISA), if necessary.
- (f)(1) The agency of human services, the department of health, and the department of banking, insurance, securities, and health care administration shall collaborate to ensure the commission and its consultant have the information necessary to create the design options.
- (2) The consultant may request legal and fiscal assistance from the office of legislative council and the joint fiscal office.
- (3) The commission or its consultant may engage with interested parties, such as health care providers and professionals, patient advocacy groups, and insurers, as necessary in order to have a full understanding of health care in Vermont.
- (g)(1) By January 1, 2011, the commission or its consultant shall release a draft of the design options to the public and provide 15 days for public review

and the submission of comments on the design options. The commission or its consultant shall review and consider the public comments and revise the draft design options as necessary prior to the final submission to the general assembly and the governor.

- (2) In the proposal and implementation plan provided to the general assembly and the governor, the commission shall include an analysis of each design option as compared to the current state of health care in Vermont, including:
- (A) the costs of providing health care to the uninsured and underinsured in Vermont;
- (B) any potential savings from creating an integrated system of health care;
 - (C) the impacts on the current private and public insurance system;
- (D) the expected net fiscal impact on individuals and on businesses from the modifications to the health care system proposed in the design;
 - (E) impacts on the state's economy;
- (F) the pros and cons of alternative timing for the implementation of each design, including the sequence and rationale for the phasing in of the major components; and
- (G) the pros and cons of each design option and of no changes to the current system.
 - * * * Immediate Cost-Containment Provisions * * *

Sec. 7. HOSPITAL BUDGETS

- (a) The commissioner of banking, insurance, securities, and health care administration shall implement this section consistent with 18 V.S.A. § 9456, with the goals identified in Sec. 50 of No. 61 of the Acts of 2009, and with the goals of systemic health care reform, including the goals of containing costs, ensuring solvency for efficient and effective hospitals, and promoting fairness and equity in health care financing. In addition to the commissioner's authority under subchapter 7 of chapter 221 of Title 8 (hospital budget reviews), the commissioner of banking, insurance, securities, and health care administration shall target hospital budgets for fiscal years 2011 and 2012 consistent with the following:
- (1) Except as provided in subdivision (5) of this subsection, the total systemwide rate increase for all hospitals reviewed by the commissioner shall not exceed 4.0 percent;

- (2) Except as provided in subdivision (5) of this subsection, the total systemwide net patient revenue increase for all hospitals reviewed by the commissioner shall not exceed 4.5 percent;
- (3) Except as provided in subdivision (5) of this subsection, the total systemwide hospital operating margin percentages shall not exceed those percentages allowed in fiscal year 2010;
- (4) Consistent with the goals of lowering overall cost increases in health care without compromising the quality of health care, the commissioner may restrict or disallow specific expenditures, such as new programs. In his or her own discretion, the commissioner may identify or may require hospitals to identify the specific expenditures to be restricted or disallowed.
- (5) The commissioner may exempt hospital revenue and expenses associated with health care reform and other expenses, such as all or a portion of the provider tax, from the limits established in subdivisions (1) through (3) of this subsection if necessary to achieve the goals identified in this section. The expenditures shall be specifically reported, shall be supported with sufficient documentation as required by the commissioner, and may only be exempt if approved by the commissioner.
- (b) Consistent with this section and the overarching goal of containing health care and hospital costs, and notwithstanding 18 V.S.A. § 9456(e) which permits the commissioner to exempt a hospital from the budget review process, the commissioner may exempt a hospital from the hospital budget process for more than two years consecutively. This provision does not apply to a tertiary teaching hospital.
- (c) Upon a showing that a hospital's financial health or solvency will be severely compromised, the commissioner may approve or amend a hospital budget in a manner inconsistent with subsection (a) of this section.
- Sec. 8. 18 V.S.A. § 9453(c) is added to read:
- (c) The commissioner's authority shall extend to affiliated corporations or similar affiliated entities of the hospital as defined by subdivision 9402(13) of this title to the extent that the commissioner reasonably believes that the action is necessary to carry out of the purposes of this subchapter.
- Sec. 9. 18 V.S.A. § 9456(h)(2) is amended to read:
- (2)(A) After notice and an opportunity for hearing, the commissioner may impose on a person who knowingly violates a provision of this subchapter, or a rule adopted pursuant to this subchapter, a civil administrative penalty of no more than \$40,000.00, or in the case of a continuing violation, a civil administrative penalty of no more than \$100,000.00 or one-tenth of one

percent of the gross annual revenues of the hospital, whichever is greater. This subdivision shall not apply to violations of subsection (d) of this section caused by exceptional or unforeseen circumstances.

(B)(i) The commissioner may order a hospital to:

(I)(aa) cease material violations of this subchapter or of a regulation or order issued pursuant to this subchapter; or

(bb) cease operating contrary to the budget established for the hospital under this section, provided such a deviation from the budget is material; and

(II) take such corrective measures as are necessary to remediate the violation or deviation and to carry out the purposes of this subchapter.

(ii) Orders issued under this subdivision (2)(B) shall be issued after notice and an opportunity to be heard, except that where the commissioner finds that a hospital's financial or other emergency circumstances pose an immediate threat of harm to the public or to the financial condition of the hospital. Where there is an immediate threat, the commissioner may issue orders under this subdivision (2)(B) without written or oral notice to the hospital. Where an order is issued without notice, the hospital shall be notified of the right to a hearing at the time the order is issued. The hearing shall be held within 30 days of receipt for the hospital's request for a hearing, and a decision shall be issued within 30 days after the conclusion of the hearing. The commissioner may expand the time to hold the hearing or render the decision for good cause shown. Hospitals may appeal any decision in this section to superior court. An appeal shall be on the record as developed by the commissioner in the administrative proceeding, and the standard of review shall be as provided in 8 V.S.A. § 16.

Sec. 10. REPEAL

18 V.S.A. § 9439(f) (annual review cycles of certificate of need applications) is repealed on July 1, 2010.

Sec. 11. INSURANCE REGULATION: INTENT

It is the intent of the general assembly that the commissioner of banking, insurance, securities, and health care administration use the insurance rate review and approval authority to control the costs of health insurance unrelated to the cost of medical care where consistent with other statutory obligations, such as ensuring solvency. Rate review and approval authority could include imposing limits on producer commissions in specified markets or limiting administrative costs as a percentage of premium.

Sec. 12. 8 V.S.A. § 4080a(h)(2)(D) is added to read:

(D) The commissioner may require a registered small group carrier to identify that percentage of a requested premium increase which is attributed to the following categories: hospital inpatient costs, hospital outpatient costs, pharmacy costs, primary care, other medical costs, administrative costs, and projected reserves or profit. Reporting of this information shall be at the time of seeking a rate increase and shall be in the manner and form as directed by the commissioner. Such information shall be made available to the public in a manner that is easy to understand.

Sec. 13. 8 V.S.A. § 4080b(h)(2)(D) is added to read:

(D) The commissioner may require a registered nongroup carrier to identify that percentage of a requested premium increase which is attributed to the following categories: hospital inpatient costs, hospital outpatient costs, pharmacy costs, primary care, other medical costs, administrative costs, and projected reserves or profit. Reporting of this information shall be at the time of seeking a rate increase and shall be in the manner and form as directed by the commissioner. Such information shall be made available to the public in a manner that is easy to understand.

Sec. 14. GRANT FUNDING

The staff director of the joint legislative commission on health care reform shall apply for grant funding, if available, for the design and implementation analysis provided for in Sec. 4 of this act. Any amounts received in grant funds, up to the amount appropriated in Sec. 15 of this act, shall offset the general fund appropriation by allowing any remaining general funds appropriated to revert to the general fund or reducing future general fund appropriations. Any grant funds received in excess of the appropriated amount may be used for the analysis.

Sec. 15. APPROPRIATION

The amount of \$250,000.00 is appropriated from the general fund to the joint fiscal office in fiscal year 2011 to accomplish the purposes of this act.

Sec. 16. EFFECTIVE DATE

- (a) This section and Secs. 1 through 6 and 14 of this act shall take effect upon passage.
 - (b) Secs. 7 through 13 and 15 shall take effect on July 1, 2010.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended

by the Committee on Health and Welfare?, Senator Racine, on behalf of the Committee on Health and Welfare, requested and was granted leave to substitute an amendment for the recommendation of amendment of the Committee on Health and Welfare as follows:

By striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that:

- (1) The escalating costs of health care in the United States and in Vermont are not sustainable.
- (2) Health care costs are hurting Vermont's families, employers, local governments, nonprofit organizations and the state budget, with serious economic problems as the consequence.
- (3) The cost of health care in Vermont is estimated to increase by \$1 billion, from \$4.9 billion to \$5.9 billion, by 2012.
- (4) Vermont's per-capita health care expenditures are estimated to be \$9,463.00 in 2012, compared to \$7,414.00 per capita in 2008.
- (5) The average annual increase in Vermont per-capita health care expenditures from 2009 to 2012 is expected to be 6.3 percent. National per-capita health care spending is projected to grow at an average annual rate of 4.8 percent during the same period.
- (6) From 2004 to 2008, Vermont's per-capita health care expenditures grew at an average annual rate of eight percent compared to five percent for the United States.
- (7) At the national level, health care expenses are estimated at 18 percent of GDP and are estimated to rise to 34 percent by 2040.
- (8) Vermont's health care system covers a larger percentage of the population than that of most other states, but still about seven percent of Vermonters lack health insurance coverage.
- (9) In 2008, 15.4 percent of Vermonters with private insurance were underinsured, meaning that the out-of-pocket health insurance expenses exceeded five to 10 percent of a family's annual income depending on income level or that the annual deductible for the health insurance plan exceeded five percent of a family's annual income. Out-of-pocket expenses do not include the cost of insurance premiums. Most Vermonters are a job loss away from being uninsured.

- (10) Vermont's health care reform efforts to date, including Dr. Dynasaur, VHAP, Catamount, the Blueprint for Health, health information technology, and the department of health's wellness and prevention initiatives have been beneficial to thousands of Vermonters, and hold promise for helping to provide access and to control costs in the future.
- (11) Testimony received by the senate committee on health and welfare and the house committee on health care makes it clear that the current best efforts described in subdivision (10) of this section will neither provide insurance coverage for all Vermonters nor significantly reduce the escalation of health care costs.
- (12) It is clear that only structural reform will provide all Vermonters with access to affordable, high quality health care.
- (13) As this state has done before in so many areas of public policy, Vermont must show leadership on health care reform.

* * * HEALTH CARE SYSTEM DESIGN * * *

Sec. 2. PRINCIPLES FOR HEALTH CARE REFORM

The general assembly adopts the following principles as a framework for reforming health care in Vermont:

- (1) It is the policy of the state of Vermont to ensure universal access to and coverage for health services for all Vermonters. All Vermonters must have access to comprehensive, quality health care. Systemic barriers must not prevent people from accessing necessary health care. All Vermonters must receive affordable and appropriate health care at the appropriate time in the appropriate setting, and health care costs must be contained over time.
- (2) The health care system must be transparent in design, efficient in operation, and accountable to the people it serves. The state must ensure public participation in the design, implementation, evaluation, and accountability mechanisms in the health care system.
- (3) Primary care must be preserved and enhanced so that Vermonters have care available to them; preferably, within their own communities. Other aspects of Vermont's health care infrastructure must be supported in such a way that all Vermonters have access to necessary health services and that these health services are sustainable.
- (4) Vermont's health delivery system must model continuous improvement of health care quality and safety and, therefore, the system must be accountable in access, cost, quality, and reliability.

- (5) A system for eliminating unnecessary expenditures; reducing administrative costs; reducing costs that do not contribute to efficient, quality health services; and containing all system costs must be implemented so that health care spending does not bankrupt the Vermont economy.
- (6) The financing of health care in Vermont must be sufficient, fair, sustainable, and shared equitably.
- (7) State government must ensure that the health care system satisfies the principles in this section.

Sec. 3. GOALS OF HEALTH CARE REFORM

Consistent with the adopted principles for reforming health care in Vermont, the general assembly adopts the following goals:

- (1) The purpose of the health care system design proposals created by this act is to ensure that individual programs and initiatives can be placed into a larger, more rational design for access to, the delivery of, and the financing of health care in Vermont.
- (2) Vermont's primary care providers will be adequately compensated through a payment system that reduces administrative burdens on providers.
- (3) Health care in Vermont will be organized and delivered in a patient-centered manner through community-based systems that:
 - (A) are coordinated;
 - (B) focus on meeting community health needs;
 - (C) match service capacity to community needs;
- (D) provide information on costs, quality, outcomes, and patient satisfaction;
- (E) use financial incentives and organizational structure to achieve specific objectives;
 - (F) improve continuously the quality of care provided; and
 - (G) contain costs.
- (4) To ensure financial sustainability of Vermont's health care system, the state is committed to slowing the rate of growth of total health care costs and preferably to reducing health care costs below today's amounts.
- (5) Health care costs will be controlled or reduced using a combination of options, including:

- (A) increasing the availability of primary care services throughout the state;
- (B) simplifying reimbursement mechanisms throughout the health care system;
- (C) reducing of administrative costs associated with private and public insurance and bill collection;
- (D) reducing the cost of pharmaceuticals, medical devices, and other supplies through a variety of mechanisms;
- (E) aligning health care professional reimbursement with best practices and outcomes rather than utilization;
- (F) efficient health facility planning, particularly with respect to technology; and
 - (G) increasing price and quality transparency.
- (6) All Vermont residents, subject to reasonable residency requirements, will have universal access to and coverage for health services that meet defined benefits standards, regardless of their age, employment, economic status, or their town of residency, even if they require health care while outside Vermont.
- (7) A system of health care will provide access to health services needed by individuals from birth to death and be responsive and seamless through employment and other life changes.
- (8) A process will be developed to define packages of health services, taking into consideration scientific and research evidence, available funds, the values and priorities of Vermonters, and federal health care reform if enacted.
- (9) Health care reform will ensure that Vermonters' health outcomes and key indicators of public health will show continuous improvement across all segments of the population.
- (10) Health care reform will reduce the number of adverse events from medical errors.
- (11) Disease and injury prevention, health promotion, and health protection will be key elements in the health care system.
- Sec. 4. 2 V.S.A. § 901 is amended to read:

§ 901. CREATION OF COMMISSION

(a) There is established a commission on health care reform. The commission, under the direction of co-chairs who shall be appointed by the speaker of the house and president pro tempore of the senate, shall monitor

health care reform initiatives and recommend to the general assembly actions needed to attain health care reform.

- (b)(1) Members of the commission shall include four three representatives appointed by the speaker of the house, four three senators appointed by the committee on committees, and two nonvoting members appointed by the governor, one nonvoting member with experience in health care appointed by the speaker of the house, and one nonvoting member with experience in health care appointed by the president pro tempore of the senate.
- (2) The two nonvoting members with experience in health care shall not be in the employ of or holding any official relation to any health care provider or insurer, or engaged in the management of a health care provider or insurer, or owning stock, bonds, or other securities thereof, or who is, in any manner, connected with the operation of a health care provider or insurer. In addition, these two members shall not render professional health care services or make or perform any business contract with any health care provider or insurer if such service or contract relates to the business of the health care provider or insurer, except contracts made as an individual or family in the regular course of obtaining health care services.

* * *

Sec. 5. APPOINTMENT; COMMISSION ON HEALTH CARE REFORM

Within 15 days of enactment, the speaker of the house, the president protempore of the senate, and the committee on committees shall appoint members of the joint legislative commission on health care reform as necessary to reflect the changes in Sec. 4 of this act. All other current members, including those appointed by the governor, shall continue to serve their existing terms.

Sec. 6. HEALTH CARE SYSTEM DESIGN AND IMPLEMENTATION PLAN

- (a)(1) By February 1, 2011, the joint legislative commission on health care reform established in chapter 25 of Title 2 shall propose to the general assembly and the governor at least three design options, including implementation plans, for creating a single system of health care which ensures all Vermonters have access to and coverage for affordable, quality health services through a public or private single-payer or multipayer system and that meets the principles and goals outlined in Secs. 2 and 3 of this act.
- (2) One option shall include the design of a government-administered and publicly financed "single-payer" health benefits system decoupled from employment which prohibits insurance coverage for the health services

provided by this system and allows for private insurance coverage only of supplemental health services.

- (3) Each design option shall include sufficient detail to allow the governor and the general assembly to consider the adoption of one design during the 2011 legislative session and to initiate implementation of the new system through a phased process beginning no later than July 1, 2012.
- (4) The proposal to the general assembly and the governor shall include a recommendation for which of the design options best meets the principles and goals outlined in Secs. 2 and 3 of this act in an affordable, timely, and efficient manner.
- (b) No later than 45 days after enactment, the commission shall propose to the joint fiscal committee a recommendation, including the requested amount, for one or more outside consultants who have demonstrated experience in health care systems or designing health care systems that have expanded coverage and contained costs to provide the expertise necessary to do the analysis and design required by this act. Within seven days of the commission's proposal, the joint fiscal committee shall meet and may accept, reject, or modify the commission's proposal.
- (c) In creating the design options, the consultant shall review and consider the following:
- (1) the findings and reports from previous studies of health care reform in Vermont, including the Universal Access Plan Report from the health care authority, November 1, 1993; reports from the Hogan Commission; relevant studies provided to the state of Vermont by the Lewin Group; and studies and reports provided to the commission.
- (2) existing health care systems or components thereof in other states or countries as models.
- (3) Vermont's current health care reform efforts as defined in 3 V.S.A. § 2222a.
- (4) the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010; Employee Retirement Income Security Act (ERISA); and Titles XVIII (Medicare), XIX (Medicaid), and XXI (SCHIP) of the Social Security Act.
- (d) Each design option shall propose a single system of health care which maximizes the federal funds to support the system and is composed of the following components, which are described in subsection (e) of this section:
- (1) a payment system for health services which includes one or more packages of health services providing for the integration of physical and

mental health; budgets, payment methods, and a process for determining payment amounts; and cost reduction and containment mechanisms;

- (2) coordinated local delivery systems;
- (3) health system planning, regulation, and public health;
- (4) financing and proposals to maximize federal funding; and
- (5) a method to address compliance of the proposed design option or options with federal law.
- (e) In creating the design options, the consultant shall include the following components for each option:
 - (1) A payment system for health services.
- (A) Packages of health services. Each design shall include one or more packages of health services providing for the integration of physical and mental health:
- (i) all of which shall include access to and coverage for primary care, preventive care, chronic care, acute episodic care, hospital services, prescription drugs, and mental health services;
- (ii) one or more may include coverage for additional health services, such as home- and community-based services, services in nursing homes, payment for transportation related to health services, or dental or vision services; and
 - (iii) all of which shall include a cost-sharing proposal.
- (B) Administration. The consultant shall include a recommendation for:
- (i) a method for administering payment for health services, which may include administration by a government agency, under an open bidding process soliciting bids from insurance carriers or third-party administrators, through private insurers, or a combination.
 - (ii) enrollment processes.
- (iii) integration of the pharmacy best practices and cost control program established by 33 V.S.A. §§ 1996 and 1998 and other mechanisms, to promote evidence-based prescribing, clinical efficacy, and cost-containment, such as a single statewide preferred drug list, prescriber education, or utilization reviews.
- (iv) appeals processes for decisions made by entities or agencies administering coverage for health services.

- (C) Budgets and payments. Each design shall include a recommendation for budgets, payment methods, and a process for determining payment amounts. The consultant shall consider:
- (i) amendments necessary to current law on the unified health care budget, including consideration of cost-containment mechanisms or targets, anticipated revenues available to support the expenditures, and other appropriate considerations, in order to establish a statewide spending target within which costs are controlled, resources directed, and quality and access assured.
- (ii) how to align the unified health care budget with the health resource allocation plan under 18 V.S.A. § 9405; the hospital budget review process under 18 V.S.A. § 9456; and the proposed global budgets and payments, if applicable and recommended in a design option.
- (iii) recommending a global budget where it is appropriate to ensure cost-containment by a health care facility, health care provider, a group of health care professionals, or a combination. Any recommendation shall include a process for developing a global budget, including circumstances under which an entity may seek an amendment of its budget, and any changes to the hospital budget process in 18 V.S.A. § 9456.
- (iv) payment methods to be used for each health care sector which are aligned with the goals of this act and provide for cost-containment, provision of high quality, evidence-based health services in a coordinated setting, patient self-management, and healthy lifestyles. Payment methods may include:
- (I) periodic payments based on approved annual global budgets;

(II) capitated payments;

- (III) incentive payments to health care professionals based on performance standards, which may include evidence-based standard physiological measures, or if the health condition cannot be measured in that manner, a process measure, such as the appropriate frequency of testing or appropriate prescribing of medications;
- (IV) fee supplements if necessary to encourage specialized health care professionals to offer a specific, necessary health service which is not available in a specific geographic region;

(V) diagnosis-related groups;

(VI) global payments based on a global budget, including whether the global payment should be population-based, cover specific line

items, provide a mixture of a lump sum payment, diagnosis-related group (DRG) payments, incentive payments for participation in the Blueprint for Health, quality improvements, or other health care reform initiatives as defined in 3 V.S.A. § 2222a; and

(VIII) fee for service.

- (v) what process or processes are appropriate for determining payment amounts with the intent to ensure reasonable payments to health care professionals and providers and to eliminate the shift of costs between the payers of health services by ensuring that the amount paid to health care professionals and providers is sufficient. Payment amounts should provide reasonable access to health services, provide sufficient uniform payment to health care professionals, reduce unnecessary care, and encourage the financial stability of health care professionals. The consultant shall consider the following processes:
- (I) Negotiations with hospitals, health care professionals, and groups of health care professionals;
- (II) Establishing a global payment for health services provided by a particular hospital, health care provider, or group of professionals and providers. In recommending a process for determining a global payment, the board shall consider the interaction with a global budget and other information necessary to the determination of the appropriate payment, including all revenue received from other sources. The recommendation may include that the global payment be reflected as a specific line item in the annual budget.
- (III) Negotiating a contract including payment methods and amounts with any out-of-state hospital or other health care provider that regularly treats a sufficient volume of Vermont residents, including contracting with out-of-state hospitals or health care providers for the provision of specialized health services that are not available locally to Vermonters.
- (IV) Paying the amount charged for a medically necessary health service for which the individual received a referral or for an emergency health service customarily covered and received in an out-of-state hospital with which there is not an established contract;
- (V) Developing a reference pricing system for nonemergency health services usually covered which are received in an out-of-state hospital or by a health care provider with which there is not a contract.
- (VI) Utilizing one or more health care professional bargaining groups provided for in 18 V.S.A. § 9409, consisting of health care professionals who choose to participate and may propose criteria for forming

and approving bargaining groups, and criteria and procedures for negotiations authorized by this section.

- (D) Cost-containment. Each design shall include cost reduction and containment mechanisms. If the design option includes private insurers, the option may include a fee assessed on insurers combined with a global budget to streamline administration of health services.
- (2) Coordinated local delivery systems. The consultant shall propose a local delivery system to ensure that the delivery of health care in Vermont is coordinated in order to provide health services to the citizens of Vermont, to improve health outcomes, and to improve the efficiency of the health care system by ensuring that health care professionals, hospitals, health care facilities and home- and community-based providers offer patient care in an integrated manner designed to optimize patient care at a lower cost and to reduce redundancies in the health care delivery system as a whole. The consultant shall consider the following models:
- (A) mechanisms in each region of the state to solicit public input; conduct a community needs assessment for incorporation into the health resources allocation plan; a plan for community health needs based on the community needs assessment; develop budget recommendations and resource allocations for the region; provide oversight and evaluation regarding the delivery of care in its region; and other functions determined to be necessary in managing the region's health care delivery system or furthering cost-containment.
- (B) a regional entity organized by health care professionals and providers to coordinate health services for that region's population, including developing payment methodologies and budgeting, incentive payments, and other functions determined to be necessary in managing the region's health care delivery system or furthering cost-containment.
- (3) Health system planning, regulation, and public health. The consultant shall evaluate the existing mechanisms for health system and facility planning and for assessing quality indicators and outcomes and shall evaluate public health initiatives, including the health resource allocation plan, the certificate of need process, the Blueprint for Health, the statewide health information exchange, services provided by the Vermont Program for Quality in Health Care, and community prevention programs.
 - (4) Financing, including federal financing. The consultant shall provide:
- (A) an estimate of any additional costs for providing access to and coverage for health services to the uninsured and underinsured, any estimated savings from streamlining the administration of health care, and financing

proposals for sustainable revenue necessary for funding the system, including by maximizing federal revenues.

- (B) a proposal to the Centers on Medicare and Medicaid Services to waive provisions of Titles XVIII (Medicare), XIX (Medicaid), and XXI (SCHIP) of the Social Security Act if necessary to align the federal programs with the proposals contained within the design options in order to maximize federal funds or to promote the simplification of administration, cost-containment, or promotion of health care reform initiatives as defined by 3 V.S.A. § 2222a; and
- (C) a proposal to participate in a federal insurance exchange established by the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 or for a waiver from these provisions when available.
- (5) A method to address compliance of the proposed design option or options with federal law, including the Employee Retirement Income Security Act (ERISA), if necessary. In the case of ERISA, the consultant may propose a strategy to seek an ERISA exemption from Congress if necessary for one of the design options.
- (f)(1) The agency of human services and the department of banking, insurance, securities, and health care administration shall collaborate to ensure the commission and its consultant have the information necessary to create the design options.
- (2) The consultant may request legal and fiscal assistance from the office of legislative council and the joint fiscal office.
- (3) The commission or its consultant may engage with interested parties, such as health care providers and professionals, patient advocacy groups, and insurers, as necessary in order to have a full understanding of health care in Vermont.
- (g)(1) By January 1, 2011, the commission shall release a draft of the design options to the public and provide 15 days for public review and the submission of comments on the design options. The commission shall review and consider the public comments and revise the draft design options as necessary prior to the final submission to the general assembly and the governor.
- (2) In the proposal and implementation plan provided to the general assembly and the governor, the commission shall include an analysis of each design option as compared to the current state of health care in Vermont, including:

- (A) the costs of providing health care to the uninsured and underinsured in Vermont;
- (B) any potential savings from creating an integrated system of health care;
 - (C) the impacts on the current private and public insurance system;
- (D) the expected net fiscal impact on individuals and on businesses from the modifications to the health care system proposed in the design;
 - (E) impacts on the state's economy;
- (F) the pros and cons of alternative timing for the implementation of each design, including the sequence and rationale for the phasing in of the major components; and
- (G) the pros and cons of each design option and of no changes to the current system.

Sec. 7. GRANT FUNDING

The staff director of the joint legislative commission on health care reform shall apply for grant funding, if available, for the design and implementation analysis provided for in Sec. 6 of this act. Any amounts received in grant funds, up to the amount appropriated in Sec. 8 of this act, shall offset the general fund appropriation by allowing any remaining general funds appropriated to revert to the general fund or reducing future general fund appropriations. Any grant funds received in excess of the appropriated amount may be used for the analysis.

Sec. 8. APPROPRIATION

The amount of \$250,000.00 is appropriated from the general fund to the joint fiscal office in fiscal year 2011 to accomplish the purposes of this act.

Sec. 9. EFFECTIVE DATES

- (a) This section and Secs. 1 through 7 of this act shall take effect upon passage.
 - (b) Sec. 8 shall take effect on July 1, 2010.

Thereupon, pending the question, Shall the substitute recommendation of amendment of the Committee on Health and Welfare be amended as recommended by the Committee on Appropriations?, Senators Kitchel and Bartlett requested and were granted leave to substitute an of amendment for the recommendation of amendment of the Committee on Appropriations as follows:

That the bill be amended as recommended by Senator Racine on behalf of the Committee on Health and Welfare, with the following amendments thereto:

<u>First</u>: By inserting seven new sections to be numbered Secs. 7a through 7g to read as follows:

Sec. 7a. HOSPITAL BUDGETS

- (a) The commissioner of banking, insurance, securities, and health care administration shall implement this section consistent with 18 V.S.A. § 9456, with the goals identified in Sec. 50 of No. 61 of the Acts of 2009, and with the goals of systemic health care reform, including the goals of containing costs, ensuring solvency for efficient and effective hospitals, and promoting fairness and equity in health care financing. In addition to the commissioner's authority under subchapter 7 of chapter 221 of Title 8 (hospital budget reviews), the commissioner of banking, insurance, securities, and health care administration shall target hospital budgets for fiscal years 2011 and 2012 consistent with the following:
- (1) Except as provided in subdivision (5) of this subsection, the total systemwide rate increase for all hospitals reviewed by the commissioner shall not exceed 4.0 percent;
- (2) Except as provided in subdivision (5) of this subsection, the total systemwide net patient revenue increase for all hospitals reviewed by the commissioner shall not exceed 4.5 percent;
- (3) Except as provided in subdivision (5) of this subsection, the total systemwide hospital operating margin percentages shall not exceed those percentages allowed in fiscal year 2010;
- (4) Consistent with the goals of lowering overall cost increases in health care without compromising the quality of health care, the commissioner may restrict or disallow specific expenditures, such as new programs. In his or her own discretion, the commissioner may identify or may require hospitals to identify the specific expenditures to be restricted or disallowed.
- (5) The commissioner may exempt hospital revenue and expenses associated with health care reform and other expenses, such as all or a portion of the provider tax, from the limits established in subdivisions (1) through (3) of this subsection if necessary to achieve the goals identified in this section. The expenditures shall be specifically reported, shall be supported with sufficient documentation as required by the commissioner, and may only be exempt if approved by the commissioner.
- (b) Consistent with this section and the overarching goal of containing health care and hospital costs, and notwithstanding 18 V.S.A. § 9456(e) which

permits the commissioner to exempt a hospital from the budget review process, the commissioner may exempt a hospital from the hospital budget process for more than two years consecutively. This provision does not apply to a tertiary teaching hospital.

- (c) Upon a showing that a hospital's financial health or solvency will be severely compromised, the commissioner may approve or amend a hospital budget in a manner inconsistent with subsection (a) of this section.
- Sec. 7b. 18 V.S.A. § 9453(c) is added to read:
- (c) The commissioner's authority shall extend to affiliated corporations or similar affiliated entities of the hospital as defined by subdivision 9402(13) of this title to the extent that the commissioner reasonably believes that the action is necessary to carry out of the purposes of this subchapter.
- Sec. 7c. 18 V.S.A. § 9456(h)(2) is amended to read:
- (2)(A) After notice and an opportunity for hearing, the commissioner may impose on a person who knowingly violates a provision of this subchapter, or a rule adopted pursuant to this subchapter, a civil administrative penalty of no more than \$40,000.00, or in the case of a continuing violation, a civil administrative penalty of no more than \$100,000.00 or one-tenth of one percent of the gross annual revenues of the hospital, whichever is greater. This subdivision shall not apply to violations of subsection (d) of this section caused by exceptional or unforeseen circumstances.
 - (B)(i) The commissioner may order a hospital to:
- (I)(aa) cease material violations of this subchapter or of a regulation or order issued pursuant to this subchapter; or
- (bb) cease operating contrary to the budget established for the hospital under this section, provided such a deviation from the budget is material; and
- (II) take such corrective measures as are necessary to remediate the violation or deviation and to carry out the purposes of this subchapter.
- (ii) Orders issued under this subdivision (2)(B) shall be issued after notice and an opportunity to be heard, except that where the commissioner finds that a hospital's financial or other emergency circumstances pose an immediate threat of harm to the public or to the financial condition of the hospital. Where there is an immediate threat, the commissioner may issue orders under this subdivision (2)(B) without written or oral notice to the hospital. Where an order is issued without notice, the hospital shall be notified of the right to a hearing at the time the order is issued. The hearing shall be held within 30 days of receipt for the hospital's request

for a hearing, and a decision shall be issued within 30 days after the conclusion of the hearing. The commissioner may expand the time to hold the hearing or render the decision for good cause shown. Hospitals may appeal any decision in this section to superior court. An appeal shall be on the record as developed by the commissioner in the administrative proceeding, and the standard of review shall be as provided in 8 V.S.A. § 16.

Sec. 7d. REPEAL

18 V.S.A. § 9439(f) (annual review cycles of certificate of need applications) is repealed on July 1, 2010.

Sec. 7e. INSURANCE REGULATION; INTENT

It is the intent of the general assembly that the commissioner of banking, insurance, securities, and health care administration use the insurance rate review and approval authority to control the costs of health insurance unrelated to the cost of medical care where consistent with other statutory obligations, such as ensuring solvency. Rate review and approval authority could include imposing limits on producer commissions in specified markets or limiting administrative costs as a percentage of the premium.

Sec. 7f. 8 V.S.A § 4080a(h)(2)(D) is added to read:

(D) The commissioner may require a registered small group carrier to identify that percentage of a requested premium increase which is attributed to the following categories: hospital inpatient costs, hospital outpatient costs, pharmacy costs, primary care costs, other medical costs, administrative costs, and projected reserves or profit. Reporting of this information shall be at the time of seeking a rate increase and shall be in the manner and form as directed by the commissioner. Such information shall be made available to the public in a manner that is easy to understand.

Sec. 7g. 8 V.S.A § 4080b(h)(2)(D) is added to read:

(D) The commissioner may require a registered nongroup carrier to identify that percentage of a requested premium increase which is attributed to the following categories: hospital inpatient costs, hospital outpatient costs, pharmacy costs, primary care costs, other medical costs, administrative costs, and projected reserves or profit. Reporting of this information shall be at the time of seeking a rate increase and shall be in the manner and form as directed by the commissioner. Such information shall be made available to the public in a manner that is easy to understand.

<u>Second</u>: In Sec. 9 (Effective Dates) by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) Secs. 7a through 7g and 8 shall take effect on July 1, 2010.

Thereupon, the question, Shall the bill be amended as recommended by Senator Racine on behalf of the Committee on Health and Welfare, as substituted?, was agreed to.

Thereupon, pending the question, Shall the bill be amended as recommended by Senators Kitchel and Bartlett, on behalf of the Committee on Appropriations, as substituted?, Senator Mullin requested that in the *first* proposal of amendment that Sec. 7a be voted on separately, which was agreed to.

Thereupon, the question, Shall the bill be amended as recommended by Senators Kitchel and Bartlett on behalf of the Committee on Appropriations in the *first* recommendation of amendment Secs. 7b through 7g and in the *second* recommendation of amendment?, was agreed to on a roll call, Yeas 30, Nays 0.

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

Roll Call

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

Those Senators who voted in the negative were: None.

Thereupon, the question, Shall bill be amended as recommended by Senators Kitchel and Bartlett on behalf of the Committee on Appropriations in the *first* recommendation of amendment Sec. 7a?, was agreed on a roll call, Yeas 21, Nays 9.

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: Ashe, Bartlett, Campbell, Carris, Cummings, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, MacDonald, Mazza, McCormack, Miller, Racine, Sears, Shumlin, Snelling, Starr, White.

Those Senators who voted in the negative were: Ayer, Brock, Choate, Doyle, Flory, Lyons, Mullin, Nitka, Scott.

Thereupon, the pending question, Shall the bill be read a third time?, was decided in the affirmative on a roll call, Yeas 28, Nays 2.

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, Ayer, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr, White.

Those Senators who voted in the negative were: *Brock, Flory.

*Senator Brock explained his vote as follows:

"I recognize and support strongly the need for meaningful health care reform and cost controls. However, I oppose this bill because it takes a flawed approach to achieving needed reform.

This bill creates three different health care system designs. But each design contains mandated elements eerily reminiscent of the 1930's central planning. The design specifications suggest unprecedented interference with personal choice and provider freedom. By structuring the commission as a creature solely controlled by the current legislative leadership, there is created a genuine perception that this is a process dictated not by the need for independent professional expertise, but by political expediency. Especially in light of the manifest uncertainties arising from still little understood federal healthcare legislation, this bill takes the wrong approach at the wrong time."

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. 539, H. 639, H. 658, H. 766.

Message from the House No. 48

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 joint resolution originating in the Senate of the following title:

J.R.S. 59. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

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

H. 456. An act relating to seasonal fuel assistance.

And has 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 April 7, 2010, he approved and signed a bill originating in the House of the following title:

H. 764. An act relating to the state teachers' retirement system of Vermont.

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 Representatives Waite-Simpson and Jerman,

H.C.R. 299.

House concurrent resolution congratulating the 2010 Albert D. Lawton Intermediate School Vermont MATHCOUNTS competition championship team.

By Representative Howrigan and others,

By Senators Brock and Kittell,

H.C.R. 300.

House concurrent resolution congratulating Representative Carolyn Branagan on being named the 2010 Vermont Mother of the Year.

By All Members of the House,

By All Members of the Senate,

H.C.R. 301.

House concurrent resolution in memory of U.S. Army 2nd Lt. Joseph Douglas Fortin of St. Johnsbury.

By Representative Morrissey and others,

By Senators Hartwell and Sears,

H.C.R. 302.

House concurrent resolution congratulating the 2010 Mount Anthony Union High School Patriots Division I championship boys' Nordic ski team.

By Representative Morrissey and others,

By Senators Hartwell and Sears,

H.C.R. 303.

House concurrent resolution congratulating the 2010 Mount Anthony Union High School Patriots championship wrestling team.

By Representative Morrissey and others,

By Senators Hartwell and Sears,

H.C.R. 304.

House concurrent resolution congratulating the 2010 Mount Anthony Union High School Patriots Division I championship girls' Nordic ski team.

By Representative Donahue and others,

By Senators Cummings, Scott and Doyle,

H.C.R. 305.

House concurrent resolution congratulating the 2010 Norwich University Cadets ECAC East women's ice hockey championship team.

By Representatives Rodgers and Morley,

H.C.R. 306.

House concurrent resolution congratulating Craftsbury Academy student Mael Le Scouezec on winning the 2010 Vermont State Individual Spelling Bee.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eleven o'clock and thirty minutes in the morning.

THURSDAY, APRIL 8, 2010

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Rules Suspended; Committee Relieved of Further Consideration; Bill Committed

H. 689.

On motion of Senator Campbell, the rules were suspended, and H. 689 was taken up for immediate consideration, for the purpose of relieving the Committee on Judiciary from further consideration of the bill. Thereupon, on motion of Senator Campbell, the Committee on Judiciary was relieved of House bill entitled:

An act relating to the Uniform Common Interest Ownership Act, and the bill was committed to the Committee on Finance.

Senate Resolution Placed on Calendar

S.R. 22.

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

By the Committee on Natural Resources and Energy,

S.R. 22. Senate resolution relating to S. 77, An act relating to the recycling and disposal of electronic waste.

Whereas, during the course of the 2009-2010 biennium, a certain Senate bill, S. 77, was passed by the Senate in 2009, and after consideration by the House was returned to the Senate with a proposal of amendment bearing document number 254704.1, and

Whereas, S. 77 was further considered by the Senate, resulting in the Senate concurring in the House proposal of amendment as set forth in document number 254704.1 and in the Senate calendars dated March 9, 12, 16 and 17, with further proposals of amendment, and

Whereas, the House concurred in the Senate's further proposals of amendment to the House proposal of amendment on March 23, 2010, and

Whereas, the action by the House on March 23, 2010, and the subsequent return of S. 77 to the Senate by the House completed the final passage of S. 77 by the Vermont General Assembly, and

Whereas, following final passage of S. 77 it was discovered that one subsection of the House proposal of amendment to S. 77 that had been approved by the House on February 24, 2010, had been inadvertently omitted from the text of the House proposal of amendment as set forth in document number 254704.1 and in the Senate calendars for March 9, 12, 16 and 17, and

Whereas, because of the inadvertent omission of a portion of the House proposal of amendment to S. 77, the version of S. 77 as passed by the Senate differs from the version of S. 77 as passed by the House, and

Whereas, in order for legislation to be enacted in accordance with the Constitution of the State of Vermont, the exact wording of bills as passed by the Senate and the House must be the same in each chamber.and

Whereas, the wording of S. 77 that must be approved by the Senate is the addition to Sec. 2, 10 V.S.A. § 7553, as proposed by the House, of the following language:

"(i) Exemption. A manufacturer who sells less than 20 covered electronic devices in Vermont in a program year is exempt from the requirements of this section.", now therefore be it

Resolved by the Senate:

That the Vermont Senate does hereby approve and does hereby concur with the House proposal of amendment that in Sec. 2 of S. 77, 10 V.S.A. § 7553(i) should read as follows:

(i) Exemption. A manufacturer who sells less than 20 covered electronic devices in Vermont in a program year is exempt from the requirements of this section.

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

Message from the Governor Appointments Referred

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

Ristau, Arthur of Barre - Member of the Vermont Lottery Commission, - from April 7, 2010, to February 28, 2013.

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

Nesbitt, Thomas D. of Waterbury Center - Member of the Plumbers' Examining Board, - from April 7, 2010, to February 28, 2013.

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

Miller, Mary of Waterbury Center - Member of the Vermont State Housing Authority, - from April 7, 2010, to February 28, 2015.

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

Hover, Caprice B. of Rutland - Member of the Children and Family Council for Prevention Programs, - from April 5, 2010, to February 29, 2012.

To the Committee on Health and Welfare.

Jolles, Antonia Stacy of South Burlington - Member of the Children and Family Council for Prevention Programs, - from April 5, 2010, to February 29, 2012.

To the Committee on Health and Welfare.

Johnson, Linda of Cabot - Member of the Children and Family Council for Prevention Programs, - from April 5, 2010, to February 28, 2013.

To the Committee on Health and Welfare.

Hanson-Metayer, Elizabeth of South Burlington - Member of the Children and Family Council for Prevention Programs, - from April 5, 2010, to February 28, 2013.

To the Committee on Health and Welfare.

Consideration Postponed

Senate bill entitled:

S. 288.

An act relating to the Vermont recovery and reinvestment act of 2010.

Was taken up.

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

Consideration Postponed

House bills entitled:

H. 540.

An act relating to motor vehicles passing vulnerable users on the highway and to bicycle operation.

H. 765.

An act relating to establishing the Vermont agricultural innovation authority.

Were taken up.

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

Bill Passed

Senate bill of the following title was read the third time and passed:

S. 88. An act relating to health care financing and universal access to health care in Vermont.

Joint Resolution Adopted on the Part of the Senate J.R.S. 60.

Joint Senate resolution entitled:

Joint resolution honoring women veterans and requesting that state and federal officials work cooperatively to assure that women veterans receive the recognition, the health care services and other support services they need and deserve.

Having been placed on the Calendar for action, was taken up and adopted on the part of the Senate.

Senate Resolution Adopted

S.R. 21.

Senate resolution entitled:

Senate resolution honoring Dr. Nina Lynn Meyerhof for her international leadership as an educator and peace advocate

Having been placed on the Calendar for action, was taken up and adopted.

Rules Suspended; Bill Messaged

On motion of Senator Campbell, the rules were suspended, and the following bill was ordered messaged to the House forthwith:

S. 88.

Adjournment

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

FRIDAY, APRIL 9, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Lisa Ramson of Moretown.

Message from the House No. 49

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. 760.** An act relating to the repeal or revision of certain boards and commissions.
- **H. 774.** An act relating to approval of amendments to the charter of the city of South Burlington.
- **H. 778.** An act relating to amending miscellaneous provisions in Vermont's public retirement systems.
 - **H. 791.** An act relating to the tax expenditure budget.

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

Bills Referred to Committee on Finance

House bills of the following titles, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule were severally referred to the Committee on Finance:

- **H. 647.** An act relating to misclassification of employees to lower premiums for workers' compensation and unemployment compensation.
- **H. 772.** An act relating to alcoholic beverage tastings and other liquor licensing issues.

Bills Referred

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

H. 760.

An act relating to the repeal or revision of certain boards and commissions.

To the Committee on Government Operations.

H. 774.

An act relating to approval of amendments to the charter of the city of South Burlington.

To the Committee on Government Operations.

H. 778.

An act relating to amending miscellaneous provisions in Vermont's public retirement systems.

To the Committee on Government Operations.

H. 791.

An act relating to the tax expenditure budget.

To the Committee on Finance.

House Proposals of Amendment Concurred In with Amendment; Rules Suspended; Bill Messaged

S. 288.

House proposal of amendment to Senate bill entitled:

An act relating to the Vermont recovery and reinvestment act of 2010.

Was taken up.

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

* * * VRRA 2010 Legislative Intent * * *

Sec. 1. LEGISLATIVE INTENT

- (a) This act is intended to supplement and support the programs and policies established in No. 54 (H.313) of the Acts of 2009, the Vermont Recovery and Reinvestment Act of 2009, and to provide other economic incentives.
- (b) The provisions of this act provide short-term economic stimulus to certain sectors of the Vermont economy, and invest in long-term strategies that are consistent with the four principal goals of economic development identified by the commission on the future of economic development and codified in 10 V.S.A. § 3(b) as follows:
- (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 programs identified in this act shall strive to meet the challenge of improving their economic development results by taking steps to meet the two outcomes for economic development stated in Sec. 8(b) of an Act Relating to Challenges for Change, No. 68 (S.286) of the Acts of the 2009 Adj. Sess. (2010): (1) Vermont achieves a sustainable annual increase in nonpublic sector employment and in median household income; and (2) Vermont attains a statewide, state-of-the-art telecommunications infrastructure. As also identified in the Challenges for Change Act, Sec. 8(a)(3) in S.286, such steps shall include:
 - (1) identifying measurable results of improvement;
- (2) designing evidence-based economic development strategies to achieve these improvements and the four goals of economic development identified in 10 V.S.A. § 3;
 - (3) directing available state funds to these strategies; and
- (4) using objective, data-based indicators to measure performance of these strategies.
 - * * * SFSF General Services Fund Appropriations * * *
- Sec. 2. STATE FISCAL STABILIZATION FUND; GENERAL SERVICES FUND; APPROPRIATIONS
- (a) In fiscal year 2010, \$8,665,000.00 from the state fiscal stabilization fund general services fund that remains available to Vermont under the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5, is hereby appropriated as prescribed in Secs. 3–10 of this act.
- (b) For the specific purpose of ensuring SFSF funds are expended in a timely fashion and in accordance with the deadlines and restrictions established under ARRA, and also to ensure that the objectives of the appropriations contained herein are accomplished, the secretary of administration is authorized to substitute any authorized general fund appropriations for the SFSF appropriations in this section, and in such an

event, the secretary is authorized to expend the SFSF funds on any other authorized general fund expenditure.

- (c) It is the intent of the general assembly that, unless otherwise stated, the appropriations of SFSF funds made pursuant to this act are expended as quickly as possible so as to have an immediate stimulative impact on Vermont's economy. However, to the extent it is not feasible or prudent for a program to expend all funds in fiscal year 2010, the funds may be carried forward to fiscal year 2011 and otherwise expended in accordance with the provisions of this act.
- (d) It is the intent of the general assembly that any program receiving SFSF funds pursuant to this act make all reasonable and practicable efforts to ensure that such funds are evenly and equitably distributed throughout the entire state of Vermont.

Sec. 3. ENTREPRENEURS' SEED CAPITAL FUND

The amount of \$400,000.00 is appropriated to the entrepreneurs' seed capital fund established under chapter 14A of Title 10.

Sec. 4. RURAL BROADBAND; VTA

The amount of \$3,165,00.00 is appropriated to the Vermont telecommunications authority (VTA) for the purpose of making broadband services available to at least 12,000 households or businesses in locations where such services are not currently available, as provided in 30 V.S.A. § 8079, as established in Sec. 11 of this act.

Sec. 5. VERMONT EMPLOYMENT TRAINING PROGRAM

The amount of \$1,200,000.00 is appropriated to the department of economic, housing, and community development for grants for the Vermont employment training program established under 10 V.S.A. § 531.

Sec. 6. TOURISM AND MARKETING; MEDIA ADVERTISING

The amount of \$400,000.00 is appropriated to the department of tourism and marketing to increase the frequency of and expand the media buys in the state's key regional markets for Vermont's recreation and hospitality operations. These funds shall be expended in calendar year 2010 with the goal of increasing the number of visitors throughout all regions of the state this year.

Sec. 7. AGRICULTURE; VERMONT FARMERS

(a) The amount of \$778,000.00 is appropriated to the Vermont economic development authority (VEDA) to be used by the Vermont agricultural credit corporation for the Vermont agricultural credit program established under

- 10 V.S.A. § 374a to assist Vermont farmers with capital to meet operating and related needs.
- (b) The amount of \$100,000.00 is appropriated to the Vermont sustainable jobs fund program established in 10 V.S.A. § 328 to further the initiatives of the farm-to-plate investment program established in 10 V.S.A. § 330, as provided in Sec. 13 of this act.
- (c) The amount of \$122,000.00 is appropriated to the secretary of agriculture, food and markets to be transferred as follows:
- (1) \$75,000.00 to the farm-to-school program established under 6 V.S.A. § 4721.
 - (2) \$22,000.00 to Vermont agricultural fairs.
 - (3) \$25,000.00 to the Vermont Association of Conservation Districts.

Sec. 8. CHAMPLAIN BRIDGE CLOSURE; GRANTS AND LOANS

- (a) The amount of \$500,000.00 is appropriated to the agency of commerce and community development for a grant to the Addison County economic development corporation (ACEDC) for the purpose of providing grants and loans to businesses and organizations that have incurred economic losses as a direct result of the closure of the Lake Champlain bridge at Crown Point, with oversight and reporting provided by the Vermont office of economic stimulus and recovery.
- (b) Grants for loss in revenue. The ACEDC shall award grants to any business or organization that, due to the bridge closure, suffered revenue losses of at least 20 percent during the fourth quarter of calendar year 2009 as compared with the same period in 2008. Awards under this subsection shall compensate up to 50 percent of uninsured losses.
- (c) Grants for increased expenses. The ACEDC shall award grants to any business or organization for the purpose of compensating losses incurred during the fourth quarter of calendar year 2009 directly attributable to the closure of the bridge as follows:
- (1) up to 75 percent of a documented, uninsured increase in transportation costs.
- (2) up to 75 percent of documented, uninsured costs incurred in paying employee per diems to cover increased commuting time and expenses.
- (3) up to 75 percent of documented, uninsured costs incurred for equipment rentals or the hiring of custom haulers necessary to continue business operations.

- (d) Any grant made pursuant to subsections (b) and (c) of this section shall not exceed \$20,000.00. No business or organization shall be eligible for more than one grant. ACEDC shall not award more than \$150,000.00 in grants under this section.
- (e) Loans. The ACEDC shall establish criteria for making low-or-no-interest loans to businesses and organizations negatively impacted by the closure of the Champlain Bridge. The loans shall be to assist such entities with maintaining payroll, ordering inventory, and covering operational expenses. The ACEDC shall establish underwriting criteria, and any other terms and conditions deemed necessary to carry out the purposes of this subsection. The ACEDC shall issue up to \$350,000.00 in aggregated loans.
- (f) Unless other funds for administrative costs become available, the Addison County economic development corporation may use 0.5 percent of the appropriation made under this section for administrative costs.
- (g) On November 1, 2010, all unexpended funds shall be transferred to the Vermont economic development authority (VEDA). In addition, all loan repayments shall be transferred to VEDA. Any funds received by VEDA pursuant to this subsection shall be transferred to the entrepreneurs' seed capital fund established under chapter 14A of Title 10. ACEDC may retain any interest.

Sec. 9. VEDA; VERMONT JOBS FUND

The amount of \$1,700,000.00 is appropriated to the Vermont economic development authority to provide interest-rate subsidies on loans approved under the Vermont jobs fund established in 10 V.S.A. § 234.

- Sec. 10. MICROBUSINESS DEVELOPMENT; INDIVIDUAL DEVELOPMENT ACCOUNTS
- (a) The amount of \$100,000.00 is appropriated to community capital of Vermont for the job start loan fund to support low and moderate income business owners who do not have access to conventional bank loans.
- (b) The amount of \$200,000.00 is appropriated to the office of economic opportunity within the Vermont department for children and families. These funds shall not be used to secure a federal match. Of this appropriation:
- (1) \$100,000.00 shall be transferred to the individual development account (IDA) program; and
- (2) \$100,000.00 shall be transferred to the micro-business development program.

* * * VTA Broadband Infrastructure * * *

Sec. 11. 30 V.S.A. § 8079 is added to read:

§ 8079. BROADBAND ADOPTION PROGRAM

- (a) There is established the Vermont broadband adoption program to be administered by the Vermont telecommunications authority for the purposes of accelerating the subscription to and use of broadband Internet access by the public and increasing the sustainability of broadband networks in Vermont, especially in rural and underserved communities. Through this program, the authority shall insure that broadband service is provided to at least 12,000 households and businesses left unserved by private entities.
- (b) The authority shall expend monies appropriated to the Vermont broadband adoption program consistent with this section.
- (c) For purposes of this section, a "community" shall be a local geographic area of the state defined by the authority and consisting of one or more geographic areas with a defined boundary, including municipalities, telephone exchanges, ZIP codes, or census blocks.
- (d) For purposes of this section, "broadband" service shall mean Internet access services which provide download speeds not less than 1.5 megabits per second and upload speeds not less than 200 kilobits per second. Service provided by satellite shall not qualify as "broadband." In addition, the authority shall give priority to broadband services which meet or exceed the minimum technical service characteristic objectives established pursuant to section 8077 of this title, and may adopt any new such objectives established pursuant to section 8077 of this title in place of the definition provided in this subsection.
- (e) In each fiscal year in which funding is available for the program, the authority shall establish target communities in which it will offer incentives to broadband service providers. In selecting the target communities, the authority shall consider, to the extent possible:
- (1) the proportion of homes and businesses in those communities without access to broadband service and without access to broadband service meeting the minimum technical service characteristic objectives established under section 8077 of this title;
- (2) the level of adoption of broadband services by residential and business users within the community;
- (3) opportunities to leverage or support other sources of federal, state, or local funding for the expansion or adoption of broadband service;

- (4) the number of potential new subscribers in each community and the total level of funding available for the program; and
- (5) the geographic location of selected communities and whether new target communities would further the goal of bringing broadband services to all regions of the state.
- (f) For each target community, the authority shall seek proposals through a competitive process from broadband service providers who agree to improve, expand, or introduce broadband service in the community. The authority shall consider in its selection of broadband service providers the factors used in selecting the target communities, and also the quality of the proposed broadband services and the plans of applicants to market and promote the adoption of its broadband services in the target communities. Based on the number and quality of proposals received, the authority may seek additional proposals, adjust the boundaries of the communities it has defined, or elect to not provide assistance in some target communities.
- (g) Broadband service providers that agree to receive assistance under this program for a target community shall within 18 months make broadband service available to all occupied nonseasonal home and business locations within the community at upload and download speeds which shall be specified in a grant agreement with the authority, which shall not be less than speeds commonly offered by the broadband service provider in other areas it serves in the state.
- (h) The authority shall provide a broadband service provider selected to receive assistance for a target community with a grant per new broadband subscriber in the target community. The amount of the grant shall be equal to a monthly refund level established by the authority. Prior to July 1, 2013, the authority shall establish a monthly refund level not exceeding \$20.00 per month. Grants shall be sufficient to provide the monthly refund level for a period of 12 months. The broadband service provider shall apply the amount of the monthly refund level as a credit to the amount owed by a subscriber for service. The authority may require new subscribers to claim the credit on line, which may include initiating one or more on-line transactions with state services offered on line. To the extent possible and consistent with the cost-effective administration of the program, the authority shall limit grants awarded such that they are awarded for subscribers who have not previously had broadband service available in the target community.
- (i) Prior to distribution of grant funding, the authority shall seek and obtain a reasonable demonstration that a selected broadband service provider has adequate capital funding available to complete the expansion of service required by subsection (g) of this section.

- (j) Broadband service providers that agree to receive assistance under this program shall offer a broadband service on at least one tier of service at a price that shall not exceed the amount of the monthly refund level for one year after the subscriber initiates service. Broadband providers may offer additional tiers of broadband service or bundles of broadband service and other services without limit on price due to participation in this program.
- (k) For good cause, if no satisfactory proposals to provide service in a target community are received, the authority may provide partial or full refunds for reasonable nonrecurring charges associated with initiation of service and may either establish for a target community a monthly grant level higher than otherwise allowed by subsection (h) of this section, or modify the price limitations of subsection (j) of this section, or both. In no case shall the monthly refund level exceed the price of the lowest tier of broadband service offered in a target community.
- (l) During any quarter it receives assistance under this program, a broadband service provider shall provide information regarding broadband service availability, adoption, speed, and price to the entity selected by the National Telecommunications and Information Administration to receive funding for broadband data collection in Vermont under the state broadband data and development grant program established under the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5 and the Broadband Data Improvement Act of 2008, P.L. No. 110-385.
- (m) The authority may use up to 10 percent of the funds appropriated to the program to provide financial incentives for new subscribers in target communities to conduct transactions with state government on line instead of in person or in paper form, not to exceed \$50.00 per new subscriber. Notwithstanding any other provision of this section, the authority may use up to 50 percent of the funds appropriated to the program to provide any state match which may be required if Congress extends the federal telephone lifeline program to include broadband service, or if Congress enacts any other program to provide financial assistance for low income consumers of broadband service as it may be defined under federal law. If the authority acts pursuant to this subsection, it shall send notice to the commissioner of public service, the speaker of the house, and the president pro tempore of the senate. Upon receipt of such notice, the commissioner of public service shall make a recommendation to the general assembly within six months regarding changes to Vermont statutes or rules regarding the telephone lifeline program and changes which may be required to provide ongoing support for a similar program for broadband.

- (n) Of the funds appropriated to the broadband adoption program, the authority may use up to five percent for administration of the funds received.
- (o) On or before January 1, 2011, the authority shall submit a report to the house committee on commerce and community development and the senate committee on economic development, housing and general affairs that details the progress it has made in reaching the goals of the broadband adoption program established by this section, specifically in terms of reaching the 12,000 unserved Vermonters.
 - * * * Agreements Pertaining to Telecommunications Facilities * * *

Sec. 12. 30 V.S.A. § 8079 is added to read:

§ 8079. AGREEMENTS; TELECOMMUNICATIONS FACILITIES

In awarding loans or grants to entities as permitted under subdivision § 8062(a)(6) of this title, the authority shall develop terms and conditions applicable to agreements covering telecommunications infrastructure that ensure payments accrue in reasonable installments and at reasonable intervals, particularly with respect to the time period commencing after an agreement is entered into but before the telecommunications facility that is the subject of the agreement is ready for commercial use.

* * * Farm-to-Plate Investment Program * * *

Sec. 13. FARM-TO-PLATE INVESTMENT PROGRAM

The funds received pursuant to Sec. 7(b) of this act shall be used to further the initiatives of the farm-to-plate investment program established in 10 V.S.A. § 330 and support entities that will enhance the production, storage, processing, and distribution infrastructure of the Vermont food system. The funds shall be competitively awarded by the program director, in consultation with the secretary of agriculture, food and markets and the Vermont sustainable agriculture council, in the form of grants to nonprofit farmers' markets and like entities that are ready to implement their business plans or expand their existing operations to provide additional capacity and services within the food system. The funds also may be used for the coordination and implementation of the recommendations contained in the strategic plan of the farm-to-plate investment program.

Sec. 13a. 10 V.S.A. § 330(c)(4) is added to read:

(4) The farm-to-plate investment program strategic plan shall also include recommendations regarding measurable outcomes that shall be tracked over the ten-year life of the plan; methods for the ongoing collection of data necessary to track those outcomes; plans for updating the plan as needed; and

appropriate methods to track the ongoing economic contribution of the farm and food sector to the Vermont economy.

* * * Audit Strategy for Job Creation * * *

Sec. 14. AUDIT STRATEGY; JOB CREATION

On or before January 1, 2011, the state auditor of accounts shall develop and recommend to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs an audit strategy designed to comprehensively validate job-creation programs in Vermont. The audit strategy shall seek to incorporate design elements that take into account possible "job inflation" caused by multiple economic development programs claiming creation of the same job.

* * * Increased Moral Obligation for Vermont Jobs Fund * * *

Sec. 15. 10 V.S.A. § 219(d) is amended to read:

In order to assure the maintenance of the debt service reserve requirement in each debt service reserve fund established by the authority, there may be appropriated annually and paid to the authority for deposit in each such fund, such sum as shall be certified by the chair of the authority, to the governor or the governor-elect, the president of the senate, and the speaker of the house, as is necessary to restore each such debt service reserve fund to an amount equal to the debt service reserve requirement for such fund. The chair shall annually, on or about February 1, make, execute, and deliver to the governor or the governor-elect, the president of the senate, and the speaker of the house, a certificate stating the sum required to restore each such debt service reserve fund to the amount aforesaid, and the sum so certified may be appropriated, and if appropriated, shall be paid to the authority during the then current state fiscal year. The principal amount of bonds or notes outstanding at any one time and secured in whole or in part by a debt service reserve fund to which state funds may be appropriated pursuant to this subsection shall not exceed \$70,000,000.00 \$100,000,000.00, provided that the foregoing shall not impair the obligation of any contract or contracts entered into by the authority in contravention of the Constitution of the United States.

* * * VEDA: Increased Flexibility for Inter-Fund Lending Transfers * * *

Sec. 16. 10 V.S.A. § 234 is amended to read:

§ 234. THE VERMONT JOBS FUND

* * *

(c) Monies in the fund may be loaned to the Vermont agricultural credit program to support its lending operations as established in chapter 16A of this

title at interest rates and on terms and conditions to be set by the authority to establish a line of credit in an amount not to exceed \$30,000,000.00 to be advanced to the Vermont agricultural credit program to support its lending operations as established in chapter 16A of this title.

- (d) Monies in the fund may be loaned to the Vermont small business development corporation to support its lending operations as established pursuant to subdivision 216(14) of this title at interest rates and on terms and conditions to be set by the authority to establish a line of credit in an amount not to exceed \$3,000,000.00 to be advanced to the Vermont small business development corporation to support its lending operations as established pursuant to subdivision 216(14) of this title.
- (e) Monies in the fund may be loaned to the Vermont 504 corporation to support its lending operations as established pursuant to subdivision 216(13) of this title at interest rates and on terms and conditions to be set by the authority.
 - * * * VEDA: Extension of Time for Economic Recovery and Opportunity Program * * *
- Sec. 17. Sec. 5.507 of No. 192 of the Acts of the 2007 Adj. Sess. (2008) shall be amended to read:
- Sec. 5.507. VEDA ECONOMIC RECOVERY AND OPPORTUNITY PROGRAM
- (a) The state treasurer in consultation with the secretary of administration shall negotiate an agreement to advance up to \$1,250,000 to the Vermont economic development authority ("VEDA") in fiscal year 2009.
- (b) In fiscal 2009, a write down of the advance in the amount of \$257,000 shall be made as an estimate of subsidy costs to be incurred by VEDA in 2009. Any difference between the actual subsidy costs incurred by VEDA in any fiscal year 2009 through 2013 shall be adjusted in the following year's write-down amount.
- (c) VEDA shall submit the advance agreement to the state treasurer and secretary of administration; said agreement shall include the following:
- (1) The agreement shall be structured to allow a structure that allows VEDA flexibility to use the subsidy funds in the most effective way to generate new loan volume as quickly as possible to act as a stimulant to the Vermont economy; and
- (2) Terms terms of repayment or write-down of the advance in years 2010 through 2013 shall be contingent on VEDA's demonstrated use of the advance proceeds, and any interest earned thereon, to offset the revenue lost by

VEDA over the same period as a result of subsidies made by VEDA to its borrowers.

- (3) The subsidies to VEDA borrowers will be for a maximum of three years from the date of closing of each enrolled loan.
- (4) A maximum of \$18 million in VEDA loans can be made under the program over a 24 month period commencing on the effective date of the legislation.
- (5) The program will terminate when all VEDA borrowers enrolled in the program have completed their respective three year subsidy periods.
- (d)(c) Upon termination of the program any amount of the advance, or the interest earned thereon, not used for the subsidy program shall be repaid by VEDA to the state.
 - * * * Recovery Zone Facility Bond (RZFB) Program * * *

Sec. 18. RZFB PROGRAM; PUBLIC OUTREACH

- (a) The American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5, allocates authority for the issuance of \$135,000,000.00 of recovery zone facility (private activity) bonds to Vermont, which must be issued before the end of calendar year 2010.
- (b) The federal government issued the bonding authorizations to 11 of Vermont's 14 counties; however, in the opinion of the Vermont attorney general, Vermont counties do not have the necessary authority to issue or authorize others to issue facility bonds. ARRA allows the counties to waive their allocations to state government, which they did. In October 2009, the emergency board approved a plan designating the Vermont economic development authority (VEDA) as the entity responsible for issuing the bonds.
- (c) The recovery zone facility bond (RZFB) program is designed to aid certain businesses through the issuance of tax-exempt bonds. Tax-exempt bonds traditionally carry lower interest rates than conventional bank loans because income earned by purchasers of these bonds is exempt from federal and, in some cases, state tax. VEDA is encouraged to take any steps necessary to increase public awareness of the RZFB program.
- (d) VEDA is authorized to increase the current \$25,000,000.00 cap per project to \$50,000,000.00.
- * * * Recovery Zone Economic Development Bond (RZEDB) Program * * *

Sec. 19. RZEDB: PUBLIC OUTREACH

(a) The American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5, allocates authority for the issuance of \$90,000,000.00 of

recovery economic development bonds to Vermont. The Vermont municipal bond bank is responsible for issuing the bonds, which must be issued before the end of calendar year 2010.

- (b) The recovery zone economic development bonds (RZEDBs) are a category of Build America Bonds (BABs), and sometimes referred to as "super BABs." They reduce by 45 percent the cost of the kind of tax-exempt bonding normally done by towns, counties, school districts, and the state. They may be used to fund capital expenditures for real and personal property; public infrastructure and facilities; and expenditures for job training and education programs.
- (c) The Vermont municipal bond bank, in consultation with the Vermont League of Cities and Towns, shall make all reasonable efforts to inform public entities in Vermont about the availability, terms, and conditions of REZDBs to Ensure that Vermont, as a whole, is able to maximize the use of these favorable instruments of economic development.
 - * * * Legislative Priorities for ARRA Funds * * *

Sec. 20. LEGISLATIVE PRIORITIES FOR ARRA FUNDS

With respect to federal funds potentially available to the state of Vermont as competitive funds under the ARRA and in addition to any other legislatively identified priorities established with regard to ARRA funds, the general assembly establishes the following equal priorities as outlined in this section.

- (1) Railroad projects determined by the Vermont office of economic stimulus and recovery as being consistent with Vermont's transportation plan.
- (2) With respect to passenger rail funds requested by the state, funds for making upgrades to passenger rail service along the western corridor, such as the Ethan Allen Express improvements and extension corridor program. This corridor program consists of track and crossing improvements and a bridge project along the existing Ethan Allen Express Amtrak route as well as an extension of that service from Hoosick, NY to Bennington, from Bennington to Rutland and from Rutland to Burlington. The program will serve to support intercity passenger rail service through the most populous area of the state and further connect vital economic regions of the state to each other and to the state of New York.
- (3) Telecommunications projects determined by Vermont's chief technology officer as being consistent with the goals and policies established under chapter 91 of Title 30.

Sec. 21. REPEAL; PRIORITIES FOR MUNICIPAL TELECOMMUNICATIONS

Sec. 17(d) of No. 54 of the Acts of 2009 (municipal priorities for municipal communications services) is repealed.

Sec. 22. COORDINATION OF FARM-TO-PLATE, FARM-TO-SCHOOL, AND FARM-TO-INSTITUTIONS PROGRAMS

For the purposes of avoiding duplication of administration and better coordinating resources, the Vermont farm-to-plate investment program, in consultation with the secretary of agriculture, shall include in its strategic plan for agricultural economic development required by 10 V.S.A. § 330(c)(1), a recommendation for the oversight and coordination of the farm-to-plate investment program established under 10 V.S.A. § 330, the farm-to-school program established under 6 V.S.A. § 4721, and any other farm-to-institutions partnerships designed to increase institutional purchases of fresh, locally grown food.

* * * Public Service Board: Smart Grid; Notice * * *

Sec. 23. 30 V.S.A. § 218(b)(3) is added to read:

(3) If the board approves or requires a utility to adopt a rate design that includes dynamic pricing, the board may alter or waive the notice and filing provisions that would otherwise apply under section 225 of this title for such real-time pricing rate plan, provided the board insures that each customer receives notice of the price of electricity the customer will be charged in advance of the time at which the customer uses the electricity.

* * * Study: Buy Local * * *

Sec. 24. STUDY ON STATE PURCHASE OF LOCAL GOODS AND SERVICES

The secretary of administration shall conduct a study to evaluate the opportunities and feasibility of increasing the volume of state purchases of both goods and services from local suppliers. The secretary shall report his or her findings to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs on or before January 15, 2011.

* * * Digital Nonprofit Corporations * * *

Sec. 25. 11B V.S.A. § 1.20 is amended to read:

§ 1.20 FILING REQUIREMENTS

* * *

(c) The document must be typewritten or printed <u>or</u>, <u>if electronically transmitted</u>, <u>it must be in a format that can be retrieved or reproduced in typewritten or printed form or in an electronic format prescribed by the secretary of state.</u>

* * *

(g) If the secretary of state has prescribed a mandatory form <u>or electronic format</u> for a document under section 1.21 of this title, the document must be in or on the prescribed form.

* * *

Sec. 26. 11B V.S.A. § 1.21(a) is amended to read:

- (a) The secretary of state may prescribe the form or electronic format of and furnish on request, forms or specifications for formats for:
 - (1) an application for a certificate of existence;
- (2) a foreign corporation's application for a certificate of authority to transact business in this state;
- (3) a foreign corporation's application for a certificate of withdrawal; and
 - (4) the biennial report.

Sec. 27. 11B V.S.A. § 1.23 is amended to read:

§ 1.23. EFFECTIVE DATE OF DOCUMENT

- (a) Except as provided in subsection (b) of this section, section subsection 1.24(c) of this title, and section 2.03 of this title, a document is effective:
- (1) at the time of filing on the date it is filed, as evidenced by the secretary of state's endorsement on the original document any means the secretary of state may use for the purpose of recording the date and time of filing; or
- (2) at the time specified in the document as its effective time on the date it is filed.

* * *

Sec. 28. 11B V.S.A. § 1.24(a) is amended to read:

- (a) A domestic or foreign corporation may correct a document filed by the secretary of state if the document:
 - (1) contains an incorrect statement; or

- (2) was defectively executed, attested, sealed, verified, or acknowledged; or
- (3) was undeliverable because the electronic transmission was defective. Sec. 29. 11B V.S.A. § 1.25(b) is amended to read:
- (b) The secretary of state files a document by stamping or otherwise endorsing recording it as "Filed," together with the secretary of state's name and official title and on the date and the time of receipt, on both the original and copy of the document and on the record of the receipt for the filing fee. After filing a document, except as provided in sections 5.03 and 15.10 of this title, the secretary of state shall deliver a copy of the document copy to the domestic or foreign corporation or its representative.

Sec. 30. 11B V.S.A. § 1.27 is amended to read:

§ 1.27. EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT

- (a) A certificate attached to a copy of a document bearing the secretary of state's signature (which may be in facsimile) and the seal of this state or a certificate as to the nonexistence of records relating to a corporation is conclusive evidence as to whether or not the original is on file with the secretary of state.
- (b) A certificate by the secretary of state that a diligent search has failed to locate documents claimed to be filed with the secretary of state shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the records in the custody of the secretary of state.
- (c) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

A certificate from the secretary of state delivered with a copy of a document filed with the secretary of state is conclusive evidence that the document is on file with the secretary of state.

Sec. 31. 11B V.S.A. § 1.40 is amended to read:

§ 1.40. DEFINITIONS

* * *

(4) "Bylaws" means the code or codes of rules (other than the articles) adopted pursuant to this title for the regulation or management of the affairs of the corporation, stored or depicted in any tangible or electronic medium, and irrespective of the name or names by which such rules are designated.

* * *

(8) "Deliver" includes mail or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission.

* * *

- (35) "Electronic transmission" or "electronically transmitted" means a process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.
- (36) "Meeting" means any structured communications conducted by participants in person or through the use of an electronic or telecommunications medium permitting simultaneous or sequentially structured communications.
- (37) "Sign" or "signature" includes any manual, facsimile, conformed, or electronic signature.
- Sec. 32. 11B V.S.A. § 1.41(b) and (c) are amended to read:
- (b) Notice may be communicated in person; by telephone, <u>voice mail</u>, telegraph, teletype, facsimile, or other form of wire <u>or</u>, wireless, <u>or electronic</u> communication; or by mail or private carrier, <u>or other method of delivery</u>. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.
- (c) Notice to members. Written notice by a domestic <u>or foreign</u> corporation to its members, if in a comprehensible form, is effective when:
- (1) mailed first class postpaid and correctly addressed to the members address as shown in the corporation's current record of members; or
- (2) electronically transmitted to the member in a manner authorized by the member.
- Sec. 33. 11B V.S.A. § 7.01(f) is amended to read:
- (f) An annual or regular meeting may be conducted by means of any <u>electronic or</u> telecommunications mechanism, including video-conferencing telecommunication.
- Sec. 34. 11B V.S.A. § 7.02(f) is amended to read:
- (f) A special meeting may be conducted by means of any <u>electronic or</u> telecommunications mechanism, including video-conferencing telecommunication.

Sec. 35. 11B V.S.A. § 7.04(e) is added to read:

- (e) For purposes of this section, written consent may be evidenced by an electronic communication or an electronic record.
- Sec. 36. 11B V.S.A. § 8.20(c) is amended to read:
- (c) Unless the articles of incorporation or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication, including an electronic, telecommunications, and video- or audio-conferencing conference telephone call, by which all directors participating may simultaneously hear communicate with each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.
- Sec. 37. 11B V.S.A. § 16.01(d) and (e) are amended to read:
- (d) A corporation shall maintain its records in written form or in another form, including electronic form, capable of conversion into written form within a reasonable time.
- (e) A corporation shall keep a copy of the following records at its principal office (or, if none in this state, then the registered office):

* * *

(5) all written <u>or electronic</u> communications to members generally within the past three years, including the financial statements furnished for the past three years under section 16.20 of this title;

* * *

Sec. 38. 11A V.S.A. § 2.06(b) is amended to read:

- (b) The bylaws of a corporation may contain any provisions for managing the business and regulating the affairs of the corporation that are not inconsistent with law or the articles of incorporation, and may be stored or depicted in any tangible or electronic medium.
 - * * * Vermont Public Power Supply Authority * * *

Sec. 39. 30 V.S.A. § 5012 is amended to read:

§ 5012. GENERAL POWERS AND DUTIES

The authority shall have all of the powers necessary and convenient to carry out this chapter, including without limitation those general powers provided a business corporation by section 1852 of Title 11, and including, without limiting the generality of the foregoing, the power:

* * *

(12) jointly or jointly with utilities or on its own to plan, finance, acquire, construct, improve, purchase, operate, maintain, use, share costs of, own, lease, sell, dispose of or otherwise participate in projects or portions of projects, the product or service from them, securities or obligations issued or incurred in connection with the financing of them, or research and development relating to them, within or outside the state. It may also enter into and perform contracts with any person with respect to the foregoing. If the authority acquires or owns an interest as a tenant in common with others in any projects within the state, the surrender or waiver by the other property owner of its right to partition the property for a period not exceeding the period for which the property is used or useful for electric utility purposes shall not be invalid and unenforceable by reason of length of the period, or as unduly restricting the alienation of such property;

* * *

- (17) to make and execute all contracts and agreements and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this chapter; and
- (18) to enter into contracts determined by the authority to be useful for the prudent management of its assets, purchases, funds, debts, or fuels, including interest rate or other swaps, option contracts, future contracts, forward purchase contracts, hedging contracts, and leases or other risk management instruments to the full extent that a business corporation is authorized to enter into such contracts;
- (19) to acquire stock, shares, securities, membership units, or other equity or participation interests in entities that directly or indirectly construct, own, or operate electric generation or transmission facilities within or outside the state to the full extent that a business corporation is authorized to acquire such interests; and
- (18)(20) to do all things necessary, convenient or desirable to carry out the purposes of this chapter or the powers expressly granted or necessarily implied in this chapter.

Sec. 40. 30 V.S.A. § 5013 is amended to read:

§ 5013. SPECIAL POWERS

* * *

(c) A municipality <u>or cooperative</u> shall be obligated to fix, revise and collect fees and charges for electric power and energy and other services, facilities and commodities furnished or supplied through its electric department

or system at least sufficient to provide revenues adequate to meet its obligations under any such output and capacity contract and to pay all other amounts payable from or constituting a charge and lien upon those revenues.

* * *

(e) The authority and any member municipality or cooperative or other utility (whether or not such utility is a member of the authority) that is acting pursuant to a contract with the authority may expend its funds, including without limitation the proceeds of its notes, bonds, or other obligations, for the purposes of modifying demand for electric capacity or energy through conservation or load management by participation in such facilities, projects, and programs as the board of the authority or the legislative body or other governing body or the governing board of the member municipality or cooperative or other utility, as the case may be, determines will effectively accomplish such purposes. Such facilities, projects, and programs may include, but shall not be limited to, providing or financing facilities or projects for conservation or load management, which may be: (i) owned or operated by the authority or any member municipality or cooperative or other utility or by others; (ii) leased or licensed by the authority or any member municipality or cooperative or other utility to others, or financed by laons loans by the authority or any member municipality or cooperative or other utility to others, in either case on such terms and conditions as the board of the authority or the legislative body or other governing body or the governing board of the member municipality or cooperative or other utility, as the case may be, may determine. Any member municipality or cooperative or other utility may issue its notes, bonds or other obligations pursuant to any statutory authority conferring such power for carrying out the purposes of this subsection.

Sec. 41. 30 V.S.A. § 5017 is amended to read:

§ 5017. POWERS OF MUNICIPALITIES

A municipality, after an affirmative vote of the qualified voters at any duly warned annual or special meeting to be held for that purpose, may by resolution of its legislative body enter into contracts with the authority for the purchase, sale, exchange, or transmission of electric energy and other services, on such terms and for such period of time as the resolution may provide. A municipality may by resolution of its legislative body enter into a contract with the authority related to the issuance of bonds and notes as authorized by section 5031 of this title only after an affirmative vote of the qualified voters at any duly warned annual or special meeting held for that purpose. The required vote may either approve a specific contract with the authority or it may approve generally the right for the municipality to enter into all such contracts with the authority by resolution of its legislative body. A municipality may

appropriate electricity-derived revenues received in any year to make payments due during that year under any contract made by the municipality with the authority. Nothing in this section shall be construed to repeal any charter provision or law requiring an election or other condition precedent to the establishment of a municipal electric plant.

Sec. 42. 30 V.S.A. § 5031 is amended to read:

§ 5031. BONDS AND NOTES

(a)(1) The authority may issue its negotiable notes and bonds in such principal amount as the authority determines to be necessary to provide sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of the authority, establishment of reserves to secure the notes and bonds, and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers. Without limiting the generality of the foregoing, such bonds and notes may be issued for project costs, or the authority's share of costs of projects which may include:

* * *

(5) The notes and bonds shall be authorized by resolution or resolutions of the authority, shall bear such date or dates and shall mature at such time or times as the resolution or resolutions may provide. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination of them. The resolution or resolutions may provide that the notes and bonds bear interest at a given rate or rates, be in certain denominations, be in temporary, coupon or registered form, carry certain registration privileges, be executed in a given manner, be payable in a given medium of payment, at a place or places within or without the state, and be subject to specified terms of redemption. The authority may participate in any state or federally created or supported bond programs. The notes and bonds of the authority may be sold by the authority, at public or private sale, at such price or prices as the authority shall determine.

* * *

* * * International Trade Agreements: Prior Approval * * *

Sec. 43. 9 V.S.A. chapter 111A is added to read:

CHAPTER 111A. APPROVAL OF INTERNATIONAL TRADE AGREEMENTS

§ 4125. FINDINGS AND PURPOSE

The general assembly makes the following findings of fact:

- (1) Today's international trade agreements have impacts which extend significantly beyond the bounds of traditional trade matters such as tariffs and quotas. Restrictive government procurement rules, for example, may undermine state purchasing laws and preferences that are designed to promote good jobs and a healthy environment.
- (2) Economic development and environmental policies that might be constrained by government procurement provisions in international trade agreements include buy-local laws, recycled-content laws, and renewable energy purchasing requirements. Measures that conflict with obligations in one or more international trade agreements could be challenged as potential barriers to trade.
- (3) Currently, the Office of the United States Trade Representative asks state governors, without input from state legislatures, whether they will commit state purchasing to trade rules. States, through their governors, may opt into or out of trade rules dealing with government procurement.
- (4) Historically, the general assembly and the governor have worked together to adopt and implement state procurement policies. The decision to consent to the coverage of Vermont under procurement provisions of international trade agreements should also include consultation with the legislative branch.
- (5) If new trade rules permit states to opt into or out of trade rules dealing with investment and services, in addition to procurement, then the general assembly intends for the procedures in this chapter to apply to those provisions as well.

§ 4126. DEFINITIONS

As used in this chapter:

- (1) "Commission" means the commission on international trade and state sovereignty established in 3 V.S.A. § 23.
- (2) "International trade agreement" or "trade agreement" means a trade agreement between the federal government and a foreign country. It does not include a trade agreement between the state and a foreign country to which the federal government is not a party.

§ 4127. APPROVAL OF TRADE AGREEMENTS

(a) If the United States government provides the state with the opportunity to consent to or reject binding the state to a trade agreement, or a provision within a trade agreement, then an official of the state, including the governor, may not bind the state or give consent to the United States government to bind the state in those circumstances, except as provided in this section.

- (b) When a communication from the United States trade representative concerning a trade agreement provision is received by the state, the governor shall submit a copy of the communication and the proposed trade agreement, or relevant provisions of the trade agreement, to the chairs of the commission, the president pro tempore of the senate, the speaker of the house of representatives, and the relevant legislative standing committees of jurisdiction.
- (c) The commission shall review and analyze the trade agreement and issue a recommendation on the potential impact of the trade agreement to the governor.
- (d) Prior to binding the state to the trade agreement, the governor shall consider the commission's recommendation and then shall report his or her intended action on the trade agreement to the members of the emergency board. A majority of the emergency board may request an opportunity to consider the issue at a meeting and make a recommendation to the governor prior to the governor binding the state.
- (e) Upon completion of the consultation process provided for in this section, the governor may bind the state to the trade agreement.
- Sec. 44. 3 V.S.A. § 23(b) is amended to read:
- (b) Membership. There is created a commission on international trade and state sovereignty consisting of:
- (1) the chair of the house committee on commerce or his or her designee two legislators appointed by the speaker of the house;
- (2) the chair of the senate committee on economic development, housing and general affairs or his or her designee two legislators appointed by the committee on committees;
- (3) a representative of a nonprofit environmental organization, appointed by the governor from a list provided by the Vermont Natural Resources Council;
- (4) a representative of organized labor, appointed by the governor from a list provided by Vermont AFL-CIO, Vermont NEA, and the Vermont state employees' association;
- (5) the secretary of commerce and community development or his or her designee;
 - (6) the attorney general or his or her designee;
- (7) a representative of an exporting Vermont business, appointed by the governor; and

- (8) a representative of a Vermont business actively involved in international trade, appointed by the governor;
 - (9) the secretary of agriculture or his or her designee;
- (10) a representative of a human rights organization, appointed by the governor; and
- (11) a representative of a Vermont chamber of commerce, appointed by the governor.

* * * Effective Date * * *

Sec. 45. EFFECTIVE DATE

This act shall take effect on passage.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Illuzzi, on behalf of the Committee on Economic Development, Housing and General Affairs, moved that the Senate concur in the House proposal of amendment with an amendment as follows:

<u>First</u>: In Sec. 1, by striking out subsection (c) (relating to Challenges for Change steps and outcomes) in its entirety.

<u>Second</u>: In Sec. 2, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) In fiscal year 2010, \$8,665,000.00 from the state fiscal stabilization fund general services fund that remains available to Vermont under the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5, shall be appropriated to the secretary of administration, who is directed to transfer the funds to the department of public safety for the costs of the state police. The secretary of administration is further directed to reduce the general fund appropriation for the state police by \$8,665,000.00. From the general fund, the amount of \$8,665,000.00 is hereby appropriated as prescribed in Secs. 3–10d of this act.

<u>Third</u>: In Sec. 2, by striking out subsection (b) (permitting the secretary of administration to swap general fund funds with SFSF funds) in its entirety and by relettering the remaining subsections accordingly.

<u>Fourth</u>: By striking out Sec. 3 in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

Sec. 3. ENTREPRENEURS' SEED CAPITAL FUND

(a) The amount of \$850,000.00 is appropriated to the entrepreneurs' seed capital fund established under chapter 14A of Title 10.

- (b) This appropriation will supplement the \$1,000,000.00 of ARRA funds in the clean energy development fund transferred to the seed capital fund pursuant to Sec. 10f of this act as well as the \$2,150,000.00 appropriated to the fund under No. 54 of the Acts of 2009 and the \$1,000,000.00 in federal funds received by the fund manager, Vermont Center for Emerging Technologies, Inc. (VCET), from the economic development initiative of the United States Department of Housing and Urban Development and pledged as a match to the seed fund. In addition, H.789 of the 2010 legislative session (the big bill) contains an appropriation to VCET; however, these big-bill funds are intended to cover the operational costs of VCET in lieu of funding which will no longer be provided by the University of Vermont.
- (c) Equity capital is a major basis upon which lenders make loan decisions. Unfortunately, early stage equity capital remains a vital financing gap for Vermont entrepreneurs, preventing job creation and new tax revenue generation. To accelerate job growth by helping emerging firms get across this funding gap, the entrepreneurs' seed capital fund was initiated last year. The fund manager has already identified 38 firms across Vermont in sectors such as life sciences, agriculture, energy, software, and manufacturing who are now seeking over \$45,000,000.00 in early-stage equity capital with an estimated three-year job creation of nearly 700 jobs. In order to attract high-potential firms and maximize this revolving fund's ability and competitiveness to leverage dollars both from newly available federal and from private sources, the size of the fund must be at least \$5,000,000.00.
- (d) The entrepreneurs' seed capital fund is now focused on high-opportunity, value-adding employers rather than more general retail and services sectors, which currently have ample access to financial resources and lenders. In fact, in contrast to events last year, this year Vermont banks have seen dramatic increases in the making of commercial loans, and liquidity and credit in debt form have returned significantly. On the other hand, venture capital investment remains at dramatic lows, down nearly 33 percent in the last year alone.
- (e) Vermont's capitalization of the entrepreneurs' seed capital fund represents a one-time investment in financial infrastructure that will revolve for at least 10 years. The seed fund does not require an annual state subsidy.

<u>Fifth</u>: By striking out Sec. 4 (relating to the broadband adoption program) in its entirety and inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. RURAL BROADBAND; VTA

(a) The amount of \$2,850,000.00 is appropriated to the Vermont telecommunications authority (VTA) for the purpose of making broadband services available to at least 10,000 households or businesses in locations

where such services are not currently available, as provided in 30 V.S.A. § 8079 as established in Sec. 11 of this act. Of the appropriation made in this subsection, up to \$500,000.00 may be used for upgrades in underserved business districts, as specified in 30 V.S.A. § 8079(e).

- (b) No portion of the appropriation made in subsection (a) of this section shall be encumbered or disbursed until a detailed itemization of the specific manner in which the funds shall be spent is presented to and approved by the joint fiscal committee, after obtaining input from the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development.
- (c) The appropriation provided in subsection (a) of this section is in addition to the proposed appropriation to the VTA in the fiscal year 2011 capital bill, intended to allow VTA to construct telecommunications infrastructure (towers and fiber-optic cable). Together, these funds will allow the VTA to leverage access to moral obligation bonding as authorized under No. 79 of the Acts of 2007.
- (d) Access to telecommunications and broadband services is this era's equivalent to rural electrification in the 1930s. It was viewed at that time as uneconomical, and private electric companies were unwilling to operate lines and distribute electricity in rural areas. Under the authority of the Rural Electrification Act of 1936, the United States Department of Agriculture began making direct loans and loan guarantees to electric utilities to serve customers in rural areas. Rural electrification is now viewed as an achievement that has been a tremendous force for positive social change and social equality in rural areas.

<u>Sixth</u>: By striking out Sec. 5 (relating to the employment training program) in its entirety and inserting in lieu thereof a new Sec. 5 to read as follows:

Sec. 5. VERMONT EMPLOYMENT TRAINING PROGRAM

- (a) The amount of \$950,000.00 is appropriated to the department of economic, housing, and community development for grants for the Vermont employment training program established under 10 V.S.A. § 531.
- (b) The appropriation provided in subsection (a) of this section, when combined with the proposed fiscal year 2011 \$1,700,000.00 appropriation, will add up to historic high funding for the training program. In fiscal year 2010, \$1,900,000.00 was appropriated to the training program.
- (c) The Vermont training program works with businesses and educational institutions to develop programs targeting the manufacturing, health care, information technology, telecommunications, and environmental engineering sectors and can cover up to 50 percent of the cost of training.

<u>Seventh</u>: By striking out Sec. 6 in its entirety and by inserting in lieu thereof a new Sec. 6 to read as follows:

Sec. 6. TOURISM AND MARKETING; MEDIA ADVERTISING

- (a) The amount of \$300,000.00 is appropriated to the department of tourism and marketing to supplement the fiscal year 2010 \$1,950,000.00 appropriation (later subject to a rescission of \$181,000.00) to increase the frequency of and expand the media buys in the state's key regional markets for Vermont's winter recreation and hospitality operations. The additional media advertising is aimed at increasing the number of visitors that will decide to visit Vermont. Should circumstances require, a portion of the appropriation will be spent to supplement the planned \$600,000.00 spring and summer media advertising campaigns. The \$300,000.00 appropriation made in this subsection also supplements the \$100,000.00 appropriated to the Vermont Convention Bureau, which is attached to the Lake Champlain Regional Chamber of Commerce, in No. 54 of the Acts of 2009.
- (b) Particularly during the current recession and at a time when other states, such as Connecticut, are curtailing their travel advertising, Vermont should continue to invest in marketing and tourism and optimize the opportunities to have a positive impact on our hospitality businesses.

Eighth: By adding a new section to be numbered Sec. 6a to read as follows:

Sec. 6a. AGRICULTURE; VERMONT FARMERS

- (a) The amount of \$1,000,000.00 is appropriated to the Vermont economic development authority (VEDA) to be used by the Vermont agricultural credit corporation for the Vermont agricultural credit program established under 10 V.S.A. § 374a to assist Vermont farmers with capital to meet operating and related needs. With this appropriation, the agricultural debt consolidation program is expected to leverage \$21,000,000.00 in loan activity.
- (b) This appropriation is intended to supplement the \$1,000,000.00 general fund appropriation to VEDA contained in No. 4 of the Acts of 2009 (the budget adjustment act), which was aimed at helping farmers meet spring 2009 operating expenses.
- (c) Vermont lost more than 100 farms in the last two years alone and thousands in previous years. From January to July, 2009, 33 farms ceased operations. With every working farm that shuts down, Vermont suffers economically, environmentally, and socially.
- (d) Based on numbers provided in the Northeast Dairy Herd summary prepared by the Farm Credit System for New England, the cost of dairy production at present exceeds the price farmers are paid for milk. The national

dairy crisis in 2009 was caused by a decline in demand for dairy products on the national and international markets due to the global economic crisis. The imbalance in supply and demand caused the price paid to dairy farmers to decline by over 40 percent from 2008. The decline in milk prices has caused Vermont dairy farmers to either go out of business or go severely into debt and has created a great deal of hardship for dairy farmers and related businesses.

Ninth: In Sec. 7, by striking out subsection (a) (relating to the Vermont agricultural credit corporation) in its entirety and, in subsection (b) (relating to the farm-to-plate investment program), by adding a second sentence to read as follows: "This appropriation supplements the \$100,000.00 appropriation made to the program pursuant to No. 54 of the Acts of 2009."

And by relettering the remaining subsections accordingly.

Tenth: By adding a new section to be numbered Sec. 7a to read as follows:

Sec. 7a. FARM-TO-INSTITUTION PARTNERSHIPS

- (a) The amount of \$100,000.00 is appropriated to the secretary of agriculture, food and markets for the purpose of providing grants for capital upgrades or the development of programs to support farm-to-institution partnerships which can be used as models for similar partnerships throughout Vermont.
- (b) The purpose of the farm-to-institution initiatives is to increase institutional purchases of fresh, locally grown food. The participation of institutional buyers such as hospitals, schools, and businesses will play an important role in stimulating greater local food production and keeping more money in the local economy and will further sustain the key role that agriculture plays in the vibrant past and future of Vermont's economy.
- (c) Another significant outcome of farm-to-institution programs is that as small farmers are able to secure contracts with large institutional purchasers, they are more likely to have access to financing. This is particularly true for nondairy farmers who generally do not have as many assets as dairy farmers have, such as land, machinery, and equipment, which can be used as collateral.

<u>Eleventh</u>: By striking out Sec. 8 (relating to the Champlain Bridge closure) in its entirety and inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. ADDISON COUNTY; CHAMPLAIN BRIDGE CLOSURE; VERMONT JOBS FUND

(a) The amount of \$800,000.00 is appropriated to the Vermont economic development authority (VEDA) to provide interest-rate subsidies through the Vermont jobs fund established under 10 V.S.A. § 234 and to provide loans to

businesses negatively affected by the closure of the Lake Champlain bridge at Crown Point as provided in subsections (b) and (c) of this section.

- (b) Addison County; Priority for Funds. For a period of 90 days after the enactment of this act, businesses and nonprofit health care organizations in Addison County that have incurred economic losses as a direct result of the closure of the Lake Champlain bridge at Crown Point may apply to VEDA for loans to assist with maintaining payroll, ordering inventory, and covering operational expenses, including increased expenses resulting from increased travel costs. VEDA shall make the loans from the Vermont jobs fund subject to the following requirements:
- (1) The minimum loan issue shall be \$1,000.00; the maximum \$25,000.00.
- (2) All applicants must have been in business and operational prior to October 16, 2009.
- (3) Interest rates shall be established by the VEDA board of directors, but shall not exceed the current maximum interest rate applicable under the Vermont jobs fund and may be zero.
- (c) With respect to loans made under subsection (b) of this section, VEDA shall establish underwriting criteria and standards to ensure that eligible businesses are credit-worthy but for the three-month closure of the Lake Champlain bridge at Crown Point; term limits are based upon individual business circumstances; criteria are established for determining which economic losses qualify as the direct result of the bridge closure; and any other terms and conditions it deems appropriate and necessary to accomplish the purposes of this section.
- (d) Any appropriation not used to make loans to eligible Addison County businesses under subsection (b) of this section may be used by VEDA to make loans through the Vermont jobs fund to provide interest-rate subsidies to applicants unless there is a demonstrated financial need.

<u>Twelfth</u>: By striking out Sec. 9 (relating to the Vermont jobs fund) in its entirety and inserting in lieu thereof a new Sec. 9 to read as follows:

Sec. 9. VEDA: VERMONT JOBS FUND

- (a) The amount of \$1,000,000.00 is appropriated to the Vermont economic development authority to provide interest-rate subsidies on loans approved under the Vermont jobs fund established in 10 V.S.A. § 234.
- (b) The appropriation made in subsection (a) of this section supplements the \$1,000,000.00 appropriation made to the Vermont jobs fund pursuant to No. 54 of the Acts of 2009. To date, with \$1,400,000.00 in subsidy funding

(both state and ARRA funds), VEDA has been able to buy down the interest rate on commercial loans in the aggregate amount of approximately \$17,600,000.00. The proceeds of those loans have generated approximately \$58,000,000.00 of economic activity and from that amount have had a stimulative economic effect of \$28,000,000.00.

<u>Thirteenth</u>: By striking out Sec. 10 (relating to microbusiness programs) in its entirety and inserting in lieu thereof a new Sec. 10 to read as follows:

Sec. 10. COMMUNITY CAPITAL OF VERMONT; JOB START LOAN FUND: INDIVIDUAL DEVELOPMENT ACCOUNTS

- (a) The amount of \$100,000.00 is appropriated to community capital of Vermont for the job start loan fund to support low- and moderate-income business owners who do not have access to conventional bank loans. Community Capital of Vermont, Inc. is a community-based 501(c)(3) nonprofit serving the entire state of Vermont. Administration of the Vermont job start loan program was transferred from the Vermont economic development authority to Community Capital of Vermont as of May 1, 2008. In addition to financing, Community Capital of Vermont provides postloan technical assistance grants for specialized consulting services in the areas of marketing, financial management, inventory management, and human resources.
- (b) The amount of \$73,000.00 is appropriated to the office of economic opportunity within the Vermont department for children and families to be transferred to the individual development account (IDA) program established in 33 V.S.A. § 1123.

<u>Fourteenth</u>: By adding a new section to be numbered Sec. 10a to read as follows:

Sec. 10a. DOWNTOWN TAX CREDIT PROGRAM

- (a) The amount of \$100,000.00 shall be transferred to the general fund in fiscal year 2011 to cover the costs of allocating \$100,000.00 worth of tax credits in calendar year 2010 under the downtown and village center program pursuant to 32 V.S.A. § 5930ee, which amount is in addition to the statutory cap of \$1,700,000.00.
- (b) Based on the past performance of the downtown tax credit program, the additional \$100,000.00 in tax credits authorized by this act will leverage an estimated \$1,500,000.00 in downtown rehabilitation, as well as enhance Vermont's downtowns and villages.

(c) In the Vermont Statutes Annotated, the annotations under 32 V.S.A. § 5930ee shall reflect the additional \$100,000.00 worth of tax credits authorized in calendar year 2010 pursuant to this section.

<u>Fifteenth</u>: By adding a new section to be numbered Sec. 10b to read as follows:

Sec. 10b. BTV; AVIATION TECHNICAL TRAINING CENTER

- (a) The amount of \$150,000.00 is appropriated to the Burlington International Airport (BTV) to continue the process of planning and designing a new aviation technical training center.
- (b) This appropriation supplements the \$1,000,000.00 grant in 2009 to BTV from the National Aeronautics and Space Administration (NASA) for the aviation technology training program, and a contemplated \$1,500,000.00 grant, also from NASA. NASA grants cannot be used for facility construction or planning.
- (c) Tenants of the new building will include the technical training center, the Vermont Flight Academy, and the Vermont Technical College, which will support training and education leading to FAA certificates for up to 100 students annually. The current training program can only accommodate about six graduates per year.
- (d) BTV shall consult with career centers and adult education directors from all regions of Vermont to develop a plan that ensures the aviation training program is available to students from all geographic regions in Vermont.

<u>Sixteenth</u>: By adding a new section to be numbered Sec. 10c to read as follows:

Sec. 10c. VERMONT FILM CORPORATION

- (a) The amount of \$100,000.00 is appropriated to the Vermont film corporation to continue its work of creating jobs and growing the state's new media and film economy, as described in chapter 26 of Title 10. It is anticipated that the corporation will solicit funds from private sources pursuant to its authority under 10 V.S.A. § 645(3) to cover the remaining balance of its operational and other business expenses.
- (b) On or before January 15, 2011, the secretary of commerce and community development and the board of directors of the Vermont film corporation shall submit a recommendation to the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development as to whether the work now done by the film corporation should be assumed by the department of tourism and

marketing within the agency of commerce and community development or should remain with the film corporation.

- (c) 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.
- (d) Vermont is home to authors, filmmakers, producers, and young people concentrating their educational and professional development in the emerging fields of communications, multimedia and film production, graphic and digital design, and the performing arts.
- (e) Vermont's natural and seasonal beauty and the charm and character of its towns and regions equal or surpass 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.
- (f) 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; the Johnson State College program which has produced five films to date exploring the history of various Vermont counties; and Castleton State College's concentrations in communication, mass media, and digital media.
- (g) Considering these substantial resources, it is the goal of the general assembly to encourage and promote the development of a strong and dynamic media and film sector within Vermont's creative economy, but no longer to support with general fund dollars the operation of a stand-alone film corporation in and after fiscal year 2012.

<u>Seventeenth</u>: By adding a new section to be numbered Sec. 10d to read as follows:

Sec. 10d. VTC; PARAMEDIC-LEVEL TRAINING PROGRAM

- (a) The amount of \$70,000.00 is appropriated to the Vermont Technical College for the purpose of contributing to the development of a statewide paramedic-level training program.
- (b) This appropriation will supplement the \$25,840.00 already committed to the program by Essex Rescue, and the combined amounts will enable the grant recipients to leverage an additional \$503,360.00 of federal funds from the Federal Emergency Management Agency.

(c) Vermont is currently the only state without a statewide paramedic training program. These funds appropriated in this section will initially provide training to 15 students in the northwest region of the state and will contribute to the development of Vermont's first statewide continuing education program for paramedics in Vermont.

<u>Eighteenth</u>: By adding a new section to be numbered Sec. 10e to read as follows:

Sec. 10e. 18 V.S.A. § 906 is amended to read:

§ 906. EMERGENCY MEDICAL SERVICES DIVISION; RESPONSIBILITIES

To implement the policy of section 901, the department of health shall be responsible for:

* * *

- (8) Establishing, by rule, levels of individual certification and application forms for advanced emergency medical care. The commissioner may use the guidelines established by the American College of Surgeons' Board of Regents as a standard or other similar standards, except that a felony conviction shall not necessarily disqualify an applicant. The rules shall also provide that:
- (A) An individual may apply for and obtain one or more additional certifications as an emergency medical technician intermediate, paramedic, registered nurse emergency medical technician, or physician assistant emergency medical technician.
- (B) An individual licensed or certified by the commissioner as an emergency medical technician or who holds one or more additional certifications shall be able to practice fully within his or her scope of training.
- (C) An applicant seeking certification under this section other than an apprentice certification shall be 18 years of age or older. An individual under 18 years of age may enroll in any course necessary for certification and may obtain apprentice certification.
- (D) An individual seeking any level of certification shall be required to pass an examination approved by the commissioner for that level of certification.
- (E) If there is a hardship imposed on any applicant for a certification under this section because of unusual circumstances, the applicant may apply to the commissioner for a temporary waiver of the certification provisions of this section. The commissioner may for good cause waive one or more of the

certification provisions of this section. An applicant who has served as an advanced emergency medical care provider as a member of the United States Armed Forces may be granted a temporary or permanent waiver of the certification provisions to practice in the same area of training and practice as long as the applicant complies with any continuing education and other certification maintenance requirements.

- (F) No advanced certification shall be required for a student in established advanced training programs leading to certification as an advanced emergency medical care provider, provided that the student is supervised by an individual holding a level of certification for which the student is training and the student is enrolled in an approved training program.
- (G) An advanced emergency medical care provider certified under this chapter may render advanced emergency medical care, rescue, and lifesaving services in those areas of training for which the person is certified without limitation on the individual's ability to practice.

Nineteenth: By adding Sec. 10f to read as follows:

Sec. 10f. CEDF; ARRA FUNDS; VERMONT SMALL-SCALE RENEWABLE ENERGY INCENTIVE PROGRAM; ENTREPRENEURS' SEED CAPITAL FUND

The general assembly finds that the Vermont small-scale renewable energy program, 10 V.S.A. § 6523(d)(1)(E)(ii), currently administered by the renewable energy resource center, is expected to receive \$5,275,000.00 in funding in 2010. These funds come from the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No-111-5, and the clean energy development fund established under 10 V.S.A. § 6523. Notwithstanding any other provision of law, the general assembly directs that \$1,000,000.00 of this amount be reallocated from the small-scale renewable energy program to the entrepreneurs' seed capital fund created under 10 V.S.A. § 291 to conduct ARRA-eligible activities related to "clean energy resources" or "emerging energy-efficient technologies" as those terms are defined under 10 V.S.A. § 6523(b)(1) and (4), respectively.

<u>Twentieth</u>: By striking out Sec. 11 (relating to the broadband adoption program) in its entirety and inserting in lieu thereof a new Sec. 11 to read as follows:

Sec. 11. 30 V.S.A. § 8079 is added to read:

§ 8079. BROADBAND INFRASTRUCTURE; INVESTMENT

(a) To achieve the goals established in subsection 8060(b) of this title, the authority is authorized to invest in broadband infrastructure or contract with

retail providers for the purpose of making services available to at least 10,000 households or businesses in target communities where such services are currently unavailable or to upgrade services in underserved business districts, as determined by the authority. For the purposes of this section, target communities shall not be considered unserved if a broadband provider has a legally binding commitment to provide service to those locations or a provider has received a broadband stimulus grant to provide service to those locations.

- (b) To accomplish the purpose of this section, the authority shall publish a request for proposals for any or all of the following options for the purpose of providing broadband coverage to 100 percent of Vermont households and businesses within target communities: (1) the construction of physical broadband infrastructure, to be owned by the authority; (2) initiatives by public–private partnerships or retail vendors; or (3) programs that provide financial incentives to consumers, in the form of rebates for up to 18 months, for example, to ensure that providers have a sufficient number of subscribers.
- (c) The authority shall review proposals and award contracts based upon the price, quality of services offered, positive experience with infrastructure maintenance, retail service delivery, and other factors determined to be in the public interest by the authority. In selecting target communities, the authority shall consider to the extent possible:
- (1) the proportion of homes and businesses in those communities without access to broadband service and without access to broadband service meeting the minimum technical service characteristic objectives established under section 8077 of this title;
- (2) the level of adoption of broadband service by residential and business users within the community;
- (3) opportunities to leverage or support other sources of federal, state, or local funding for the expansion or adoption of broadband service;
- (4) the number of potential new subscribers in each community and the total level of funding available for the program; and
- (5) the geographic location of selected communities and whether new target communities would further the goal of bringing broadband service to all regions of the state.
- (d) To the extent any funds appropriated by the general assembly are rendered unnecessary for the purpose of reaching unserved Vermonters due to a successful application to the broadband initiatives program under the Rural Utilities Service of the U.S. Department of Agriculture, such funds shall be placed in reserve by the authority to be used first to achieve 100-percent coverage pursuant to chapter 91 of Title 30 and, once that is achieved, to then

deliver fiber-quality service to Vermont's public facilities, regional business hubs, and anchor businesses and institutions.

(e) Beginning July 1, 2010, the authority may invest up to \$500,000.00 for upgrades in broadband services in underserved business districts, as defined by the authority.

<u>Twenty-first</u>: In Sec. 13 (relating to the farm-to-plate investment program), in the first sentence, by striking out the following: "<u>Sec. 7(b)</u>" and inserting in lieu thereof the following: Sec. 7(a)

<u>Twenty-second</u>: By adding a new section to be numbered Sec. 14a to read as follows:

Sec. 14a. 10 V.S.A. § 531(i) is added to read:

- (i)(1) Program Outcomes. The joint fiscal office shall prepare a training program performance report based on the following information submitted to it by the Vermont training program, which is to be collected from each participating employer and then aggregated:
- (A) The number of full-time employees six months prior to the training and six months after its completion.
- (B) For all existing employees, the median hourly wages prior to and after the training.
- (C) The number of "new hires," "upgrades," and "crossovers" deemed eligible for the waivers authorized by statute and the median wages paid to employees in each category upon completion.
- (D) A list and description of the benefits required under subdivision (c)(3) of this section for all affected employees, including the number of employees that receive each type of benefit.
- (E) The number of employers allowed to pay reduced wages in high unemployment areas of the state, along with the number of affected workers and their median wage.
- (2) Upon request by the secretary of commerce and community development, participating employers shall provide the information necessary to conduct the performance report required by this subsection. The secretary, in turn, shall provide such information to the joint fiscal office in a manner agreed upon by the secretary and the joint fiscal office. The secretary and the joint fiscal office shall take measures to ensure that company-specific data and information remain confidential and are not publicly disclosed except in aggregate form. The secretary shall submit to the joint fiscal office any

program outcomes, measurement standards, or other evaluative approaches in use by the training program.

- (3) The joint fiscal office shall review the information collected pursuant to subdivisions (1) and (2) of this subsection and prepare a training program performance report with recommendations relative to the program. The joint fiscal office shall submit its first training program performance report on or before January 15, 2011, to the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development. A second performance report shall be submitted on or before January 15, 2016. In addition to the information evaluated pursuant to subdivision (1) of this subsection, the second report shall include recommendations as to the following:
- (A) whether the outcomes achieved by the program are sufficient to warrant its continued existence.
- (B) whether training program outcomes can be improved by legislative or administrative changes.
- (C) whether continued program performance reports are warranted and, if so, at what frequency and at what level of review.
- (4) The joint fiscal office may contract with a consultant to conduct the performance reports required by this subsection. Costs incurred in preparing each report shall be reimbursed from the training program fund up to \$15,000.00.

<u>Twenty-third</u>: By adding a new section to be numbered Sec. 14b to read as follows:

Sec. 14b. 10 V.S.A. § 531(b)(4) is added to read:

(4) the employer agrees to contribute 50 percent of the overall cost of any training program offered pursuant to this section. For purposes of this subdivision, the overall cost of a training program shall not include a trainee's salary or benefits, but may include the cost of training materials, tuition, and lost production time due to scheduled training.

<u>Twenty-fourth</u>: In Sec. 16 (relating to VEDA's inter-funding lending), by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) Monies in the fund may be loaned to the Vermont agricultural credit program to support its lending operations as established in chapter 16A of this title at interest rates and on terms and conditions to be set by the authority to establish a line of credit in an amount not to exceed \$30,000,000.00

\$60,000.00 to be advanced to the Vermont agricultural credit program to support its lending operations as established in chapter 16A of this title.

<u>Twenty-fifth</u>: By striking out Sec. 23 in its entirety and by inserting in lieu thereof a new Sec. 23 to read as follows:

Sec. 23. 30 V.S.A. § 218(b)(3) is added to read:

(3) Smart Grid. Notwithstanding any provision of law to the contrary, an applicant may propose and the board may approve or require an applicant to adopt a rate design that includes dynamic pricing, such as real-time pricing rates. Under such circumstances, the board may alter or waive the notice and filing provisions that would apply otherwise under section 225 of this title, provided the applicant ensures that each customer receives sufficient advance notice of the time-of-day usage rates.

<u>Twenty-sixth</u>: By striking out Sec. 24 in its entirety and by inserting in lieu thereof a new Sec. 24 to read as follows:

Sec. 24. STUDY ON STATE PURCHASE OF LOCAL GOODS AND SERVICES

The commissioner of buildings and general services, in consultation with interested parties including Vermont business groups, shall conduct a study to evaluate the opportunities and feasibility of increasing the volume of state purchases of both goods and services from local suppliers. The study shall include a presentation of the contracting obstacles to securing state contracts by locally owned businesses and may include recommendations for creating tools that would quantify the tangible and intangible benefits to the state for purchasing from Vermont-owned businesses. The commissioner shall report his or her findings to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs on or before January 15, 2011.

<u>Twenty-seventh</u>: By striking out Sec. 43 (relating to the process for international trade agreement recommendations) in its entirety and inserting in lieu thereof a new Sec. 43 to read as follows:

Sec. 43. 9 V.S.A. chapter 111A is added to read:

<u>CHAPTER 111A. APPROVAL OF INTERNATIONAL TRADE</u> <u>AGREEMENTS</u>

§ 4125. FINDINGS AND PURPOSE

The general assembly makes the following findings of fact:

(1) Today's international trade agreements have impacts which extend significantly beyond the bounds of traditional trade matters such as tariffs and

- quotas. Restrictive government procurement rules, for example, may undermine state purchasing laws and preferences that are designed to promote good jobs and a healthy environment.
- (2) As the subject matters contained within trade agreements expand, these agreements may impact on areas traditionally governed by the states, including economic development, financial investment, environmental policies, pharmaceutical policy, recreational services, utilities and energy distribution, and agricultural subsidies. The subject matter addressed by trade agreements is constantly evolving into new areas and becomes more likely over time to infringe on state law or policy.
- (3) Specific examples in one area important to Vermont—state economic development and environmental policies—that might be constrained by government procurement provisions in international trade agreements include buy-local laws, electronic waste recycling laws, and renewable energy purchasing requirements. Measures that conflict with obligations in one or more international trade agreements could be challenged as potential barriers to trade.
- (4) Input from states has been essential to the Office of the United States Trade Representative's understanding of state practices that may be impacted by policies in trade agreements. For example, after states protested that language in the Australia-United States trade agreement was ambiguous and created uncertainty as to whether it applied to Medicaid preferred drug lists, the United States specifically clarified in the Korea-United States trade agreement that similar pharmaceutical policies did not apply to Medicaid.
- (5) Currently, the Office of the United States Trade Representative asks state governors, without input from state legislatures, whether they will commit state purchasing to trade rules. States, through their governors, may opt into or out of trade rules dealing with government procurement.
- (6) Historically, the general assembly and the governor have worked together to adopt and implement state procurement policies. The decision to consent to the coverage of Vermont under procurement provisions of international trade agreements should also include consultation with and agreement by with the legislative branch.
- (7) If future trade rules permit states to opt into or out of trade rules dealing with investment and services, in addition to procurement, then the general assembly intends for the procedures in this chapter to apply to those provisions as well.

(8) It is important for the state to provide information and recommendations to Congress and the United States trade representative about the possible impacts of proposed trade agreements on state law and policy.

§ 4126. DEFINITIONS

As used in this chapter:

- (1) "Commission" means the commission on international trade and state sovereignty established in 3 V.S.A. § 23.
- (2) "International trade agreement" or "trade agreement" means a trade agreement between the federal government and a foreign country. It does not include a trade agreement between the state and a foreign country to which the federal government is not a party.

§ 4127. APPROVAL OF TRADE AGREEMENTS

- (a) Options for binding the state. If the United States government provides the state of Vermont with the opportunity to consent to or reject binding the state to a trade agreement or to a provision within a trade agreement, then the governor may bind the state or give consent to the United States government to bind the state only after consultation with the commission as provided for in subsection (c) of this section.
- (b) Recommendations to Congress and the United States Trade Representative. In all other circumstances in which the United States government provides the state with information about a proposed trade agreement, the commission shall make a recommendation to Vermont's delegation to Congress and to the Office of the United States Trade Representative within the time frame requested by the Office of the United States Trade Representative.
- (c)(1) Consultation process. When a communication from the United States trade representative regarding a proposed trade agreement is received by the state, the person who receives the communication shall submit a copy of the communication and any proposed trade agreement or relevant provisions of the trade agreement to the chairs of the commission. The chairs may disseminate the information to the chairs of the relevant legislative standing committees of jurisdiction.
- (2) The commission shall review and analyze the trade agreement and issue a recommendation on the potential impact of the trade agreement to the appropriate party as described in subsections (a) and (b) of this section within a time frame that will afford Vermont's recommendations due consideration.

<u>Twenty-eighth</u>: By striking out Sec. 44 (relating to membership on the international trade commission) in its entirety and inserting in lieu thereof a new Sec. 44 to read as follows:

Sec. 44. 3 V.S.A. § 23 is amended to read:

§ 23. THE COMMISSION ON INTERNATIONAL TRADE

* * *

(b) Membership. There is created a commission on international trade and state sovereignty consisting of:

* * *

- (7) a representative of an exporting Vermont business, appointed by the governor; and
- (8) a representative of a Vermont business actively involved in international trade, appointed by the governor;
 - (9) the secretary of agriculture or his or her designee; and
- (10) a representative of a Vermont chamber of commerce, appointed by the governor.
 - (c) Powers and duties.

* * *

(4) In response to a request from the governor or the general assembly, or on its own initiative As provided for in 9 V.S.A. chapter 111A, the committee commission shall consider and develop formal recommendations with respect to how the state should best respond to challenges and opportunities posed by a particular international agreement. Formal recommendations on the specific international agreement shall be submitted to the governor and the house and senate committees on judiciary, on government operations, and on natural resources and energy, and to the house committee on commerce and the senate committees on finance and on economic development, housing and general affairs.

* * *

<u>Twenty-ninth</u>: By adding a new section to be numbered Sec. 44a to read as follows:

Sec. 44a. VERMONT REDEVELOPMENT AUTHORITY; STUDY

(a) The Brattleboro Development Credit Corporation, in consultation with the other regional development corporations in Vermont, may develop a

proposal for enabling legislation that permits a municipality to form an economic development authority.

- (b) The proposal, if developed, shall include recommendations regarding the following:
- (1) the powers that an economic development authority may exercise with respect to: eminent domain; permitting; access to bonding; access to lending through state authorities such as VEDA; property acquisition; and infrastructure investment; and
- (2) the goals of an economic development authority, such as increasing the grand list; increasing occupancy and rent levels; increasing employment opportunities; as well as benchmarks and indicators for measuring an authority's success with meeting those goals.
- (c) The Brattleboro Development Credit Corporation is invited to submit its proposal to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs by January 15, 2011.

<u>Thirtieth</u>: By adding a new section to be numbered Sec. 44b to read as follows:

Sec. 44b. 11 V.S.A. § 3022(d) is added to read:

(d) The secretary of state shall maintain a separate record of the number of limited liability companies that deliver articles of organization to the secretary for filing by electronic transmission.

<u>Thirty-first</u>: By adding a new section to be numbered Sec. 44c to read as follows:

Sec. 44c. 11A V.S.A. § 2.03(c) is added to read:

(c) The secretary of state shall maintain a separate record of the number of corporations that deliver articles of incorporation to the secretary for filing by electronic transmission.

<u>Thirty-second</u>: By adding a new section to be numbered Sec. 44d to read as follows:

Sec. 44d. 11B V.S.A. § 2.03(c) is added to read:

(c) The secretary of state shall maintain a separate record of the number of corporations that deliver articles of incorporation to the secretary for filing by electronic transmission.

Which was agreed to.

Thereupon, Senator Illuzzi moved that the Senate proposal of amendment to the House proposal of amendment be further amended as follows:

<u>First</u>: In Sec. 2, subsection (a), after the last sentence, by adding a new last sentence to read as follows: <u>The Vermont office of economic stimulus and recovery is directed to the track these general fund appropriations as if they were ARRA funds.</u>

<u>Second</u>: In Sec. 3, subsection (a), by striking out the following: "<u>\$850,000.00</u>" and by inserting in lieu thereof the following: <u>\$750,000.00</u>

<u>Third</u>: In Sec. 3, by striking out subsection (d) in its entirety and by relettering the remaining subsection to be alphabetically correct

<u>Fourth</u>: In Sec. 6, subsection (a), by striking out the word "<u>winter</u>"

Fifth: In Sec. 6, by adding a new subsection (c) to read as follows:

(c) The funds appropriated in this section shall be expended in calendar year 2010 with the goal of increasing the number of visitors throughout all regions of the state this year.

<u>Sixth</u>: By striking out Sec. 8 in its entirety and by inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. CHAMPLAIN BRIDGE CLOSURE

- (a) The amount of \$800,000.00 is appropriated to the Addison County economic development corporation (ACEDC) to provide loans to persons negatively affected by the closure of the Lake Champlain bridge at Crown Point as provided in subsections (b) and (c) of this section.
- (b) Priority for Funds. Until October 31, 2010, persons that have incurred economic losses as a direct result of the closure of the Lake Champlain bridge at Crown Point may apply to ACEDC for loans to assist with maintaining payroll, ordering inventory, and covering operational expenses, including increased expenses resulting from increased travel costs. ACEDC shall make the loans subject to the following requirements:
- (1) The minimum loan issue shall be \$1,000.00; the maximum \$25,000.00.
- (2) All applicants must have been in business and operational prior to October 16, 2009.
 - (3) Interest rates shall be established by ACEDC and may be zero.
- (c) With respect to loans made under subsection (b) of this section, ACEDC shall establish underwriting criteria and standards to ensure that: eligible persons are credit-worthy but for the three-month closure of the Lake

Champlain bridge at Crown Point; term limits are based upon individual business circumstances; criteria are established for determining which economic losses qualify as the direct result of the bridge closure; and shall establish any other terms and conditions it deems appropriate and necessary to accomplish the purposes of this section.

- (d) On November 1, 2010, all unexpended funds shall be transferred to the Vermont economic development authority (VEDA). In addition, all loan repayments shall be transferred to VEDA. Any funds received by VEDA pursuant to this subsection shall be transferred to the entrepreneurs' seed capital fund established under chapter 14A of Title 10. ACEDC may retain any interest.
- (e) Unless other funds for administrative costs become available, the ACEDC may use up to 0.5 percent of each loan issued under this section to cover administrative costs.

Seventh: In Sec 10, by adding subsection (c) to read as follows:

(c) The amount of \$100,000.00 is appropriated to the office of economic opportunity within the Vermont department for children and families to be transferred to the micro-business development program.

<u>Eighth</u>: In Sec. 10c, in subsection (b), after the following: "<u>the secretary of commerce and community development</u>" by adding the following: <u>, the board of the Vermont arts council.</u>

<u>Ninth</u>: In Sec. 10c, in subsection (b), after the words "<u>or should remain</u> <u>with the film corporation</u>" by adding the words <u>or whether the film corporation</u> should enter into a partnership with the Vermont arts council

<u>Tenth</u>: In Sec. 10c, in subsection (f), after the words "<u>Vermont is home to at least</u>" by striking out the word "<u>five</u>" and by inserting the word <u>seven</u>

<u>Eleventh</u>: In Sec. 10c, in subsection (f), after the following: "<u>various Vermont counties</u>;" by inserting the following: <u>the Lyndon State College film program</u>; the Bennington College film program;

<u>Twelfth</u>: In Sec. 10d, subsection (a), after the words "<u>development of a</u>" by adding the following: <u>stand-alone</u>

<u>Thirteenth</u>: In Sec. 10d, subsection (b), by striking out the following: "\$25,840.00" and by inserting in lieu thereof the following: generous and substantial

<u>Fourteenth</u>: In Sec. 10d, subsection (b), after the words "<u>Essex Rescue</u>" by adding the following: <u>and EMS District 3</u>

<u>Fifteenth</u>: In Sec. 10d, subsection (b), by striking out the following: "<u>an additional \$501,360.00 of</u>" and by inserting in lieu thereof the following: additional

<u>Sixteenth</u>: In Sec. 10d, by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) Vermont is currently the only state without a statewide paramedic training program. The funds appropriated in this section will bring about essential training under a regional program for 15 students and also will contribute to the development of Vermont's first statewide paramedic certification program.

<u>Seventeenth</u>: By striking out Sec. 10e in its entirety and by inserting in lieu thereof a new Sec. 10e to read as follows:

Sec. 10e. 18 V.S.A. § 906 is amended to read:

§ 906. EMERGENCY MEDICAL SERVICES DIVISION; RESPONSIBILITIES

To implement the policy of section 901, the department of health shall be responsible for:

* * *

- (8) Establishing, by rule, levels of individual certification and application forms for advanced emergency medical care. The commissioner may use the guidelines established by the National Highway Transportation Safety Administration as a standard or other comparable standards, except that a felony conviction shall not necessarily disqualify an applicant. The rules shall also provide that:
- (A) An individual may apply for and obtain one or more additional certifications, including certification as an advanced emergency medical technician or as a paramedic.
- (B) An individual certified by the commissioner as an emergency medical technician, advanced emergency medical technician, or a paramedic shall be able to practice fully within the statewide scope of practice for such level of certification as established by the commissioner by rule, which shall be adopted and implemented on a statewide basis no later than January 1, 2011, provided that such person is affiliated with a rescue service, fire department, or licensed ambulance service, or other state licensed medical facility.
- (C) An individual seeking any level of certification shall be required to pass an examination approved by the commissioner for that level of certification.

- (D) If there is a hardship imposed on any applicant for a certification under this section because of unusual circumstances, the applicant may apply to the commissioner for a temporary or permanent waiver of one or more of the certification requirements, which the commissioner may waive for good cause. An applicant who has served as an advanced emergency medical technician, such as a hospital corpsman or a medic in the United States Armed Forces, or who is licensed as a registered nurse or a physician's assistant shall be granted a permanent waiver of the training requirements to become a certified emergency medical technician, an advanced emergency medical technician, or a paramedic, provided the applicant passes the applicable examination approved by the commissioner for that level of certification.
- (E) No advanced certification shall be required for a trainee in established advanced training programs leading to certification as an advanced emergency medical technician, provided that the trainee is supervised by an individual holding a level of certification for which the trainee is training and the student is enrolled in an approved certification program.

<u>Eighteenth</u>: By striking out Sec. 10f in its entirety and inserting in lieu thereof a new Sec. 10f to read as follows:

- Sec. 10f. CEDF; ARRA FUNDS; VERMONT SMALL-SCALE LOAN PROGRAM; ENTREPRENEURS' SEED CAPITAL FUND
- (a) The general assembly finds that the Vermont small-scale renewable energy loan program currently administered by the clean energy development fund is expected to receive \$1,000,000.00 in funding in 2010 under the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No-111-5, and the clean energy development fund established under 10 V.S.A. § 6523. Notwithstanding any other provision of law, the general assembly directs that this \$1,000,000.00 in funds be reallocated to the entrepreneurs' seed capital fund created under 10 V.S.A. § 291 to conduct ARRA-eligible activities related to "clean energy resources" or "emerging energy-efficient technologies" as those terms are defined under 10 V.S.A. § 6523(b)(1) and (4), respectively.
- (b) The commissioner of public service, in conjunction with the Vermont office of economic stimulus and recovery, shall seek and obtain from the United States Department of Energy express authorization for the reallocation of funds pursuant to subsection (a) of this section within four months of the effective date of this act.
- (c) The funds appropriated under this section, and any return on the state's investment, shall remain in the entrepreneurs' seed capital fund and may be reinvested in Vermont firms consistent with the purposes of the fund.

<u>Nineteenth</u>: By striking out Sec. 14b (relating to a 50-percent employer contribution under the Vermont training program) in its entirety.

<u>Twentieth</u>: In Sec. 16 (relating to VEDA's inter-fund lending) by striking out subsection (c) in its entirety and by inserting in lieu thereof a new subsection (c) to read as follows:

(c) Monies in the fund may be loaned to the Vermont agricultural credit program to support its lending operations as established in chapter 16A of this title at interest rates and on terms and conditions to be set by the authority to establish a line of credit in an amount not to exceed \$30,000,000.00 \$60,000,000.00 to be advanced to the Vermont agricultural credit program to support its lending operations as established in chapter 16A of this title.

Twenty-first: In Sec. 44a, subdivision (b)(1), by striking out the words "eminent domain;"

And by renumbering the remaining sections to be numerically correct.

Which was agreed to.

Thereupon, Senators Bartlett, Brock, Campbell, Doyle, Illuzzi, Kittell, Scott and Shumlin moved that the Senate proposal of amendment to the House proposal of amendment be further amended as follows:

First: In Sec. 6a, by adding a new subsection (e) to read as follows:

(e) From the amount appropriated in this section, the sum of \$50,000.00 shall be transferred from the Vermont economic development authority to the agency of agriculture, food and markets for use by the secretary to develop and implement a third party verification or audit process to enable the Vermont seal of quality program to be resumed with strict quality review and approval standards.

<u>Second</u>: By adding a new section to be numbered Sec. 6b to read as follows:

Sec. 6b. 6 V.S.A. § 2964 is amended to read:

§ 2964. VERMONT <u>AGRICULTURAL</u> PRODUCTS; IDENTIFICATION AND DEFINITION; <u>SEAL OF QUALITY</u>

(a) A producer or packer of agricultural products produced in Vermont annually may apply to the secretary for an identification label which may be applied to his or her products to indicate that they have been produced in Vermont and have met standards of quality as have been or may be established by the secretary. The person requesting the labels shall annually pay a fee established by the secretary by rule. based on the volume of sales for each category of products in the previous year according to the following fee

schedule: \$25.00 for a prior annual sales volume less than \$25,000.00; \$50.00 for a prior annual sales volume from \$25,000.00 to under \$100,000.00; \$100.00 for a prior annual sales volume from \$100,000.00 to \$250,000.00; and \$500.00 for a prior annual sales volume greater than \$250,000.00. The applicant shall also pay for the cost of all labels requested.

* * *

(g) Third Party Verification. The secretary may designate by rule a qualified, independent person or entity to verify that an agricultural product has been produced or processed in Vermont in compliance with this section and rules adopted by the secretary pursuant to this section, and that the product meets the standards of quality established by the secretary for the product. The applicant shall be responsible for the cost of verification performed by the designated person or entity.

<u>Third</u>: By adding a new section to be numbered Sec. 6c to read as follows:

Sec. 6c. 6 V.S.A. § 2965 is amended to read:

§ 2965. MISUSE OF LABELS; PENALTY

A person who fraudulently utilizes the labels issued as provided in section 2964 of this title, who willingly allows another to fraudulently use the labels or who applies the labels to products which do not meet quality standards as have been or may be established by the secretary shall be fined no more than \$500.00 for each offense.

- (a) No person shall use, nor allow another person to use, an identification label designed and issued by the secretary under section 2964 of this title without authorization of the secretary.
- (b) A person who violates this section commits a civil violation and shall be assessed a penalty of not less than \$500.
- (c) In addition to the penalties set forth in this section, the secretary may take any action authorized under 6 V.S.A. Chapter 1 to enforce the requirements of section 2964 of this title and the rules adopted pursuant to that section.

<u>Fourth</u>: By adding a new section to be numbered Sec. 6d to read as follows: Sec. 6d. 4 V.S.A. § 1102(19) is added to read:

(19) Violations of 6 V.S.A. § 2965 relating to the misuse of identification labels for agricultural products produced in Vermont and meeting standards of quality established by the secretary of agriculture, food and markets.

<u>Fifth</u>: By adding a new section to be numbered Sec. 6e to read as follows:

- Sec. 6e. INTERIM ADMINISTRATION OF THE VERMONT SEAL OF QUALITY PROGRAM
- (a) Pending adoption of a third party verification process pursuant to 6 V.S.A. § 2964(g), the secretary of the agency of agriculture, food and markets shall adopt by rule or by emergency rule, which notwithstanding any provision of law to the contrary shall remain in effect until repealed, an interim process and an appropriate fee structure for administering the authorization and use of identification labels pursuant to 6 V.S.A. § 2964.
- (b) Identification labels issued during the interim administration of the identification label program shall be limited to maple and dairy products that:
- (1) meet the current quality standards under rules adopted by the secretary for those products pursuant to 6 V.S.A. § 2964; and
- (2) meet the requirements of the "Vermont origin rule," Vt. Code R. 06 031 021, Rule CF 120 (Representations of Vermont Origin).
- (c) Certification during the interim period shall be made pursuant to self-certification on forms issued by the secretary for that purpose.
- (d) It shall be an unfair and deceptive act in trade in violation of 9 V.S.A. § 2453 for any person to use an identification label without authorization of the secretary during the period of the interim administration of the identification label program.
 - (e) This section shall be repealed on June 30, 2011.
- (f) The secretary shall resume administration of the seal of quality program not later than July 1, 2011.

Which was agreed to on a roll call, Yeas 27, 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, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Racine, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: None.

Those Senators absent and not voting were: Giard, Mullin, Shumlin.

Thereupon, Senator Illuzzi moved that the Senate proposal of amendment to the House proposal of amendment be further amended in Sec. 6b by striking out subsection (g) of 6 V.S.A. § 2964 in its entirety and by inserting in lieu thereof the following:

(g) Third Party Verification. The secretary may adopt rules to design and implement a third party verification process under which a qualified, independent person or entity shall verify that an agricultural product has been produced or processed in Vermont in compliance with this section and rules adopted by the secretary pursuant to this section, and that the product meets the standards of quality established by the secretary for the product. The secretary shall determine who is responsible for the cost of the required verification.

Which was agreed to.

Thereupon, Senator MacDonald moved that the Senate proposal of amendment to the House proposal of amendment be further amended as follows:

<u>First</u>: In Sec. 4, subsection (a), by striking out the following: "§ 8079(e)" and inserting in lieu thereof the following: § 8079(f)

<u>Second</u>: In Sec. 4, subsection (b), by striking out the following: "<u>economic development</u>, housing and general affairs" and inserting in lieu thereof the following: <u>finance</u>

<u>Third</u>: In Sec. 11, subsection (b), by adding a new last sentence to read as follows: <u>Before publication</u>, a copy of all requests for proposals shall be provided to the senate committee on finance and the house committee on commerce and economic development, and shall be approved by the joint fiscal committee

<u>Fourth</u>: In Sec. 11, by adding a new subsection (c) to read as follows:

- (c) Criteria. In developing the criteria which will govern the requests for proposals regarding the expenditure of the appropriations contained in S.288 and H. 790 as enacted in the 2010 legislative session, and to the extent consistent with the objectives set forth in subsection (a) of this section, the authority shall strive to achieve the following:
- (1) Require the use of current generation infrastructure, such as fiber optic cable where cable is used, or otherwise appropriate, and technology which is considered state of the art by the telecommunications industry.
- (2) Require that any infrastructure owned and leased by the authority shall be available for use by as many telecommunication providers as the technology will permit to avoid the state from establishing a monopoly service territory for one provider.

And by relettering the remaining subsections in Sec. 11 to be alphabetically correct.

<u>Fifth</u>: In Sec. 11, subsection (c) [re-lettered as subsection (d) pursuant to the fourth instance of amendments stated herein], by adding subdivision (6) to read as follows:

(6) Pending grant and loan applications for the expansion of broadband service filed with the U.S. Department of Commerce and with the broadband initiatives program under the Rural Utilities Service of the U.S. Department of Agriculture, which will be awarded no later than October 1, 2010.

Which was agreed to.

Thereupon, the pending question, Shall the Senate concur in the House proposal of amendment with further proposals of amendment?, was agreed to on a roll call, Yeas 28, 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, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Racine, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: None.

Those Senators absent and not voting were: Mullin, Shumlin.

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

Consideration Postponed

Senate resolution entitled:

S.R. 17.

Senate resolution urging Congress to authorize alternative waivers to the 21-year-old minimum drinking age that do not entail federal highway funding penalties for states.

Was taken up.

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

Proposal of Amendment; Third Reading Ordered H. 540.

Senator Scott, for the Committee on Transportation, to which was referred House bill entitled:

An act relating to motor vehicles passing vulnerable users on the highway and to bicycle operation.

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. 23 V.S.A. § 4(81) is added to read:
- (81) "Vulnerable user" means a pedestrian; an operator of highway building, repair, or maintenance equipment or of agricultural equipment; a person operating a wheelchair or other personal mobility device, whether motorized or not; a person operating a bicycle or other nonmotorized means of transportation (such as, but not limited to, roller skates, rollerblades, or roller skis); or a person riding, driving, or herding an animal.
- Sec. 2. 23 V.S.A. § 1033 is amended to read:

§ 1033. PASSING ON THE LEFT <u>MOTOR VEHICLES AND</u> VULNERABLE USERS

- (a) Vehicles Passing motor vehicles. Motor vehicles proceeding in the same direction may be overtaken and passed only as follows:
- (1) The driver of a <u>motor</u> vehicle overtaking another <u>motor</u> vehicle proceeding in the same direction may pass to its left at a safe distance, and when so doing shall exercise due care, <u>may shall</u> not pass to the left of the center of the highway unless the way ahead is clear of approaching traffic, and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.
- (2) Except when overtaking and passing on the right is permitted, the driver of an overtaken <u>motor</u> vehicle shall give way to the right in favor of the overtaking <u>motor</u> vehicle on audible signal and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.
- (b) Passing vulnerable users. The operator of a motor vehicle approaching or passing a vulnerable user as defined in subdivision 4(81) of this title shall exercise due care, which includes increasing clearance, to pass safely the vulnerable user.

Sec. 3. 23 V.S.A. § 1039 is amended to read:

§ 1039. FOLLOWING TOO CLOSELY, <u>CROWDING</u>, <u>AND</u> HARASSMENT

(a) The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon, and the conditions of, the highway. The operator of a vehicle shall not, in a careless or imprudent manner, approach, pass, or maintain speed unnecessarily close to a vulnerable user as defined in subdivision 4(81) of this title, and an occupant of a vehicle shall not throw any object or substance at a vulnerable user.

* * *

Sec. 4. 23 V.S.A. § 1065 is amended to read:

§ 1065. HAND SIGNALS

- (a) All A right or left turn shall not be made without first giving a signal of intention either by hand or by signal in accordance with section 1064 of this title. Except as provided in subsection (b) of this section, all signals to indicate change of speed or direction, when given by hand, shall be given from the left side of the vehicle and in the following manner:
 - (1) Left turn. Hand and arm extended horizontally.
 - (2) Right turn. Hand and arm extended upward.
 - (3) Stop or decrease speed. Hand and arm extended downward.
- (b) No turn to right or left may be made without first giving a signal of an intention to do so either by hand or by signal in accordance with section 1064 of this title A person operating a bicycle may give a right-turn signal by extending the right hand and arm horizontally and to the right side of the bicycle.
- Sec. 5. 23 V.S.A. § 1127 is amended to read:

§ 1127. CONTROL IN PRESENCE OF HORSES AND CATTLE ANIMALS

(a) Whenever upon a public highway and approaching a vehicle drawn by a horse or other draft animal, or approaching a horse or other <u>an</u> animal upon which a person is riding, <u>or animals being herded</u>, the operator of a motor vehicle shall operate the vehicle in such a manner as to exercise every reasonable precaution to prevent the frightening of <u>such horse or any</u> animal and to <u>insure ensure</u> the safety and protection of the <u>animal and the</u> person riding <u>or</u>, driving, or herding.

- (b) The operator of a motor vehicle shall yield to any cattle, sheep, or goats which are animals being herded on or across a highway.
- Sec. 6. 23 V.S.A. § 1139(a) is amended to read:
- (a) A person operating a bicycle upon a roadway shall <u>exercise due care</u> when passing a standing vehicle or one proceeding in the same direction and <u>generally shall</u> ride as near to the right side of the roadway as practicable exercising due care when passing a standing vehicle or one proceeding in the same direction, but shall ride to the left or in a left lane when:
- (1) preparing for a left turn at an intersection or into a private roadway or driveway;
- (2) approaching an intersection with a right turn lane if not turning right at the intersection;
 - (3) overtaking another highway user; or
- (4) taking reasonably necessary precautions to avoid hazards or road conditions.
- Sec. 7. 23 V.S.A. § 1141(a) is amended to read:
- (a) No A person may shall not operate a bicycle at nighttime from one-half hour after sunset until one-half hour before sunrise unless it is equipped with a lamp on the front, which emits a white light visible from a distance of at least 500 feet to the front, and with a lamp on the rear, which emits a flashing or steady red reflector on the rear, which light that shall be visible at least 300 feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. Lamps emitting red lights visible to the rear may be used in addition to the red reflector. In addition, bicyclists shall operate during these hours with reflective, rear-facing material on pedals, shoes, or ankle bands.

Sec. 8. REPEAL

23 V.S.A. § 1053 (passing pedestrians on a highway) is repealed.

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, and third reading of the bill was ordered.

Leave Granted to Offer Proposal of Amendment After Third Reading; Bill Passed in Concurrence with Proposal of Amendment

H. 765.

House bill entitled:

An act relating to establishing the Vermont agricultural innovation authority.

Was taken up.

Thereupon, pending the question, Shall the bill pass in concurrence with proposal of amendment?, Senator Choate requested and was granted leave to offer a proposal of amendment after third reading.

Thereupon, pending the question, Shall the bill pass in concurrence with proposal of amendment?, Senator Choate moved that the Senate proposal of amendment be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 6 V.S.A. §§ 2961 and 2962 are amended and §§ 2962a and 2962b are added to read:

§ 2961. CREATION OF AGRICULTURAL DEVELOPMENT COMMISSION DEFINITIONS

- (a) There is established within the agency of agriculture, food and markets the agricultural development commission, which shall be composed of the secretary of agriculture, food and markets, commissioner of forests, parks and recreation or his designee, the director of extension service, and director of research at the University of Vermont or their designees and four members appointed by the governor from a list of ten names, five to be submitted to him by the committee on agriculture of the house and five to be submitted to him by the committee on agriculture of the senate. The public members shall be appointed for terms of two years. The secretary of agriculture, food and markets shall be chairman.
- (b) The commission shall be attached to the agency of agriculture, food and markets for administrative support. In addition, the commission may use the services and staff of any department to assist it in the performance of its duties. The secretary of agriculture, food and markets may appoint a person from within the agency of agriculture, food and markets to serve as executive director to the commission.
- (c) Public members of the commission shall receive \$30.00 per diem and necessary expenses incurred while in the performance of their duties As used in this subchapter:
 - (1) "Center" means the Vermont agricultural innovation center.
- (2) "Value-added agricultural product" means any agricultural commodity or product that has been changed, produced, or segregated such that the market for the product has expanded and where the greater portion of

the revenue derived from the value-added activity accrues to the producer of the commodity or product.

§ 2962. COMMISSION; POWERS AND DUTIES ESTABLISHMENT OF VERMONT AGRICULTURAL INNOVATION CENTER

The commission may develop policies and recommend procedures for the implementation of coordinated educational, regulatory, research and promotional programs in agriculture. In addition, the commission may:

- (1) Develop a five year continuing agriculture development program for the state which shall be updated biennially;
- (2) Encourage lending institutions to expand their agricultural lending activities:
- (3) Identify those institutional forces which impede agricultural expansion and make recommendations for the removal of those impediments;
 - (4) Assist individuals and organizations in their agricultural efforts;
- (5) Make recommendations to the agency of agriculture, food and markets and the agricultural experiment station on areas where research might prove most beneficial to agriculture in Vermont;
- (6) [Repealed.] (a) The Vermont agricultural innovation center is hereby established.
- (b) The Vermont agricultural innovation center shall be administered by a board consisting of 13 members with no more than four members representing in a primary capacity any one agricultural sector. The board shall comprise the following:
- (1) The secretary of agriculture, food and markets, who shall serve as chair; and
- (2) The following four members appointed by the governor: One member from each of the four highest grossing commodities produced in Vermont as determined on the basis of annual gross cash sales. These four commodity groups presently include the dairy industry, the maple industry, the livestock, and the produce industry;
- (3) The following eight members appointed by the speaker of the house and the president pro tempore of the senate:
- (A) One representative from each of the two largest membership-based agricultural organizations in Vermont;
- (C) Six members with knowledge of or experience in the production or marketing of value-added agricultural products.

- (c) The Vermont agricultural innovation center's powers are vested in the board, and a quorum shall consist of seven members. No action of the board shall be considered valid unless the action is supported by a majority vote of the members present and voting and then only if at least seven members vote in favor of the action.
- (d) Members of the board shall be appointed for staggered terms of three years. Any vacancy occurring among the members of the board shall be filled by the governor for the unexpired portion of the term. A board member may be reappointed, but no member, except the secretary of agriculture, food and markets, may serve for more than six consecutive years.
- (e) Board members whose membership is not supported by their employer or association may receive per diem and reimbursement for travel as provided in 32 V.S.A. § 1010 to the extent that funds are available.

§ 2962a. PURPOSE; POWERS AND DUTIES

- (a) To achieve the purposes of this subchapter, the Vermont agricultural innovation center shall:
- (1) Promote agriculture and the business of agriculture in Vermont, including the production or marketing of value-added agricultural products.
- (2) Coordinate with federal and state agencies and private sources to make financial resources available to the center for distribution of financial assistance for the promotion of agriculture, including the production or marketing of value-added agricultural products.
- (3) Administer federal grant monies for the production or marketing of value-added agricultural products. Grant monies shall be administered in accordance with their terms which may include:
- (A) Technical assistance, including technical, engineering, and product research services;
- (B) Assistance in marketing, market development, and business planning, including advisory services with respect to leveraging capital assets;
- (C) Organizational, outreach, and development assistance to increase the viability, growth, and sustainability of businesses engaged in the production or marketing of value-added agricultural products;
- (D) Studies that analyze the feasibility of facilities, including processing facilities, for use by potential producers or marketers of value-added products in order to determine the size that optimizes construction and other cost efficiencies.

- (b) The agricultural innovation center may:
- (1) consult, contract, or coordinate with the Vermont economic development authority or other agricultural funders to provide financial assistance for purposes authorized by this subchapter;
- (2) support the establishment of partnerships for the promotion and development of agriculture in the state, including the production or marketing of value-added agricultural products;
- (3) support local initiatives to produce or market value-added agricultural products;
- (4) pursue and coordinate access to regional and local revolving loan funding and all state, federal, and private funding that is available for the development of agriculture and value-added agricultural products;
- (5) receive and accept grants, gifts, loans, or contributions from any source subject to the provisions of 32 V.S.A. § 5;
- (6) use the services and staff of the agency of agriculture, food and markets to assist in the performance of the center's duties with the concurrence of the secretary of agriculture, food and markets;
- (7) contract for support, technical, or other professional services necessary to complete the work of the center.

§ 2962b. INTERAGENCY COOPERATION AND ASSISTANCE

Other departments and agencies of state government shall assist and cooperate with the center and shall make available to it information and data as needed to assist the center in carrying out its duties. Nothing in this section shall be construed to waive any privilege or protection otherwise afforded to the data and information under exemptions to the public records act or under other laws due solely to the fact that the information or data are shared with the center pursuant to this section.

Sec. 2. RECODIFICATION

6 V.S.A. chapter 162 is recodified as follows:

(1) §§ 2961–2962b shall be subchapter 1 which is added to read:

Subchapter 1. Vermont Agricultural Innovation Center

(2) §§ 2963–2965 shall be subchapter 2 which is added to read:

Subchapter 2. Generally

Sec. 3. EFFECTIVE DATE

This act shall take effect January 15, 2011.

And that after passage of the bill the title of the bill be amended to read as follows:

An act relating to establishing the Vermont agricultural innovation center.

Which was agreed to.

Thereupon, the recurring question, Shall the bill pass in concurrence with proposal of amendment?, was decided in the affirmative.

Proposal of Amendment; Third Reading Ordered H. 524.

Senator Nitka, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to interference with or cruelty to a guide dog.

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. 13 V.S.A. § 355 is added to read:

§ 355. INTERFERENCE WITH OR CRUELTY TO A GUIDE DOG

- (a) As used in this section:
 - (1) "Custody" means the care, control, and maintenance of a dog.
- (2) "Guide dog" means a dog, with visible identification of its status, individually trained to do work or perform tasks for the benefit of an individual with a disability for purposes of guiding an individual with impaired vision, alerting an individual with impaired hearing to the presence of people or sounds, assisting an individual during a seizure, pulling a wheelchair, retrieving items, providing physical support and assistance with balance and stability, and assisting with navigation.

(3) "Notice" means:

- (A) a verbal or otherwise communicated warning regarding the behavior of another person and a request that the person stop the behavior; and
- (B) a written confirmation submitted to the local law enforcement agency, either by the owner of the guide dog or another person on his or her behalf, which shall include a statement that the warning and request was given and the person's telephone number.
- (b) No person shall recklessly injure or cause the death of a guide dog, or recklessly permit a dog he or she owns or has custody of to injure or cause the

- death of a guide dog. A person who violates this subsection shall be imprisoned not more than two years or fined not more than \$3,000.00, or both.
- (c) No person who has received notice or has knowledge that his or her behavior, or the behavior of a dog he or she owns or has custody of, is interfering with the use of a guide dog shall recklessly continue to interfere with the use of a guide dog, or recklessly allow the dog he or she owns or has custody of to continue to interfere with the use of a guide dog, by obstructing, intimidating, or otherwise jeopardizing the safety of the guide dog user or his or her guide dog. A person who violates this subsection shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.
- (d) No person shall recklessly interfere with the use of a guide dog, or recklessly permit a dog he or she owns or has custody of to interfere with a guide dog, by obstructing, intimidating, or otherwise jeopardizing the safety of the guide dog user or his or her guide dog. A person who violates this subsection commits a civil offense and shall be:
 - (1) for a first offense, fined not more than \$100.00.
 - (2) for a second or subsequent offense, fined not more than \$250.00.
- (e) A violation of subsection (d) of this section shall constitute notice as defined in subdivision (a)(3) of this section.
- (f) As provided in section 7043 of this title, restitution shall be considered by the court in any sentencing under this section if the victim has suffered any material loss. Material loss for purposes of this section means uninsured:
 - (1) veterinary medical expenses;
- (2) costs of temporary replacement assistance services, whether provided by a person or guide dog;
- (3) replacement value of an equally trained guide dog without any differentiation for the age or experience of the dog;
 - (4) loss of wages; and
- (5) costs and expenses incurred by the person as a result of the injury to the guide dog.
- Sec. 2. 4 V.S.A. § 1102 is amended to read:
- § 1102. JUDICIAL BUREAU; JURISDICTION

* * *

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

* * *

(12) Violations of 13 V.S.A. § 352(3), (4), and (9), relating to cruelty to animals, and 13 V.S.A. § 355(d), relating to interference with a guide dog.

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, and third reading of the bill was ordered.

House Proposal of Amendment to Senate Proposal of Amendment Concurred In

H. 456.

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

An act relating to seasonal fuel assistance.

Was taken up.

The House proposes to the Senate to amend the Senate proposal of amendment in Sec. 3, 33 V.S.A. § 2604(b), by adding a new last sentence to read as follows: The secretary or designee shall provide a draft of the table to the home energy assistance task force established pursuant to 33 V.S.A. § 2501a(c) and solicit input from the task force prior to finalizing the table.

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

Senate Resolution Adopted

S.R. 22.

Senate resolution entitled:

Senate resolution relating to S. 77, An act relating to the recycling and disposal of electronic waste.

Having been placed on the Calendar for action, was taken up and adopted.

Adjournment

On motion of Senator Campbell, the Senate adjourned, to reconvene on Tuesday, April 13, 2010, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 59.

TUESDAY, APRIL 13, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Robert T. Athas of Burlington.

Pledge of Allegiance

Pages Aleksandra Stamper and Meaghan Williams then led the members of the Senate in the pledge of allegiance.

Message from the House No. 50

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. 695. An act relating to definition of premises for award of liquor license.

And has concurred therein.

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

S. 150. An act relating to parking reserved for disabled persons.

And has passed the same in concurrence.

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

S. 28. An act relating to the regulation of landscape architects.

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

Bill Title Amended by Secretary

S. 150.

Pursuant to Senate Rule 40, the title of the bill was amended by the Secretary to read as follows:

An act relating to parking reserved for people with disabilities.

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. 485.

An act relating to the use value appraisal program.

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. 61. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, April 16, 2010, it be to meet again no later than Tuesday, April 20, 2010.

Rules Suspended; Committee Relieved of Further Consideration; Bill Committed

H. 680.

On motion of Senator Sears, the rules were suspended, and H. 680 was taken up for immediate consideration, for the purpose of relieving the Committee on Judiciary from further consideration of the bill. Thereupon, on motion of Senator Sears, the Committee on Judiciary was relieved of House bill entitled:

An act relating to termination of occupancy of farm employee housing, and the bill was committed to the Committee on Agriculture.

Third Reading Ordered

J.R.S. 47.

Senator Illuzzi, for the Committee on Economic Development, Housing and General Affairs, to which was referred joint Senate resolution entitled:

Joint resolution strongly urging the Republic of Turkey to recognize the right to religious freedom for all its residents and to end all discriminatory policies directed against the Ecumenical Patriarchate of the Orthodox Church.

Reported that the joint resolution ought to be adopted on the part of the Senate.

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 on a roll call Yeas 26, Nays 1.

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: Ayer, Bartlett, Brock, Campbell, Carris, Cummings, Doyle, Flanagan, Flory, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr, White.

The Senator who voted in the negative was: Ashe.

Those Senators absent and not voting were: Choate, Giard, Mullin.

Consideration Postponed

Senate resolution entitled:

S.R. 17.

Senate resolution urging Congress to authorize alternative waivers to the 21-year-old minimum drinking age that do not entail federal highway funding penalties for states.

Was taken up.

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

House bill entitled:

H. 524.

An act relating to interference with or cruelty to a guide dog.

Was taken up.

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

Bill Passed in Concurrence with Proposal of Amendment

H. 540.

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

An act relating to motor vehicles passing vulnerable users on the highway and to bicycle operation.

Proposals of Amendment; Third Reading Ordered H. 648.

Senator Flory, for the Committee on Education, to which was referred House bill entitled:

An act relating to harassment and hazing policies at independent colleges.

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

<u>First</u>: By striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. REPEAL

The following sections in Title 16 are repealed:

- (1) 16 V.S.A. § 2182 (harassment and hazing prevention policies; Vermont state colleges).
- (2) 16 V.S.A. § 2284 (harassment and hazing prevention policies; University of Vermont).

<u>Second</u>: In Sec. 4, by striking out the words "<u>Independent postsecondary</u>" and inserting in lieu thereof the word "<u>Postsecondary</u>"

And that after passage the title of the bill be amended to read:

An act relating to harassment and hazing policies at postsecondary schools.

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 proposals of amendment were collectively agreed to, and third reading of the bill was ordered.

Senate Concurrent Resolution

The following joint concurrent resolution, 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, is hereby adopted on the part of the Senate:

By Senators Hartwell and Sears,

By Representative Wilson,

S.C.R. 48.

Senate concurrent resolution honoring Patricia Kenworthy Nuckols of Manchester on being presented a Congressional Gold Medal for her extraordinary military service as a member of the World War II Women Airforce Service Pilots (WASP).

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 Spengler and others,

By Senators Choate and Kittell,

H.C.R. 307.

House concurrent resolution recognizing the role of registered nurses in the delivery of health care in Vermont.

By Representative Head and others,

H.C.R. 308.

House concurrent resolution designating April as Fair Housing Month in Vermont.

By Representative Botzow and others,

By Senators Hartwell and Sears,

H.C.R. 309.

House concurrent resolution congratulating the Woodford SnoBusters snowmobile club on its silver anniversary.

By Representative Malcolm,

H.C.R. 310.

House concurrent resolution in memory of Jane Rinck of Pawlet.

By Representative Shaw and others,

By Senators Carris, Flory and Mullin,

H.C.R. 311.

House concurrent resolution congratulating the 2010 Stafford Technical Center "Act Out Loud" contest team as one of the 20 national competition finalists.

By Representative Clarkson,

By Senators Campbell, McCormack and Nitka,

H.C.R. 312.

House concurrent resolution congratulating the 2010 Woodstock Union High School Wasps Division II championship boys' Nordic ski team.

By Representative Potter and others,

By Senators Ayer, Campbell, Carris, Doyle, Flory, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mullin, Nitka, Racine, Sears, Shumlin, Snelling and White,

H.C.R. 313.

House concurrent resolution welcoming the 2010 National Tree Farmer Convention to Vermont.

By All Members of the House,

By All Members of the Senate,

H.C.R. 314.

House concurrent resolution congratulating the 2010 University of Vermont

Catamounts America East Conference championship men's basketball team.

By All Members of the House,

By All Members of the Senate,

H.C.R. 315.

House concurrent resolution congratulating the 2010 University of Vermont Catamounts on their second consecutive America East Conference women's basketball championship and historic first NCAA tournament win.

By All Members of the House,

By All Members of the Senate,

H.C.R. 316.

House concurrent resolution congratulating the 2010 University of Vermont Catamounts men's ice hockey team on its performances in the Hockey East and NCAA tournaments.

Message from the House No. 51

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. 776. An act relating to rental housing.

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. 272. An act relating to human trafficking.

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 the following House bill:

H. 539. An act relating to amending the charter of the town of Hartford.

And has concurred therein.

The House has adopted House concurrent resolutions of the following titles:

- **H.C.R. 307.** House concurrent resolution recognizing the role of registered nurses in the delivery of health care in Vermont.
- **H.C.R.** 308. House concurrent resolution designating April as Fair Housing Month in Vermont.
- **H.C.R. 309.** House concurrent resolution congratulating the Woodford SnoBusters snowmobile club on its silver anniversary.
- **H.C.R. 310.** House concurrent resolution in memory of Jane Rinck of Pawlet.
- **H.C.R. 311.** House concurrent resolution congratulating the 2010 Stafford Technical Center "Act Out Loud" contest team as one of the 20 national competition finalists.
- **H.C.R.** 312. House concurrent resolution congratulating the 2010 Woodstock Union High School Wasps Division II championship boys' Nordic ski team.
- **H.C.R. 313.** House concurrent resolution welcoming the 2010 National Tree Farmer Convention to Vermont.
- **H.C.R.** 314. House concurrent resolution congratulating the 2010 University of Vermont Catamounts America East Conference championship men's basketball team.

- **H.C.R.** 315. House concurrent resolution congratulating the 2010 University of Vermont Catamounts on their second consecutive America East Conference women's basketball championship and historic first NCAA tournament win.
- **H.C.R. 316.** House concurrent resolution congratulating the 2010 University of Vermont Catamounts men's ice hockey team on its performances in the Hockey East and NCAA tournaments.

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

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

S.C.R. 48. Senate concurrent resolution honoring Patricia Kenworthy Nuckols of Manchester on being presented a Congressional Gold Medal for her extraordinary military service as a member of the World War II Women Airforce Service Pilots (WASP).

And has adopted the same in concurrence.

Message from the House No. 52

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 House proposal of amendment to Senate bill of the following title:

S. 288. An act relating to the Vermont recovery and reinvestment act of 2010.

And has concurred therein.

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

J.R.S. 60. Joint resolution honoring women veterans and requesting that state and federal officials work cooperatively to assure that women veterans receive the recognition, the health care services, and other support services they need and deserve.

And has adopted the same in concurrence.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until one o'clock in the afternoon on Wednesday, April 14, 2010.

WEDNESDAY, APRIL 14, 2010

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Bill Referred to Committee on Finance

H. 243.

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

An act relating to the creation of a mentored hunting license.

Bill Referred

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

H. 776.

An act relating to rental housing.

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

Consideration Postponed

House bill entitled:

H. 524.

An act relating to interference with or cruelty to a guide dog.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until tomorrow.

Senate resolution entitled:

S.R. 17.

Senate resolution urging Congress to authorize alternative waivers to the 21-year-old minimum drinking age that do not entail federal highway funding penalties for states.

Was taken up.

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

Joint Resolution Adopted on the Part of the Senate

J.R.S. 47.

Joint Senate resolution of the following title was read the third time and adopted on the part of the Senate:

Joint resolution strongly urging the Republic of Turkey to recognize the right to religious freedom for all its residents and to end all discriminatory policies directed against the Ecumenical Patriarchate of the Orthodox Church.

Bill Passed in Concurrence with Proposals of Amendment

H. 648.

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

An act relating to harassment and hazing policies at independent colleges.

Third Reading Ordered

H. 773.

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

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

Reported that the bill ought to pass in concurrence.

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

Proposals of Amendment; Third Reading Ordered

H. 408.

Senator Kittell, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to improving nutrition programs.

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

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

Sec. 4a. SUMMER EDUCATIONAL PROGRAMS; CAMPS

On or before October 1, 2010, the department of education shall report to the house committee on human services, the senate committee on health and welfare, and the house and senate committees on appropriations and on

education regarding the number of school districts that operated or funded summer educational or recreational programs or camps.

<u>Second</u>: By striking out Sec. 5 in its entirety and inserting in lieu thereof a new Sec. 5 to read as follows:

Sec. 5. DIRECT CERTIFICATION FOR SCHOOL MEALS PROGRAMS

The department for children and families and the department of education shall continue to improve the monthly direct certification process through the use of automated data matches in order to certify children receiving 3SquaresVT or other programs or benefits deemed by federal law to make those children eligible for school breakfast, lunch, and summer meals programs.

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 proposals of amendment were collectively agreed to, and third reading of the bill was ordered.

House Proposals of Amendment Concurred In

S. 28.

House proposals of amendment to Senate bill entitled:

An act relating to the regulation of landscape architects.

Were taken up.

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

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

Sec. 4. FINDINGS

- (a) The general assembly finds that:
- (1) All states in the United States, with the exception of Vermont, regulate the profession of landscape architects.
- (2) Most states do not have sunrise criteria for regulation of new professions such as that set forth in chapter 57 of Title 26.
- (3) Landscape architecture is the fastest growing profession among design professions.
- (4) Architects', engineers' and landscape architects' scopes of practice overlap.

- (5) Architects and engineers are licensed by the state of Vermont, while landscape architects are not.
- (6) The general welfare of Vermonters is impacted by the work of landscape architects and those impacts continue to grow with the growth of the profession.
- (7) There are economic and environmental side effects resulting from the lack of regulation of landscape architects.
- (8) It is clear that the provisions set forth in this act may benefit the Vermont economy and environment by promoting the landscape architect profession within and outside of the state.
- (9) While it is not clear that regulation of landscape architects will benefit the public health, safety or welfare, or that unregulated practice will harm or endanger the public, health safety or welfare, the potential for those issues to affect Vermonters is bound to increase as the services become more popular.
- (10) Based on the foregoing, the profession of landscape architects should be licensed as set forth in this act.

<u>Second</u>: By striking out Sec. 3 in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

- Sec. 3. REVIEW BY DIRECTOR OF THE OFFICE OF PROFESSIONAL REGULATION; REPEAL
 - (a) Sec. 2 of this act shall be repealed on July 1, 2014.
- (b) On or before December 31, 2013, the director shall file a report with the house and senate committees on government operations on whether this act has benefited the public health, safety or welfare. The report shall make a specific finding of whether or not this act has benefited the public health, safety or welfare. If the report finds no such benefit, this act shall be repealed on July 1, 2014.

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

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. 648.

Rules Suspended; Joint 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. 47.

Appointments Confirmed

Under suspension of the rules (and particularly, Senate Rule 93), as moved by Senator Shumlin, 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:

Alberts, Robert of Bridport - Member of the Vermont Housing Finance Agency, - from February 9, 2010, to January 31, 2014.

Canney, Dagyne of North Clarendon – Member of the Vermont Housing Finance Agency – February 9, 2010, to January 31, 1014.

Davis, Susan of Shelburne - Member - Travel Information Council, - from March 1, 2010, to February 29, 2012.

Gentile, Betsy of Guilford – Member of the Economic Incentive Review Board, - from April 1, 2009, to March 31, 2013.

Gibbons, Kenneth of Hyde Park - Member of the Vermont Educational and Health Buildings Financing Agency, - from February 1, 2010, to January 31, 2016.

Gregory, Peter of Hartland - Member of the State Infrastructure Bank Board, - from March 1, 2010, to February 28, 2015.

Gurin, Steven of Barre - Member of the Vermont Educational and Health Buildings Financing Agency, - from February 1, 2010, to January 31, 2016.

Heald, Francis of Rutland - Member - Travel Information Council, - from March 1, 2010, to February 29, 2012.

Hogan, Ann L. of Shelburne - Member of the State Infrastructure Bank Board, - from March 1, 2010, to February 28, 2015.

Johnson, Thomas of Dummerston - Member of the Vermont State Housing Authority, - from March 12, 2009, to February 28, 2014.

Kennett, Elizabeth G. of Rochester - Member – Travel Information Council, - from March 1, 2010, to February 29, 2012.

Kenney, Frederick S., II of Jericho – Executive Director of the Economic Incentive Review Board, - from April 1, 2009, to March 31, 2011.

Kelley, Robert of Brandon - Member of the State Board of Education, - from July 21, 2009, to June 30, 2011.

Keyser, Christopher S. of Rutland – Member of the Economic Incentive Review Board, - from April 1, 2009, to March 31, 2013.

Kimel, David R.. of St. Albans – Director of the Vermont Municipal Bond Bank, - from February 1, 2010, to January 31, 2012.

Lintermann, Mary of Stowe – Member of the Economic Incentive Review Board, - from April 1, 2009, to March 31, 2013.

Marshall, Karen of Williston – Member of the Economic Incentive Review Board, - from April 1, 2009, to March 31, 2011.

Marvin, David of Hyde Park - Member of the Sustainable Jobs Fund Board of Directors, - from September 14, 2009, to August 31, 2014.

Morse, Stephan of Newfane – Member of the Economic Incentive Review Board, - from April 1, 2009, to March 31, 2011.

Murphy, Sandi of Enosburg Falls - Member of the Valuation Appeals Board, - from October 19, 2009, to January 31, 2012.

Port, Nancy of Burlington – Member of the Economic Incentive Review Board, - from April 1, 2009, to March 31, 2011.

Quillen-Blume, Lenae of Hartland - Member of the Sustainable Jobs Fund Board of Directors, - from September 14, 2009, to August 31, 2014.

Rosenquist, Carl of Georgia – Member of the Economic Incentive Review Board, - from April 1, 2009, to March 31, 2011.

Rowell, Laurie A. of Saxtons River – Member and Chair, Valuation Appeals Board – February 9, 2010, to January 31, 1013.

Smith, Rachel of St. Albans – Member of the Economic Incentive Review Board, - from April 1, 2009, to March 31, 2013.

Sutton, Joseph of East Middlebury - Member - Travel Information Council, - from March 1, 2010, to February 29, 2012.

Valente, John W. of Rutland - Director of the Vermont Municipal Bond Bank, - from February 1, 2010, to January 31, 2012.

Young, Mark of Orwell – Member of the Economic Incentive Review Board, - from April 1, 2009, to March 31, 2013.

Young, Peter F., Jr. Esq. of Northfield - Chair of the Natural Resources Board, - from February 1, 2009, to January 31, 2011.

Message from the House No. 53

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.** 532. An act relating to the domestic violence fatality review commission.
- **H. 589.** An act relating to nuclear energy generation and the institution of trusts for greenfield restoration and spent fuel management.
- **H. 788.** An act relating to approval of amendments to the charter of the town of Berlin.

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. 264. An act relating to stop and hauling charges.

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. 61. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until one o'clock in the afternoon on Thursday, April 15, 2010.

THURSDAY, APRIL 15, 2010

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

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Bills Referred

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

H. 532.

An act relating to the domestic violence fatality review commission.

To the Committee on Rules.

H. 589.

An act relating to nuclear energy generation and the institution of trusts for greenfield restoration and spent fuel management.

To the Committee on Rules.

H. 788.

An act relating to approval of amendments to the charter of the town of Berlin.

To the Committee on Government Operations.

Senate Resolution Adopted

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

By the Committee on Economic Development, Housing and General Affairs,

S.R. 23. Senate resolution urging the Douglas administration to reconsider its decision to reject the implementation of a Project Labor Agreement for the new Lake Champlain Bridge.

Whereas, the construction of the new Lake Champlain Bridge, between Crown Point, New York, and Chimney Point, Vermont, is one of the largest transportation projects in Vermont in decades and is projected to cost at least \$75 million, and

Whereas, the New York State Department of Transportation (NYSDOT) has proposed that the two states adopt a Project Labor Agreement (PLA) to ensure that work proceeds effectively and without conflicting labor contract provisions, and at the lowest possible cost, and

Whereas, a PLA is a negotiated, pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project, and pursuant to President Obama's Executive Order 13502, federal agencies are encouraged to use PLAs in connection with large-scale, federally financed construction projects, and

Whereas, according to testimony before both the Senate Committees on Economic Development, Housing and General Affairs and on Transportation, harmonizing conflicting labor agreements takes on added importance on the Lake Champlain Bridge project because many of the trades working on the project are expected to be union trades, each with its own collective bargaining agreement with terms that may conflict with agreements of the other trades, and

Whereas, before issuing the draft PLA, the NYSDOT commissioned Arace & Company Consulting, LLC, an outside expert firm with no financial stake in the project to conduct an analysis of the PLA's impact; and the analysis concluded a PLA will harmonize conflicting contracts on this particular project and save an estimated \$1.75–\$3.0 million, and

Whereas, the cost savings achieved with a PLA result when labor unions agree to forego overtime and other contract benefits in exchange for an opportunity to work on a project, and

Whereas, without a PLA there is no guarantee that Vermonters and New Yorkers will be employed on the \$75 million project, thus preventing qualified Vermonters who work in the building trades from benefiting from a major employment opportunity in this region, and

Whereas, PLAs have been used successfully in other states, and

Whereas, the Douglas administration has directed the Vermont Agency of Transportation not to negotiate a PLA, and

Whereas, this refusal is based on the mistaken premise that the PLA will prevent nonunion Vermont subcontractors from applying for work on the project, and

Whereas, some Vermont subcontractors have opposed the PLA on "philosophical grounds," now therefore be it

Resolved by the Senate:

That based on available information, the proposed Project Labor Agreement will reduce the overall cost of the project and help to ensure that Vermont and New York residents will obtain some of the work on the project, *and be it further*

Resolved: That the Senate of the State of Vermont urges the Douglas administration to reconsider its decision to not negotiate, and if successful enter into, a Project Labor Agreement for the new Lake Champlain Bridge, and be it further

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to the Secretary of Administration.

Message from the Governor Appointments Referred

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

Kamp, Susan of South Burlington - Member of the Children and Family Council for Prevention Programs, - from April 5, 2010, to February 29, 2012.

To the Committee on Health and Welfare.

Gibbs, Gary P. of Leicester - Member of the Fish and Wildlife Board, - from April 12, 2010, to February 29, 2016.

To the Committee on Natural Resources and Energy.

Consideration Postponed

House bill entitled:

H. 524.

An act relating to interference with or cruelty to a guide dog.

Was taken up.

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

Consideration Resumed; Resolution Amended; Third Reading Ordered S.R. 17.

Consideration was resumed on Senate resolution entitled:

Senate resolution urging Congress to authorize alternative waivers to the 21-year-old minimum drinking age that do not entail federal highway funding penalties for states.

Thereupon, pending the question, Shall the Senate resolution be amended as recommended by the Committee on Economic Development, Housing and General Affairs?, Senator Miller requested and was granted leave to withdraw the recommendation of amendment of the Committee on Economic Development, Housing and General Affairs.

Thereupon, Senator Miller on behalf of the Committee on Economic Development, Housing and General Affairs moved to amend the resolution by striking out all after the title and inserting in lieu thereof the following:

Whereas, in 1984, Congress enacted Public Law 97-364, which in Sec. 101(a) added 23 U.S.C. § 408(f)(6) to the United States Code that established the statutory basis for the federal penalty that withholds ten percent of a state's federal highway funding if the state's drinking age is lower than 21, and

Whereas, the current ten percent highway funding penalty prevents an open public debate about the effects of the 21-year-old drinking age as it impacts unlawful, unsupervised consumption of alcohol, and

Whereas, given the constitutional authority of states to regulate alcohol within their borders, Congress should work with the states to find solutions to address the growing problem of unsupervised, underage consumption and overconsumption of alcohol, and

Whereas, each state has unique qualities and residents that make a one-size-fits-all solution difficult, and each state should have the opportunity to develop a comprehensive program that addresses its unique situation, and now therefore be it

Resolved by the Senate:

That the Senate of the State of Vermont urges Congress to authorize the states to address the problems associated with underage consumption of alcohol by obtaining waivers from federal law to avoid triggering federal highway funding penalties, *and be it further*

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to the Vermont Congressional delegation.

Resolved: That the title of the resolution be amended to read: "Senate resolution relating to problems associated with underage consumption of alcohol."

Which was agreed to.

Thereupon, the question, Shall the resolution be read the third time?, was decided in the affirmative.

Bill Passed in Concurrence with Proposals of Amendment H. 408.

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

An act relating to improving nutrition programs.

Bill Passed in Concurrence

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

H. 773. An act relating to approval of amendments to the charter of the city of Burlington.

Consideration Postponed

House bill entitled:

H. 527.

An act relating to municipal recovery of costs of fire department response.

Was taken up.

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

Third Reading Ordered

H. 680.

Senator Kittell, for the Committee on Agriculture, to which was referred House bill entitled:

An act relating to termination of occupancy of farm employee housing.

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.

House Proposal of Amendment Concurred In

S. 272.

House proposal of amendment to Senate bill entitled:

An act relating to human trafficking.

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. FINDINGS

The general assembly finds that:

(1) According to his book, The Slave Next Door: Human Trafficking and Slavery in America Today, Dr. Kevin Bales states that the number of human beings estimated to be enslaved today has reached over 27 million

worldwide, the highest in recorded history. Vermont and all of its bordering states have seen elements of human trafficking, yet Vermont is the only remaining state in the Northeast and one of the remaining five in the nation lacking legislation on this issue. Vermont's geographical location bordering Canada makes it susceptible to human trafficking activity.

- (2) Human trafficking is an interrelated, under-reported crime that is intentionally kept secret by the traffickers who profit by billions of dollars from these crimes. Human trafficking is the third most profitable illegal global enterprise after drug and weapon trafficking, all of which have been found to be closely related.
- (3) Because Vermont has a limited level of awareness regarding the existence of human trafficking within its own borders, the collaborative efforts of a human trafficking task force are necessary to raise public awareness and to recommend measures that will assist victims of human trafficking.

Sec. 2. HUMAN TRAFFICKING TASK FORCE

- (a) As used in this section, "human trafficking" shall have the same meaning as in 18 U.S.C. §§ 1589–1592.
- (b) For purposes of the definition of "human trafficking," "forced labor" means providing or obtaining the labor or services of a person:
- (1) by threats of serious harm to, or physical restraint against, that person or another person;
- (2) by means of any scheme, plan, or pattern intended to cause the person to believe that if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) by means of the abuse or threatened abuse of law or the legal process.
- (c) The human trafficking task force is established for the purpose of raising public awareness about human trafficking within the state and across state and international borders, identifying resources for the victims of human trafficking, recommending to the public ways to identify and report acts of human trafficking and reporting, and making findings and recommendations regarding those efforts to the general assembly.
- (d) The human trafficking task force shall be composed of the following members:
 - (1) the attorney general or his or her designee, who shall serve as chair;
- (2) a representative of the law enforcement community, appointed by the commissioner of public safety;

- (3) a representative of Vermont's emergency housing or shelter community;
- (4) representatives, appointed by the governor, from each of the following:
 - (A) the Vermont state housing authority;
 - (B) the department of labor;
 - (C) the department of education;
 - (D) the department for children and families;
 - (E) the business community; and
 - (F) the agency of agriculture, food and markets.
- (5) a representative, appointed by the secretary, from the agency of human services who specializes in refugee matters;
 - (6) a representative of the coalition of Vermonters against slavery today;
 - (7) a representative of the Vermont farm bureau;
- (8) a representative of the Vermont network against domestic and sexual violence;
- (9) a representative of the Vermont coalition of runaway and homeless youth programs;
 - (10) a representative of the Vermont crime victim's services; and
 - (11) an immigration attorney, appointed by the Vermont bar association.
 - (e) The task force shall consult with representatives from the following:
 - (1) the human rights commission:
 - (2) the department of public safety;
 - (3) the polaris project;
 - (4) health care professionals;
 - (5) the United States' attorney for Vermont;
 - (6) migrant worker and other labor advocacy groups; and
 - (7) any other groups or individuals the committee deems appropriate.
 - (f) The task force shall perform the following duties:
- (1) Identify ways to raise public awareness about human trafficking in Vermont communities.

- (2) Recommend how the Vermont public, business community, local and state government, health, and education providers can best identify, report, and prevent acts of human trafficking in Vermont.
- (3) Identify the services needed by victims of human trafficking and their families, and recommend ways to provide those services.
- (g) The task force shall have the assistance and cooperation of all state and local agencies and departments.
- (h) On or before November 15, 2010, the task force shall report to the members of the senate and house committees on judiciary, the senate committee on health and welfare, the house committee on human services and to the legislative council its recommendations and legislative proposals, including criminal statutory provisions, if any, relating to its findings.
- (i) On or before January 15, 2011, the task force shall report to the general assembly and to the governor its findings and any recommendations.
- (j) The task force may meet no more than six times, and shall cease to exist on January 15, 2011.

Sec. 3. LAW ENFORCEMENT ADVISORY BOARD

- (a) On or before November 15, 2010, the commissioner of public safety shall report to the law enforcement advisory board on the status of efforts by Vermont law enforcement to respond to issues regarding the crime of human trafficking and what recommendations, if any, should be made to the members of the senate and house committees on judiciary and to the legislative council in order to respond more effectively to those issues.
- (b) Prior to making this report, the commissioner shall consult with the following groups:
 - (1) a representative of the Vermont association of chiefs of police;
 - (2) a representative of the Vermont sheriffs' association;
- (3) the attorney general, or his or her designee from the criminal division;
- (4) a state's attorney, appointed by the executive director of the department of state's attorneys and sheriffs;
 - (5) a representative from the Vermont center for crime victim services;
- (6) a representative from the network against domestic and sexual violence;
- (7) a representative from the coalition of Vermonters against slavery today;

- (8) the executive director of the Vermont police academy or his or her designee;
 - (9) the United States' attorney for Vermont or his or her designee;
 - (10) representatives from federal law enforcement agencies in Vermont;
 - (11) the human trafficking task force; and
- (12) any other groups or individuals the commissioner deems appropriate.
- (c) The law enforcement advisory board shall include its findings and recommendations, based upon the commissioner's report, in its annual report to the general assembly and governor as required pursuant to 24 V.S.A. § 1939(d).

Sec. 4. EFFECTIVE DATE

This act shall take effect upon passage.

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

Rules Suspended; Bills Messaged

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

H. 408, H. 773.

Adjournment

On motion of Senator Mazza, the Senate adjourned until eight o'clock and thirty minutes in the morning.

FRIDAY, APRIL 16, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Lisa Ramson of Moretown.

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. 784.

An act relating to the state's transportation program.

Consideration Postponed

House bills entitled:

H. 213.

An act to provide fairness to tenants in cases of contested housing security deposit withholding.

H. 524.

An act relating to interference with or cruelty to a guide dog.

Were taken up.

Thereupon, without objection consideration of the bills were postponed until the next legislative day.

Third Reading Ordered

H. 527.

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

An act relating to municipal recovery of costs of fire department response.

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.

Consideration Postponed

S.R. 17.

Senate resolution of the following title

Senate resolution urging Congress to authorize alternative waivers to the 21-year-old minimum drinking age that do not entail federal highway funding penalties for states.

Was taken up.

Thereupon, pending third reading of the resolution, Senator Sears moved that the Senate resolution be committed to the Committee on Judiciary.

Thereupon, pending the question, Shall the Senate resolution be committed to the Committee on Judiciary?, Senate Sears requested and was granted leave to withdraw his motion.

Thereupon, pending third reading of the resolution, Senator Shumlin moved that consideration of the Senate resolution be postponed.

Bill Passed in Concurrence

H. 680.

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

An act relating to termination of occupancy of farm employee housing.

Third Reading Ordered

H. 771.

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

An act relating to approval of amendments to the charter of the town of Stowe.

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.

Consideration Postponed

Senate bill entitled:

S. 264.

An act relating to stop and hauling charges.

Was taken up.

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

Proposals of Amendment; Third Reading Ordered

H. 759.

Senator Cummings, for the Committee on Finance, to which was referred House bill entitled:

An act relating to executive branch fees.

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

<u>First</u>: In Sec. 2, 20 V.S.A. § 2738, in subsection (a), in subdivision (4), by striking out the word "<u>and</u>" in subdivision (5), by adding the following: <u>; and</u> and saving the old period for the end of a new subdivision (6) which is added to read as follows:

(6) fees relating to licensing elevator mechanics and inspectors, and issuing permits and certificates of operation under subchapter 2A of chapter 3 of Title 21

<u>Second</u>: By striking out Sec. 4 in its entirety and inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. 20 V.S.A. §§ 2883 and 2884 are amended to read:

§ 2883. INSPECTIONS BY INSURANCE COMPANIES BOILER INSPECTIONS

The commissioner has authority to obtain specific information from boiler insurance companies, boiler inspectors on forms furnished by them, which shall first be approved by the commissioner. The commissioner may authorize qualified inspectors in the employ of insurance companies to conduct inspections under his or her control and under such rules as the commissioner may prescribe. If a boiler or pressure vessel is insured, the inspection may be conducted by a qualified inspector who is employed, or contractually authorized, by the insurer. If a boiler or pressure vessel is not insured, the inspection may be conducted by any qualified inspector authorized by the commissioner. In case the inspection is made by such an inspector, no fee shall be charged by the division, except a process fee of \$20.00 \$30.00 for issuance of an operating certificate. The fee for a person requesting a three-year authorization to conduct inspections shall be \$150.00. A licensed boiler inspector shall carry liability insurance in an amount determined by the department.

§ 2884. QUALIFICATIONS OF INSPECTORS

All boiler inspectors, employed by the state and insurance companies, shall have passed the examination required by the National Board of Boiler and Pressure Vessel Inspectors, and hold annual certification from such board.

<u>Third</u>: By inserting an internal caption and a new section to be numbered Sec. 9a to read as follows:

* * * Criminal conviction records * * *

Sec. 9a. 20 V.S.A. § 2056c is amended to read:

§ 2056c. DISSEMINATION OF CRIMINAL CONVICTION RECORDS TO THE PUBLIC

* * *

(c) Criminal conviction records shall be disseminated to the public by the center under the following conditions:

* * *

(10) No person entitled to receive a criminal conviction record pursuant to this section shall require an applicant to obtain, submit personally, or pay for a copy of his or her criminal conviction record, except that this subdivision shall not apply to a local governmental entity with respect to criminal conviction record checks for licenses or vendor permits required by the local governmental entity.

<u>Fourth</u>: By inserting an internal caption and a new section to be numbered Sec. 9b to read as follows:

* * * Fingerprinting fees * * *

Sec. 9b. 20 V.S.A. § 2062 is amended to read:

§ 2062. FINGERPRINTING FEES

State, county and municipal law enforcement agencies may charge a fee of not more than \$15.00 \$25.00 for providing persons with a set of classifiable fingerprints. No fee shall be charged to retake fingerprints determined by the Vermont criminal information center not to be classifiable. Fees collected by the state of Vermont under this section shall be credited to the fingerprint fee special fund established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5 of chapter 7 of Title 32, and shall be available to the department of public safety to offset the costs of providing these services.

<u>Fifth</u>: By striking out Sec. 6 in its entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

Sec. 6. 26 V.S.A. § 905 is amended to read:

§ 905. APPLICATION; EXAMINATIONS AND FEES

* * *

(d)(1) Three-year electrical license fees shall be:

For a masters license (initial and renewal) \$120.00 \frac{\$150.00}{};

For a journeyman's license (initial and renewal) \$\\$90.00 \\$115.00;

For a type-S journeyman's license (initial and renewal) per field

\$ 90.00 \$115.00;

\$ 10.00.

- (2) A fee established under this subsection for a license initially obtained under section 906 of this title shall not be less than the fee charged for the same license by the reciprocal state.
 - (e) For The fee for a certificate for framing shall be
- (e)(f) If a license is allowed to lapse, it may be renewed within one year of its expiration date by the payment of \$25.00 in addition to the renewal fee.
 - (f)(g) The fee for replacement of a lost or damaged license shall be \$20.00.

<u>Sixth</u>: In Sec. 9, by adding a new subsection (c) to read as follows:

(c) 21 V.S.A. § 157 (elevator safety fund; creation) is repealed.

<u>Seventh</u>: By striking out Sec. 10 in its entirety and inserting in lieu thereof a new Sec. 10 to read as follows:

Sec. 10. 6 V.S.A. § 324(b) is amended to read:

(b) No person shall distribute in this state a commercial feed that has not been registered pursuant to the provisions of this chapter. Application shall be in a form and manner to be prescribed by rule of the secretary. The application for registration of a commercial feed shall be accompanied by a registration fee of \$70.00 \$75.00 per product. The registration fees, along with any surcharges collected under subsection (c) of this section, shall be deposited in the special fund created by subsection 364(e) of this title. Funds deposited in this account shall be restricted to implementing and administering the provisions of this title and any other provisions of the law relating to fertilizer, lime, or seeds. If the secretary so requests, the application for registration shall be accompanied by a label or other printed matter describing the product.

<u>Eighth</u>: In Sec. 18, 9 V.S.A. § 2643, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) The secretary shall, from time to time, test the accuracy and use of laser scanning and other computer assisted check-out systems in stores. The secretary shall compare the programmed computer price with the item price of any consumer commodity offered by a store. The store shall provide access to the computer as is necessary to allow the secretary to conduct the accuracy test.

- (b) If, upon review, the programmed price of a commodity exceeds the price printed on or the advertised price of the commodity, the store may be subject to <u>license denial</u>, <u>revocation</u>, <u>suspension or</u> the <u>following</u> administrative penalties: \$15.00 per violation identified in more than two percent but less than four percent of the commodities reviewed, rounded to the nearest whole number, \$20.00 per violation in the next two percent reviewed, \$50.00 per violation in the next two percent and \$100.00 for each additional violation. In no event, however, shall the total amount of penalty for the review exceed \$1,000.00 allowed by 6 V.S.A. § 15 for overcharge errors identified in two percent or more of the commodities reviewed.
- (c) If a subsequent review within 12 months reveals further violations, the total amount of penalty due may be multiplied by the number of violations discovered.

<u>Ninth</u>: By striking out Sec. 20 in its entirety and inserting in lieu thereof a new Sec. 20 to read as follows:

Sec. 20. 8 V.S.A. § 2506 is amended to read:

§ 2506. APPLICATION FOR LICENSE

* * *

(d) A nonrefundable application fee of \$1,000.00 and, a license fee of \$500.00 for the applicant, and a license fee of \$25.00 for each authorized delegate location shall accompany an application for a license under this subchapter. The license fee shall be refunded if the application is denied.

* * *

<u>Tenth</u>: By striking out Sec. 21 in its entirety and inserting in lieu thereof a new Sec. 21 to read as follows:

Sec. 21. 8 V.S.A. § 2509 is amended to read:

§ 2509. RENEWAL OF LICENSE AND, ANNUAL REPORT, AND ANNUAL ASSESSMENT

(a) A licensee under this subchapter shall pay an annual license renewal fee of \$500.00, plus an annual renewal fee of \$25.00 for each authorized delegate location, provided that the total renewal fee for all authorized delegate locations shall not exceed \$3,500.00, no later than December 1 for the next succeeding calendar year.

* * *

(c) On or before April 1 of each year, the licensee shall pay the department an annual assessment equal to \$0.0001 per dollar volume of money services activity performed for or sold or issued to Vermont customers for the most

recent year ending December 31, which assessment shall not be less than \$100.00 and shall not be greater than \$15,000.00.

- (d) If a licensee does not file an annual report on or before April 1, pay its annual assessment on or before April 1, or pay its renewal fee by December 1, or within any extension of time granted by the commissioner, the commissioner shall send the licensee a notice of suspension. The licensee's license shall be suspended 10 calendar days after the commissioner sends the notice of suspension. The licensee has 20 days after its license is suspended in which to file an annual report, pay its annual assessment, or pay the renewal fee, plus \$100.00 for each day after suspension that the commissioner does not receive the annual report, the annual assessment, or the renewal fee. The commissioner for good cause may grant an extension of the due date of the annual report or the renewal date.
- (d)(e) The commissioner may require more frequent reports from any licensee for the purpose of determining the adequacy of the licensee's security.

<u>Eleventh</u>: By striking out Sec. 24 in its entirety and inserting in lieu thereof a new Sec. 24 to read as follows:

Sec. 24. 8 V.S.A. § 2532a is added to read:

§ 2532a. CHANGE OF AUTHORIZED DELEGATES; CHANGE OF LOCATION

A licensee shall notify the commissioner in writing within 30 days of any change in the list of authorized delegates or locations in this state where the licensee or an authorized delegate of the licensee provides money services, including limited stations and mobile locations. Such notice shall state the name and street address of each authorized delegate or of each location removed or added to the licensee's list. Upon any such change, the licensee shall provide sufficient evidence that it is in compliance with section 2507 of this title. The licensee shall submit with the notice a nonrefundable fee of \$25.00 for each new authorized delegate location and for each change in location. There is no fee to remove authorized delegates or to remove locations.

Twelfth: By inserting an internal caption and nine new sections to be numbered Secs. 24a, 24b, 24c, 24d, 24e, 24f, 24g, 24h, and 24i to read as follows:

- * * * Simplified licensing process for certain commercial lenders * * *
- Sec. 24a. 8 V.S.A. § 2200(1) is amended to read:
- (1) "Commercial loan" means any loan or extension of credit that is described in subdivision 46(1), (2), or (4) of Title 9 and that is in excess of

\$25,000.00. The term does not include a loan or extension of credit for the purpose of farming, as defined in subdivision 6001(22) of Title 10 and does not include a loan or extension of credit for the purpose of financing secured in whole or in part by an owner occupied one- to four-unit dwelling.

Sec. 24b. 8 V.S.A. § 2202(d) is added to read:

(d) This section does not apply to a lender making only commercial loans. Sec. 24c. 8 V.S.A. § 2202a is added to read:

§ 2202a. APPLICATION FOR COMMERCIAL LENDER LICENSE; FEES

- (a) Application for a license for a lender making solely commercial loans shall be in writing, under oath, and in the form prescribed by the commissioner, and shall contain the name and address of the residence and the place of business of the applicant and, if the applicant is a partnership or association, of every member thereof, and, if a corporation, of each officer, director, and control person thereof; the county and municipality with street and number, if any, where the business is to be conducted; and such further information as the commissioner may require.
- (b) At the time of making application, the applicant shall pay to the commissioner a \$500.00 fee for investigating the application and a \$500.00 initial license fee for a period terminating on the last day of the current calendar year.
- (c) In connection with an application for a commercial lender license, the applicant and each officer, director, and control person of the applicant shall furnish to the Nationwide Mortgage Licensing System and Registry (NMLSR) information concerning the applicant's identity and the identity of each of the applicant's officers, directors, and control persons, including:
- (1) Fingerprints for submission to the Federal Bureau of Investigation and for any other governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check.
- (2) Personal history and experience in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR and the commissioner to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.
- (3) Any other information required by the NMLSR or the commissioner. Sec. 24d. 8 V.S.A. § 2203(f) is added to read:
 - (f) This section does not apply to a lender making only commercial loans.

- Sec. 24e. 8 V.S.A. § 2204(d) is added to read:
 - (d) This section does not apply to a lender making only commercial loans.

Sec. 24f. 8 V.S.A. § 2204c is added to read:

§ 2204c. APPROVAL OF APPLICATION; ISSUANCE OF COMMERCIAL LENDER LICENSE

- (a) Upon the filing of the application and payment of the required fees, the commissioner shall issue and deliver a commercial lender license to the applicant upon findings by the commissioner as follows:
- (1) That the experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter. If the applicant is a partnership or association, such findings are required with respect to each partner, member, and control person. If the applicant is a corporation, such findings are required with respect to each officer, director, and control person.
- (2) That the applicant and each officer, director, and control person of the applicant has never had a lender license, mortgage broker license, mortgage loan originator license, or similar license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation.
- (3) That the applicant and each officer, director, and control person of the applicant has not been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court:
- (A) During the seven-year period preceding the date of the application for licensing, except a conviction for driving under the influence or a similarly titled offense in this state or in any other jurisdiction;
- (B) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering; or
- (C) Provided that any pardon of a conviction shall not be a conviction for purposes of this subsection.
- (b) If the commissioner does not find as set forth in subsection (a) of this section, the commissioner shall not issue a license. Within 60 days of filing of the completed application, the commissioner shall notify the applicant of the denial, stating the reason or reasons therefor. If after the allowable period, no request for reconsideration under subsection 2205(a) of this title is received from the applicant, the commissioner shall return to the applicant the sum paid

by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application.

- (c) If the commissioner makes findings as set forth in subsection (a) of this section, he or she shall issue the license within 60 days of filing the completed application. Provided the licensee annually renews the license, the license shall be in full force and effect until surrendered by the licensee or until revocation, suspension, termination, or refusal to renew by the commissioner.
- Sec. 24g. 8 V.S.A. § 2209(a)(6) is added to read:
- (6) For the renewal of a lender's license for a lender making only commercial loans, \$500.00.

Sec. 24h. 8 V.S.A. § 2224(b) is amended to read:

(b) Annually, within 90 days of the end of its fiscal year, each licensed lender, mortgage broker, and sales finance company shall file financial statements with the commissioner in a form and substance satisfactory to the commissioner, which financial statements must include a balance sheet and income statement. This subsection does not apply to a lender making only commercial loans.

Sec. 24i. 9 V.S.A. § 46 is amended to read:

§ 46. EXCEPTIONS

Section 43 of this title relating to deposit requirements and section 45 of this title relating to prepayment penalties shall not apply and the parties may contract for a rate of interest in excess of the rate provided in section 41a of this title in the case of:

* * *

(2) obligations incurred by any person, partnership, association or other entity to finance in whole or in part income-producing business or activity, but not including obligations incurred to finance family dwellings of two four units or less when used as a residence by the borrower or to finance real estate which is devoted to agricultural purposes as part of an operating farming unit when used as a residence by the borrower; or

* * *

<u>Thirteenth</u>: By inserting an internal caption and a new section to be numbered Sec. 29a to read as follows:

* * * Moose hunting permit * * *

Sec. 29a. 10 V.S.A. § 4254 is amended to read:

§ 4254. FISHING AND HUNTING LICENSES; ELIGIBILITY, DESIGN, DISTRIBUTION, SALE, AND ISSUE

* * *

(i)(1) If the board establishes a moose hunting season, up to five moose permits shall be set aside to be auctioned. The board shall adopt rules necessary for the department to establish, implement, and run the auction process. Proceeds from the auction shall be deposited in the fish and wildlife fund and used for conservation education programs run by the department. Successful bidders must have a Vermont hunting or combination license in order to purchase a moose permit. Beginning with the 2006 hunting season, the five moose permits set aside for auction shall be in addition to the number of annual moose permits authorized by the board.

* * *

(3) If the board establishes a moose hunting season, there shall be established a program to set aside three moose permits for children with life-threatening illnesses. The department of fish and wildlife shall adopt a procedure to implement the set-aside program for children with life-threatening illnesses.

<u>Fourteenth</u>: In Sec. 30, 3 V.S.A. § 2822(j), in subdivision (2)(B)(i), by striking out the figure "\$210,000.00" and inserting in lieu thereof the figure \$60,000.00

<u>Fifteenth</u>: In Sec. 30, 3 V.S.A. § 2822(j), by adding an ellipsis after subdivision (7)(F)

<u>Sixteenth</u>: In Sec. 30, 3 V.S.A. § 2822(j), by inserting subdivision (26) and amending it to read as follows:

- (26) For <u>individual</u> conditional use determinations, for <u>individual</u> wetland permits, for general conditional use determinations issued under 10 V.S.A. § 1272, or for wetland authorizations issued under a general permit, an administrative processing fee assessed under subdivision (2) of this subsection (j) and an application fee of:
- (A) \$0.07 \$0.14 per square foot of proposed impact to Class I or II wetlands;
- (B) \$0.05 \$0.10 per square foot of proposed impact to Class I or II wetland buffers;

- (C) maximum fee, for the conversion of Class II wetlands or wetland buffers to cropland use, \$200.00 per application. For purposes of this subdivision, "cropland" means land that is used for the production of agricultural crops, including row crops, fibrous plants, pasture, fruit-bearing bushes, trees or vines and the production of Christmas trees;
 - (D) minimum fee, \$50.00 per application.

* * *

<u>Seventeenth</u>: In Sec. 30, 3 V.S.A. § 2322(j), by adding two new subdivisions (29) and (30) to read as follows:

- (29) For salvage yards permitted under subchapter 10 of chapter 61 of Title 24:
 - (A) facilities that crush or shred should per facility. junk motor vehicles.
 - (B) facilities that accept or \$1,000.00 per facility.
 dismantle junk motor vehicles.
 - (C) facilities that manage junk \$350.00 per facility. on site excluding junk motor vehicles.
 - (D) facilities, the primary activity of which is handling total-loss vehicles from insurance companies. \$300.00 per facility.
- (30) For beverage redemption centers certified under chapter 53 of Title 10, an annual fee of \$100.00 per certified redemption center.

* * *

<u>Eighteenth</u>: In Sec. 30, 3 V.S.A. § 2822(1), in subdivision (2), by striking the (A) designation, the word "or" and subdivision (B) in its entirety.

Nineteenth: By striking out Sec. 31 in its entirety.

Twentieth: In Sec. 33, by adding a new subsection (c) to read as follows:

(c) 24 V.S.A. § 2263 (annual salvage yard licensing fee) is repealed.

<u>Twenty-first</u>: In Sec. 35, 32 V.S.A. § 605, in subsection (b), by striking out subdivision (1) in its entirety and inserting in lieu thereof a new subdivision (1) to read as follows:

(1) A report covering all fees in existence on the prior July 1 within the areas of government identified by the department of finance and management accounting system as "general government," "labor," "general education," "development and community affairs" and "transportation" shall be submitted

by October 1, 1996 and every three years thereafter on by the third Tuesday of the legislative session beginning with 2000 beginning in 2011 and every three years thereafter.

Twenty second: By striking out Sec. 35a in its entirety.

Twenty third: By inserting an internal caption and a new section to be numbered Sec. 34a to read as follows:

* * * Probate fees * * *

Sec. 34a. 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:

* * *

(14) Guardianships for minors	\$35.00 <u>\$85.00</u>
(15) Guardianships for adults	\$50.00 <u>\$100.00</u>
(16) Petitions for change of name	\$75.00 <u>\$125.00</u>
* * *	
(23) Petitions for partial decree	\$100.00
(24) Petitions for license to sell real estate	<u>\$50.00</u>

* * *

And by 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, and the proposals of amendment were collectively agreed to, and third reading of the bill was ordered.

Message from the Governor

A message was received from His Excellency, the Governor, by David Coriell, 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 April, 2010 he approved and signed a bill originating in the Senate of the following title:

S. 288. An act relating to the Vermont recovery and reinvestment act of 2010.

Message from the House No. 54

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. 293. An act relating to state standards for boilers and pressure vessels.

And has passed the same in concurrence.

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

S. 282. An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles.

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

The Governor has informed the House that on the April 13, 2010, he approved and signed bills originating in the House of the following titles:

- **H. 461.** An act relating to small estates.
- **H. 600.** An act relating to permitted investments by the state treasurer.
- **H. 695.** An act relating to definition of premises for award of liquor license.

Message from the House No. 55

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. 781. An act relating to renewable energy.

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

Adjournment

On motion of Senator Shumlin, the Senate adjourned, to reconvene on Monday, April 19, 2010, at three o'clock in the afternoon pursuant to J.R.S. 61.

MONDAY, APRIL 19, 2010

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

Message from the House No. 56

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 House bill of the following title:

H. 765. An act relating to establishing the Vermont agricultural innovation authority.

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

Bill Referred

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

H. 781.

An act relating to renewable energy.

To the Committee on Natural Resources and Energy.

Bill Referred to Committee on Finance

H. 562.

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

An act relating to the regulation of professions and occupations.

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. 790.

An act relating to capital construction and state bonding.

Adjournment

On motion of Senator Kitchel, the Senate adjourned until nine o'clock and thirty minutes in the morning.

TUESDAY, APRIL 20, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Amelia Pitton of Montpelier.

Pledge of Allegiance

Pages Kyle Gadapee and Brianna Grimm then led the members of the Senate in the pledge of allegiance.

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. 62. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, April 23, 2010, it be to meet again no later than Tuesday, April 27, 2010.

Proposals of Amendment; Third Reading Ordered H. 784.

Senator Mazza, for the Committee on Transportation, to which was referred House bill entitled:

An act relating to the state's transportation program.

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. TRANSPORTATION PROGRAM

- (a) The state's proposed fiscal year 2011 transportation program appended to the agency of transportation's proposed fiscal year 2011 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 "ARRA funds" refers to federal funds allocated to the state by the American Recovery and Reinvestment Act of 2009;
- (5) the term "TIB funds" refers to monies deposited in the transportation infrastructure bond fund in accordance with 19 V.S.A. § 11f;
- (6) the term "debt service reserve" refers to funds required to be segregated under the terms of a trust agreement entered into to secure transportation infrastructure bonds issued pursuant to subchapter 4 of chapter 13 of Title 32;
- (7) the column heading "TIB" in the agency's proposed fiscal year 2011 transportation program refers to TIB funds and to the proceeds of transportation infrastructure bonds issued pursuant to Sec. 13 of this act; and
- (8) the term "TIB bond" refers to the proceeds of transportation infrastructure bonds issued pursuant to Sec. 19 of this act.

Sec. 2. RAIL

The following modifications are made to the rail program:

(1) A new project is added for Albany, New York – Bennington, Vermont – Rutland, Vermont bi-state intercity rail corridor track 3 planning with the following spending authority:

<u>FY11</u>	As Proposed	As Amended	<u>Change</u>
Other	0	1,000,000	1,000,000
Total	0	1,000,000	1,000,000
Source of funds			

State	0	250,000	250,000
Federal	0	500,000	500,000
Local	0	250,000	250,000
Total	0	1,000,000	1,000,000

The local share indicated represents the state of New York participation in the project.

(2) A new project is added for Amtrak Vermonter – New England Central Railroad track 1 improvements with the following spending authority:

<u>FY11</u>	As Proposed	As Amended	<u>Change</u>
Construction	0	26,231,846	26,231,846
Total	0	26,231,846	26,231,846
Sources of func	<u>ls</u>		
State	0	0	0
Federal	0	0	0
ARRA	0	26,231,846	26,231,846
Local	0	0	0
Total	0	26,231,846	26,231,846

Sec. 3. DEPARTMENT OF MOTOR VEHICLES

Spending authority for the department of motor vehicles is amended to read:

As Proposed	As Amended	<u>Change</u>
15,786,441	15,786,441	0
8,377,553	8,303,553	-74,000
136,476	136,476	0
24,300,470	24,226,470	-74,000
23,096,730	23,022,730	-74,000
1,203,740	1,203,740	0
24,300,470	24,226,470	-74,000
	15,786,441 8,377,553 136,476 24,300,470 23,096,730 1,203,740	15,786,441 15,786,441 8,377,553 8,303,553 136,476 136,476 24,300,470 24,226,470 23,096,730 23,022,730 1,203,740 1,203,740

^{* * *} Program Development * * *

Sec. 4. PROGRAM DEVELOPMENT – ROADWAY

The following modifications are made to the program development — roadway program:

(1) Authorized spending on the Waterbury FEGC F 013-4(13) project is amended to read:

<u>FY11</u>	As Proposed	As Amended	<u>Change</u>
PE	100,000	100,000	0
Construction	0	350,000	350,000
Total	100,000	450,000	350,000
Sources of funds	<u>s</u>		
State	3,000	3,000	0
TIB fund	0	10,500	10,500
Federal	95,000	427,500	332,500
Local	2,000	9,000	7,000
Total	100,000	450,000	350,000

(2) Authorized spending on the Cabot-Danville FEGC F 028-3(26)C/1 project is amended to read:

<u>FY11</u>	As Proposed	As Amended	<u>Change</u>
PE	100,000	100,000	0
Construction	500,000	447,500	-52,500
Total	600,000	547,500	-52,500
Sources of fund	<u>S</u>		
State	5,000	5,000	0
TIB fund	25,000	14,500	-10,500
Federal	570,000	528,000	-42,000
Total	600,000	547,500	-52,500

(3) The following project has received a federal earmark and is added to program development – roadway program – roadway projects candidate list as follows:

<u>Rutland STP 3000() - Rutland Center Street Marketplace</u> Improvements - \$973,834.00; 100 percent federal funds.

Sec. 5. PROGRAM DEVELOPMENT - INTERSTATE BRIDGE

<u>The following modification is made to the program development – interstate bridge program:</u>

<u>Authorized spending on the Littleton, NH – Waterford, VT IM 093-1()</u> project (rehabilitation of I-93 bridges over CT River connecting VT and NH) is added to read:

<u>FY11</u>	As Proposed	As Amended	<u>Change</u>
Construction	0	500,000	500,000
Total	0	500,000	500,000
Sources of fund	<u>s</u>		
State	0	0	0

TIB fund	0	50,000	50,000
Federal	0	450,000	450,000
Total	0	500,000	500,000

Sec. 6. PROGRAM DEVELOPMENT – BIKE AND PEDESTRIAN FACILITIES

The following project has received a federal earmark and is added to program development – bike and pedestrian facilities – bike and pedestrian facilities candidates list:

<u>Thetford STP 0180() – Thetford Village Pedestrian Improvements –</u> \$438,225.00; 100 percent federal funds.

Sec. 7. PROGRAM DEVELOPMENT – FUNDING

Spending authority in program development is modified as follows:

- (1) Among eligible projects selected in the secretary's discretion, the secretary shall replace project spending authority in the total amount of \$1,949,321.00 in transportation funds with the same amount in TIB funds.
- (2) Among eligible projects selected in the secretary's discretion, the secretary shall replace project spending authority in the total amount of \$130,000.00 in transportation funds with the same amount in federal funds via the use of federal toll credits.

* * * Aviation * * *

Sec. 8. AVIATION

The following modifications are made to the aviation program:

(1) Spending authority for the South Burlington – Burlington International AIP Program project is amended to read:

FY11	As Proposed	As Amended	<u>Change</u>
ROW	4,050,000	4,050,000	0
Constructi	on 10,880,000	10,850,000	-30,000
Total	14,930,000	14,900,000	-30,000
Sources of fu	<u>nds</u>		
State	218,200	447,000	228,800
Federal	14,183,500	14,155,000	-28,500
Local	528,300	298,000	-230,300
Total	14,930,000	14,900,000	-30,000

(2) Spending authority for the Berlin CAP HQ project is amended to read as follows. The agency is authorized to proceed with the Berlin CAP HQ project if a federal earmark can be secured for the project.

<u>FY11</u>	As Proposed	As Amended	<u>Change</u>
PE	100,000	0	-100,000
Construction	900,000	0	-900,000
Total	1,000,000	0	-1,000,000
Sources of fund	<u>ls</u>		
State	100,000	0	-100,000
Federal	900,000	0	-900,000
Total	1,000,000	0	-1,000,000

(3) Spending authority for Statewide – Facility Improvements is amended to read:

<u>FY11</u>	As Proposed	As Amended	<u>Change</u>
Construction	322,000	263,600	-58,400
Total	322,000	263,600	-58,400
Sources of funds	3		
State	322,000	263,600	-58,400
Total	322,000	263,600	-58,400
* * * Vermont Local Roads * * *			

Sec. 9. TOWN HIGHWAY - VERMONT LOCAL ROADS

<u>Spending authority for the town highway – Vermont local roads program is amended to read:</u>

<u>FY11</u>	As Proposed	As Amended	Change
Grants	375,000	390,000	15,000
Total	375,000	390,000	15,000
Sources of funds			
State	235,000	235,000	0
Federal	140,000	155,000	15,000
Total	375,000	390,000	15,000
	* * * Public 7	Fransit * * *	

Sec. 10. PUBLIC TRANSIT

The following modifications are made to the public transit program:

- (1) From the spending authority approved for the public transit program, the agency shall allocate \$30,000.00 in transportation funds to fund a grant to the Vermont Kidney Association to support the transportation costs of dialysis patients.
- (2) From the funds allocated to the public transit general capital program, \$100,000.00 in federal funds shall be held by the agency 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. Disbursements from the reserve funds shall be limited to transit agencies that have administered appropriately constrained E&D programs.

* * * Personal Services Spending * * *

Sec. 11. AGENCY PERSONAL SERVICES SPENDING

Total spending authority for agency personal services is reduced by up to \$686,400.00 in transportation funds to reflect fiscal year 2011 personnel pension benefit savings. The agency shall apportion the reduction among its programs and activities accordingly.

* * * ARRA Maintenance of Effort – Appropriation Transfers * * *

Sec. 12. AMERICAN RECOVERY AND REINVESTMENT ACT; TRANSPORTATION MAINTENANCE OF EFFORT

- (a) The general assembly finds that the state should maximize the federal money available for transportation. It is the intent of this section to assist the state in complying with the maintenance of effort requirements in section 1201 of the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111-5, which requires the state to certify and maintain planned levels of expenditure of state funds for the types of projects funded by ARRA during the period February 17, 2009 through September 30, 2010. Failure to maintain the certified level of effort will prohibit the state from receiving additional federal funds through the August 2011 redistribution of federal aid highway and safety programs.
- (b) Notwithstanding 32 V.S.A. § 706 and the limits on program, project, or activity spending authority in the fiscal year 2010 and 2011 transportation programs, the secretary, with the approval of the secretary of administration and subject to the provisions of subsection (c) of this section, may transfer transportation fund or federal fund appropriations, other than appropriations for the town highway state aid, structures, and class 2 roadway programs, to redirect funding to activities eligible for inclusion in, and for the specific purpose of complying with, the maintenance of effort requirements of section 1201 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5. Any appropriations so transferred shall be expended on projects or activities within the fiscal year 2010 or 2011 transportation programs.
- (c) If a contemplated transfer of an appropriation would, by itself, have the effect of significantly delaying the planned work schedule of a project which formed the basis of the project's funding in the fiscal year of the contemplated transfer, the secretary shall submit the proposed transfer for approval by the

house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, by the joint transportation oversight committee. In all other cases, the secretary may execute the transfer, giving prompt notice thereof to the joint fiscal office and to the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, to the joint transportation oversight committee.

- (d) This section shall expire on September 30, 2010.
 - * * * FY 2011 Transportation Infrastructure Bonds * * *
- Sec. 13. AUTHORITY TO ISSUE TRANSPORTATION INFRASTRUCTURE BONDS
- (a) The state treasurer is authorized to issue transportation infrastructure bonds pursuant to 32 V.S.A. § 972 for the purpose of funding the appropriations of Sec. 14 of this act and associated costs of the transportation infrastructure bonds as defined in 32 V.S.A. § 972(b) in the amount of \$13,500,000.00 in fiscal year 2011.
 - (b) In the event the state treasurer determines that:
- (1) the creation and funding of a debt service reserve is advisable to support the successful issuance of transportation infrastructure bonds, or the cost of preparing, issuing, and marketing the bonds is likely to exceed \$202,500.00; and
- (2) the balance of the TIB fund as of the end of fiscal year 2010 is insufficient to fund a debt service reserve and to pay associated issuance costs of the bonds, the treasurer is authorized to increase the issue of transportation infrastructure bonds authorized in subsection (a) of this section up to a total amount of \$16,500,000.00.
- Sec. 14. TRANSPORTATION INFRASTRUCTURE BONDS; APPROPRIATION

The amount of up to \$13,500,000.00 from the issuance of transportation infrastructure bonds is appropriated in fiscal year 2011 to the agency of transportation program development appropriation (8100001100) for use on eligible projects as defined in 32 V.S.A. § 972(c) in the state's fiscal year 2011 transportation program.

* * * Transportation Infrastructure Bond Reserves * * *

Sec. 15. FISCAL YEAR END 2010 TRANSPORTATION FUND SURPLUS

Subject to the funding of the transportation fund stabilization reserve in accordance with 32 V.S.A. § 308a and notwithstanding 32 V.S.A. § 308c (transportation fund surplus reserve), any surplus in the transportation fund as of the end of fiscal year 2010 up to a maximum amount of \$3,000,000.00 shall be transferred to the TIB fund.

Sec. 16. AUTHORITY TO TRANSFER FISCAL YEAR 2010 APPROPRIATIONS TO PAY FISCAL YEAR 2011 BOND OBLIGATIONS

- (a) Notwithstanding 32 V.S.A. § 706 and the limits on program, project, or activity spending authority in the fiscal year 2010 transportation program, the secretary of transportation, with the approval of the secretary of administration and subject to the provisions of subsection (b) of this section, may transfer transportation fund appropriations, other than appropriations for the town highway state aid, structures, and class 2 roadway programs, or TIB fund appropriations, to the TIB fund for the specific purpose of providing the funds the treasurer deems likely to be needed to satisfy any debt service reserve requirement of transportation infrastructure bonds authorized by this act, to pay the issuance costs of such bonds, or to pay the principal and interest due on such bonds in fiscal year 2011.
- (b) The secretary's authority under subsection (a) of this section to transfer appropriations is limited to appropriations, the transfer of which, by itself, will not have the effect of significantly delaying the planned fiscal year 2010 work schedule of a project which formed the basis of the project's funding in fiscal year 2010.
- (c) When any appropriation is transferred pursuant to this section, the secretary shall report the transfer to the joint fiscal office and to the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, to the joint transportation oversight committee.

Sec. 17. CHANGE TO CONSENSUS REVENUE FORECAST

In the event the July 2010 consensus revenue forecast of fiscal year 2011 transportation fund revenue is increased above the January 2010 forecast, the increase up to \$3,000,000.00 shall be transferred to the TIB fund to provide the funds the treasurer deems likely to be needed to satisfy any debt service reserve requirement of transportation infrastructure bonds authorized by this act, to pay the issuance costs of such bonds, or to pay the principal and interest due on such bonds in fiscal year 2011 or fiscal year 2012.

- Sec. 18. AUTHORITY TO TRANSFER FISCAL YEAR 2011 APPROPRIATIONS TO PAY FISCAL YEAR 2012 BOND OBLIGATIONS
- (a) Notwithstanding 32 V.S.A. § 706 and the limits on program, project, or activity spending authority in the fiscal year 2011 transportation program, the secretary of transportation, with the approval of the secretary of administration and subject to the provisions of subsection (b) of this section, may transfer transportation fund appropriations, other than appropriations for the town highway state aid, structures, and class 2 roadway programs, or TIB fund appropriations, to the TIB fund for the specific purpose of providing the funds the treasurer deems likely to be needed to satisfy any debt service reserve requirement of transportation infrastructure bonds authorized by this act or to pay the principal and interest due on such bonds in fiscal year 2012.
- (b) The secretary's authority under subsection (a) of this section to transfer appropriations is limited to appropriations, the transfer of which, by itself, in the context of any spending authorized for the project in the fiscal year 2012 transportation program, will not have the effect of significantly delaying the planned work schedule of the project which formed the basis of the project's funding in fiscal years 2011 and 2012.
- (c) The agency shall expedite the procedures required to determine the eligibility and certification of federal toll credits with respect to potentially qualifying capital expenditures made by Vermont entities through the end of fiscal year 2010 which, subject to compliance with federal maintenance of effort requirements, would be available for use by the state in fiscal year 2012. The fiscal year 2012 transportation program shall reserve up to \$3,000,000.00 of such potentially available federal toll credits and federal formula funds and authorize the secretary to utilize the federal toll credits and federal formula funds to accomplish the objectives of this section.
- (d) When any appropriation is transferred pursuant to this section, the secretary shall report the transfer to the joint fiscal office and to the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, to the joint transportation oversight committee.
 - * * * FY 2011 Contingent Transportation Bonding Authority * * *

Sec. 19. FY 2011 CONTINGENT BONDING AUTHORITY; WESTERN CORRIDOR GRANT APPLICATION

(a) Notwithstanding 32 V.S.A. § 980 (authority to issue transportation infrastructure bonds), the state treasurer is authorized to issue transportation infrastructure bonds for fiscal year 2011 of up to \$15,000,000.00 more than the amounts authorized in the preceding sections of this act, provided that the

agency describes the proposed use of the funding and receives approval from the general assembly, or if the general assembly is not in session, the joint transportation oversight committee, of such issue and the proposed use of the funds.

- (b) The agency is authorized to apply for a Federal Railroad Administration High-Speed Intercity Passenger Rail (HSIPR) grant to cover, in whole or in part, the cost of upgrading the state's western rail corridor for intercity passenger rail service. In applying for a grant, the agency is authorized to identify the bonds authorized by this section as a possible source of nonfederal match dollars which could be included in and would thereby strengthen the application.
- (c) In the event transportation infrastructure bonds are issued pursuant to subsection (a) of this section for purposes other than the funding of the potential Federal Railroad Administration HSIPR grant referenced in subsection (b) of this section, the proposed spending of bond proceeds approved by the general assembly or by the joint transportation oversight committee is authorized, and the amount of the approved spending is appropriated to the programs as identified by the agency.
- (d) In the event the state is awarded a Federal Railroad Administration HSIPR grant for infrastructure improvements to upgrade the state's western rail corridor for intercity passenger rail service as referenced in subsection (b) of this section:
- (1) a project for the improvements covered by the grant is added to the state's transportation program;
- (2) authority to spend the federal grant funds is added as follows and the specified amount of federal funds is appropriated to the rail program; and
- (3) to the extent that other state funds are not available and transportation infrastructure bonds are issued pursuant to subsection (a) of this section to fund the project, authority to spend the bond proceeds on the project is added as follows and the specified amount of transportation infrastructure bond proceeds is appropriated to the rail program:

<u>FY11</u>	As Proposed	As Amended	<u>Change</u>
Other	0	7,500,000	7,500,000
Total	0	7,500,000	7,500,000
Sources of funds	<u>S</u>		
TIB bond	0	1,500,000	1,500,000
Federal	0	6,000,000	6,000,000
Total	0	7,500,000	7,500,000

* * * Central Garage * * *

Sec. 20. TRANSFER TO CENTRAL GARAGE FUND

Notwithstanding 19 V.S.A. § 13(c), in fiscal year 2011, the amount of \$1,120,000.00 is transferred from the transportation fund to the central garage fund created in 19 V.S.A. § 13.

Sec. 21. REPEAL

- 19 V.S.A § 13(g) (report on central garage activity, equipment rental, and fleet condition) is repealed.
 - * * * Notification of Emergency and Safety Projects; Reporting of Expenditures and Carry Forwards * * *

Sec. 22. 19 V.S.A. § 10g is amended to read:

- § 10g. ANNUAL REPORT; TRANSPORTATION PROGRAM; ADVANCEMENTS, CANCELLATIONS, AND DELAYS
- (a) The agency of transportation shall annually present to the general assembly a multiyear transportation program covering the same number of years as the statewide transportation improvement plan (STIP), consisting of the recommended budget for all agency activities for the ensuing fiscal year and projected spending levels for all agency activities for the following fiscal years. The program shall include a description and year-by-year breakdown of recommended and projected funding of all projects proposed to be funded within the time period of the STIP and, in addition, a description of all projects which are not recommended for funding in the first fiscal year of the proposed program but which are projected to be ready scheduled for construction at that time (shelf projects) during the time period covered by the STIP. The program shall be consistent with the planning process established by No. 200 of the Acts of the 1987 Adj. Sess. (1988), as codified in 3 V.S.A. chapter 67 of Title 3 and 24 V.S.A. chapter 117 of Title 24, the statements of policy set forth in sections 10b-10f of this title, and the long-range systems plan, corridor studies, and project priorities developed through the capital planning process under section 10i of this title.

* * *

- (e)(1) The agency's annual transportation program shall include a separate report summarizing with respect to the most recently ended fiscal year:
 - (A) all expenditures of funds by source; and
- (B) all unexpended appropriations of transportation funds and TIB funds that have been carried forward from the previous fiscal year to the ensuing fiscal year.

(2) The summary shall identify expenditures and carry forwards for each program category included in the proposed annual transportation program as adopted for the closed fiscal year in question and such other information as the agency deems appropriate.

* * *

- (g) The agency's annual transportation program shall include a separate report referencing this section describing all proposed projects in the program which would be new to the state transportation program if adopted.
- Should capital projects in the transportation program be delayed because of unanticipated problems with permitting, right-of-way acquisition, construction, local concern, or availability of federal or state funds, the secretary is authorized to advance projects in the approved transportation program, giving priority to shelf projects. The secretary is further authorized to undertake projects to resolve emergency or safety issues. Upon authorizing a project to resolve an emergency or safety issue, the secretary shall give prompt notice of the decision and action taken to the joint fiscal office and to the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, to the joint transportation oversight committee. Should an approved project in the current transportation program require additional funding to maintain the approved schedule, the agency is authorized to allocate the necessary resources. However, the secretary shall not delay or suspend work on approved projects to reallocate funding for other projects except when other funding options are not available. In such case, the secretary shall notify the members of the joint transportation oversight committee and the joint fiscal office. With respect to projects in the approved transportation program, the secretary shall notify, in the district affected, the regional planning commission, the municipality, legislators, and members of the senate and house committees on transportation, and the joint fiscal office of any significant change in design, change in construction cost estimates requiring referral to the transportation board under 19 V.S.A. § section 10h of this title, or any change which likely will affect the fiscal year in which the project is planned to go to construction. No project shall be cancelled without the approval of the general assembly.

* * * Joint Transportation Oversight Committee; Meetings * * *

Sec. 23. 19 V.S.A. § 12b is amended to read:

§ 12b. JOINT TRANSPORTATION OVERSIGHT COMMITTEE

(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 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.

- (b) The committee shall meet during adjournment for official duties. Meetings shall be convened by the chair and when practicable shall be coordinated with the regular meetings of the joint fiscal committee. Members shall be entitled to compensation and reimbursement pursuant to 2 V.S.A. § 406. The committee shall have the assistance of the staff of the legislative council and the joint fiscal office.
- (c) The committee shall provide legislative overview of the transportation fund revenues collection and the operation and administration of the agency of transportation construction, paving and rehabilitation programs. The secretary of transportation shall report to the oversight committee upon request.
- (d)(1) In coordination with the regular meetings of the joint fiscal committee, the joint transportation oversight committee shall meet in mid-July, mid-September, and mid-November. At these meetings, the secretary shall prepare a report on the status of the state's transportation finances and transportation programs, including. If a meeting of the committee is not convened on the scheduled dates of the joint fiscal committee meetings, the secretary in advance shall transmit the report electronically to the joint fiscal office for distribution to committee members. The report shall include a report on contract bid awards versus project estimates and a detailed report on all known or projected cost overruns, project savings and funding availability from delayed projects; and the agency's actions taken or planned to cover the cost overruns and to reallocate the project savings and delayed project funds with respect to:
- (A) all paving projects other than statewide maintenance programs; and
- (B) all projects in the roadway, state bridge, interstate bridge, or town bridge programs with authorized spending in the fiscal year of \$500,000.00 or more with a cost overrun equal to 20 percent or more of the authorized spending or generating project savings or delayed project available funding equal to 20 percent or more of the authorized spending.
- (2) In addition, at with respect to the July meeting of the joint transportation oversight <u>fiscal</u> committee, the <u>secretarys shall secretary's</u> report to the committee on <u>shall discuss</u> the agency's plans to adjust spending to any changes in the consensus forecast for transportation fund revenues.

* * * Vermont Bridge Maintenance Program * * *

Sec. 24. REPEAL

The following are repealed:

- (1) 19 V.S.A. § 40 (Vermont bridge maintenance program).
- (2) Sec. 56 of No. 80 of the Acts of 2005 (allocation of vehicle inspection change revenue).

Sec. 25. 23 V.S.A. § 1230 is amended to read:

§ 1230. CHARGE

For each inspection certificate issued by the department of motor vehicles, the commissioner shall be paid \$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. All vehicle inspection certificate charge revenue shall be allocated to the transportation fund with one-half reserved for bridge maintenance activities.

Sec. 26. CARRY-FORWARD AUTHORITY – BRIDGE MAINTENANCE

Notwithstanding any other provisions of law and subject to the approval of the secretary of administration, transportation fund appropriations remaining unexpended on June 30, 2010, in the transportation — bridge maintenance appropriation (8100005400) shall be carried forward, shall be designated for expenditure in the transportation — program development appropriation (8100001100), and shall be used for the purpose of bridge maintenance.

* * * Transportation Projects; Construction Claims * * *

Sec. 27. 19 V.S.A. § 5(d) is amended to read:

(d) The board shall:

* * *

(4) provide appellate review, when requested in writing, regarding legal disputes in the execution of contracts <u>awarded by the agency or by municipalities cooperating with the agency to advance projects in the state's transportation program;</u>

* * *

* * * Transportation Contracts; Procurement Standards * * *

Sec. 28. 19 V.S.A. § 10 is amended to read:

§ 10. DUTIES

The agency shall, except where otherwise specifically provided by law:

(1) Award contracts on terms as it deems to be in the best interest of the state, for the construction, repair, or maintenance of transportation related facilities; for the use of any machinery or equipment either with or without operators or drivers; for the operation, repair, maintenance, or storage of any state-owned machinery or equipment; for professional engineering services, inspection of work or materials, diving services, mapping services, photographic services, including aerial photography or surveys, and any other services, with or without equipment, in connection with the planning, construction, and maintenance of transportation facilities. Persons rendering these services shall not be within the classified service, and the services shall not entitle the provider to rights under any state retirement system. Notwithstanding 3 V.S.A. chapter 13 of Title 3, the agency may contract for services also provided by persons in the classified service, either at present or at some time in the past. Any contract of more than \$50,000.00 shall be advertised and awarded to the lowest qualified bidder unless determined otherwise by the board. The solicitation and award of contracts by the agency shall follow procurement standards approved by the secretary of administration as well as applicable federal laws and regulations.

* * *

* * * Cancellation of Locally Managed Projects * * *

Sec. 29. 19 V.S.A. § 5(d) is amended to read:

(d) The board shall:

* * *

- (12) maintain the accounting functions for the duties imposed by 9 V.S.A. chapter 108 of Title 9 separately from the accounting functions relating to its other duties;
- (13) hear and determine disputes involving a determination of the agency under section 309c of this title that the municipality is responsible for repayment of federal funds required by the Federal Highway Administration.

Sec. 30. 19 V.S.A. § 309c is added to read:

§ 309c. CANCELLATION OF LOCALLY MANAGED PROJECTS

(a) Notwithstanding section 309a of this title, a municipality or other local sponsor responsible for a locally managed project through a grant agreement with the agency shall be responsible for the repayment, in whole or in part, of federal funds required by the Federal Highway Administration or other federal agency because of cancellation of the project by the municipality or other local sponsor due to circumstances or events wholly or partly within the municipality's or other local sponsor's control. Prior to any such

determination that cancellation of a project was due to circumstances or events wholly or partly within a municipality's or other local sponsor's control, the agency shall consult with the municipality or other local sponsor to attempt to reach an agreement to determine the scope of the municipality's or other local sponsor's repayment obligation.

(b) Within 15 days of an agency determination under subsection (a) of this section, a municipality may petition the board for a hearing to determine if cancellation of the project was due to circumstances or events in whole or in part outside the municipality's control. The board shall hold a hearing on the petition within 30 days of its receipt and shall issue an appropriate order within 30 days thereafter. If the board determines that cancellation of the project was due in whole or in part to circumstances or events outside the municipality's control, it shall order that the municipality's repayment obligation be reduced proportionally, in whole or in part. The municipality shall have no obligation to make a repayment under this section until the board issues its order.

* * * Filing of Transportation Deeds and Leases * * *

Sec. 31. 3 V.S.A. § 103 is amended to read:

§ 103. DOCUMENTS REQUIRED TO BE FILED

- (a) All deeds, contracts of sale, leases, and other documents or copies of same conveying land or an interest therein to the state, except for highway rights of way transportation rights-of-way, leases, and conveyances, shall be filed in the office of the secretary of state.
- (b) All deeds, contracts of sale, leases, and other documents conveying land or an interest in land from the state as grantor, except for transportation rights-of-way, leases, and conveyances, shall be made out in duplicate by the authorized agent of the state. The original shall be delivered to the grantee and the duplicate copy, so marked, shall be filed in the office of the secretary of state.
- (c) The secretary of state shall also record the state treasurer's bonds and other documents required to be recorded in his the secretary of state's office and give copies of the same upon tender of his the secretary of state's legal fees.

* * * Transportation Board; Town Reports * * *

Sec. 32. 24 V.S.A. § 1173 is amended to read:

§ 1173. TOWN OR VILLAGE REPORTS

The clerk of a municipality shall supply annually each library in such municipality with two copies of the municipal report, upon its publication.

The clerk shall also mail to the state library two copies thereof, and one copy each to the secretary of state, commissioner of taxes, transportation board, state board of health, commissioner for children and families, director of the office of Vermont health access, auditor of accounts, and board of education. Officers making these reports shall supply the clerk of the municipality with the printed copies necessary for him or her to comply with the provisions of this section and section 1174 of this title.

* * *

* * * Signs and Other Traffic Control Devices * * *

Sec. 33. 23 V.S.A. § 1025 is amended to read:

§ 1025. STANDARDS

- (a) The United States Department of Transportation Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD) for streets and highways as amended shall be the standards for all traffic control signs, signals, and markings within the state. The latest revision of the MUTCD shall be adopted upon its effective date except in the case of projects beyond a preliminary state of design that are anticipated to be constructed within two years of the otherwise applicable effective date; such projects may be constructed according to the MUTCD standards applicable at the design stage. Existing signs, signals, and markings shall be valid until such time as they are replaced or reconstructed. When new traffic control devices are erected or placed or existing traffic control devices are replaced or repaired the equipment, design, method of installation, placement or repair shall conform with such standards the MUTCD.
- (b) These The standards of the MUTCD shall apply for both state and local authorities as to traffic control devices under their respective jurisdiction.

* * *

* * * School Zone Warning Signs * * *

Sec. 34. 19 V.S.A. § 921 is amended to read:

§ 921. SCHOOL ZONES

- (a) Municipalities shall erect or cause to be erected on all public highways near a school warning signs bearing the legend "school zone." The signs shall conform conforming to the standards of the manual on uniform traffic control devices as provided in 23 V.S.A. § 1025.
- (b) For the purposes of this section and 23 V.S.A. § 1025, the term "school" shall include school district-operated prekindergarten program facilities owned or leased by a school district.

* * * State Airports * * *

Sec. 35. WILLIAM H. MORSE STATE AIRPORT (BENNINGTON); AUTHORIZATION TO ACCEPT DONATION OF HANGAR

- (a) The secretary of transportation, as agent for the state of Vermont, is authorized to accept donation of an existing hangar building at the William H. Morse State Airport in the town of Bennington from Business Air, Inc., d/b/a Air Now. Notwithstanding 19 V.S.A. § 26a, the secretary is further authorized to enter into an amendment of Air Now's existing lease to allow Air Now to use the hangar building rent free, subject to Air Now's continuing to do business at the airport and maintaining the building at no expense to the state. In the event that Air Now ceases to do business at the airport or requests to assign its leasehold to some other person, the requirement to pay fair market value rent pursuant to 19 V.S.A. § 26a shall resume.
- (b) Upon accepting conveyance of the hangar building under subsection (a) of this section, the secretary of transportation shall notify the secretary of administration so the hangar building can be added to the inventory of state-owned buildings maintained for purposes of 32 V.S.A. §§ 3701–3707.
 - * * * State-owned Railroad Property * * *
- Sec. 36. 5 V.S.A. § 3406(b) is amended to read:
- (b) The secretary shall have authority, with the approval of the governor, to sell to any person or legal entity part or all of any parcel of state-owned railroad property or rights therein, provided that the terms of the sale are approved by the legislature or, in the event that the general assembly is not in session, by the joint fiscal committee subject to the following conditions:
- (1) the property is located more than 33 feet from the centerline of main line track (or former main line track), and the secretary determines that the property no longer is needed for railroad operating purposes or for railbanking under section 3408 of this title; and
- (2)(A) if the appraised value of the property is \$100,000.00 or above, with the prior approval of the general assembly of the sale and its terms, or, in the event that the general assembly is not in session, with the prior approval of the joint transportation oversight committee; or
- (B) if the appraised value of the property is below \$100,000.00, without further approval.

Sec. 37. 5 V.S.A. § 3408 is amended to read:

§ 3408. RAILBANKING; NOTIFICATION

(a) If the secretary finds that the continued operation of any state-owned railroad property is not economically feasible under present conditions, he or she may place the line in railbanked status after giving advance notice of such planned railbanking to the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, to the joint transportation oversight committee. The agency, on behalf of the state, shall continue to hold the right-of-way of a railbanked line for reactivation of railroad service or for other public purposes not inconsistent with future reactivation of railroad service. Such railbanking shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of the rights-of-way for railroad purposes.

* * *

Sec. 38. APPROVAL OF TRANSACTIONS REGARDING STATE-OWNED RAILROAD PROPERTY

- (a) The secretary of transportation, as agent for the state of Vermont, is authorized to sell to New England Central Railroad, Inc., for fair market value, a segment of the so-called Fonda Branch of the former Central Vermont Railway, Inc. in the town of Swanton, beginning at approximate mile post 137.86 and extending northerly a distance of approximately 1.26 miles to approximate mile post 139.12, which is the northerly abutment of the railroad bridge over the Missisquoi River.
- (b) The secretary, as agent for the state of Vermont, is authorized to sell to Shelburne Limestone Corporation, for fair market value, a segment of the so-called Fonda Branch of the former Central Vermont Railway, Inc. in the town of Swanton, beginning at approximate mile post 139.12, which is the northerly abutment of the railroad bridge over the Missisquoi River, and extending northerly a distance of approximately 0.58 miles to approximate mile post 139.70, which is the southwesterly line of U.S. Route 7.
- (c) In aid of the descriptions contained in this section, reference may be had to valuation plans V8/138-140 for the former Central Vermont Railway Company (dated June 30, 1917); the October 17, 1973 quit-claim deed of Central Vermont Railway, Inc. to the St. Johnsbury & Lamoille County Railroad, which is recorded at book 81, page 278 of the Swanton land records; and the December 7, 1973 quit-claim deed of the St. Johnsbury & Lamoille County Railroad to the Vermont Transportation Authority, which is recorded at book 81, page 368 of the Swanton land records.

* * * Authorized Enforcement and Emergency Vehicles * * *

Sec. 39. 23 V.S.A. § 1011 is amended to read:

§ 1011. APPLICABILITY OF THIS CHAPTER; <u>AUTHORIZED</u> ENFORCEMENT VEHICLES

- (a) The provisions of this chapter relating to the operation of motor vehicles apply to operation upon public highways only, except where a different place is specifically referred to.
- (b) On duty On-duty enforcement officers are exempt from the speed limits established in accordance with sections 1003 and 1007 of this title, and fixed by section 1081 of this title.:
 - (1) may park or stand contrary to the provisions of this chapter;
- (2) may proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
- (3) shall come to a full stop when approaching a school bus flashing red lights and may proceed only when the flashing red lights are extinguished;
 - (4) may exceed the maximum speed limits;
- (5) may disregard regulations governing direction of movement or turning in specified directions.
- (c) The provisions of subsection (b) of this section shall not relieve an on-duty officer from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the officer from the consequences of his or her reckless disregard for the safety of others.
- (d) The operator of a school bus, upon the approach of an on-duty officer in a vehicle displaying a blue or blue and white signal lamp or sounding a siren, shall take action immediately to ensure the safety of the schoolchildren, and shall thereafter extinguish any flashing red lights.
- Sec. 40. 23 V.S.A. § 1015 is amended to read:

§ 1015. AUTHORIZED EMERGENCY VEHICLES

- (a) The driver of an authorized emergency vehicle, when responding to an emergency call or when responding to, but not returning from, a fire alarm and a law enforcement officer operating an authorized emergency vehicle in fresh pursuit of a suspected violator of the law:
 - (1) may park or stand contrary to the provisions of this chapter;
- (2) may proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

- (3) shall come to a full stop when approaching a school bus which is flashing red lights and may proceed only when the flashing red lights are extinguished;
 - (4) may exceed the maximum speed limits;
- (5) may disregard regulations governing direction of movement or turning in specified directions.
- (b) The exemptions granted to an authorized emergency vehicle apply only when the vehicle is making use of audible or visual signals displaying a signal lamp or sounding a siren meeting the requirements of this title.
- (c) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his or her reckless disregard for the safety of others.
- (d) The operator of a school bus, upon the approach of an authorized emergency vehicle as described in subsection (a) of this section displaying a signal lamp or sounding a siren, shall take action immediately to get school ehildren out of the public highway and to a safe place ensure the safety of the schoolchildren and shall thereafter extinguish the any flashing red lights.
 - * * * Out-of-State First Responder Vehicles * * *

Sec. 41. 23 V.S.A. § 1251 is amended to read:

§ 1251. SIRENS AND COLORED SIGNAL LAMPS

- (a) No motor vehicle shall be operated upon a highway of this state equipped with a siren or signal lamp colored other than amber unless a permit authorizing such equipment, issued by the commissioner of motor vehicles, is carried in the vehicle. The commissioner may adopt additional rules as may be required to govern the acquisition of permits and the use pertaining to sirens and colored signal lamps.
- (b) Notwithstanding the provisions of subsection (a) of this section, when responding to emergencies, out-of-state ambulances, fire vehicles, or vehicles owned or leased by, or provided to, volunteer firefighters or rescue squad members may use sirens and red or red and white signal lamps in Vermont, and a permit shall not be required for such use, as long as the vehicle is properly permitted in its home state or province.
 - * * * Establishing Speed Limits * * *

Sec. 42. 23 V.S.A. § 1003(a) is amended to read:

(a) When the traffic committee constituted under 19 V.S.A. § 1(24) determines, on the basis of an engineering and traffic investigation that shall

take into account, if applicable, safe speeds within school zones (or safe speeds within 200 feet of school district-operated prekindergarten program facilities owned or leased by a school district) when children are traveling to or from such schools or facilities, 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 including the Dwight D. Eisenhower 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.

Sec. 43. 23 V.S.A. § 1004(a) is amended to read:

(a) The traffic committee has exclusive authority to make and publish, and from time to time may alter, amend, or repeal, rules pertaining to vehicular, pedestrian, and animal traffic, speed limits, and the public safety on the Dwight D. Eisenhower national system of interstate and defense highways and other limited access and controlled access highways within this state. The rules and any amendments or revisions may be made by the committee only in accordance with chapter 25 of Title 3. The rules shall be consistent with accepted motor vehicle codes or standards, shall be consistent with law, and shall not be unreasonable or discriminatory in respect to persons engaged in like, similar, or competitive activities. The rules are applicable only to the extent that they are not in conflict with regulations or orders issued by any agency of the United States having jurisdiction and shall be drawn with due consideration for the desirability of uniformity of law of the several states of the United States.

* * * Special Occasions * * *

Sec. 44. 23 V.S.A. § 1010 is amended to read:

§ 1010. SPECIAL OCCASIONS: TOWN HIGHWAY MAINTENANCE

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

* * *

* * * Replacement of Gasoline Dispensers * * *

Sec. 45. 10 V.S.A. § 583 is amended 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:

* * *

(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.

* * *

* * * Relinquishment of State Highway Segments to Municipalities * * *

Sec. 46. RELINQUISHMENT OF FORMER VERMONT ROUTE 109 TO TOWN OF BELVIDERE

(a) Under the authority of 19 V.S.A. § 15(2), approval is granted for the secretary to enter into an agreement with the town of Belvidere to relinquish to the town's jurisdiction a segment of former VT Route 109 beginning at a point in the northerly right-of-way boundary of the present VT Route 109, said point also being the northerly right-of-way boundary of the former VT Route 109, being 35 feet distant northerly radially from station 73+00 of the established centerline of Highway Project Belvidere S 0282(1); thence 155 feet, more or less, southeasterly, crossing the former VT Route 109, to a point in the northerly right-of-way boundary of the present VT Route 109, said point also being in the southerly right-of-way boundary of the former VT Route 109, being 45 feet distant northerly radially from station 74+55 of the centerline; thence northeasterly, easterly, and southeasterly along the southerly right-of-way boundary of the former VT Route 109 to a point in the northerly right-of-way boundary of the present VT Route 109, being 70 feet distant northerly at right angle from station 82+15 of the centerline; thence 79 feet, more or less,

- northeasterly crossing the former VT Route 109 to a point in the northerly right-of-way boundary of present VT Route 109, being 92 feet distant northerly at right angle from station 82+90 of the centerline; thence northwesterly, westerly, and southwesterly along the northerly right-of-way boundary of the former VT Route 109 to the point and place of beginning.
- (b) The relinquishment shall include a three-rod (49.5 feet) right-of-way and slope rights within the area and is subject to the rights of utility companies under chapter 71 of Title 30 and other statutes of similar effect.
- Sec. 47. RELINQUISHMENT OF STATE HIGHWAY SEGMENTS TO THE TOWN OF NORWICH
- (a) Pursuant to 19 V.S.A. § 15(2), approval is granted for the secretary of transportation to enter into an agreement with the town of Norwich to relinquish to the town's jurisdiction a segment of the state highway known as VT Route 10A in the town of Norwich, beginning at the low-water mark of the Connecticut River at a point in the center of VT Route 10A and continuing 2,756 feet (approximately 0.52 miles) westerly to mile marker 1.218 where VT Route 10A intersects with U.S. Route 5 (this point also is station 78+00 on the U.S. Route 5 centerline of Highway Project Hartford-Norwich I 91-2(5)).
- (b) Pursuant to 19 V.S.A. § 15(2), approval is granted for the secretary of transportation to enter into an agreement with the town of Norwich to relinquish to the town's jurisdiction a segment of the state highway known as U.S. Route 5 (Church Street) in the town of Norwich, beginning at its intersection with VT Route 10A approximately at mile marker 1.218. This point is also station 78+00 on the U.S. Route 5 centerline of Highway Project Hartford-Norwich I 91-2(5). The relinquishment shall continue 6,496 feet (approximately 1.230 miles) northerly and easterly along the center of U.S. Route 5 to its intersection with the Norwich State Highway approximately at U.S. Route 5 mile marker 2.448.
- (c) Pursuant to 19 V.S.A. § 15(2), approval is granted for the secretary of transportation to enter into an agreement with the town of Norwich to relinquish to the town's jurisdiction a segment of the state highway known as Norwich State Highway, beginning at the intersection of the Norwich State Highway with VT Route 10A. The relinquishment shall continue 6,071 feet (approximately 1.15 miles) northerly along the center of the Norwich State Highway to its intersection with U.S. Route 5 approximately at Norwich State Highway mile marker 1.150.
- (d) Control of the highways but not ownership of the lands or easements within the highway right-of-way shall be relinquished to the town of Norwich. The town of Norwich 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 of Bennington; Adjustments to State Highway System * * *
- Sec. 48. TOWN OF BENNINGTON; ADJUSTMENTS TO STATE HIGHWAY SYSTEM
- (a) Under the authority of 19 V.S.A. § 15(2), the general assembly authorizes the secretary to enter into an agreement with the town of Bennington to relinquish to the town's jurisdiction approximately 1.07 miles of U.S. Route 7 (South Street) between mile marker 1.088 (near Carpenter Hill Road [TH #48]) and mile marker 2.156 (near the entrance to the Park Lawn Cemetery) to become a class 1 town highway.
- (b) Under the authority of 19 V.S.A. § 15(2), the general assembly authorizes the secretary to enter into an agreement with the town of Bennington to accept as part of the state highway system approximately 1,300 feet of VT Route 9 (Main Street [TH #2]) between mile marker 5.655, near the location of a crosswalk to be constructed under the transportation project Bennington NH 019-1(51), and mile marker 5.901, which is the existing jurisdictional boundary between the state highway and the class 1 town highway. The agreement shall provide for the town of Bennington to be responsible for maintenance of sidewalks within the subject area.
 - * * * Short-Range Public Transit Plan * * *

Sec. 49. REPEAL

The following are repealed:

- (1) 24 V.S.A. § 5088(7) (definition of "short-range public transit plan").
- (2) 24 V.S.A. § 5091(f) (requirement that grantees shall be eligible for funding only if a short-range public transit plan has been completed).
 - * * * Modal Councils * * *

Sec. 50. VERMONT RAIL, AVIATION, AND PUBLIC TRANSIT ADVISORY COUNCILS

The agency of transportation shall examine the current functions of the Vermont Rail Advisory Council, the Vermont Aviation Advisory Council, and the Vermont Public Transit Advisory Council. The agency shall consider the structure, composition, and format of each council and shall report back to the senate and house committees on transportation with any recommendations for modifications to improve the efficiency and effectiveness of each council by January 15, 2011.

* * * Scenery Preservation Council * * *

Sec. 51. 10 V.S.A. § 425 is amended to read:

§ 425. SCENERY PRESERVATION COUNCIL

- (a) The scenery preservation council shall:
- (1) upon request, advise and consult with organizations, municipal planning commissions or legislative bodies, or regional planning commissions concerning byway program grants and in the designation of municipal scenic roads or byways;
- (2) recommend for designation state scenic roads or byways after holding a public meeting to determine local support for designation; and
- (3) encourage and assist in fostering public awareness, understanding, and participation in the objectives and functions of scenery preservation and in stimulating public participation and interest.
- (b) There is created within the state planning office a scenery preservation council to advise and assist the state planning director in the performance of his duties with respect to this chapter. The scenery preservation council shall consist of ten seven members including: the secretary of the agency of natural resources, or his or her designee; the secretary of the agency of transportation and the director of the state planning office or their designees. The governor shall appoint his or her designee; and five members appointed by the governor. The speaker of the house shall appoint one member of the house as member and the committee on committees of the senate shall appoint one senator as member. The terms of the members appointed by the governor shall be for three years, except that he or she shall appoint the first members so that the terms of the members end in one year, two years, and three years. The terms of the members appointed by the speaker of the house and the committee on committees of the senate shall end on January 15 in every odd-numbered year and their successors shall be appointed at that time. The governor shall designate an appointed member to serve as chairman at the governor's pleasure. Except as provided in this section, no state employee or member of any state commission nor or any federal employee or member of any federal commission shall be eligible for membership on the scenery preservation council. Members of the council who are not full-time state employees, including members of the general assembly when the general assembly is not in session, shall be entitled to a per diem of \$30.00 as provided in 32 V.S.A. § 1010(b) and their actual necessary expenses. Only the secretary of transportation or his or her designee may call meetings of the council, and meetings shall be called only as necessary for the council to perform the functions set forth in subsection (a) of this section.

- (b) The scenery preservation council shall:
- (1) upon request, advise and consult with municipal planning commissions or legislative bodies and regional planning commissions in the designation of municipal scenic roads;
- (2) recommend for designation state scenic roads, after consultation with regional planning commissions, pursuant to the provisions of chapter 25 of Title 19:
- (3) encourage and assist in fostering public awareness, understanding and participation in the objectives and functions of scenery preservation and in stimulating public participation and interest;
- (4) report biennially to the governor and the general assembly upon the effectiveness of this chapter and make continuing recommendations regarding scenic corridors, scenic areas and scenic sites. The reports shall indicate the status of all state and town designated scenic roads;
- (5) prepare and recommend to the transportation board prior to January 1, 1978 aesthetic criteria to carry out the purposes of this chapter.

* * *

* * * Highway Condemnation Orders * * *

Sec. 52. 19 V.S.A. § 512 is amended to read:

§ 512. ORDER FIXING COMPENSATION; INVERSE CONDEMNATION; RELOCATION ASSISTANCE

(a) Within 45 30 days after the compensation hearing, the transportation board shall by its order fix the compensation to be paid to each person from whom land or rights are taken, and. Within 30 days of the board's order, the agency of transportation shall file and record the order in the office of the clerk of the town where the land is situated, and shall deliver to each person or persons a copy of that portion of the order directly affecting the person or persons, and shall pay or tender the award to each person entitled—which. A person to whom a compensation award is paid or tendered under this subsection may be accepted, retained and disposed accept, retain, and dispose of the award to his or her own use without prejudice to the person's right of appeal, as provided in section 513 of this title. Upon the payment or tender of the award as above provided, the agency of transportation may proceed with the work for which the land is taken.

* * *

* * * Traveler Information Services * * *

Sec. 53. INTERSTATE 91 TRAVELER INFORMATION SERVICES FACILITY

- (a) Pursuant to Sec. 109(b) of No. 50 of the Acts of 2009, the commissioner of buildings and general services (BGS) is authorized to negotiate and contract with businesses interested in providing travel information services near Exit 7 of Interstate 91 for the purpose of establishing a privately operated travel information center near this exit.
- (b) The agency of transportation shall work with BGS and the Federal Highway Administration to implement a signage strategy to clearly direct travelers to businesses providing travel information services at any travel information center established pursuant to subsection (a) of this section.

Sec. 54. INFORMATION CENTERS; CROSS-BORDER OPPORTUNITIES

The commissioner of buildings and general services may evaluate opportunities to reach agreement with neighboring states and provinces concerning advertising at information centers or the joint operation of information centers. The commissioner shall report findings and recommendations related to any evaluation conducted pursuant to this section to the senate and house committees on transportation by January 15, 2011.

* * * Lake Champlain Bridge Facilities * * *

Sec. 55. LAKE CHAMPLAIN BRIDGE FACILITIES

- (a) The secretary of transportation and the commissioner of fish and wildlife shall work together to develop plans regarding the repair and expansion of existing fishing access facilities at the Lake Champlain bridge at Crown Point.
- (b) The secretary of transportation and the commissioner of buildings and general services shall work together in seeking federal funds for renovations to Chimney Point State Historic Site facilities and the repair and expansion of existing fishing access facilities in connection with construction of the Lake Champlain bridge at Crown Point.
 - * * * Official Business Directional Sign Fees * * *

Sec. 56. 10 V.S.A. § 501 is amended to read:

§ 501. FEES

Subject to the provisions of 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.

* * *

- (2) Annual renewal fees shall be as follows:
- (A) for full and half-sized official business directional signs, \$125.00 \$100.00 per sign;
 - (B) information plaza plaques, \$25.00 per plaque.

* * * Rest Area Advisory Committee * * *

Sec. 57. REPEAL

19 V.S.A. § 12c (rest area advisory committee) is repealed.

* * * Low-Bed Trailer Permits * * *

Sec. 58. 23 V.S.A. § 1402(e) is amended to read:

- (e) Pilot project allowing annual permits for low-bed trailers.
- (1) The commissioner may issue an annual permit to allow the transportation of a so-called "low-bed" trailer. A "low-bed" trailer is defined as a trailer manufactured for the primary purpose of carrying heavy equipment on a flat-surfaced deck, which deck is at a height equal to or lower than the top of the rear axle group.
- (2) A blanket permit may be obtained for an annual fee of \$275.00 per unit, provided the total vehicle length does not exceed 75 feet, does not exceed a loaded width of 12'6", does not exceed a total weight of 108,000 lbs., and has a height not exceeding 14 feet.
- (3) Warning signs and flags shall be required if the vehicle exceeds 75 feet in length, or exceeds 8'6" in width.
- (4) This subsection shall expire on June 30, 2010. No later than January 15, 2010, the department of motor vehicles, after consultation with the agency of transportation, Vermont League of Cities and Towns, and Vermont Truck and Bus Association, shall report to the house and senate committees on transportation on the results of this two-year pilot project. The report shall include recommendations on extending this provision on low bed trailers, as well as other recommendations relating to longer vehicle lengths. [Repealed.]

* * * Effective Dates * * *

Sec. 59. EFFECTIVE DATES

- (a) This section and the following sections of this act shall take effect on passage:
 - (1) Sec. 12 (ARRA maintenance of effort appropriation transfers).

- (2) Sec. 13 (FY11 transportation infrastructure bonds).
- (3) Sec. 15 (end FY10 transportation fund surplus).
- (4) Sec. 16 (authority to transfer FY10 appropriations).
- (5) Sec. 42 (speed limits).
- (6) Sec. 43 (traffic committee rulemaking).
- (7) Sec. 45 (replacement of gasoline dispensers). Notwithstanding 1 V.S.A. § 214, Sec. 45 shall apply retroactively to gasoline dispensers installed at an existing gasoline dispensing facility after May 1, 2009.
 - (8) Sec. 58 (low-bed trailer permits).
- (b) All other sections of this act not specifically enumerated in subsection (a) of this section shall take effect on July 1, 2010.

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

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill be amended as recommended by the Committee on Transportation and that the bill be further amended in Sec. 10 by striking out subdivision (1) in its entirety and inserting in lieu thereof a new subdivision (1) to read as follows

(1) Spending authority for the public transit program is increased by \$30,000.00 in transportation funds. The agency shall allocate \$30,000.00 in transportation funds for a grant to the Vermont Kidney Association to support the transportation costs of dialysis patients.

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 Transportation was amended as recommended by the Committee on Appropriations.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Transportation, as amended?, Senator Illuzzi moved to amend the proposal of amendment of the Committee on Transportation, as amended, as follows:

<u>First:</u> In Sec. 23, 19 V.S.A., § 12b(b) by amending the last sentence to read as follows: The committee shall have the assistance of the staff of the legislative council and the joint fiscal office agency of transportation.

<u>Second:</u> In Sec. 39, 23 V.S.A. § 1011(b)(4) after the following: "<u>limits;</u>" by inserting the following: <u>and</u>

<u>Third:</u> In Sec. 41, 23 V.S.A. § 1251 in the title of the section, after the word "LAMPS" by inserting the following: <u>OUT-OF-STATE EMERGENCY AND RESCUE VEHICLES</u>

Fourth: In Sec. 41, 23 V.S.A. § 1251 subsection (b) by striking out the following: "out-of-state" and inserting in lieu thereof the following: <u>law enforcement vehicles</u>, after the words "<u>squad members</u>" by inserting the following: <u>which are registered or licensed by another state or province</u>, and after the words "<u>may use sirens and</u>" by striking out the following: <u>red or red</u> and white

Thereupon, pending the question, Shall the proposal of amendment of the Committee on Transportation, as amended be amended as recommended by Senator Illuzzi?, Senator Illuzzi requested and was granted leave to withdraw the *third* and *fourth* proposals of amendment.

Thereupon, the pending question, Shall the proposal of amendment of the Committee on Transportation, as amended be amended as recommended by Senator Illuzzi?, was agreed to.

Thereupon, the proposals of amendment recommended by the Committee on Transportation, as amended, were agreed to and third reading of the bill was ordered.

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 Keenan and others,

By Senators Brock and Kittell,

H.C.R. 317.

House concurrent resolution honoring Carl Johnson for his outstanding halfcentury of public service as a law enforcement officer and for his dedicated work as a Franklin County historian. By Representative Sweaney and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 318.

House concurrent resolution congratulating the 2010 Windsor High School Yellow Jackets Division III girls' basketball championship team.

By Representative Frank and others,

H.C.R. 319.

House concurrent resolution designating April 28, 2010, as National Walk@Lunch Day in Vermont.

By All Members of the House,

By All Members of the Senate,

H.C.R. 320.

House concurrent resolution honoring Meredith Sumner for her dedicated public service as a legislative council attorney.

By All Members of the House,

By All Members of the Senate,

H.C.R. 321.

House concurrent resolution honoring E. Anne Winchester's extraordinary public service as a legislative council drafter and policy analyst.

By All Members of the House,

By All Members of the Senate,

H.C.R. 322.

House concurrent resolution honoring Stanley Michael Slater on the conclusion of his outstanding legislative council career.

By Representative Poirier and others,

By Senators Scott, Cummings and Doyle,

H.C.R. 323.

House concurrent resolution congratulating the 2010 Norwich University Cadets championship NCAA Division III men's ice hockey team.

By Representative Mrowicki and others,

H.C.R. 324.

House concurrent resolution recognizing Vermont students' excellent performance on the national reading examination.

- By Representative Clarkson,
- By Senators Campbell, McCormack and Nitka,

H.C.R. 325.

House concurrent resolution congratulating Philip Swanson on the 25th anniversary of his exemplary public service as Woodstock's town and village manager.

- By Representative Wheeler and others,
- By Senators Illuzzi and Starr,

H.C.R. 326.

House concurrent resolution commemorating the World War II friendship and military service of Raymond Sanville and Bill Spriggs.

- By Representative Morrissey and others,
- By Senators Hartwell and Sears,

H.C.R. 327.

House concurrent resolution in memory of the Rev. Michael A. DeMasi.

By Representative Wizowaty and others,

H.C.R. 328.

House concurrent resolution congratulating Andrea Rogers on 30 years of extraordinary leadership and commitment to artistic excellence and community involvement.

- By Representative French and others,
- By Senators Carris, Flory and Mullin,

H.C.R. 329.

House concurrent resolution in memory of Mark Richard Skakel.

By Representatives Obuchowski and Partridge,

H.C.R. 330.

House concurrent resolution congratulating Charles Hunter on being named the Great Falls Regional Chamber of Commerce Person of the Year. By Representative Obuchowski and others,

H.C.R. 331.

House concurrent resolution recognizing American Craft Beer Week in Vermont.

By Representatives Manwaring and Moran,

By Senators Hartwell, Sears, Shumlin and White,

H.C.R. 332.

House concurrent resolution designating the Deerfield Valley as the Blueberry Capital of Vermont.

Message from the House No. 57

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. 770.** An act relating to approval of amendments to the charter of the city of Barre.
 - **H. 792.** An act relating to implementation of challenges for change.

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

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

H. 540. An act relating to motor vehicles passing vulnerable users on the highway and to bicycle operation.

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. Burke of Brattleboro Rep. Howard of Cambridge Rep. Lanpher of Vergennes

The House has adopted House concurrent resolutions of the following titles:

- **H.C.R. 317.** House concurrent resolution honoring Carl Johnson for his outstanding half-century of public service as a law enforcement officer and for his dedicated work as a Franklin County historian.
- **H.C.R. 318.** House concurrent resolution congratulating the 2010 Windsor High School Yellow Jackets Division III girls' basketball championship team.
- **H.C.R. 319.** House concurrent resolution designating April 28, 2010, as National Walk@Lunch Day in Vermont.
- **H.C.R. 320.** House concurrent resolution honoring Meredith Sumner for her dedicated public service as a legislative council attorney.
- **H.C.R. 321.** House concurrent resolution honoring E. Anne Winchester's extraordinary public service as a legislative council drafter and policy analyst.
- **H.C.R. 322.** House concurrent resolution honoring Stanley Michael Slater on the conclusion of his outstanding legislative council career.
- **H.C.R. 323.** House concurrent resolution congratulating the 2010 Norwich University Cadets championship NCAA Division III men's ice hockey team.
- **H.C.R. 324.** House concurrent resolution recognizing Vermont students' excellent performance on the national reading examination.
- **H.C.R. 325.** House concurrent resolution congratulating Philip Swanson on the 25th anniversary of his exemplary public service as Woodstock's town and village manager.
- **H.C.R. 326.** House concurrent resolution commemorating the World War II friendship and military service of Raymond Sanville and Bill Spriggs.
- **H.C.R. 327.** House concurrent resolution in memory of the Rev. Michael A. DeMasi.
- **H.C.R. 328.** House concurrent resolution congratulating Andrea Rogers on 30 years of extraordinary leadership and commitment to artistic excellence and community involvement.
- **H.C.R. 329.** House concurrent resolution in memory of Mark Richard Skakel.
- **H.C.R. 330.** House concurrent resolution congratulating Charles Hunter on being named the Great Falls Regional Chamber of Commerce Person of the Year.
- **H.C.R. 331.** House concurrent resolution recognizing American Craft Beer Week in Vermont.
- **H.C.R. 332.** House concurrent resolution designating the Deerfield Valley as the Blueberry Capital of Vermont.

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

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eight o'clock and thirty minutes in the morning.

WEDNESDAY, APRIL 21, 2010

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 eight o'clock and thirty minutes, 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 nominated Senator John F. Campbell to be acting President *pro tempore*. Senator Lyons seconded the nomination.

There being no further nominations, on motion of Senator Mazza, 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

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the Governor

A message was received from His Excellency, the Governor, by David Coriell, 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 April, 2010, he approved and signed a bill originating in the Senate of the following title:

S. 77. An act relating to the recycling and disposal of electronic waste.

Message from the Governor

A message was received from His Excellency, the Governor, by David Coriell, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the twentieth day of April, 2010, he approved and signed a bill originating in the Senate of the following title:

S. 150. An act relating to parking reserved for people with disabilities.

Bills Referred

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

H. 770.

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

To the Committee on Government Operations.

H. 792.

An act relating to implementation of challenges for change.

To the Committee on Appropriations.

Bills Passed in Concurrence

House bills of the following titles were severally read the third time and passed in concurrence:

- **H. 527.** An act relating to municipal recovery of costs of fire department response.
- **H. 771.** An act relating to approval of amendments to the charter of the town of Stowe.

Bill Passed in Concurrence with Proposals of Amendment

Н. 759.

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

An act relating to executive branch fees.

House Proposal of Amendment Concurred In with Amendment

S. 264.

House proposal of amendment to Senate bill entitled:

An act relating to stop and hauling charges.

Was taken up.

The House proposes to the Senate to amend the bill by striking out Sec. 5 in its entirety and inserting in lieu thereof a new Sec. 5 to read as follows:

Sec. 5. EFFECTIVE DATE

This bill shall take effect upon passage, except that Sec. 2. (amendment to 6 V.S.A. § 2676, mandating that cost of hauling to be paid by buyer) shall take effect when New York and Pennsylvania require, by legislative or administrative enactment of statewide applicability and enforcement, that dairy hauling costs be paid by the purchaser of cows' milk rather than the producer of the milk.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Giard moved that the Senate concur in the House proposal of amendment with an amendment as follows:

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

Sec. 5. EFFECTIVE DATE

This act shall take effect upon passage, except that Sec. 2 (amendment to 6 V.S.A. § 2676, mandating that the cost of hauling shall be paid by the buyer) shall take effect when New York requires, by legislative or administrative enactment of statewide applicability and enforcement, that dairy hauling costs shall be paid by the purchaser of the cows' milk rather than by the producer of the cows' milk.

Which was agreed to.

House Proposal of Amendment Not Concurred In; Committee of Conference Requested

S. 282.

House proposal of amendment to Senate bill entitled:

An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles.

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. 23 V.S.A. § 4103(4)(B)(iii) is amended to read:

- (iii) military equipment owned or operated by the United States Department of Defense, including the National Guard, and operated by noncivilian personnel or by National Guard military technicians (civilians who are required to wear military uniforms) and active duty U.S. Coast Guard personnel;
- Sec. 2. 23 V.S.A. § 4110(a)(6)(C) is amended to read:
- (C) the applicant is not subject to any disqualification under 49 C.F.R. part 385.51 section 383.51, or any license suspension, revocation, or cancellation under state law; and
- Sec. 3. 23 V.S.A. § 4111(a) and (f) are amended to read:
- (a) Contents of license. A commercial driver's license shall be marked "commercial driver license" or "CDL," and shall be, to the maximum extent practicable, tamper proof, and shall include, but not be limited to, the following information:

* * *

(2) The person's color photograph or imaged likeness. A person issued a license under this subsection that contains an imaged likeness may renew his or her license by mail. Except that a renewal must be made in person so that an updated imaged likeness of the person is obtained no less often than once every eight years may renew the license not earlier than six months prior to its expiration date. In such case, the prior license document shall be surrendered. The renewed license shall be effective from the date of issuance to the end of the period for which it is renewed.

* * *

(f) When applying for renewal of a commercial driver license, the applicant shall complete the application form required by section 4110 of this title, providing updated information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the written test for a hazardous materials endorsement must be taken and passed. In addition, the applicant must successfully complete the security threat assessment required by 49 C.F.R. part 1572. Within 15 days of an adverse initial or final determination of threat assessment being served by the United States Transportation Security Administration, the applicant's hazardous materials endorsement shall be revoked or denied.

Sec. 4. 23 V.S.A. § 4112 is amended to read:

§ 4112. RECORDS; NOTIFICATION

- (a) After suspending, revoking, or disqualifying a person from holding a commercial driver license, the commissioner shall update his or her records to reflect that action within 10 days. After suspending, revoking, or disqualifying a nonresident commercial driver's privileges, the commissioner shall notify the licensing authority of the state which issued the commercial driver license or commercial driver certificate within 10 days.
- (b) When the commissioner receives a request for an operating record of a person currently or previously licensed in Vermont, the commissioner shall provide the information within 30 days.
- Sec. 5. 23 V.S.A. § 4113 is amended to read:
- § 4113. Notification of traffic convictions

When a person who holds a commercial driver license issued by another state is convicted in this state of any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, in any type of vehicle, the commissioner shall notify the driver licensing authority in the licensing state of the conviction within 30 10 days.

- Sec. 6. 23 V.S.A. § 4116(d) and (k) are amended to read:
- (d) A person shall be disqualified from driving a commercial motor vehicle for a period of 60 days if convicted of two serious traffic violations, or 120 days if convicted of three serious traffic violations, arising from separate incidents occurring within a three-year period. A disqualification for 120 days shall be issued to be consecutive with any previous disqualification.
- (k) A person shall be disqualified for a term concurrent with any disqualification <u>or suspension</u> issued by the administrator of the Federal Motor Carrier Safety Administration pursuant to 49 C.F.R. <u>part section</u> 383.52.
- Sec. 7. 23 V.S.A. § 4119 is amended to read:
- § 4119. <u>COMPLIANCE WITH OUT-OF-SERVICE ORDER;</u> DISQUALIFICATION FROM OPERATION OF VEHICLE
- (a) No person shall operate a commercial motor vehicle in violation of an out-of-service order.
- (b) Any person convicted for violating an out-of-service order shall be disqualified as follows except as provided in subsection $\frac{b}{c}$ of this section:

- (1) A person shall be disqualified from driving a commercial motor vehicle for a period of 90 180 days if convicted of a first violation of an out-of-service order.
- (2) A person shall be disqualified for a period of one year two years if convicted of a second violation of an out-of-service order during any ten-year period, arising from separate incidents.
- (3) A person shall be disqualified for a period of three years if convicted of a third or subsequent violation of an out-of-service order during any tenyear period, arising from separate incidents.
- (b)(c) Any person convicted for violating an out-of-service order while transporting hazardous materials or while operating a commercial motor vehicle designed or used to transport 15 16 or more passengers, including the driver, shall be disqualified as follows:
- (1) A person shall be disqualified for a period of 180 days if convicted of a first violation of an out-of-service order.
- (2) A person shall be disqualified for a period of three years if convicted of a second or subsequent violation of an out-of-service order during any ten-year period, arising from separate incidents.
- Sec. 8. 23 V.S.A. § 4120(a) and (b) are amended to read:
- (a) Notwithstanding any other provision of law to the contrary, any driver who violates or fails to comply with an out-of-service order is subject to a penalty of \$1,500.00 for a first conviction or for a second or subsequent conviction at the applicable minimum level set forth in 49 C.F.R. section 383.53(b)(1), in addition to disqualification under this chapter.
- (b) Any employer who violates an out-of-service order, or who knowingly requires or permits a driver to violate or fail to comply with an out-of-service order, is subject to a penalty of \$4,000.00 for a first conviction or for a second or subsequent conviction at the applicable minimum level set forth in 49 C.F.R. section 383.53(b)(2).
- Sec. 9. 23 V.S.A. § 102(a) is amended to read:
 - (a) The commissioner shall:

* * *

- (9) Issue nondriver identification cards; and
- (10) Maintain commercial driver records and driver identification data in accordance with the provisions of 49 C.F.R section 384.231(d).

Sec. 10. 5 V.S.A. § 2001(d) and (f) are amended to read:

- (d) Notwithstanding any other provision of this chapter or other law whether general, special, or local, violations of any rules promulgated pursuant to this section involving the operation of a motor vehicle may be charged through the use of a traffic complaint prescribed by the supreme court pursuant to 23 V.S.A. § 2303 4 V.S.A. § 1105.
- (f) The regulations promulgated by the Materials Transportation Bureau of the Pipeline and Hazardous Materials Safety Administration, United States Department of Transportation contained in Parts 170-189 100-199 of Title 49 of the Code of Federal Regulations revised as of December 31, 1976 October 1, 2007, and any amendment or addition to these regulations, and the regulations promulgated by the Bureau of Federal Motor Carrier Safety, Federal Highway Administration, United States Department of Transportation contained in Parts 390–397 of Title 49 of the Code of Federal Regulations, revised as of October 1, 1976 2008, and any amendment or addition to these regulations and any provisions of any other regulations regarding the transportation of hazardous materials adopted by a federal agency may be adopted by the secretary of transportation.

Sec. 11. 5 V.S.A. § 2101(d) and (e) are amended to read:

- (d) Notwithstanding any other provision of this chapter or other law whether general, special, or local, violations of any rules adopted pursuant to this section involving the operation of a motor vehicle may be charged through the use of a traffic complaint prescribed by the supreme court pursuant to 23 V.S.A. § 2303 4 V.S.A. § 1105.
- (e) The regulations promulgated by the <u>Federal</u> Motor Carrier Safety Administration, United States Department of Transportation contained in parts 40, 350, 360, 365, 372, 381–383, 386–388 385–388, 390–397, and 399 of Title 49 of the Code of Federal Regulations, revised as of October 1, 2002 2008, and any amendment or addition to these regulations may be adopted by the secretary of transportation.
- Sec. 12. 23 V.S.A. § 114(a)(21) is amended to read:
 - (21) Records not otherwise specified

4.00 6.00 per page

Sec. 13. 23 V.S.A. §§ 453 and 459 are amended to read:

§ 453. FEES AND NUMBER PLATES

* * *

(g) The commissioner of motor vehicles shall not issue a dealer's certificate of registration to a new or used car dealer, unless the dealer has

provided the commissioner with a surety bond, letter of credit, or certificate of deposit issued by an entity authorized to transact business in the same state. The amount of such surety bond, letter of credit, or certificate of deposit shall be between \$5,000.00 \$20,000.00 and \$15,000.00, \$35,000.00 based on the number of new or used units sold in the previous year; such schedule is to be determined by the commissioner of motor vehicles. In the case of a certificate of deposit, it shall be issued in the name of the dealer and assigned to the commissioner or his or her designee. The bond, letter of credit, or certificate of deposit shall serve as indemnification for any monetary loss suffered by the state or by a purchaser of a motor vehicle by reason of the dealer's failure to remit to the commissioner any fees collected by the dealer under the provisions of chapters 7 and 21 of this title or by a dealer's failure to remit to the commissioner any tax collected by the dealer under chapter 219 of Title 32. This state or the motor vehicle owner who suffers such loss or damage shall have the right to claim against the surety upon the bond or against the letter of credit or certificate of deposit. The bond, letter of credit, or certificate of deposit shall remain in effect for the pending registration year and one year thereafter. The liability of any such surety or claim against the letter of credit or certificate of deposit shall be limited to the amount of the fees or tax collected by the dealer under chapters 7 and 21 of this title or chapter 219 of Title 32 and not remitted to the commissioner.

§ 459. NOTICE TO COMMISSIONER

- (a) Upon issuing a number plate with temporary validation stickers, temporary number plate, or decal to a purchaser for attachment to a motor vehicle, a dealer shall, within three business 15 calendar days, forward to the commissioner the application and fee, deposited with him or her by the purchaser, together with notice of such issue and such other information as the commissioner may require.
- (b) If a number plate with temporary validation stickers, temporary registration plate, or decal is not issued by a dealer in connection with the sale or exchange of a motor vehicle, the dealer may accept, from the purchaser, a properly executed registration, tax and title application, and the required fees for transmission to the commissioner. The dealer shall, within three business 15 calendar days, forward to the commissioner the application and fee together with such other information as the commissioner may require.

Sec. 14. 23 V.S.A. § 1129(a) is amended to read:

(a) The operator of a motor vehicle involved in an accident whereby a person is injured or whereby there is total damage to all property to the extent of \$1,000.00 \$3,000.00 or more shall make a written report concerning the accident to the commissioner of motor vehicles on forms furnished by the

commissioner. The written report shall be mailed to the commissioner within 72 hours after the accident. The commissioner may require further facts concerning the accident to be provided upon forms furnished by him or her.

Sec. 15. 23 V.S.A. § 1222(c) is amended to read:

(c) Notwithstanding the provisions of subsection (a) of this section, an exhibition vehicle of model year 1940 or before, registered as prescribed in section 373 of this title or a trailer registered as prescribed in subdivision 371(a)(1)(A) of this title shall be exempt from inspection; provided, however, the vehicle must be equipped as originally manufactured, must be in good mechanical condition, and must meet the applicable standards of the inspection manual.

Sec. 16. 23 V.S.A. § 2017(b) is amended to read:

- (b) The commissioner shall maintain at his or her central office a record of all certificates of title issued by him or her:
- (1) Under for vehicles 15 years old and newer under a distinctive title number assigned to the vehicle;
 - (2) Under under the identification number of the vehicle;
- (3) Alphabetically alphabetically, under the name of the owner; and, in the discretion of the commissioner, by any other method he or she determines. The original records may be maintained on microfilm or electronic imaging. and, in the discretion of the commissioner, by any other method he or she determines. The original records may be maintained on microfilm or electronic imaging.

Sec. 17. REPEAL

23 V.S.A. § 735 (motorcycle rider training program advisory committee) and chapter 20 of Title 23 (interstate compact for motor vehicle safety equipment) are repealed.

Sec. 18. 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. 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 Except as otherwise provided in subsection (d) of this section, no plate is valid for the second and succeeding years unless the sticker is affixed to the rear plate in the manner prescribed by the commissioner.

(d) When a registration is renewed electronically, a receipt shall be available for printing. The receipt shall serve as a temporary registration. To be valid, the temporary registration shall be in the possession of the operator at all times, and it shall expire ten days after the date of the transaction.

Sec. 19. 23 V.S.A. § 1251 is amended to read:

§ 1251. SIRENS AND COLORED SIGNAL LAMPS

No A motor vehicle shall <u>not</u> be operated upon a highway of this state equipped with a siren or signal lamp colored other than amber unless a permit authorizing <u>such this</u> equipment, issued by the commissioner of motor vehicles, is carried in the vehicle. A permit may be transferred following the <u>same procedure and subject to the same time limits as set forth in section 321 of this title.</u> The commissioner may adopt additional rules as may be required to govern the acquisition of permits and the use pertaining to sirens and colored signal lamps.

Sec. 20. EFFECTIVE DATES

- (a) Sec. 3 (renewal) shall take effect on July 1, 2011.
- (b) This section and Sec. 19 (siren and signal lamp permit transfer) shall take effect on passage.
 - (c) Secs. 1–2 and Secs. 4–18 shall take effect on July 1, 2010.

And that after passage the title of the bill be amended to read:

"An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles and amending miscellaneous motor vehicle laws."

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

Third Readings Ordered

H. 774.

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

An act relating to approval of amendments to the charter of the city of South 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.

H. 775.

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

An act relating to technical changes to the records management authority of the Vermont state archives and records administration.

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. 788.

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

An act relating to approval of amendments to the charter of the town of Berlin.

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.

Consideration Postponed

House bill entitled:

H. 213.

An act to provide fairness to tenants in cases of contested housing security deposit withholding.

Was taken up.

Thereupon, Senator Illuzzi moved that the bill be ordered to lie.

Thereupon, pending the question, Shall the bill be ordered to lie?, Senator Illuzzi requested and was granted leave to withdraw his motion.

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

Proposal of Amendment; Third Reading Ordered

H. 578.

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

An act relating to requiring all state law enforcement officers to serve under the direction and control of the commissioner of public safety.

Reported recommending that the Senate propose to the House to amend the bill by adding a new section to be numbered Sec. 2a to read as follows:

Sec. 2a. COMMISSIONER OF PUBLIC SAFETY; REPORT

The commissioner of public safety shall file a report with the house and senate committees on government operations by January 15, 2011. The report shall explain the commissioner's efforts to develop criteria to measure the reduction of redundancies and the increase in communication as set forth in Sec. 1 of this act. The report shall also recommend improvements in the command and coordination of Vermont law enforcement agencies.

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, and third reading of the bill was ordered on a division of the Senate, Yeas 12, Nays 10.

Rules Suspended; Proposals of Amendment; Third Reading Ordered H. 790.

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

An act relating to capital construction and state bonding.

Was taken up for immediate consideration.

Senator Scott, for the Committee on Institutions, to which the bill was referred, reported recommending 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, asbestos and lead abatement:	300,000	
(2) Statewide, Americans with Disabilities Act (ADA):	100,000	
(3) Statewide, building reuse and planning:	125,000	
(4) Statewide, contingency:	<u>500,000</u>	
(5) Statewide elevator repairs and upgrades:	350,000	
(6) Statewide, major maintenance:	8,003,826	
(7) Statewide, major maintenance, VT information centers:	100,000	
(8) Statewide: BGS engineering and architectura		
costs:	<u>2,465,785</u>	
(9) Statewide physical security enhancements:	<u>100,000</u>	
(10) Montpelier, 116 State St., restore building envelope:	<u>750,000</u>	
(11) Montpelier, 133 State St., infrastructure repair:	1,250,000	
(12) Montpelier, 120 State St., replace heating system	<u>750,000</u>	
(13) Waterbury, steamline extension:	700,000	
(14) Waterbury, state office complex fire alarm panels		
holders:	<u>250,000</u>	
(15) Springfield, state office building, HVAC upgrade:	<u>500,000</u>	
(16) Bennington, courthouse and state office building:	<u>6,958,340</u>	
(17) Burlington, 32 Cherry St., HVAC upgrades:	<u>500,000</u>	
(18) Burlington, 108 Cherry St., HVAC upgrades. The commissioner may reallocate funds between this subdivision and subdivision (17) of this section as the commissioner finds to be in the best interests of the state: 500,000		
(19) Bennington, state office building, geotherm		
project:	<u>2,000,000</u>	
(20) Montpelier, rehabilitation of 128 State Street for the secretary of state: 250,000		
(21) Montpelier, state house, renovations to restore room 41 for a house committee room and to return the Ethan Allen room for use as a conference room for general use. Any remaining funds shall be used to renovate room 33: Total Appropriation – Section 1 \$26,477,951		
	0, 711,731	

Sec. 2. ADMINISTRATION

- (a) The sum of \$100,000 is appropriated to 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.
- (b) The sum of \$5,000,000 is appropriated to the Vermont telecommunications authority (VTA) to build infrastructure to meet the cellular and broadband needs of unserved Vermonters. To the extent possible, the VTA shall use the funds to leverage drawdown of ARRA funds and to build infrastructure that can be used as a revenue stream to enable use of up to \$40,000,000 in moral obligation bonding allocated to the VTA.

<u>Total Appropriation – Section 2</u>

\$5,100,000

Sec. 3. HUMAN SERVICES

- (a) 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) Health laboratory design. Site acquisition, permitting, and construction documents for co-location of department of health laboratory with the UVM Colchester research facility: 4,700,000
 - (2) Vermont state hospital, ongoing safety renovations: 100,000
 - (3) Corrections, continuation of suicide abatement project: 100,000
 - (4) Corrections, security upgrades: 200,000
- (5) Corrections, grease trap for the Chittenden regional correctional facility: 335,000
- (b) The sum of \$10,000 is appropriated to the department of corrections for the study conducted pursuant to Sec. 31 of this act.

Total Appropriation – Section 3

\$5,445,000

Sec. 4. JUDICIARY

The sum of \$750,000 is appropriated to the department of buildings and general services to design and replace the electric boiler and upgrade to a solar energy or biomass system in the Barre district court and office building.

Total Appropriation – Section 4

\$750,000

Sec. 5. COMMERCE AND COMMUNITY DEVELOPMENT

- (a) The following sums are appropriated in total 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) Plymouth Visitors' Center, exhibits and furnishings: 250,000
- (b) The following sums are appropriated in total 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 5 \$565,000

Sec. 6. BUILDING COMMUNITIES GRANTS

The following sums are appropriated for building communities grants established in chapter 137 of Title 24:

- (1) To the agency of commerce and community development, division for historic preservation, for the historic preservation grant program: 180,000
- (2) To the agency of commerce and community development, division for historic preservation, for the historic barns preservation grant program:

 180,000
- (3) To the Vermont council on the arts for the cultural facilities grant program: 180,000
- (4) To the department of buildings and general services for the recreational facilities grant program: 180,000
- (5) To the department of buildings and general services for the human services and educational facilities competitive grant program: 180,000
- (6) For the agricultural fairs capital projects competitive grant program. No single entity shall be awarded more than ten percent of this appropriation: 180,000

Total Appropriation – Section 6

\$1,080,000

Sec. 7. EDUCATION

The following is appropriated in total to the department of education for:

- (1) State aid for emergency school construction projects pursuant to 16 V.S.A. § 3448(a)(3)(A): 600,000
 - (2) Emergency shelters in schools:

44,889

- (3) The Burlington International airport to continue the process of planning and designing a new aviation technical training center: 150,000
- (4) Alternate energy projects pursuant to 16 V.S.A. § 3448(a)(7)(B) which were prioritized for funding by the state board of education for fiscal year 2011. Each project shall receive an equal percentage of the amount owed by the state:

 1,157,676
- (5) Remaining state aid for school construction projects pursuant to 16 V.S.A. § 3448 which were prioritized for funding by the state board of education for fiscal year 2011, excluding asset renewal projects. Each project shall receive an equal percentage of the amount owed by the state: 5,197,435

Total Appropriation – Section 7

\$7,150,000

Sec. 8. AUSTINE SCHOOL

The sum of \$540,104 is appropriated to the department of buildings and general services for the renovation of Holton Hall at the Austine School.

<u>Total Appropriation – Section 8</u>

\$540,104

Sec. 9. UNIVERSITY OF VERMONT

The sum of \$2,000,000 is appropriated to the University of Vermont for construction, renovation, and maintenance.

<u>Total Appropriation – Section 9</u>

\$2,000,000

Sec. 10. VERMONT STATE COLLEGES

The sum of \$2,000,000 is appropriated to the Vermont State Colleges for major facility maintenance.

Total Appropriation – Section 10

\$2,000,000

Sec. 11. VERMONT INTERACTIVE TELEVISION

The sum of \$290,085 is appropriated to Vermont Interactive Television to purchase equipment, including video upgrades and monitor replacement.

Total Appropriation – Section 11

\$290,085

Sec. 12. NATURAL RESOURCES

(a) The following is appropriated in total to the agency of natural resources for water pollution control projects:

(1) 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), the Springfield loan conversion, and administrative support under chapter 120 of Title 24. Of this amount and the amount in subdivision (2) of this subsection, up to \$50,000 may be used to provide municipalities with grants or loans for a study of the feasibility and planning of site-appropriate potable water supply and wastewater systems, including innovative decentralized systems, for historic village and existing settled areas. Systems shall be designed to comply with the adopted municipal plan. The agency of natural resources shall have the discretion to determine eligibility for and amounts of funds provided to municipalities for feasibility studies and planning, and shall report to the senate committees on institutions and on natural resources and energy, and the house committees on corrections and institutions and on fish, wildlife and water resources on or before January 15, 2011, regarding how the municipal grant program is working, the demand for the grants, what projects were funded, and anticipated future construction costs of those projects: 2,375,400

(2) For combined sewer overflow projects receiving ARRA funding:

(A) Burlington, Gazo Avenue:	100,000
(B) Burlington, Manhattan Drive:	<u>200,000</u>
(C) Middlebury, pump station work:	<u>450,000</u>
(D) Montpelier, several areas of the city:	<u>138,500</u>
(E) Proctor sewer system rehabilitation:	<u>32,500</u>
(F) Springfield, several areas:	<u>374,000</u>

- (3) Interest on short-term borrowing associated with delayed grant funding for the Pownal project: 85,000
- (b) The following sum is appropriated to the agency of natural resources for the drinking water state revolving fund. Of this amount, up to \$50,000 may be used to provide municipalities with grants or loans for a study of the feasibility and planning of site-appropriate potable water supply and wastewater systems, including innovative decentralized systems, for historic village and existing settled areas. Systems shall be designed to comply with the adopted municipal plan. The agency of natural resources shall have the discretion to determine eligibility for and amounts of funds provided to municipalities for feasibility studies and planning, and shall report to the senate committees on institutions and on natural resources and energy, and the house committees on corrections and institutions and on fish, wildlife and water resources on or before January 15, 2011, regarding how the municipal grant

program is working, the demand for the grants, what projects were funded, and anticipated future construction costs of those projects: 2,175,660

- (c) The following sum is appropriated to the agency of natural resources for the clean and clear program for ecosystem restoration and protection. The agency shall use at least \$250,000 of this appropriation to work with the Vermont youth conservation corps on appropriate ecosystem restoration and protection projects:

 1,700,000
- (d) The following sum is appropriated to the agency of natural resources for the state's year-three 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:

 177,000
- (e) The following sums are appropriated to the agency of natural resources for the department of forests, parks and recreation:
- (1) rehabilitation of small and large infrastructure in the state forests and parks, including wastewater repairs, upgrades of restrooms and bathhouses, rehabilitation of CCC structures, and road restoration:

 2,500,000
- (2) energy conservation and alternative energy projects at Vermont state parks: 1,000,000
- (f) The following sums are appropriated to the agency of natural resources for department of fish and wildlife projects described in this subsection:
 - (1) to match federal funding for a lamprey control project: 157,500
- (2) Safety improvements at the Salisbury, Bennington, and Bald Hill fish hatcheries: 78,300
 - (3) Bald Hill fish hatchery, fish production improvements: 120,000

70,000

- (4) Bald Hill emergency dam repair:
- (5) For the Lake Champlain Walleye Association, Inc. to upgrade and repair the walleye rearing, restoration, and stocking infrastructure. The association shall enter into an agreement with any private landowner whose pond is upgraded, maintained, or built in whole or in part using state funds. The agreement shall provide for a lease of at least 10 years, with the option for renewal, and for mutually agreeable maintenance, repair, and use of the pond. In addition, the Walleye Association shall report in January 2011 to the house committee on corrections and institutions and the senate committee on institutions on use of the funds appropriated in this subdivision: 25,000

(6) For improvement and expansion of existing fishing accesses: 250,000

Total Appropriation – Section 12

\$12,008,860

Sec. 13. MILITARY

The sum of \$850,000 is appropriated to the department of the military for maintenance and renovation at state armories. To the extent feasible, these funds shall be used to draw down federal funds.

Total Appropriation – Section 13

\$850,000

Sec. 14. PUBLIC SAFETY

The following is appropriated in total to the department of buildings and general services for the department of public safety for:

- (1) Renovations to the public safety headquarters building in Waterbury: 3,215,000
- (2) Purchase of equipment for the fire service training center in Pittsford: 100,000
- (3) Conversion to narrowband frequencies for SOV two-way radio systems: 45,000

Total Appropriation – Section 14

\$3,360,000

Sec. 15. CRIMINAL JUSTICE TRAINING COUNCIL

The sum of \$1,000,000 is appropriated to the department of buildings and general services for the Vermont Criminal Justice Training Council to complete improvements and repairs to the firing range in Pittsford.

Total Appropriation – Section 15

\$1,000,000

Sec. 16. AGRICULTURE, FOOD AND MARKETS

The following is 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 reduce nonpoint source pollution in Vermont. For projects paid from this appropriation, cost share funds may be increased to 90 percent of a project:

 1,500,000
- (2) For the agricultural buffer program, to install water quality conservation buffers: 175,000

Total Appropriation – Section 16

\$1,675,000

Sec. 17. VERMONT PUBLIC TELEVISION

The sum of \$500,000 is appropriated to Vermont Public Television for the state match for the federally mandated conversion of Vermont Public Television's transmission sites to digital broadcasting format.

Total Appropriation – Section 17

\$500,000

Sec. 18. 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.

<u>Total Appropriation – Section 18</u>

\$100,000

Sec. 19. VERMONT VETERANS' HOME

The following sums are appropriated in total to the department of buildings and general services for the Vermont Veterans' Home for the purposes described in this section:

(1) Relocate and replace the transformer:

150,000

(2) Replace gas lines:

<u>170,000</u>

Total Appropriation – Section 19

\$320,000

Sec. 20. 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. Annually, on or before December 1, the Vermont Center for Crime Victim Services shall file with the commissioner of buildings and general services a report which details the status of the improvements funded in whole or in part by state capital appropriations.

Total Appropriation – Section 20

\$50,000

Sec. 21. VERMONT HISTORICAL SOCIETY

The sum of \$150,000 is appropriated to the department of buildings and general services for a one-to-one matching grant to the Vermont historical society to reduce debt at the Vermont history center in Barre. The department may release the funds to the historical society upon receiving certification that the funds have been matched.

Total Appropriation – Section 21

\$150,000

Sec. 22. HOUSING AND CONSERVATION BOARD

The amount of \$5,000,000 is appropriated to the Vermont housing and conservation board (VHCB) for building and preservation of affordable housing, and for conservation projects. The board shall:

- (1) give priority consideration to affordable housing preservation and infill projects in or near downtowns or village centers as well as consider applications to build or renovate housing for elders, supportive housing for persons with disabilities, including chronic mental illness, and individuals and families who might otherwise be homeless;
- (2) allocate up to 20 percent of this appropriation for conservation grant awards that will maximize drawdown of federal and private matching funds, particularly federal farmland protection funds allocated to Vermont by the Natural Resources Conservation Service. If less than \$4,000,000 of the state's private activity bond cap is made available to the VHCB for eligible affordable housing investments, VHCB may increase the amount it allocates to conservation grant awards from its capital appropriation, notwithstanding the percentage provided for in this section, provided that VHCB increases its affordable housing investments by the same amount from funds appropriated to VHCB in the FY 2011 Appropriations Act;
- (3) allocate \$100,000 of this appropriation for the construction of single room occupancy (SRO) housing for at-risk youth. The board shall give priority to SRO housing that requires as a condition of residency participation in educational, life-skills, and job training and programming and for which rental subsidies will support ongoing operational costs;
- (4) leverage federal and private funds to the maximum extent feasible; and
- (5) on or before January 15, 2011, report to the senate committee on institutions and the house committee on corrections and institutions on how the funds appropriated in this section were spent or obligated.

Total Appropriation – Section 22

\$5,000,000

* * * Financing this Act * * *

Sec. 23. 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 proceeds from sale of space in the Emory A. Hebard State Office Building in Newport pursuant to Sec. 37 of No. 62 of the Acts of 1997:

53,478.68

- (2) of the amount realized from the sale of land on Swift Street in Burlington pursuant to Sec. 27 of No. 43 of the Acts of 2005: 30,000.00
- (3) of the amount appropriated by Sec. 5(a)(1) of No. 147 of the Acts of the 2005 Adj. Sess. (2006) (Lamoille County courthouse): 61,508.11
- (4) of the amount appropriated by Sec. 5(d) of No. 147 of the Acts of the 2005 Adj. Sess. (2006) (Grand Isle County courthouse): 8,476.40
- (5) of the amount realized from a nonrefundable deposit for purchase of land pursuant to Sec. 25(2) of No. 147 of the Acts of the 2005 Adj. Sess. (2006) (Comfort Hill Road, Vergennes): 3,010.00
- (6) of the amount appropriated for dam inspection and repair at the Southeast State Correctional Facility in Windsor pursuant to Sec. 4(4) of No. 52 of the Acts of 2007:

 68,868.00
- (7) of the amount appropriated by Sec. 4(6) of No. 52 of the Acts of 2007 for security at the Chittenden Regional Correctional Facility: 422.49
- (8) of the amount appropriated by Sec. 8(2) of No. 149 of the Acts of the 2001 Adj. Sess. (2002) for a sludge storage facility in Bradford: 42,521.92
- (9) of the amount appropriated by Sec. 11(e)(3) of No. 256 of the Acts of the 1991 Adj. Sess. (1992) for grants and loans for solid waste management facilities:

 2,704.23
- (10) of the amount appropriated by Sec. 19(d)(1) of No. 233 of the Acts of the 1993 Adj. Sess. (1994) for municipal grants and loans for landfill closings:

 2,000.00
- (11) of the amount appropriated by Sec. 13(b)(4)(B) of No. 62 of the Acts of 1995 for assistance to municipalities for recycling: 25,143.58
- (12) of the amount appropriated by Sec. 19(d)(3) of No. 233 of the Acts of the 1993 Adj. Sess. (1994) for municipal grants and loans for solid waste management facilities:

 23,424.00
- (13) of the amount appropriated by Sec. 10(b)(3) of No. 185 of the Acts of the 1995 Adj. Sess. (1996) for municipal assistance for solid waste management facilities:

 9,120.46
- the 2005 Adj. Sess. (2006) to purchase mechanical harvesting equipment: 2,479.03
- (15) of the amount appropriated by Sec. 10(d) of No. 121 of the Acts of the 2003 Adj. Sess. (2004) for a forest plan for the Green Mountain National Forest:

 11,921.57

- (16) of the amount appropriated by Sec. 10(o) of No. 121 of the Acts of the 2003 Adj. Sess. (2004) for an engineering study of the state dock in St. Albans: 7,373.00
- (17) of the amount appropriated by Sec. 3(3) of No. 43 of the Acts of 2009 for consideration of how to replace acute intensive psychiatric inpatient services provided at the current Vermont state hospital with services to be provided at the Rutland Regional Medical Center:

 250,000.00
- (18) of the amount appropriated by Sec. 10(d) of No. 121 of the Acts of the 2003 Adj. Sess. (2004) for forestry planning: 11,922.00
- of the amount appropriated by Sec. 12(f)(4) of No. 200 of the Acts of the 2007 Adj. Sess. (2008) for the Salisbury fish station generator: 13,119.00
- (20) of the amount appropriated by Sec. 9 of No. 29 of the Acts of 1999 for the Vermont historical society:

 29,116.00
- (21) of the amount appropriated by Sec. 3(c)(1) of No. 43 of the Acts of 2005 for a dormitory-style work camp:

 41,163.00
- (22) of the amount appropriated by Sec. 9(a)(1) of No. 43 of the Acts of 2009 for water pollution control: 88,879.00
- (23) of the amount appropriated by Sec.12 (a)(1) of No. 200 of the Acts of the 2007 Adj. Sess. (2008) for water pollution control: 431,538.00
- (24) of the amount appropriated by Sec 4(f) of No. 147 of the Acts of the 2005 Adj. Sess. (2006) for heating and ventilation system for the Northern State Correctional Facility:

 6,196.00
- (25) of the amount appropriated by Sec. 10(o) No. 121 of the Acts of the 2003 Adj. Sess. (2004) for the St. Albans engineering study: 7,373.00
- (26) of the amount appropriated by Sec. 23 of No. 148 of the Acts of the 1999 Adj. Sess. (2000) for non-point pollution reduction: 25,947.37
- (27) of the amount appropriated by Sec. 5 of No.61 of the Acts of 2001 for non-point source pollution reduction:

 87,558.69
- (28) of the amount appropriated by Sec. 13 of No. 149 of the Acts of the 2001 Adj. Sess. (2002) for non-point pollution reduction:

 13,313.08
- (29) of the amount appropriated by Sec.14(a) of No. 63 of the Acts of 2003 for non-point source pollution reduction: 57,885.15
- (30) of the amount appropriated by Sec.15 of No.121 of the Acts of the 2003 Adj. Sess. (2004) for non-point source pollution reduction: 170,537.39

 Total Reallocations and Transfers Section 23 \$1,587,000.15

Sec. 24. GENERAL OBLIGATION BONDS AND APPROPRIATIONS

- (a) The state treasurer is authorized to issue general obligation bonds in the amount of \$71,825,000 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.
- (b) The sum of \$2,000,000 is transferred from the Vermont clean energy development fund established in 10 V.S.A. § 6523 to the department of buildings and general services for the purpose of funding statewide energy efficiencies and renewable projects pursuant to Sec. 1(19) of this act.
- (c) The sum of \$1,000,000 is transferred from the Vermont clean energy development fund established in 10 V.S.A. § 6523 to the agency of natural resources for the purpose of energy conservation and alternative energy projects at state parks pursuant to Sec. 11(e)(2) of this act.

Total Revenues – Section 24

\$74,825,000

* * * Buildings and General Services * * *

Sec. 25. PROPERTY TRANSACTIONS; MISCELLANEOUS

- (a) Pursuant to 29 V.S.A. § 152(3), the commissioner of buildings and general services is authorized to purchase the land and existing building located at 245 South Park Drive in Colchester.
- (b) Notwithstanding 29 V.S.A. § 166, the commissioner of buildings and general services is authorized to sell the land purchased under subsection (a) of this section to the University of Vermont for one dollar, and to enter into a ground lease with the University of Vermont for one dollar for the purpose of locating the state health laboratory for a minimum of 50 years with an automatic renewal provision. With the advice and consent of the chairs and vice chairs of the house committee on corrections and institutions and the senate committee on institutions, the commissioner shall negotiate the ground lease so that the state will receive services and benefits from the university which will ensure that the land exchange is fair to both parties.
- (c) Notwithstanding 29 V.S.A. §§ 166(b) and 165(h), after consultation with the chairs and vice chairs of the senate committee on institutions and the house committee on corrections and institutions, the commissioner of buildings and general services is authorized to sell or enter into a lease purchase agreement at less than fair market value for building #617 in Essex.

- (d) Notwithstanding 29 V.S.A. §§ 165 and 166, the commissioner of buildings and general services is authorized to sell to the city of Rutland the former armory building at 62 Pierpoint Avenue in Rutland at the 2010 appraised value. The sale may be a lease purchase agreement that would enable the city to lease the building for up to ten years and that would grant the city the right to purchase the property any time during the ten-year lease for fair market value with all lease payments and improvements to the property, at depreciated value, made by the city to the state being deducted from the purchase price. The lease-to-own agreement shall include a provision that the city shall pay all expenses, including major maintenance. If the commissioner is unable to negotiate a mutually acceptable agreement with the city of Rutland, the commissioner is authorized to sell the building pursuant to 29 V.S.A. § 166. Proceeds of the lease purchase under this subsection shall be paid into a capital fund account pursuant to 29 V.S.A. § 166(d).
- (e) Following consultation with the state advisory council on historic preservation as required by 22 V.S.A. § 742(7) and pursuant to 29 V.S.A. § 166, the commissioner of buildings and general services is authorized to subdivide and sell the house, barn, and up to 10 acres of land at 3469 Lower Newton Road in St. Albans.

Sec. 26. USE AND DEVELOPMENT OF STATE FACILITIES AND LANDS

- (a) The commissioner of buildings and general services shall work with the town of Windsor to develop a plan for use of state lands adjacent to the southeast state correctional facility in Windsor, and shall consult with the commissioner of forests parks and recreation, and the commissioner of corrections as they develop the plan. The plan shall describe a mixed use of the area which will result in benefits to the town of Windsor, the region, and the state on a sustainable basis. Proposed uses shall be based on the natural attributes of the area so that for example, agricultural uses may be proposed in sections of prime agricultural soils, forestry uses may be proposed in areas suitable for sustainable tree growth, and housing may be proposed to be clustered near recreational uses. On or before January 15, 2011, the commissioner of buildings and general services and the town of Windsor shall jointly present the plan to the senate committee on institutions and the house committee on corrections and institutions.
- (b) The commissioner of buildings and general services shall work with the city of Montpelier to determine whether the state's steam plant could generate electricity and provide heat and water to both state buildings and a portion of the city. If needed, the commissioner is authorized to sign a letter of intent which would support the city of Montpelier's commencement of necessary

environmental reviews, if appropriate. However, any letter of intent shall be approved by the chairs of the senate committee on institutions and the house committee on corrections and institutions prior to signature, and no lease transfer or construction shall take place without the authorization of the general assembly.

- (c) It is the intent of the general assembly that, as appropriate and feasible, all programs and services of the secretary of state shall be consolidated within the capital complex.
- (d) The commissioner of buildings and general services may use up to \$400,000 of unexpended FY10 funds allocated for major maintenance and \$200,000 of funds allocated for major maintenance in FY11 for:
- (1) repair of the generator and switchgear of the cogeneration system at the state correctional facility in Springfield; and
- (2) up to \$ 200,000 for improvements and upgrades to the municipal water system serving the Springfield correctional facility, provided that the town of Springfield contributes an equal amount of funds for the upgrades and provided that the town of Springfield agrees to accept ownership of the system in accordance with provision #9 of the correctional facility agreement executed between the state and the town on March 30, 1999. However, funds shall be expended under this subdivision only for the remainder of the project after the town has received federal funds for upgrade of the water system.
- (e) Notwithstanding 29 V.S.A. § 166, the secretary of the agency of commerce and community development is authorized to enter into a lease with the Calvin Coolidge Memorial Foundation for a portion of the Calvin Coolidge state historic site in Plymouth Notch for use as an educational center for a term of years he or she deems to be in the best interests of the state.
- Sec. 27. Sec. 1(8) and (11) of No. 43 of the Acts of 2009 are amended to read:
- (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
 2.408,340
- (11) Bennington, 200 Veterans Drive. Demolish and design the rebuilding of the older section of the state office building, excluding and a portion of the courthouse space; renovate the newer section of the building to house programs and services previously located in the building to address water infiltration and indoor air quality issues, consolidate all courthouse functions in an expanded building, enhance energy opportunities, and allow geothermal equipment to be installed under the new space; and build four

holding cells, a sally port, and two additional courtrooms without jury facilities for a total of four courtrooms: 8,000,000 7,541,660

Sec. 28. 3 V.S.A. § 2291(e) amended to read:

(e) The commissioner of buildings and general services shall develop life cycle cost guidelines for use in all state buildings. These guidelines shall require all new construction and major renovations to meet or exceed the document titled "The Vermont Guidelines for Energy Efficient Commercial Construction" as published in its most recent edition by the department of public service as that document may be amended current "Vermont Commercial Building Energy Standards." Where practicable the goal shall be attaining an EPA ENERGY STAR® rating of at least seventy-five.

* * * Building Communities Grants * * *

Sec. 29. 24 V.S.A. § 5603 is amended to read:

§ 5603. HISTORIC BARNS PRESERVATION GRANT PROGRAM

There is established an historic barns preservation grant program which shall be administered by the division for historic preservation in the agency of commerce and community development. Grants shall be made available to municipalities and nonprofit tax exempt organizations barn owners on a one-for-one matching basis for restoring historic barns.

* * * Commerce and Community Development * * *

Sec. 30. 23 V.S.A. § 3311(d) is amended to read:

- (d) Underwater historic preserve area. A vessel shall not be operated in an "underwater historic preserve area" except as provided in this subsection. These areas are historic and archaeological sites located on the bottomlands of the waters of the state and are designated as public recreational areas. The division for historic preservation may designate underwater historic preserve areas and they shall be identified by a floating special purpose yellow buoy marked "State of Vermont Underwater Historic Preserve." The following requirements shall govern the operation of vessels at the preserves:
- (1) a vessel may secure to a yellow buoy only when diving <u>or remotely operated vehicle diving</u> at the preserve. <u>In this subsection, "remotely operated vehicle diving" means using an unstaffed underwater robot to view a preserve site;</u>
- (2) only vessels 35 feet in length or less, and only those engaged in diving, may secure to a buoy;
- (3) <u>vessels 50 feet in length or less and piloted by a U.S. Coast</u> Guard-licensed captain may secure to a buoy for the purpose of remotely

operated vehicle diving;

- (4) a divers-down flag shall be displayed whenever a vessel is secured to a buoy;
- (4)(5) on sites with multiple buoys, one vessel may be secured to each buoy;
- (5)(6) when a vessel is secured to the buoy, all other vessels shall remain at least 200 feet from the buoy; and
 - (6)(7) anchoring is not permitted within 200 feet of the buoy.
- Sec. 31. 10 V.S.A. § 6654(f) is amended to read:
- (f) The Vermont economic development authority, VEDA, is authorized to make loans on behalf of the state pursuant to this section. Annually, the secretary of commerce and community development with the approval of the secretary of natural resources in consultation with the VEDA manager shall determine an amount from the brownfield revitalization program that will be available to VEDA for loans. Proceeds from repayment of loans shall be deposited in the brownfield revitalization fund and shall be available for future grants and loans under this section. Loans under this subsection shall be issued and administered by VEDA, provided:

* * *

(2) A loan to an applicant <u>for characterization or assessment</u> may not exceed \$250,000.00 and may be used for characterization, assessment, or remediation. Remediation loans shall not be capped. All loans shall be subject to all the following conditions:

* * *

* * * Vermont Telecommunications Authority * * *

Sec. 32. VERMONT TELECOMMUNICATIONS AUTHORITY; USE OF PRIVATE ACTIVITY BONDING AUTHORITY; REPORT

On or before January 15, 2011, the executive director of the Vermont telecommunications authority shall report to the senate committee on institutions, the senate committee on finance, and the house committee on corrections and institutions on revenues realized from infrastructure built with general obligation bond funds, private activity bonds issued pursuant to 30 V.S.A. § 8064, revenues realized from infrastructure built with private activity bonds, and what is needed to maximize use of the authority's private activity bonding authority.

* * * Natural Resources * * *

- Sec. 33. 10 V.S.A. § 1974(4), (5), and (6) are added to read:
- (4) The installation or use of a water treatment system for a potable water supply where the treatment system is designed to:
 - (A) reduce or eliminate water hardness;
- (B) reduce or eliminate properties or constituents on the list of secondary standards in the Vermont water supply rules;
- (C) reduce or eliminate radon, lead, arsenic, or a combination of these; or
- (D) eliminate bacteria or pathogenic organisms, provided that the treatment system treats all of the water used for drinking, washing, bathing, the preparation of food, and laundering.
- (5) The installation or use of a water treatment device, provided that the installation or use is overseen by the secretary as a part of a response action due to contamination or the threat of contamination of a potable water supply by a release or threat of release of a hazardous material or any other source of contamination.
- (6) The increase in flow to an existing wastewater system as a result of the use of an exempt water treatment system under subdivisions (4) and (5) of this section.
- Sec. 34. CLEAN WATER STATE REVOLVING FUND; INTENDED USE PLAN; AMENDMENTS
- (a) The agency of natural resources has written and submitted a clean water intended use plan for submission to the U.S. Environmental Protection Agency (EPA) as part of its annual application for a Clean Water Capitalization Grant. Upon acceptance by the EPA, Vermont expects to be awarded \$12,905,000 which it will distribute through the clean water state revolving fund. The intended use plan describes how these funds will be distributed to municipal projects.
- (b) If any of the municipalities allocated a share of the federal funds in the intended use plan are unable to use the funds due to unanticipated delays, or is eligible for other funds which could be used for the project instead of the federal funds, the agency is hereby directed to submit a plan amendment which will enable it to reallocate those funds to a project on the priority list which will cost more than \$4 million, does not readily qualify for other sources of funding, serves over 2,500 users, is in the economic growth center of the region, and will result in jobs and economic growth.

Sec. 35. POLLUTION CONTROL REVOLVING LOAN FUND; DRINKING WATER REVOLVING FUND; LOAN FORGIVENESS

- (a) Upon awarding a loan 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 50 percent of the loan if the award is made from funds appropriated from the Federal Fiscal Year 2010 Clean Water State Revolving Fund or Drinking Water State Revolving Fund Grants (FFY2010 CWSRF and FFY2010 DWSRF).
- (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 FFY2010 CWSRF 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, for allocating the funds among projects, and for revising standard priority lists in order to comply with requirements associated with the federal FY2010 CWSRF and DWSRF capitalization grants.
- Sec. 36. Sec. 8(a)(3) of No. 149 of the Acts of the 2001 Adj. Sess. (2002) is amended to read:
- (3) Dams, maintenance and reconstruction; provided \$35,000 of this appropriation shall be made to supplement the \$55,000 federal Land and Water Conservation Fund grant for Harvey's Lake dam to replace the existing dam with an electronically-controlled rubber bladder dam; and provided \$30,000 \$58,591 of this appropriation shall be made to enable engineering and design of repairs to abate the imminent hazard posed by the Curtis Pond dam in Calais, with the further provision that the state shall not be liable for any claims that may arise from the work performed at that dam:

 300,000

* * * Vermont State Hospital * * *

Sec. 37. VERMONT STATE HOSPITAL; REPLACEMENT

- (a) The department of mental health is directed to continue to develop plans for the replacement of state hospital functions consistent with state public policy and the terms of the conceptual certificate of need, including acute specialized and intensive care inpatient hospital beds and any other incomplete elements of the plan.
- (b) The department of mental health shall proceed with further inpatient Phase II certificate of need applications only if the general assembly has identified an acceptable financing plan.

- (c) The commissioner of buildings and general services and the commissioner of mental health shall continue to plan, design, and work to obtain permits for a secure residential recovery facility in Waterbury. Notwithstanding Sec. 31(b) of No. 43 of the Acts of 2009, simultaneous with the certificate of need process and prior to applying for a local permit for a new appropriately designed 15-bed secure residential program and facility in Waterbury, the commissioners shall further review all potential building sites within the Waterbury complex and shall consult with the Waterbury village and town officials, and report on the final site to the chairs and vice chairs of the senate committee on institutions and house committee on corrections and institutions on or before July 1, 2010. The facility design shall incorporate the components necessary for the facility to function as a freestanding program that does not rely on support space currently serving patient needs in the existing Vermont state hospital.
- (d) The commissioner of mental health shall plan for the replacement of Vermont state hospital inpatient beds in consultation with the following: Brattleboro Retreat, Rutland Regional Medical Center, and Dartmouth Medical School. The commissioner of buildings and general services shall engage in the design of the required space. The commissioner of mental health shall make funds necessary for this work available from funds allocated in the past for planning and replacement of beds at a secure residential facility.
- Sec. 38. Sec. 31(d) of No. 43 of the Acts of 2009 is amended to read:
- (d) DAIL shall amend by rule pursuant to chapter 25 of Title 3 the licensing requirements for therapeutic community residences residential care homes to provide for the operation of secure residential recovery programs.

* * * Education * * *

Sec. 39. 16 V.S.A. § 3448(a)(7)(C) is amended to read:

(C) The amount of an award shall be 50 percent of the approved cost of a project or applicable portion of a project which results in consolidation of two or more school buildings and which will serve the educational needs of students in a more cost-effective and educationally appropriate manner as compared to individual projects constructed separately. A decision of the commissioner as to eligibility for aid under this subdivision (C) shall be final. This subdivision (C) shall apply only to a project which has received preliminary approval by June 30, 2010 2011.

Sec. 40. DEPARTMENT OF PUBLIC SAFETY; SHAFTSBURY/RUTLAND FEASIBILITY STUDY

The department of public safety shall explore opportunities for siting a consolidated police barracks in the Shaftsbury/Rutland area.

Sec. 41. REPEALS

The following are repealed:

- (1) 32 V.S.A. § 309(d), relating to emergency operation centers.
- (2) Sec. 13(b)(2)(B) of No. 148 of the Acts of the 1997 Adj. Sess. (1998), relating to deed covenants on land which may be conveyed by the state of Vermont to Rutland.

Sec. 42. EFFECTIVE DATE

This act shall take effect on passage.

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

Senator Illuzzi, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill be amended as recommended by the of the Committee on Institutions with the following amendments thereto:

<u>First</u>: By striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

- Sec. 2. ADMINISTRATION; VERMONT TELECOMMUNICATIONS AUTHORITY; VERMONT CENTER FOR GEOGRAPHIC INFORMATION
- (a) The sum of \$100,000 is appropriated to 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.
- (b) The sum of \$5,000,000 is appropriated to the Vermont telecommunications authority (VTA) to build infrastructure to meet the cellular and broadband needs of unserved Vermonters. To the extent possible, the VTA shall use the funds to leverage drawdown of ARRA funds and to build infrastructure that can be used as a revenue stream to enable use of up to \$40,000,000 in moral obligation bonding allocated to the VTA. These funds shall be spent in accordance with the provisions of Sec. 4 and Sec. 11 of No. 78 of the Acts of the 2009 Adj. Sess. (2010).

<u>Total Appropriation – Section 2</u>

\$5,100,000

<u>Second</u>: In Sec. 25(b) and (c), by striking out the subsections in their entirety and inserting in lieu thereof:

(b) Notwithstanding 10 V.S.A. § 6524, \$2,000,000 of the American Recovery and Reinvestment funds described in 10 V.S.A. § 6523(h) shall be under the authority of the commissioner of buildings and general services and

shall be for statewide energy efficiencies and renewable projects pursuant to Sec. 1(19) of this act.

(c) Notwithstanding 10 V.S.A. § 6524, \$1,000,000 of the American Recovery and Reinvestment funds described in 10 V.S.A. § 6523(h) shall be under the authority of the secretary of natural resources and shall be for energy conservation and alternative energy projects at state parks pursuant to Sec. 12(e)(2) of this act.

<u>Third</u>: In Sec. 37(d), in the third sentence, by striking out the following: "<u>commissioner of mental health</u>" and inserting in lieu thereof the following: <u>commissioner of buildings and general services</u>

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

Senator Shumlin Assumes the Chair Senator Illuzzi Assumes the Chair Senator Shumlin Assumes the Chair

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the question, Shall the proposal of amendment of the Committee on Institutions be amended as recommended by the Committee on Appropriations?, was agreed to.

Thereupon, the proposal of amendment recommended by the Committee on Institutions, as amended, was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Illuzzi moved to amend the Senate proposal of amendment by adding a new section to be numbered Sec. 41 to read as follows:

Sec. 41. SALE OR LEASE OF THE JOHN H. BOYLAN STATE AIRPORT

- (a) Pursuant to the provisions of 5 V.S.A. § 204(3), the secretary of transportation is authorized to sell or lease the John H. Boylan state airport to the town of Brighton or to the Vermont Renewable Energy Company, LLC, d/b/a Vermont Biomass Energy (or its assignee) at fair market value.
- (b) The state shall retain an ownership interest in the area which may be used as a helipad on the property that is accessible for authorized uses.
- (c) The property shall be conveyed subject to a condition that the property will revert to the state of Vermont on terms and conditions negotiated by the parties.

- (d) Any purchaser or lessor shall agree to accept assignment of the state of Vermont's interest in current leases on the property.
- (e) In the event that the town of Brighton or Vermont Biomass Energy (or its assignee) does not purchase or lease the entire parcel, the secretary of transportation is authorized to sell the residence and up to an acre of associated land on the airport property to the highest bidder, provided that the residence and land shall not be sold for less than fair market value.
- (f) Proceeds from the state of Vermont's sales or leases authorized by this section shall be deposited into the transportation fund, except for up to \$5,000.00 which may be used by the agency of transportation to create a memorial park at a location mutually agreed upon by the town of Brighton and by the agency to commemorate the contributions to the state of Vermont of the late Senator John H. Boylan and the late Essex District Probate Court Judge Lena Boylan.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senators Hartwell and Sears moved to amend the Senate proposal of amendment, as amended, by striking out Sec. 40 in its entirety and by renumbering the remaining sections to be numerically correct.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

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

H. 784.

House bill entitled:

An act relating to the state's transportation program.

Was taken up.

Thereupon, pending third reading of the bill, Senator Campbell, on behalf of the Committee on Judiciary, moved that the Senate proposal of amendment be amended as follows:

<u>First:</u> By striking out Sec. 39 in its entirety and inserting a new Sec. 39 to read as follows:

Sec. 39. AUTHORITY OF LAW ENFORCEMENT AND RESCUE PERSONNEL TO ENGAGE IN NEGLIGENT OR RECKLESS CONDUCT IN EMERGENCY AND NON-EMERGENCY SITUATIONS; STUDY

The commissioner of public safety, a designee of the Professional Firefighters of Vermont, the Vermont Bar Association, the Vermont Fire Chiefs Association, the Vermont Troopers Association and the Vermont Association for Justice shall study the need to revisit the standard of care required under § 1015(c) of Title 23, and whether the provisions of § 1015(c) of Title 23 should be extended to on-duty officers in non-emergency situations. The Committee shall report its findings and recommendations to the Senate and House committees on Judiciary on or before April 1, 2011.

Second: By striking out Sec. 40 in its entirety.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Illuzzi moved that the Senate proposal of amendment be amended as follows:

<u>First:</u> In Sec. 41, 23 V.S.A. § 1251 in the title of the section, after the word "LAMPS" by inserting the following: <u>OUT-OF-STATE EMERGENCY</u> AND RESCUE VEHICLES

<u>Second:</u> In Sec. 41, 23 V.S.A. § 1251 subsection (b) by striking out the following: "<u>out-of-state</u>" and inserting in lieu thereof the following: <u>law enforcement vehicles</u>, after the words "<u>squad members</u>" by inserting the following: <u>which are registered or licensed by another state or province</u>, and after the words "<u>may use sirens and</u>" by striking out the following: <u>red or red</u> and white

Which were collectively agreed to.

Thereupon, pending third reading of the bill, Senator Sears moved that the Senate proposal of amendment be amended in Sec. 41, 23 V.S.A. § 1251(b) in the first sentence, by adding the phrase in Vermont after the phrase "when responding to emergencies"

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Sears?, Senator Sears requested and was granted leave to withdraw the proposal of amendment.

Thereupon, pending third reading of the bill, Senators Kitchel, Hartwell, Mazza, Scott and Shumlin moved that the Senate proposal of amendment be amended as follows:

<u>First</u>: After Sec. 58 by inserting three new sections to be Secs. 58a–58c to read:

Sec. 58a. LEGISLATIVE INTENT

It is the intent of the general assembly to require the commissioner of motor vehicles to conduct an in-depth study of the most effective and efficient

mechanisms for promoting the use of ignition interlock devices or other devices that prevent impaired driving and implementing legislation related to such devices in Vermont. The commissioner also is directed to formulate recommended legislation by January 15, 2011, to advance the general assembly's goal to pass ignition interlock legislation.

Sec. 58b. LEGISLATIVE FINDINGS

The general assembly finds that:

- (1) In 2008, nearly 12,000 people were killed in crashes attributed to alcohol-impaired driving, which accounted for 32 percent of all traffic fatalities in the United States. Impaired driving is a significant public safety concern.
- (2) As a tool to combat impaired driving, 47 states have laws concerning the use of ignition interlock devices. Ignition interlock devices are installed in motor vehicles to prevent them from being started unless the operator blows into the device and the device detects that the operator's alcohol concentration is below a preset limit. Devices may be programmed to require periodic retesting while the car is running. About 146,000 ignition interlock devices currently are in use in the United States.
- (3) Vermont is one of just three states that have not enacted ignition interlock legislation.
- (4) Research shows that ignition interlock devices reduce subsequent arrest rates among both first-time and repeat DUI offenders by 50 to 90 percent while such devices are installed.
- (5) Research estimating the costs versus the benefits of ignition interlock programs suggests a \$3.00 benefit for each \$1.00 in program costs for first-time DUI offenders and a \$4.00 to \$7.00 benefit for each \$1.00 in program costs for other DUI offenders.

Sec. 58c. IGNITION INTERLOCK DEVICE STUDY

- (a) The commissioner of motor vehicles, in consultation with the commissioner of corrections, the court administrator, the department of public safety, state's attorneys and sheriffs, the defender general, the attorney general, the Vermont bar association, and any other organizations or entities the commissioner deems appropriate, shall study and formulate recommended legislation authorizing use of ignition interlock devices or other devices that prevent impaired driving in Vermont. In carrying out this directive, the commissioner shall:
- (1) Review current laws, rules and regulations, and practices regarding use of ignition interlock devices in other states and attempt to ascertain the

factors that contribute to the varying success of states in promoting use of ignition interlock devices.

- (2) Consider whether legislation should:
- (A) require installation of ignition interlock devices by some or all DUI offenders as a condition of license reinstatement;
- (B) for some or all DUI offenders, authorize operation of a motor vehicle during a suspension period under specified conditions if an ignition interlock device is installed;
- (C) require, or authorize upon request, some or all DUI offenders to install ignition interlock devices in exchange for a reduced period of license suspension;
- (D) authorize or require judges to order installation of ignition interlock devices as a condition of probation for some or all DUI offenders;
- (E) authorize or require judges to provide incentives (such as reduced fines) to some or all DUI offenders to encourage installation of such devices;
- (F) require devices to be installed for a period in excess of usual suspension periods for some or all offenders;
- (G) supplement, or operate as an alternative to, the state's abstinence program for persons whose license has been suspended for life;
- (H) apply to all impaired driving offenders (i.e., include those whose violations involve operating under the influence of drugs) or only to those whose offense involved operating under the influence of intoxicating liquor;
- (I) limit eligibility to certain classes of DUI offenders (i.e., those whose offense did not result in death of another); or
- (J) authorize or require installation of ignition interlock devices under any other circumstances.
- (3) Consider how any recommended use of ignition interlock devices should be coordinated with the use of electronic monitoring equipment such as global position monitoring equipment, automated voice recognition telephone equipment, and transdermal alcohol monitoring equipment.
- (4) Study the costs of ignition interlock devices, including installation, monthly lease charges, periodic recalibration, and data downloads and the relative merits of having such costs borne entirely by DUI offenders or partially borne by the state.
- (5) Study whether conditions or restrictions (such as hours of operation or limitation to travel to or from work, school, or a treatment program) should

be imposed on some or all DUI offenders operating subject to an ignition interlock device requirement.

- (6) Study the administrative tasks that must be performed to implement and carry out ignition interlock legislation; the costs associated with these tasks; which agency or agencies are best suited to perform them; and what additional authority or resources an agency or agencies would need to perform them.
- (7) Consider appropriate penalties for DUI offenders required to operate vehicles equipped with ignition interlock devices who tamper with or otherwise circumvent such devices, or who operate a vehicle not equipped with such a device, or whose attempt to operate a vehicle is prevented through the functioning of such device, and consider the due process to which DUI offenders cited for such activities shall be entitled.
- (8) Consider appropriate penalties for third parties who tamper with or otherwise circumvent ignition interlock devices, or who knowingly provide vehicles not equipped with such devices for DUI offenders required to operate vehicles equipped with such devices, and consider the due process to which persons cited for such activities shall be entitled.
- (9) Consider the degree to which the state should monitor, utilize, and impose sanctions based on data obtained from ignition interlock devices.
- (10) Consider and study any other issues deemed relevant to ignition interlock device policy and legislation.
- (b) The commissioner shall report his or her findings and recommended legislation to the senate and house committees on transportation, the senate and house committees on judiciary, and the joint corrections oversight committee no later than January 15, 2011.

<u>Second</u>: In Sec. 59, by adding a new subdivision to be subdivision (a)(9) to read:

(9) Secs. 58a–58c (study and recommendation of ignition interlock device legislation).

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Ayer moved that the Senate proposal of amendment be amended in Sec. 55 (a) and (b) [Lake Champlain Bridge Facilities] by adding after the word "together" the words in consultation with the Division of Historic Preservation

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment on a roll call, Yeas 28, Nays 0.

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

Roll Call

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

Those Senators who voted in the negative were: None.

Those Senators absent or not voting were: Lyons, Shumlin (presiding).

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. 264, H. 527, H. 759, H. 771, H. 784.

Message from the House No. 58

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. 239. An act relating to retiring outdoor wood-fired boilers that do not meet the 2008 emission standard for particulate matter.

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. 62. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

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

H. 408. An act relating to improving nutrition programs.

And has concurred therein.

The Governor has informed the House that on the April 20, 2010, he approved and signed bills originating in the House of the following titles:

- **H. 639.** An act relating to motor vehicle insurance for volunteer drivers.
- **H. 766.** An act relating to preventing duplication in certain public health records.

Adjournment

On motion of Senator Mazza, the Senate adjourned until eight o'clock and thirty minutes in the morning.

THURSDAY, APRIL 22, 2010

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 eight o'clock and thirty minutes, 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 nominated Senator John F. Campbell to be acting President *pro tempore*. Senator Hartwell seconded the nomination.

There being no further nominations, on motion of Senator Mazza, 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

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Consideration Postponed

Senate resolution entitled:

S.R. 17.

Senate resolution relating to problems associated with underage consumption of alcohol.

Was taken up.

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

Proposal of Amendment; Consideration Postponed H. 578.

House bill entitled:

An act relating to requiring all state law enforcement officers to serve under the direction and control of the commissioner of public safety.

Was taken up.

Thereupon, pending third reading of the bill, Senator Illuzzi moved that the Senate propose to the House to amend the bill by adding a new section to be numbered Sec. 3 to read as follows:

Sec. 3. CERTIFICATION OF LAW ENFORCMENT OFFICERS

- (a) The General Assembly finds that because the Vermont Police Academy requires candidates for certification as a full-time law enforcement officer to undergo 16 weeks of extensive physical training in addition to meeting academic requirements, older individuals or individuals with minor physical disabilities who are otherwise exceptionally qualified to discharge law enforcement duties are precluded from obtaining full-time certification and thus full-time employment as a law enforcement officer. While other states and jurisdictions have left physical training requirements to the hiring law enforcement agencies, the Vermont Criminal Justice Training Council has continued the physical training requirements, extending the cost and length of the basic training program, even though the hiring law enforcement agency already has selected and employed the candidates who seek full-time certification.
- (b) The executive director of the Vermont Criminal Justice Training Council, the attorney general or designee, a designee of the Department of Sheriffs and State's Attorneys who does not serve on the Vermont Criminal Justice Training Council, the defender general or designee, the executive director of the Human Rights Commission or designee, and a Vermont constable selected by the chair of the trustees of the Vermont League of Cities and Towns shall make recommendations regarding the advisability of granting full-time certification to law enforcement officers who have been certified as

part-time officers for at least the past ten years and who have been employed a total of at least 5,000 hours as an officer discharging law enforcement duties during that period. The chair of the committee shall be the attorney general or his or her designee. The committee shall report its findings and recommendations to the House and Senate Government Operations and Judiciary Committees no later than January 15, 2011.

And by renumbering the remaining section to be Sec. 4.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Illuzzi?, without objection on motion of Senator Shumlin consideration of the bill was postponed to the next legislative day.

Bills Passed in Concurrence

House bills of the following titles were severally read the third time and passed in concurrence:

- **H. 774.** An act relating to approval of amendments to the charter of the city of South Burlington.
- **H. 775.** An act relating to technical changes to the records management authority of the Vermont state archives and records administration.
- **H. 788.** An act relating to approval of amendments to the charter of the town of Berlin.

Consideration Postponed

House bill entitled:

H. 765.

An act relating to establishing the Vermont agricultural innovation authority.

Was taken up.

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

Proposals of Amendment; Bill Passed in Concurrence with Proposals of Amendment

H. 524.

House bill entitled:

An act relating to interference with or cruelty to a guide dog.

Was taken up.

Thereupon, pending third reading of the bill, Senator Campbell moved that the Senate proposal of amendment be amended as follows:

<u>First</u>: By adding a new section to be numbered Sec. 3 to read as follows:

Sec. 3. 20 V.S.A. § 3621 is amended to read:

§ 3621. ISSUANCE OF WARRANT TO IMPOUND, DESTROY; COMPLAINT

- (a) The legislative body of a municipality may at any time issue a warrant to one or more police officers or constables, or pound keepers, or elected or appointed animal control officers, directing them to proceed forthwith to destroy in a humane way or cause to be destroyed in a humane way impound all dogs or wolf-hybrids within the town or city not licensed according to the provisions of this subchapter, except as exempted by section 3587 of this title, and to enter a complaint against the owners or keepers thereof. A dog or wolfhybrid impounded by a municipality under this section may be transferred to an animal shelter or rescue organization for the purpose of finding an adoptive home for the dog or wolf-hybrid. If the dog or wolf-hybrid cannot be placed in an adoptive home or transferred to a humane society or rescue organization within ten days, or a greater number of days established by the municipality, the dog or wolf-hybrid may be destroyed in a humane way. The municipality shall not be liable for expenses associated with keeping the dog or wolf-hybrid at the animal shelter or rescue organization beyond the established number of days.
- (b) A municipality may waive the license fee for the current year upon a showing of current vaccinations and financial hardship. In the event of waiver due to financial hardship, the state shall not receive its portion of a dog license fee.

<u>Second</u>: By adding a new section to be numbered Sec. 4 to read as follows: Sec. 4. 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, animal control officer elected or appointed by the legislative body of a municipality, employee or agent, local board of health officer or agent, or any officer authorized to serve criminal process.

And that after passage the title of the bill be amended to read:

"An act relating to interference with or cruelty to a guide dog, warrants to impound a dog or wolf-hybrid, and the definition of 'humane officer'."

Which was agreed to.

Thereupon, pending third reading of the bill, Senators Campbell and Miller moved that the Senate proposal of amendment be amended by adding three new sections to be numbered Secs. 3, 4, and 5 to read as follows:

Sec. 3. FINDINGS

The general assembly finds that:

- (1) Cebus appella monkeys, commonly known as capuchin monkeys, are used, when highly trained, by the group Helping Hands: Monkey Helpers for the Disabled, a national nonprofit based in Boston, to serve people who are paralyzed, suffer from multiple sclerosis, are quadriplegic, or have other severe spinal cord injuries or mobility impairments by providing assistance with daily activities.
- (2) By breeding these monkeys in captivity, raising, and specially training these monkeys to act as live-in companions over the course of 20–30 years, these groups provide independence and companionship to the people they help.
- (3) Many states allow capuchin monkeys to be imported, by permit, for purposes of this service. States that have laws exempting the monkeys from their wild animal importation ban include Georgia and California.
- (4) According to Helping Hands: Monkey Helpers for the Disabled, their monkeys reside in a closed colony under tight security in a specialized facility in the Boston area. The monkeys do not have exposure to other non-colony primates. The monkeys receive thorough and comprehensive veterinary care while at the training center and after placement, including regular testing for tuberculosis and intestinal parasites. No recipients or care giver has been injured or contracted an infectious disease from these monkeys.
- (5) Helping Hands: Monkey Helpers for the Disabled's monkeys are New World primates which originate in South America. All monkeys are bred specifically for the program and none are taken from the wild. The monkeys are not infected with the well-known pathogens Herpes B or SIV, which are carried exclusively by Asian and African (Old World) primates. The capuchin monkeys are significantly smaller and more docile than Old World primates.

Sec. 4. PILOT PROGRAM FOR IMPORT OF ASSISTANCE ANIMALS; CAPUCHIN MONKEYS

- (a) A pilot program, for importing highly trained Cebus appella monkeys into Vermont, is established for the purpose of providing animals for assistance of persons with a permanent disability or disease.
- (b) The commissioner shall issue a permit under 10 V.S.A. § 4709 to two different Vermont residents for the import into the state of an animal in the

genus Cebus appella (capuchin monkeys), provided that the applicant for the permit establishes that:

- (1) the applicant has a permanent disability or disease which interferes with the person's ability to perform one or more routine daily living activities;
- (2) the animal for which the permit is to be issued has been trained to assist the person in performing his or her daily living activities;
- (3) the animal will be humanely treated and will not present a threat to public health or safety;
- (4) the animal for which the permit is sought is the only wild animal to be possessed by that person;
- (5) the applicant does not have a history of animal cruelty under chapter 8 of Title 13;
- (6) the animal is being provided by a nonprofit charity or organization dedicated to providing animals for assistance of persons with permanent disability or disease; and
- (7) the applicant provides an official health certificate from a veterinarian licensed in the state of the animal's origin certifying that the animal is free of visible signs of infections or contagious or communicable disease.
 - (c) An animal imported under a permit issued under this section shall:
 - (1) be treated humanely; and
- (2) be kept only in the residence of the permittee except as necessary for veterinary services.
- (d) When transported into the state, an animal imported under a permit issued under this section shall be transported in a U.S. Department of Agriculture-approved animal carrier.
- (e) When an animal imported under a permit issued under this section is no longer in service to the applicant, the animal shall be returned within seven days of the end of service to the nonprofit charity or organization that provided the animal.
- (f) Report. On or before January 15, 2014, the commissioner shall report to the senate committee on judiciary on all aspects of the pilot program's implementation, including public health and safety concerns, and on recommendations for legislative proposals or permitting processes, if any.

Sec. 5. EFFECTIVE DATE

This act shall take effect upon passage.

Which was agreed to.

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

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

H. 790.

House bill entitled:

An act relating to capital construction and state bonding.

Was taken up.

Thereupon, pending third reading of the bill, Senator Scott moved that the Senate proposal of amendment be amended in Sec. 23 by striking out subdivision (25) in its entirety and inserting in lieu thereof a new subdivision (25) to read as follows:

(25) of the amount appropriated by Sec.1(7) of No. 147 of the Acts of 2005 adj. session (2006) for repairs to Vermont Veterans Home Heat Distribution System: \$7,374.00

Which was agreed to.

Senator Shumlin Assumes the Chair

Thereupon, pending third reading of the bill, Senator Campbell moved that the Senate proposal of amendment be amended in Sec. 26 by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) The commissioner of buildings and general services shall work with the town of Windsor to develop a plan for use of state lands adjacent to the southeast state correctional facility in Windsor, and shall consult with the commissioner of forests parks and recreation, the commissioner of corrections, local wildlife conservation groups, and trails and recreation organizations, as they develop the plan. The plan shall describe a mixed use of the area which will result in benefits to the town of Windsor, the region, and the state on a sustainable basis. Proposed uses shall be based on the natural attributes of the area so that for example, agricultural uses may be proposed in sections of prime agricultural soils, forestry uses may be proposed in areas suitable for sustainable tree growth, wildlife habitat is maintained and improved especially for Vermont species of greatest conservation need, and housing may be proposed to be clustered near recreational uses. On or before January 15, 2011, the commissioner of buildings and general services and the town of

Windsor shall jointly present the plan to the senate committee on institutions and the house committee on corrections and institutions.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as moved by Senator Campbell?, Senator Campbell requested and was granted leave to withdraw his proposal of amendment.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Illuzzi moved that the Senate proposal of amendment be amended by adding two new sections to be numbered Secs. 41 and 42 to read as follows:

Sec. 41. 30 V.S.A. § 8079 is amended to read:

§ 8079. BROADBAND INFRASTRUCTURE; INVESTMENT

- (a) To achieve the goals established in subsection 8060(b) of this title, the authority is authorized to invest in broadband infrastructure or contract with retail providers for the purpose of making services available to at least 10,000 households or businesses in target communities where such services are currently unavailable or to upgrade services in underserved business districts, as determined by the authority. For the purposes of this section, target communities shall not be considered unserved if a broadband provider has a legally binding commitment to provide service to those locations or a provider has received a broadband stimulus grant to provide service to those locations.
- (b) To accomplish the purpose of this section, the authority shall publish a request for proposals for any or all of the following options for the purpose of providing broadband coverage to 100 percent of Vermont households and businesses within target communities: (1) the construction of physical broadband infrastructure, to be owned by the authority; (2) initiatives by public–private partnerships or retail vendors; or (3) programs that provide financial incentives to consumers, in the form of rebates for up to 18 months, for example, to ensure that providers have a sufficient number of subscribers. Before publication, a copy of all requests for proposals shall be provided to the senate committee on finance and the house committee on commerce and economic development, and shall be approved by the joint fiscal committee The authority shall select proposals for target communities that best achieve the objective stated in subsection (a) of this section, consistent with the criteria listed in subsections (c) and (d) of this section.
- (c) Criteria. In developing the criteria which will govern the requests for proposals regarding the expenditure of the appropriations contained in S.288 and H. 790 as enacted in the 2010 legislative session, and to the extent consistent wit the objectives set forth in subsection (a) of this section, the

authority shall strive to achieve Any request for proposals developed under this section shall include the following requirements:

- (1) Require the use of current generation infrastructure, such as fiber optic cable where cable is used, or otherwise appropriate, and technology which is considered state of the art by the telecommunications industry The technology and infrastructure used by a telecommunications provider participating in a project pursuant to this section shall support the delivery of services with download speeds equal to or greater than three megabits per second and upload speeds equal to or greater than two megabits per second.
- (2) Require that any infrastructure Infrastructure owned and leased by the authority shall be available for use by as many telecommunication providers as the technology will permit to avoid the state from establishing a monopoly service territory for one provider.
- (d) The authority shall review proposals and award contracts based upon the price, quality of services offered, positive experience with infrastructure maintenance, retail service delivery, and other factors determined to be in the public interest by the authority. In selecting target communities, the authority shall consider to the extent possible:
- (1) the proportion of homes and businesses in those communities without access to broadband service and without access to broadband service meeting the minimum technical service characteristic objectives established under section 8077 of this title;
- (2) the level of adoption of broadband service by residential and business users within the community;
- (3) opportunities to leverage or support other sources of federal, state, or local funding for the expansion or adoption of broadband service;
- (4) the number of potential new subscribers in each community and the total level of funding available for the program; and
- (5) the geographic location of selected communities and whether new target communities would further the goal of bringing broadband service to all regions of the state.
- (6) Pending grant and loan applications for the expansion of broadband service filed with the U.S. Department of Commerce and with the broadband initiatives program under the Rural Utilities Service of the U.S. Department of Agriculture, which will be awarded no later than October 1, 2010.
- (e) To the extent any funds appropriated by the general assembly are rendered unnecessary for the purpose of reaching unserved Vermonters due to a successful application to the broadband initiatives program under the Rural

Utilities Service of the U.S. Department of Agriculture, such funds shall be placed in reserve by the authority to be used first to achieve 100-percent coverage pursuant to chapter 91 of Title 30 and, once that is achieved, to then deliver fiber-quality service to Vermont's public facilities, regional business hubs, and anchor businesses and institutions.

- (f) Beginning July 1, 2010, the authority may invest up to \$500,000.00 for upgrades in broadband services in underserved business districts, as defined by the authority.
- Sec. 42. No. 78 of the Acts of 2010, Sec. 4, subsection (b), is amended to read:
- (b) No portion of the appropriation made in subsection (a) of this section shall be encumbered or disbursed until a detailed itemization of the specific manner in which the funds shall be spent is presented to and approved by the joint fiscal committee, after obtaining input from submitted to the senate committee on finance, the senate committee on economic development, housing and general affairs, and the house committee on commerce and economic development.

And by renumbering the remaining sections of the bill to be numerically correct.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senator Illuzzi?, Senator MacDonald moved to amend the proposal of amendment of Senator Illuzzi by striking out Sec. 41(b) in its entirety and inserting in lieu thereof a new Sec. 41(b) to read as follows:

(b) To accomplish the purpose of this section, the authority shall publish a request for proposals for any or all of the following options for the purpose of providing broadband coverage to 100 percent of Vermont households and businesses within target communities: (1) the construction of physical broadband infrastructure, to be owned by the authority; (2) initiatives by public–private partnerships or retail vendors; or (3) programs that provide financial incentives to consumers, in the form of rebates for up to 18 months, for example, to ensure that providers have a sufficient number of subscribers. Before publication, a copy of all requests for proposals shall be provided to the senate committee on finance and the house committee on commerce and economic development, and shall be approved by the joint fiscal committee The authority shall select proposals for target communities that best achieve the objective stated in subsection (a) of this section, consistent with the criteria listed in subsections (c) and (d) of this section.

Which was disagreed to on a roll call, Yeas 11, Nays 16.

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

Roll Call

Those Senators who voted in the affirmative were: Ayer, Carris, Cummings, Giard, Hartwell, MacDonald, McCormack, Nitka, Racine, Starr, White.

Those Senators who voted in the negative were: Ashe, Bartlett, Brock, Campbell, Choate, Doyle, Flanagan, Flory, Illuzzi, Kitchel, Kittell, Mazza, Miller, Mullin, Scott, Snelling.

Those Senators absent or not voting were: Lyons, Sears, Shumlin (presiding).

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as moved by Senator Illuzzi?, was decided in the affirmative.

Thereupon, pending third reading of the bill, Senator Campbell moved that the Senate proposal of amendment be amended in Sec. 26 subsection (a) as follows:

<u>First</u>: In the first sentence by striking out the following: "<u>and the commissioner of corrections</u>" and inserting in lieu thereof the following: <u>the secretary of agriculture, food and markets, the commissioner of corrections, local wildlife conservation groups, and trails and recreation organizations</u>

<u>Second</u>: In the third sentence after the following: "<u>areas suitable for sustainable tree growth</u>," by inserting the following: <u>wildlife habitat is maintained and improved especially for Vermont species of greatest conservation need</u>,

<u>Third</u>: In the last sentence after the following: "<u>shall jointly present the plan to</u>" by inserting the following: <u>the house and senate committees on natural resources and energy.</u>

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment on a roll call, Yeas 26, 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, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, MacDonald, Mazza, Miller, Mullin, Nitka, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: McCormack, Racine.

Those Senators absent or not voting were: Lyons, Shumlin (presiding).

Third Reading Ordered

H. 725.

Senator Kittell, for the Committee on Agriculture, to which was referred House bill entitled:

An act relating to farmers' markets.

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 pending the question, Shall the bill be read a third time?, Senator Kittell moved 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 a new Sec. 2 to read as follows:

Sec. 2. EFFECTIVE DATE

This act shall take effect upon passage.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Committees of Conference Appointed

S. 282.

An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles.

Was taken up. Pursuant to the request of the Senate, the President *pro tempore* announced the appointment of

Senator Kitchel Senator Scott Senator Mazza

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

H. 540.

An act relating to motor vehicles passing vulnerable users on the highway and to bicycle operation.

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

Senator Mazza Senator Scott Senator Kitchel 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 Mazza, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 282, H. 524, H. 774, H. 775, H. 788, H. 790.

Rules Suspended; Action Messaged

On motion of Senator Mazza, the rules were suspended, and the action on the following bill was ordered messaged to the House forthwith:

H. 540.

Adjournment

On motion of Senator Mazza, the Senate adjourned until eight o'clock and thirty minutes in the morning.

FRIDAY, APRIL 23, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Ann Grady of Montpelier.

Message from the House No. 59

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. 237. An act relating to operational standards for salvage yards.

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. 47. Joint resolution urging the United States Commodity Futures Trading Commission to limit rampant speculation in the energy futures market.

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. 50. Joint resolution urging expedited federal initiation of the National Environmental Policy Act process relating to the proposed federal acquisition of Eagle Point Farm in Derby, Vermont.

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

Recess

On motion of Senator Shumlin the Senate recessed until 10:30 A.M.

Called to Order

At 10:30 A.M. the Senate was called to order by the President.

House Requested to Return Bill to Custody of Senate H. 788.

On motion of Senator White, the Senate requested the House to return to the custody of the Senate, House bill entitled:

An act relating to approval of amendments to the charter of the town of Berlin.

Joint Resolution Referred

J.R.H. 47.

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution urging the United States Commodity Futures Trading Commission to limit rampant speculation in the energy futures market.

Whereas, more than half of the homes in Vermont are heated with oil, and

Whereas, the more than 150 retail providers of heating oil in Vermont purchase the product after it is traded on the unregulated futures market, and

Whereas, the rampant speculation in oil futures has artificially increased the cost of heating oil at the expense of both the retailers and the more than 340,000 people in Vermont who depend on oil for heat and hot water, and

Whereas, the federal government agency responsible for overseeing energy trading, the Commodity Futures Trading Commission (CFTC), has proposed a new rule placing speculative position limits on energy contracts in order to limit risky trades and prevent big banks from dominating the oil market, and

Whereas, this rule, in combination with passage of federal derivatives market reform legislation, will close loopholes and help return the prices of gasoline, diesel fuel, and heating oil to levels that more accurately reflect supply and demand fundamentals, and

Whereas, by federal law, the CFTC must consider public comments before it decides whether or not to implement the proposed trading rule, and it is important that this legislature express its opinion on this critical public policy matter affecting a large number of Vermont families, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges the United States Commodity Futures Trading Commission to implement speculative position limits in order to reduce volatility in the energy futures market, and be it further

<u>Resolved</u>: That the Secretary of State be directed to send a copy of this resolution to the Commodity Futures Trading Commission and the Vermont Congressional Delegation.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Economic Development, Housing and General Affairs.

Bill Passed in Concurrence with Proposal of Amendment

H. 725.

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

An act relating to farmers' markets.

Proposals of Amendment; Third Readings Ordered H. 507.

Senator Choate, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to fostering connections to success in guardianships.

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

<u>First</u>: Before Sec. 6, by striking out the heading "* * * Technical Corrections * * *"

<u>Second</u>: By striking out Sec. 8 in its entirety and inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. 33 V.S.A. § 5307(h) is added to read as follows:

(h) The department shall provide information to relatives and others with a significant relationship with the child about options to take custody or participate in the care and placement of the child, about the advantages and disadvantages of the options, and about the range of available services and supports.

<u>Third</u>: By inserting a new section to be numbered Sec. 9 to read as follows:

Sec. 9. 14 V.S.A. § 2671 is amended to read:

§ 2671. VOLUNTARY GUARDIANSHIP

- (a) Any person of at least <u>eighteen 18</u> years of age, who desires assistance with the management of his or her affairs, may file a petition with the probate court requesting the appointment of a guardian.
 - (b) The petition shall:
- (1) state that the petitioner is not mentally ill or mentally retarded understands the nature, extent, and consequences of the guardianship;

* * *

- (d) A petition for voluntary guardianship shall be granted if the court finds that:
 - (1) the petitioner is not mentally ill or mentally retarded; and
 - (2) the petitioner is uncoerced; and
- (3) the petitioner understands the nature, extent and consequences of the guardianship requested and the procedures for revoking the guardianship.
- (1) The court shall hold a hearing on the petition, with notice to the petitioner and the proposed guardian.
- (2) At the hearing, the court shall explain to the petitioner the nature, extent, and consequences of the proposed guardianship and determine if the petitioner agrees to the appointment of the named guardian.
- (3) At the hearing, the court shall explain to the petitioner the procedures for terminating the guardianship.
- (4) After the hearing, the court shall make findings on the following issues:
 - (A) whether the petitioner is uncoerced;
- (B) whether the petitioner understands the nature, extent, and consequences of the proposed guardianship; and

- (C) whether the petitioner understands the procedures for terminating the guardianship.
- (e) In its discretion, the <u>The</u> court may order that the petitioner be evaluated by a qualified mental health professional a person who has specific training and demonstrated competence to evaluate the petitioner. The scope of the evaluation shall be limited to:
 - (1) whether the petitioner is mentally ill or mentally retarded; and
- (2) the capacity of the petitioner to understand <u>understands</u> the nature, extent and consequences of the guardianship requested and the procedures for revoking the guardianship.
- (f) If <u>after the hearing</u> the court finds that the petitioner meets the criteria set forth in subsection (d) of this section is uncoerced, understands the nature, extent and consequences of the proposed guardianship, and understands the procedures for terminating the guardianship, it shall enter judgment specifying the powers of the guardian as requested in the petition. The court shall mail a copy of its order to the petitioner and the guardian, and it shall attach to the order a notification to the petitioner setting forth the procedures for terminating the guardianship.
- (g) If the court finds that the petitioner does not meet the criteria set forth in subsection (d) of this section, it shall dismiss the petition; provided, however, that if the court finds that the petitioner is mentally ill or mentally retarded does not understand the nature, extent, and consequences of the guardianship and in the court's opinion requires assistance with the management of his or her personal or financial affairs, the court may treat the petition as if filed pursuant to section 3063 of this title.
- (h) The ward person under guardianship may, at any time, file a motion to revoke the guardianship. Upon receipt of the motion, the court shall give notice as provided by the rules of probate procedure. Unless the guardian files a motion pursuant to section 3063 of this title within ten days from the date of the notice, the court shall enter judgment revoking the guardianship and shall provide the ward and the guardian with a copy of the judgment.
- (i)(1) Any person interested in the welfare of the ward person under guardianship, as defined by section 3061 of this chapter, may petition the court where venue lies for termination of the guardianship. Grounds for termination of the guardianship shall be:
- (1)(A) failure to render an account after having been duly cited by the court;
 - (2)(B) failure to perform an order or decree of the court;

- (3)(C) a finding that the guardian has become incapable of or unsuitable for exercising his <u>or her</u> powers; or
 - (4)(D) the death of the guardian.
- (2) The court may also consider termination of the guardianship on the court's own motion.
- (j) The guardian shall file an annual report with the appointing court on within 30 days of the anniversary date of appointment containing the information required by section 3076 of this title.
- (k) The court shall mail an annual notice on the anniversary date of the appointment of the guardian to the person under a guardianship setting forth the procedure for terminating the guardianship and the right of the person under guardianship to receive and review the annual reports filed by the guardian.
- (1) At the termination of a voluntary guardianship, the guardian shall render a final accounting as required by section 2921 of this title.
- (1)(m) The guardian shall not be paid any fees to which the guardian may be entitled from the estate of the ward person under guardianship until the annual reports or final accounting required by this section have been filed with the court.

And that after passage, the title of the bill be amended to read:

"An act relating to voluntary guardianship and children in foster care."

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 proposals of amendment were collectively agreed to, and third reading of the bill was ordered.

H. 590.

Senator Campbell, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to mediation in foreclosure proceedings.

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. Rule 80.1 of the Vermont Rules of Civil Procedure is amended to read: RULE 80.1. FORECLOSURE OF MORTGAGES AND JUDGMENT LIENS

* * *

(b) Complaint; Process.

(1) Complaint. The complaint in an action for foreclosure shall set forth the name of the mortgagor and mortgagee, the date of the mortgage deed, the description of the premises, the debt or claim secured by the mortgage, any attorney's fees claimed under an agreement in the mortgage or other instrument evidencing indebtedness, any assignment of the mortgage, the condition contained in the mortgage deed alleged to have been breached, the names of all parties in interest and, as to each party in interest, the date of record of the instrument upon which the interest is based, shall pray that defendants' equity of redemption in the premises be foreclosed and explain that the defendant or defendants must enter their appearance in order to receive notice of the foreclosure judgment which will set forth the amount of money they must deposit to redeem the premises and the period of time allowed them to deposit this amount. The plaintiff shall attach to the complaint copies of the original note and mortgage deed and proof of ownership thereof, including copies of all original endorsements and assignments of the note and mortgage deed. The plaintiff shall plead in its complaint that the originals are in the possession and control of the plaintiff or that the plaintiff is otherwise entitled to enforce the mortgage note pursuant to the Uniform Commercial Code. All parties in interest shall be joined as parties defendant. Failure to join any party in interest shall not invalidate the action nor any subsequent proceedings as to those joined. A claim for foreclosure in an action under this paragraph may not be joined with a claim for a deficiency except when a defendant in the answer has requested foreclosure pursuant to a power of sale in the mortgage.

* * *

Sec. 2. 12 V.S.A. § 4523(b) is amended to read:

(b) The plaintiff shall file a copy of the complaint, without supporting attachments, in the town clerk's office in each town where the mortgaged property is located. The clerk of the town shall minute on the margin of the record of the mortgage that a copy of foreclosure proceedings on the mortgage is filed. The filing shall be sufficient notice of the pendency of the action to all persons who acquire any interest or lien on the mortgaged premises between the dates of filing the copy of foreclosure and the recording of the final judgment in the proceedings. Without further notice or service, those persons shall be bound by the judgment entered in the cause and be foreclosed from all

rights or equity in the premises as completely as though they had been parties in the original action.

Sec. 3. 12 V.S.A. § 4531a is amended to read:

§ 4531a. FORECLOSURE; POWER OF SALE

- (a) When a power of sale is contained in a mortgage and the plaintiff in the foreclosure complaint, or the defendant in his or her answer requests a sale, the court may upon entry of judgment of foreclosure order that if the property is not redeemed within the time period allowed by the court, the property be sold pursuant to such power and the court may further determine the time and manner of the sale. If a sale is ordered with respect to any property other than farmland or a dwelling house of two four units or less when currently occupied by the owner as his or her principal residence, the redemption period shall be eliminated or reduced by the court to no more than 30 days. If the property is not redeemed, the plaintiff shall thereupon execute the power of sale and do all things required by it or by the court. No sale of a dwelling house of two four units or less when currently occupied by the owner as his or her principal residence may take place within seven months of service of the foreclosure complaint, unless the court finds that the occupant is making waste of the property or the parties mutually agree after suit to a shorter period.
- (b) When a power of sale is contained in a mortgage relating to any property except for a dwelling house of two four units or less that is occupied by the owner as a principal residence, or farmland, instead of a suit and decree of foreclosure, the mortgage or assignee may, upon breach of mortgage condition, exercise the power of sale without first commencing a foreclosure action or obtaining a foreclosure decree, and may give notices and do all such acts as are authorized or required by the power, including the giving of a foreclosure deed upon the completion of the foreclosure sale; but no sale under and by virtue of a power of sale shall be valid and effectual to foreclose the mortgage unless the conditions of sections 4532 and 4533a of this title are complied with.

* * *

Sec. 4. 12 V.S.A. chapter 163, subchapter 9 is added to read:

Subchapter 9. Mediation in Foreclosure Actions

§ 4701. MEDIATION PROGRAM ESTABLISHED

(a) This subchapter establishes a program to assure the availability of mediation and application of the federal Home Affordable Modification Program ("HAMP") requirements in actions for foreclosure of a mortgage on

any dwelling house of four units or less that is occupied by the owner as a principal residence.

- (b) The requirements of this subchapter shall apply only to foreclosure actions involving loans that are subject to the federal HAMP guidelines.
- (c) To be qualified to act as a mediator under this subchapter, an individual shall be licensed to practice law in the state and shall be required to have taken a specialized, continuing legal education training course on foreclosure prevention or loss mitigation approved by the Vermont Bar Association.

§ 4702. OPPORTUNITY TO MEDIATE

- (a) In an action for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence, whenever the mortgagor enters an appearance in the case or requests mediation prior to four months after judgment is entered, the court shall refer the case to mediation pursuant to this subchapter, except that the court may:
- (1) for good cause, shorten the four-month period or thereafter decline to order mediation; or
- (2) decline to order mediation if the mortgagor requests mediation after judgment has been entered and the court determines that the mortgagor is attempting to delay the case, or the court may for good cause decline to order mediation if the mortgagor requests mediation after judgment has been entered.
- (b) Unless the mortgagee agrees otherwise, all mediation shall be completed prior to the expiration of the redemption period. The redemption period shall not be stayed on account of pending mediation.
- (c) In an action for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence, the mortgagee shall serve upon the mortgagor two copies of the notice described in subsection (d) of this section with the summons and complaint. The supreme court may by rule consolidate this notice with other foreclosure-related notices as long as the consolidation is consistent with the content and format of the notice under this subsection.
 - (d) The notice required by subsection (c) of this section shall:
 - (1) be on a form approved by the court administrator;
- (2) advise the homeowner of the homeowner's rights in foreclosure proceedings under this subchapter;
- (3) state the importance of participating in mediation even if the homeowner is currently communicating with the mortgagee or servicer;
 - (4) provide contact information for legal services; and

- (5) incorporate a form that can be used by the homeowner to request mediation from the court.
- (e) The court may, on motion of a party, find that the requirements of this subchapter have been met and that the parties are not required to participate in mediation under this subchapter if the mortgagee files a motion and establishes to the satisfaction of the court that it has complied with the applicable requirements of HAMP and supports its motion with sworn affidavits that:
- (1) include the calculations and inputs required by HAMP and employed by the mortgagee; and
- (2) demonstrate that the mortgagee or servicer met with the mortgagor in person or via videoconferencing or made reasonable efforts to meet with the mortgagor in person.

§ 4703. MEDIATION

- (a) During all mediations under this subchapter:
- (1) the mortgagee shall use and consider available foreclosure prevention tools, including reinstatement, loan modification, forbearance, and short sale, and the calculations, assumptions, and forms established by the HAMP guidelines, including all HAMP-related "net present value" calculations in considering a loan modification conducted under this subchapter;
- (2) the mortgagee shall produce for the mortgagor and mediator documentation of its consideration of the options available in this subdivision and subdivision (1) of this subsection, including the data used in and the outcome of any HAMP-related "net present value" calculation; and
- (3) where the mortgagee claims that a pooling and servicing or other similar agreement prohibits modification, the mortgagee shall produce a copy of the agreement. All agreement documents shall be confidential and shall not be included in the mediator's report.
- (b) In all mediations under this subchapter, the mortgagor shall make a good faith effort to provide to the mediator 20 days prior to the first mediation, or within a time determined by the mediator to be appropriate in order to allow for verification of the information provided by the mortgagee, information on his or her household income and any other information required by HAMP unless already provided.
- (c) The parties to a mediation under this subchapter shall cooperate in good faith under the direction of the mediator to produce the information required by subsections (a) and (b) of this section in a timely manner so as to permit the mediation process to function effectively.

- (d)(1) The following persons shall participate in any mediation under this subchapter:
- (A) the mortgagee, or any other person, including the mortgagee's servicing agent, who meets the qualifications required by subdivision (2) of this subsection;
 - (B) counsel for the mortgagee; and
 - (C) the mortgagor, and counsel for the mortgagor, if represented.
 - (2) The mortgagee or mortgagee's servicing agent, if present, shall have:
- (A) authority to agree to a proposed settlement, loan modification, or dismissal of the foreclosure action;
- (B) real time access during the mediation to the mortgagor's account information and to the records relating to consideration of the options available in subdivisions (a)(1) and (2) of this section, including the data and factors considered in evaluating each such foreclosure prevention tool; and
- (C) the ability and authority to perform necessary HAMP-related "net present value" calculations and to consider other options available in subdivisions (a)(1) and (2) of this section during the mediation.
- (e) The mediator may permit a party identified in subdivision (d)(1) of this section to participate in mediation by telephone or videoconferencing.
- (f) The mediator may include in the mediation process under this subchapter any other person the mediator determines would assist in the mediation.
- (g) All mediations under this subchapter shall take place in the county in which the foreclosure action is brought pursuant to subsection 4523(a) of this title.

§ 4704. MEDIATION REPORT

- (a) Within seven days of the conclusion of any mediation under this subchapter, the mediator shall report in writing the results of the process to the court and both parties. The mediation report shall be confidential.
- (b) The report required by subsection (a) of this section shall not disclose the mediator's assessment of any aspect of the case or substantive matters discussed during the mediation, except as is required to report the information required by this section. The report shall contain all of the following items:
- (1) The date on which the mediation was held, including the starting and finishing times.

- (2) The names and addresses of all persons attending, showing their role in the mediation and specifically identifying the representative of each party who had decision-making authority.
- (3) A summary of any substitute arrangement made regarding attendance at the mediation.
- (4) All HAMP-related "net present value" calculations and other foreclosure avoidance tool calculations performed prior to or during the mediation and all information related to the requirements in subsection 4703(a) of this title.
- (5) The results of the mediation, stating whether full or partial settlement was reached and appending any agreement of the parties.
- (6)(A) A statement as to whether any person required by subsection (d) of this section to participate in the mediation failed to:
 - (i) attend the mediation;
 - (ii) make a good faith effort to mediate; or
- (iii) supply documentation, information, or data as required by subsections 4703(a)–(c) of this title.
- (B) If a statement is made under subdivision (6)(A) of this subsection (b), it shall be accompanied by a brief description of the applicable reason for the statement.

§ 4705. COMPLIANCE WITH OBLIGATIONS

- (a) Upon receipt of a mediator's report required by subsection 4704(a) of this title, the court shall determine whether the servicer has complied with all of its obligations under subsection 4703(a) of this title, and, at a minimum, with any modification obligations under HAMP.
- (b) If the mediator's report includes a statement under subdivision 4704(b)(6) of this title, or if the court makes a determination of noncompliance with the obligations under subsection 4705(a) of this title, the court may impose appropriate sanctions, including prohibiting the mortgagee from selling or taking possession of the property that is the subject of the action with or without opportunity to cure as the court deems appropriate.
- (c) No mediator shall be required to testify in an action subject to this subchapter.

§ 4706. EFFECT OF MEDIATION PROGRAM ON FORECLOSURE ACTIONS FILED PRIOR TO EFFECTIVE DATE

The court shall, on request of a party prior to judgment or on request of a party and showing of good cause after judgment, require mediation in any foreclosure action on a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence that was commenced prior to the effective date of this subchapter but only up to 30 days prior to the end of the redemption period.

§ 4707. NO WAIVER OF RIGHTS; COSTS OF MEDIATION; EXEMPTIONS

- (a) The parties' rights in a foreclosure action are not waived by their participation in mediation under this subchapter.
- (b) The mortgagee shall pay the required costs for any mediation under this subchapter. The mortgagor shall be responsible for mortgagor's own costs, including the cost of mortgagor's attorney, if any, and travel costs.
- (c) No mortgagee may shift to the mortgagor the costs of the mortgagee's or the servicing agent's attorney's fees or travel costs related to mediation or more than one-half of the costs of the mediator unless judgment in foreclosure is granted, in which case the full cost of the mediation shall be recoverable to the extent there is a surplus after the sale of the property.
- Sec. 5. 12 V.S.A. § 4532a is amended to read:

§ 4532a. NOTICE TO COMMISSIONER OF BANKING, INSURANCE, SECURITIES, AND HEALTH CARE ADMINISTRATION

- (a) At the same time the mortgage holder files an action to foreclose owner occupied, one-to-four-family residential property, the mortgage holder shall file a notice of foreclosure with the commissioner of the department of banking, insurance, securities, and health care administration. The commissioner may require that the notice of foreclosure be sent in an electronic format. The notice of foreclosure shall include:
- (1) the name and, current mailing address, and current telephone number, if any, of the mortgagor;
 - (2) the address of the property being foreclosed;
- (3) the name of the current mortgage holder, along with the address and telephone number of the person or entity responsible for workout negotiations concerning the mortgage;
 - (4) the name of the original lender, if different;

- (5) the name, address, and telephone number of the mortgage servicer, if applicable; and
 - (6) any other information the commissioner may require.
- (b) The court clerk shall not accept a foreclosure complaint for filing without a certification by the plaintiff that the notice of foreclosure has been sent to the commissioner of banking, insurance, securities, and health care administration in accordance with subsection (a) of this section.
- (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.
- (d) The commissioner may disclose the information from the notice of foreclosure to the office of the attorney general.
- Sec. 6. 27 V.S.A. § 305 is amended to read:

§ 305. CONVEYANCES EFFECTED THROUGH POWER OF ATTORNEY

- (a) A deed or other conveyance of lands or of an estate or interest therein, made by virtue of a power of attorney, shall not be of any effect or admissible in evidence, unless such power of attorney is signed, witnessed by one or more witnesses, acknowledged and recorded in the office where such deed is required to be recorded.
- (b) Nothing in subsection (a) of this section shall limit the enforceability of a power of attorney which is executed in another state or jurisdiction in compliance with the law of that state or jurisdiction. This subsection shall apply retroactively, except that it shall not affect a suit begun or pending as of July 1, 2010.
- Sec. 7. 27 V.S.A. § 348 is amended to read:

§ 348. INSTRUMENTS CONCERNING REAL PROPERTY VALIDATED

(a) When an instrument of writing shall have been on record in the office of the clerk in the proper town for a period of 15 years, and there is a defect in the instrument because it omitted to state any consideration therefor or was not sealed, witnessed, acknowledged, validly acknowledged, or because a license to sell was not issued or is defective, the instrument shall, from and after the expiration of 15 years from the filing thereof for record, be valid. Nothing herein shall be construed to affect any rights acquired by grantees, assignees or encumbrancers under the instruments described in the preceding sentence, nor

shall this section apply to conveyances or other instruments of writing, the validity of which is brought in question in any suit now pending in any courts of the state.

* * *

Sec. 8. 12 V.S.A. § 506 is amended to read:

§ 506. JUDGMENTS

Actions on judgments and actions for the renewal or revival of judgments shall be brought by filing a new and independent action on the judgment within eight years after the rendition of the judgment, and not after.

Sec. 9. 12 V.S.A. § 2903 is amended to read:

§ 2903. DURATION AND EFFECTIVENESS

- (a) A judgment lien shall be effective for eight years from the issuance of a final judgment on which it is based except that a petition for foreclosure filed an action to foreclose the judgment lien during the eight-year period shall extend the period until the termination of the foreclosure suit if a copy of the complaint is filed in the land records on or before eight years from the issuance of the final judgment.
- (b) A judgment which is renewed or revived pursuant to section 506 of this title shall constitute a lien on real property for eight years from the issuance of the renewed or revived judgment if recorded in accordance with this chapter.
- (c) Interest on a judgment lien shall accrue at the rate of 12 percent per annum.
- (e)(d) If a judgment lien is not satisfied within 30 days of recording, it may be foreclosed and redeemed as provided in this title and V.R.C.P. 80.1. Unless the court finds that as of the date of foreclosure the amount of the outstanding debt exceeds the value of the real property being foreclosed, section 4531 of this title shall apply to foreclosure of a judgment lien.

Sec. 10. 19 V.S.A. § 1111 is amended to read:

§ 1111. PERMITTED USE OF THE RIGHT-OF-WAY

* * *

(h) Restraining prohibited acts. Whenever the secretary believes that any person is in violation of the provisions of this chapter he or she may also bring an action in the name of the agency in a court of competent jurisdiction against the person to collect civil penalties as provided for in subsection (j) of this section and to restrain by temporary or permanent injunction the continuation or repetition of the violation. The selectmen have the same authority for town

highways. The court may issue temporary or permanent injunctions without bond, and any other relief as may be necessary and appropriate for abatement of any violation. An action, injunction, or other enforcement proceeding by a municipality relating to the failure to obtain or comply with the terms and conditions of any permit issued by a municipality pursuant to this section shall be instituted within 15 years from the date the alleged violation first occurred and not thereafter. The burden of proving the date on which the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

* * *

Sec. 11. 14A V.S.A. § 102 is amended to read:

§ 102. SCOPE

- (a) 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 Except as provided in subsection (b) of this section, 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 chapter 7 of Title 27, chapter 11 of Title 28, chapter 16 of Title 29, and chapters 84 and 91 of Title 30.
- (b) Section 1013 of this title (certification of trust) shall apply to all trusts described in subsection (a) of this section.

Sec. 12. EFFECTIVE DATE

- (a) Secs. 1–5 and 13 of this act shall take effect on July 1, 2010.
- (b) This section and Secs. 6–11 of this act shall take effect upon passage.

Sec. 13. SUNSET

Secs. 1, 2, 3, 4, and 5 of this act shall be repealed on the same day as the expiration date of the federal Home Affordability Modification Program ("HAMP").

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, and third reading of the bill was ordered.

Proposals of Amendment; Consideration Interrupted by Recess H. 783.

Senator Cummings, for the Committee on Finance, to which was referred House bill entitled:

An act relating to miscellaneous tax provisions.

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

<u>First</u>: By striking out Sec. 1 in its entirety (tax expenditure report).

<u>Second</u>: By striking out Sec. 9 in its entirety (VAST trails).

<u>Third</u>: By striking out Sec. 13 in its entirety and inserting in lieu thereof a new Sec. 13 to read as follows:

Sec. 13. 32 V.S.A. § 9605(a) is amended to read:

(a) The tax imposed by this chapter shall be paid to a town clerk the commissioner at the time of the delivery to that clerk for recording of a deed evidencing a transfer of title to property subject to the tax.

<u>Fourth</u>: By striking out Sec. 16 in its entirety and inserting in lieu thereof a new Sec. 16 to read as follows:

Sec. 16. 32 V.S.A. § 9608(a) is amended to read:

(a) Except as to transfers which are exempt pursuant to subdivision 9603(17) of this title, no town clerk shall record, or receive for recording, any deed to which has not been affixed an acknowledgment of return and tax payment under section 9607 of this title and a certificate in the form prescribed by the land use panel of the natural resources board and the commissioner of the department of taxes signed under oath by the seller or the seller's legal representative, that the conveyance of the real property and any development thereon by the seller is in compliance with or exempt from the provisions of chapter 151 of Title 10. The certificate shall indicate whether or not the conveyance creates the partition or division of land. If the conveyance creates a partition or division of land, there shall be appended the current "Act 250 Disclosure Statement," required by 10 V.S.A. § 6007. A town clerk who violates this section shall be fined \$50.00 for the first such offense and \$100.00 for each subsequent offense. A person who purposely or knowingly falsifies any statement contained in the certificate required is punishable by fine of not more than \$500.00 or imprisonment for not more than one year, or both.

<u>Fifth</u>: By striking out Secs. 19–24 in their entirety and inserting in lieu thereof the following:

Sec. 19. 32 V.S.A. § 6061(5) is amended to read:

- (5) "Modified adjusted gross income" means "federal adjusted gross income":
- (A) before the deduction of any trade or business loss, loss from a partnership, loss from a small business or "subchapter S" corporation, loss from a rental property, or capital loss, except that in the case of a business which sells a business property with respect to which it is required, under the Internal Revenue Code, to report a capital gain, a business loss incurred in the same tax year with respect to the same business may be netted against such capital gain;
- (B) with the addition of the following, to the extent not included in adjusted gross income: alimony, support money other than gifts, gifts received by the household in excess of a total of \$6,500.00 in cash or cash-equivalents, cash public assistance and relief (not including relief granted under this subchapter), cost of living allowances paid to federal employees, allowances received by dependents of servicemen and women, the portion of Roth IRA distributions representing investment earnings and not included in adjusted gross income, railroad retirement benefits, payments received under the federal Social Security Act, and all benefits under Veterans' Acts, and federal pension and annuity benefits not included in adjusted gross income; nontaxable interest received from the state or federal government or any of its instrumentalities, workers' compensation, the gross amount of "loss of time" insurance, and the amount of capital gains excluded from adjusted gross income, less the net employment and self-employment taxes withheld from or paid by the individual (exclusive of any amounts deducted to arrive at adjusted gross income or deducted on account of excess payment of employment taxes) on account of income included under this section, less any amounts paid as child support money if substantiated by receipts or other evidence that the commissioner may require; and
- (C) without the inclusion of: any gifts from nongovernmental sources other than those described in subdivision (B) of this subdivision (5); surplus food or other relief in kind supplied by a governmental agency; or the first \$6,500.00 of income earned by a full-time student who qualifies as a dependent of the claimant under the federal Internal Revenue Code; the first \$6,500.00 of income received by a person who qualifies as a dependent of the claimant under the Internal Revenue Code and who is the claimant's parent or disabled adult child; or payments made by the state pursuant to chapters 49 and 55 of Title 33 for foster care, or payments made by the state or an agency designated in section 18 V.S.A. § 8907 of Title 18 for adult foster care or to a family for the support of an eligible person with a developmental disability. If

the commissioner determines, upon application by the claimant, that a person resides with a claimant who is disabled or was at least 62 years of age as of the end of the year preceding the claim, for the primary purpose of providing attendant care services (as defined in section 33V.S.A. § 6321 of Title 33) or homemaker or companionship services, with or without compensation, which allow the claimant to remain in his or her home or avoid institutionalization, the commissioner shall exclude that person's modified adjusted gross income from the claimant's household income. The commissioner may require that a certificate in a form satisfactory to the commissioner be submitted which supports the claim; and

- (D) with the addition of an asset adjustment of two times the sum of interest and dividend income above \$5,000.00, regardless of whether that dividend or interest income is included in adjusted gross income.
- Sec. 20. 32 V.S.A. § 6061(4), (5), and (7) are amended to read:
- (4) "Household income" means modified adjusted gross income, but not less than zero, received in a calendar year by:
- (5) "Modified adjusted gross income" means "federal adjusted gross income":
- (A) before the deduction of any trade or business loss, loss from a partnership, loss from a small business or "subchapter S" corporation, loss from a rental property, or capital loss, except that in the case of a business which sells a business property with respect to which it is required, under the Internal Revenue Code, to report a capital gain, a business loss incurred in the same tax year with respect to the same business may be netted against such capital gain;
- (B) with the addition of the following, to the extent not included in adjusted gross income: alimony, support money other than gifts, gifts received by the household in excess of a total of \$6,500.00 in cash or cash-equivalents, cash public assistance and relief (not including relief granted under this subchapter), cost of living allowances paid to federal employees, allowances received by dependents of servicemen and women, the portion of Roth IRA distributions representing investment earnings and not included in adjusted gross income, railroad retirement benefits, payments received under the federal Social Security Act, all benefits under Veterans' Acts, federal pension and annuity benefits not included in adjusted gross income; nontaxable interest received from the state or federal government or any of its instrumentalities, workers' compensation, the gross amount of "loss of time" insurance, amounts deducted pursuant to 26 U.S.C. § 199, and the amount of capital gains excluded from adjusted gross income, less the net employment and self-employment taxes withheld from or paid by the individual (exclusive of any

amounts deducted to arrive at adjusted gross income or deducted on account of excess payment of employment taxes) on account of income included under this section, less any amounts paid as child support money if substantiated by receipts or other evidence that the commissioner may require; and

* * *

- (7) "Rent constituting property taxes" "Allocable rent" means for any housesite and for any taxable year, at the claimant's option, (A) 21 percent of the gross rent or (B) that portion of the gross rent which equals the property tax assessed for payment in the calendar year allocable to the claimant's rental unit for the period rented by the claimant. "Gross rent" means the rent actually paid during the taxable year by the individual or other members of the household solely for the right of occupancy of the housesite during the taxable year. If a claimant's rent is government subsidized, the property tax allocable to the claimant's rental unit shall be reduced in the same proportion as the rent is reduced by the subsidy. "Rent constituting property taxes" "Allocable rent" shall not include payments made under a written homesharing agreement pursuant to a nonprofit homesharing program, or payments for a room in a nursing home in any month for which Medicaid payments have been made on behalf of the claimant to the nursing home for room charges.
- Sec. 21. 32 V.S.A. § 6066(a) is amended to read:
- (a) An eligible claimant who owned the homestead on April 1 of the year in which the claim is filed shall be entitled to an adjustment amount determined as follows:
 - (1)(A) For a claimant with household income of \$90,000.00 or more:
- (i) the statewide education tax rate, multiplied by the equalized value of the housesite in the taxable year;
 - (ii) minus (if less) the sum of:

* * *

(D) A claimant whose household income does not exceed \$90,000.00 shall also be entitled to an additional adjustment amount under this section of \$10.00 per acre, up to a maximum of five acres, for each additional acre of homestead property in excess of the two-acre housesite. The adjustment amount under this section shall be shown separately on the notice of property tax adjustment to the claimant.

* * *

- (4) <u>Credit limitation.</u> In no event shall the credit <u>provided for in subdivision (3) of this subsection</u> exceed the amount of the reduced property tax.
- Sec. 22. 32 V.S.A. § 6069 is amended to read:
- § 6069. LANDLORD CERTIFICATE
- (a) Upon written request by a tenant before January 1, the owner of the rental unit shall provide to that tenant, by January 31, a certificate of rent constituting property tax for the preceding calendar year, which shall include a certificate of property tax allocable to the rental unit indicating the proportion of total property tax on that unit or parcel which was assessed for municipal property tax, for local share property tax and for statewide property tax.
- (b)(a) By January 31 of each year, the owner of land rented as a portion of a homestead in the prior calendar year shall furnish a certificate of rent to each claimant who owned a portion of the homestead and rented that land as a portion of a homestead in the prior calendar year. The certificate shall indicate the proportion of total property tax on that parcel which was assessed for municipal property tax, for local share property tax and for statewide property tax.
- (e)(b) The owner of each rental property consisting of more than four one rented homestead shall, not later than January 31 of each year, furnish a certificate of rent to each person who rented a homestead from the owner at any time during the preceding calendar year. All other owners of rented homestead units shall furnish such certificate upon request of the renter. If a renter moves prior to December 31, the owner may either provide the certificate to the renter at the time of moving or mail the certificate to the forwarding address if one has been provided by the renter or in the absence of a forwarding address, to the last known address. An owner is not required to furnish a certificate under this section to a tenant who, at the time he or she entered into the rental agreement, or any later date, signed a waiver of the right to receive the certificate. The waiver shall not be a part of any written lease, but shall be a separate document. The tenant may revoke the written waiver at any time by providing the owner with written notice of the revocation. An owner shall not demand or require a tenant to sign a waiver as a condition of entering into or continuing a rental agreement. An owner shall not charge a higher rent, change any other condition of a rental agreement, or terminate a rental agreement because a tenant has failed or refused to sign a waiver or has revoked a waiver previously signed.
- (d)(c) A certificate under this section shall be in a form prescribed by the commissioner and shall include the name of the renter, the address and any property tax parcel identification number of the homestead, notice of the

requirements for eligibility for the property tax adjustment provided by this chapter, and any additional information which the commissioner determines is appropriate.

- (e)(d)(1) An owner who knowingly fails to furnish a certificate to a renter as required by this section shall be liable to the commissioner for a penalty of \$100.00 \$200.00 for each failure to act. An owner shall be liable to the commissioner for a penalty equal to the greater of \$100.00 \$200.00 or the excess amount reported who:
- (1)(A) willfully furnishes a certificate that reports total rent constituting property taxes allocable rent in excess of the actual amount paid; or
- (2)(B) reports a total amount of rent constituting property taxes allocable rent that exceeds by ten percent or more the actual amount paid.
- (2) Penalties under this subsection shall be assessed and collected in the manner provided in chapter 151 for the assessment and collection of the income tax.
- (f)(e) Failure to receive a rent certificate shall not disqualify a renter from the benefits provided by this chapter.

Sec. 23. STATUTORY REVISION

The legislative council is directed to revise the Vermont Statutes Annotated to reflect the change from "rent constituting property taxes" to "allocable rent."

Sec. 24. FISCAL YEAR 2011 EDUCATION PROPERTY TAX RATE

- (a) For fiscal year 2011 only, the education property tax imposed under 32 V.S.A. § 5402(a) 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 \$1.37 per \$100.00; and
- (2) the tax rate for homestead property shall be \$0.88 multiplied by the district spending adjustment for the municipality per \$100.00 of equalized property value as most recently determined under 32 V.S.A. § 5405.
- (b) For claims filed in 2011 only, "applicable percentage" in 32 V.S.A. § 6066(a)(2) shall be reduced from 2.0 percent and instead shall be 1.8 percent multiplied by the fiscal year 2011 district spending adjustment for the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than 1.8 percent.

<u>Sixth</u>: By striking out Secs. 27 and 28 in their entirety (capital gains).

<u>Seventh</u>: By adding a new section to be numbered Sec. 31A immediately after the heading "* * Petroleum Cleanup Fund * * *" to read as follows:

Sec. 31A. 10 V.S.A. § 1941(b)(1)(A) is amended to read:

(A) an underground storage tank defined as a category one tank after the first \$10,000.00 of the cleanup costs have been borne by the owners or operators of tanks used for commercial purposes, or after the first \$250.00 of the cleanup costs have been borne by the owners or operators of tanks with capacities equal to or less than 1,100 gallons used for farms or residential purposes. Disbursements on any site shall not exceed \$990,000.00 \$1,240,000.00. These disbursements shall be made from the motor fuel account;

<u>Eighth</u>: By striking out Secs. 34, 35, 36, and 37 in their entirety (state collection of education property tax; education finance study; tax on nonprescription dietary supplements).

<u>Ninth</u>: By striking out Secs. 41 and 42 in their entirety and inserting in lieu thereof the following:

Sec. 41. 32 V.S.A. chapter 151, subchapter 11M is added to read:

Subchapter 11M. Machinery and Equipment Investment Tax Credit

§ 593011. MACHINERY AND EQUIPMENT TAX CREDIT

- (a) Definitions.
- (1) "Full-time job" has the same meaning as defined in subdivision 5930b(a)(9) of this title.
- (2) "Investment period" means the period commencing January 1, 2010, and ending December 31, 2014.
- (3) "Qualified capital expenditures" means expenditures properly chargeable to a capital account by a qualified taxpayer during the investment period, totaling at least \$20 million for machinery and equipment to be located and used in Vermont for creating, producing, or processing tangible personal property for sale.
 - (4) "Qualified taxpayer" means a taxpayer that:
- (A) is an existing business on January 1, 2010 with an aggregate average annual employment, including all employees of its related business units with which it files a combined or consolidated return for Vermont income tax purposes, during the investment period of no fewer than 200 full-time jobs in Vermont;

- (B) is a taxable corporation under Subchapter C of the Internal Revenue Code;
- (C) is a business whose operations at the time of application to the Vermont economic progress council are located in a Rural Economic Area Partnership (REAP) zone designated by the United States Department of Agriculture Rural Development Authority, engaged primarily in the creation, production, or processing of tangible personal property for sale; and
- (D) proposes to make qualified capital expenditures in a Vermont REAP zone and such expenditures will contribute substantially to the REAP zone's economy.
- (5) "Qualified taxpayer's Vermont income tax liability" means the corporate income tax otherwise due on the qualified taxpayer's Vermont net income after reduction for any Vermont net operating loss as provided for under section 5382 of this title. For a qualified taxpayer that is a member of an affiliated group and that is engaged in a unitary business with one or more other members of that affiliated group, its Vermont net income includes the allocable share of the combined net income of the group.

(b) Certification.

- (1) A qualified taxpayer may apply to the Vermont economic progress council for a machinery and equipment investment tax credit certification for all qualified capital expenditures in the investment period on a form prescribed by the council for this purpose.
- (2) The council shall issue a certification upon determining that the applicant meets the requirements set forth in subsection (a) of this section.
- (c) Amount of credit. Except as limited by subsections (e) and (f) of this section, a qualified taxpayer shall be entitled to claim against its Vermont income tax a credit in an amount equal to ten percent of the total qualified capital expenditures.

(d) Availability of credit.

(1) The credit earned under this section with respect to qualified capital expenditures shall be available to reduce the qualified taxpayer's Vermont income tax liability for its tax year beginning on or after January 1, 2012, or, if later, the first tax year within which the qualified taxpayer's aggregate qualified capital expenditures exceed \$20,000,000.00. A taxpayer claiming a credit under this subchapter shall submit with the first return on which a credit is claimed a copy of the qualified taxpayer's certification from the Vermont economic progress council.

(2) The credit may be used in the year earned or carried forward to reduce the qualified taxpayer's Vermont income tax liability in succeeding tax years ending on or before December 31, 2026.

(e) Limitations.

- (1) The credit earned under this section, either alone or in combination with any other credit allowed by this chapter, may not be applied to reduce the qualified taxpayer's Vermont income tax liability in any one year by more than 80 percent, and in no event shall the credit reduce the taxpayer's income tax liability below any minimum tax imposed by this chapter.
- (2) The total amount of credit authorized under this section shall be \$8,000,000.00 and in no event shall the credit in any one tax year exceed \$1,000,000.00. The credit shall be available on a first-come first-served basis by certification of the Vermont economic progress council pursuant to subsection (b) of this section.

(f) Recapture.

- (1) A qualified taxpayer who has earned credit under this section with respect to its qualified capital expenditures shall notify the Vermont economic progress council in writing within 60 days if the taxpayer's trade or business is substantially curtailed in any calendar year prior to December 31, 2023.
- (2) A qualified taxpayer's business shall be considered to be substantially curtailed when the average number of the taxpayer's full-time jobs in Vermont for any calendar year prior to December 31, 2023, is less than 60 percent of the highest average number of its full-time jobs in Vermont for any calendar year in the investment period. For purposes of the preceding calculation, the qualified taxpayer's full-time jobs in Vermont shall include all full-time jobs of its related business units with which it files a combined or consolidated return for Vermont income tax purposes. A business shall not be considered to be substantially curtailed when the assets of the business have been sold but the business continues to be located in Vermont provided that the employment test of this subdivision is met.
- (3) In the event that a qualified taxpayer has substantially curtailed its trade or business, then:
- (A) the credit certification for such tax year and all succeeding tax years of the taxpayer shall be terminated;
- (B) any credit previously earned and carried forward shall be disallowed; and

(C) any credit which has been previously used by the taxpayer to reduce its Vermont income tax liability shall be subject to recapture in accordance with the following table:

Years between the close of the tax year	Percent of	credits	to	be
when credit was earned and year when	<u>repaid (%):</u>			
business was substantially curtailed:	2			

2 or less	<u>100</u>
More than 2, up to 4	<u>80</u>
More than 4, up to 6	<u>60</u>
More than 6, up to 8	<u>40</u>
More than 8, up to 10	<u>20</u>
More than 10	<u>0</u>

- (4) The recapture shall be reported on the income tax return of the taxpayer who claimed the credit for the tax year in which the taxpayer's trade or business was substantially curtailed, or the commissioner may assess the recapture in accordance with the assessment and appeal provisions provided for in subchapter 8 of this chapter.
- (5) Within 60 days of the close of the qualified taxpayer's tax year in which the taxpayer's trade or business was substantially curtailed, the taxpayer may petition the commissioner for a reduction in the amount of the credit subject to recapture and the disallowance of credit previously earned and carried forward. The commissioner shall hold a hearing within 45 days of the receipt of the taxpayer's petition. The commissioner shall have the discretion to reduce the amount of the credit subject to recapture and disallowance upon a showing of circumstances that contributed to the substantial curtailment of the taxpayer's trade or business. The decision of the commissioner shall be final and shall not be subject to judicial review.

(g) Reporting.

- (1) Any qualified taxpayer who has been certified under subsection (b) of this section shall file a report with the Vermont economic progress council on a form prescribed by the council for this purpose and provide a copy of the report to the commissioner of the department of taxes.
- (2) The report shall be filed for each year following the certification until the year following the last year the taxpayer claims the credit to reduce its Vermont income tax liability, or 2027, whichever occurs first.
- (3) The report shall be filed by February 28 each year for activity the previous calendar year and include, at a minimum:

- (A) The number of full-time jobs in each quarter and the average number of hours worked per week.
- (B) The level of qualifying capital investments made if reporting on a year within an investment period; and
- (C) The amount of tax credit earned and applied during the previous calendar year.

Sec. 42. REPEAL

Subchapter 11M of chapter 151 of Title 32 is repealed July 1, 2026, and no credit under that section shall be available for any taxable year beginning after June 30, 2026; provided, however, that if no qualified capital expenditures are made during the investment period, both terms as defined in 32 V.S.A. § 5930ll(a) of this act, the subchapter shall be repealed effective January 1, 2015.

<u>Tenth</u>: By striking out Secs. 43, 44, 45, and 46 in their entirety (homestead appeal and one-time declaration).

<u>Eleventh</u>: By striking out Sec. 47 in its entirety and inserting in lieu thereof a new Sec. 47 to read as follows:

Sec. 47. 20 V.S.A. § 1548 is added to read:

§ 1548. VERMONT VETERANS' FUND

- (a) There is created a special fund to be known as the Vermont veterans' fund. This fund shall be administered by the state treasurer and shall be paid out in grants on the recommendations of a seven-member committee comprised of:
 - (1) The adjutant general or designee;
 - (2) The Vermont veterans home administrator or designee;
 - (3) The commissioner of the department of labor or designee;
 - (4) The secretary of the agency of human resources or designee;
 - (5) The commissioner of buildings and general services or designee;
- (6) The director of the White River Junction VA medical center or designee; and
- (7) The director of the White River Junction VA benefits office, or designee.
- (b) The purpose of this fund shall be to provide grants or other support to individuals and organizations:

- (1) For the long-term care of veterans.
- (2) To aid homeless veterans.
- (3) For transportation services for veterans.
- (4) To fund veterans' service programs.
- (c) The Vermont veterans' fund shall consist of revenues paid into it from the Vermont veterans' fund checkoff established in 32 V.S.A. § 5862e and from any other source.
- (d) For purposes of this section, "veteran" means a resident of Vermont who served on active duty in the United States armed forces or the Vermont national guard or Vermont air national guard and who received an honorable discharge.

<u>Twelfth</u>: By adding 11 new sections to be numbered Secs. 48A-48K to read as follows:

* * * Campaign Finance Checkoff * * *

Sec. 48A. REPEAL

32 V.S.A. § 5862c (providing for a checkoff on Vermont income tax returns for the Vermont campaign fund) is repealed effective for taxable years beginning on and after January 1, 2010.

* * * Transferability of Downtown Tax Credits * * *

Sec. 48B. 32 V.S.A. § 5930dd(f) is added to read:

(f) In lieu of using a tax credit to reduce its own tax liability, an applicant may request the credit in the form of an insurance credit certificate that an insurance company may accept in return for cash and for use in reducing its tax liability under subchapter 7 of chapter 211 of this title in the first tax year in which the qualified building is placed back in service after completion of the qualified project or in the subsequent nine years. The amount of the insurance credit certificate shall equal the unused portion of the credit allocated under this subchapter, and an applicant requesting an insurance credit certificate shall provide to the state board a copy of any returns on which any portion of the allocated credit under this section was claimed.

Sec. 48C. 32 V.S.A. § 5930ff is amended to read:

§ 5930ff. RECAPTURE

If, within five years after completion of the qualified project, either of the following events occurs, the applicant shall be liable for a recapture penalty in an amount equal to the total tax credit claimed plus an amount equal to any

value received from a bank for a bank <u>or insurance</u> credit certificate; and any credit allocated but unclaimed shall be disallowed to the applicant:

* * *

* * * Rutland-Clarendon Municipal Agreement * * *

Sec. 48D. REPEAL

No. M-4 of 1981 of the Acts of 1981 (relating to the agreement between Rutland City and Clarendon) is repealed effective upon passage of this act.

* * * Property Tax Exemption for Certain Skating Rinks * * *

Sec. 48E. Sec. 40 of No. 190 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

Sec. 40. EDUCATION PROPERTY TAX EXEMPTION FOR SKATING RINKS USED FOR PUBLIC SCHOOLS

Real and personal property operated as a skating rink, owned and operated on a nonprofit basis but not necessarily by the same entity, and which, in the most recent calendar year, provided facilities to local public schools for a sport officially recognized by the Vermont Principals' Association shall be exempt from education property taxes for fiscal years 2009 and, 2010, and 2011 only.

* * *Current Use Advisory Board * * *

Sec. 48F. CURRENT USE ADVISORY BOARD USE VALUE CALCULATION

The current use advisory board established pursuant to 32 V.S.A. § 3753 has provided to the general assembly a document entitled" Methodology and Criteria used in the Determination of Vermont's Use Values for the Current Use Program" and dated April 12, 2010. The general assembly hereby deems that as of the date of passage of this act the document shall have the force and effect of administrative rules adopted pursuant to chapter 25 of Title 3 of the Vermont Statutes Annotated. The document shall be filed no later than July 1, 2010, as an adopted rule with the secretary of state and the legislative committee on administrative rules and any proposed changes to the methodology or criteria as set forth in the document shall be subject to all of the provisions of chapter 25 of Title 3.

Sec. 48G. 32 V.S.A. § 7771 is amended to read:

§ 7771. RATE OF TAX

- (a) A tax is imposed on all cigarettes, little cigars, and roll-your-own tobacco held in this state by any person for sale, unless such products shall be:
 - (1) in the possession of a licensed wholesale dealer;

- (2) in the course of transit and consigned to a licensed wholesale dealer or retail dealer; or
- (3) in the possession of a retail dealer who has held the products for 24 hours or less.
- (b) Payment of the tax on cigarettes under this subsection section shall be evidenced by the affixing of stamps to the packages containing the cigarettes. Where practicable, the commissioner may also require that stamps be affixed to packages containing little cigars or roll-your-own tobacco. Any cigarette, little cigar, or roll-your-own tobacco on which the tax imposed by this subsection section has been paid, such payment being evidenced by the affixing of such stamp or such evidence as the commissioner may require, shall not be subject to a further tax under this chapter. Nothing contained in this chapter shall be construed to impose a tax on any transaction the taxation of which by this state is prohibited by the constitution of the United States. The amount of taxes advanced and paid by a licensed wholesale dealer or a retail dealer as herein provided shall be added to and collected as part of the retail sale price on the cigarettes, little cigars, or roll-your-own tobacco.
- (b)(c) A tax is also imposed on all cigarettes, little cigars, and roll-your-own tobacco possessed in this state by any person for any purpose other than sale, as follows:
 - (1) This tax shall not apply to:
 - (A) products bearing a stamp affixed pursuant to this chapter; or
- (B) products bearing a tax stamp affixed pursuant to the laws of another jurisdiction with a tax rate equal to or greater than the rate set forth in subsection (c) of this section; or
- (C) products purchased outside the state by an individual in quantities of 400 or fewer cigarettes, little cigars, and 0.09 0.0325 ounce units of roll-your-own tobacco, and brought into the state for that individual's own use or consumption. Products that are ordered from a source outside the state and delivered into this state are not "purchased outside the state" within the meaning of this subsection.
- (2) There is allowed a credit against the tax under this subsection for cigarette, little cigars, or roll-your-own tobacco tax paid to another jurisdiction and evidenced by tax stamps affixed to the subject products pursuant to the laws of that jurisdiction.
- (3) A person taxable under this subsection section shall, within 30 days of first possessing the products in this state, file a return with the commissioner, showing the quantity of products brought into the state. The

return must be made in the form and manner prescribed by the commissioner and be accompanied by remittance of the tax due.

(e)(d) The tax imposed under this section shall be at the rate of 112 mills per cigarette or little cigar and for each $0.09 \ 0.0325$ 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. 48H. 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 is intended to be imposed only once upon the wholesale sale of any tobacco product and shall be at the rate of 92 percent of the wholesale price for all tobacco products except snuff, which shall be taxed at \$1.66 \$1.87 per ounce, or fractional part thereof, and new smokeless tobacco, which shall be taxed at the greater of \$1.66 \$1.87 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 \$2.24 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. 48I. 32 V.S.A. § 7814 is amended to read:

§ 7814. FLOOR STOCK TAX

(a) Snuff <u>and new smokeless tobacco</u>. A floor stock tax is hereby imposed upon every retailer of snuff <u>or new smokeless tobacco</u> in this state in the amount by which the new tax exceeds the amount of the tax already paid on the snuff <u>or new smokeless tobacco</u>. The tax shall apply to snuff <u>and new smokeless tobacco</u> in the possession or control of the retailer at 12:01 a.m. <u>o'clock</u> on July 1, <u>2006</u>, <u>following enactment of this act</u> but shall not apply to

retailers who hold less than \$500.00 in wholesale value of such snuff and new smokeless tobacco. Each 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 snuff 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 August 25, 2006 July 25 following enactment of this act, and thereafter shall bear interest at the rate established under section 32 V.S.A. § 3108 of this title. In case of timely payment of the tax, the retailer may deduct from the tax due two percent of the tax. Any snuff or new smokeless tobacco with respect to which a floor stock tax has been imposed and paid under this section shall not again be subject to tax under section 7811 of this title.

Cigarettes, little cigars, or roll Roll-your-own (b) Notwithstanding the prohibition against further tax on stamped cigarettes, little eigars, or roll-your-own tobacco under section 7771 of this title, a floor stock tax is hereby imposed upon every dealer of eigarettes, little eigars, or roll-your-own tobacco in this state who is either a wholesaler, or a retailer who at 12:01 a.m. on July 1 following enactment of this act, has more than 10,000 eigarettes 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 the roll-your-own tobacco in the possession or control of the wholesaler or retailer at 12:01 a.m. on July 1 following enactment of this act, and on which cigarette stamps have been affixed before July 1 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. on July 1 following enactment of this act, and not yet affixed to a cigarette package, and the tax shall be at the rate of \$0.25 per stamp. Each wholesaler and retailer subject to the tax shall, on or before July 25 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. on July 1 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 following enactment of this act, and thereafter shall bear interest at the rate established under section 32 V.S.A. § 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 eigarettes, little eigars, 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.

Sec. 48J. 32 V.S.A. § 5402b(b) is amended to read:

§ 5402B. STATEWIDE EDUCATION TAX RATE ADJUSTMENTS

(b) If the commissioner makes a recommendation to the general assembly to adjust the education tax rates under section 5402 of this title, the commissioner shall also recommend a proportional adjustment to the applicable percentage base and for homestead income-based adjustments under section 6066 of this title, but the applicable percentage base shall not be The commissioner shall include in the adjusted below 1.8 percent. recommendation specific information on the total amount of annual education property tax adjustments, the percentage of Vermont households that are provided an education property tax adjustment or renter rebate based on household income, and the dollar limitations that are used for each of the computations under this chapter. Based on the foregoing information, the commissioner shall make a recommendation regarding the dollar limitations provided for in statute and whether such limitations should be increased or decreased in order to maintain the same percentage level of households from the previous fiscal year that are eligible for an education property tax adjustment or renter rebate based on household income.

Sec. 48K. 32 V.S.A. § 5402b(b) is amended to read:

§ 5402B. STATEWIDE EDUCATION TAX RATE ADJUSTMENTS

(b) If the commissioner makes a recommendation to the general assembly to adjust the education tax rates under section 5402 of this title, the commissioner shall also recommend a proportional adjustment to the applicable percentage base and for homestead income-based adjustments under section 6066 of this title, but the applicable percentage base shall not be adjusted below 1.8 percent. The commissioner shall include in the recommendation specific information on the total amount of annual education property tax adjustments, the percentage of Vermont households that are provided an education property tax adjustment or renter rebate based on household income, and the dollar limitations that are used for each of the computations under this chapter. Based on the foregoing information, the commissioner shall make a recommendation regarding the dollar limitations provided for in statute and whether such limitations should be increased or decreased in order to maintain the same percentage level of households from the previous fiscal year that are eligible for an education property tax adjustment or renter rebate based on household income.

<u>Thirteenth</u>: By striking out Sec. 49 in its entirety and inserting in lieu thereof a new Sec. 49 to read as follows:

Sec. 49. EFFECTIVE DATES

This act shall take effect upon passage, except:

- (1) Sec. 3 (collection assistance fees) shall apply to fees assessed on or after July 1, 2010.
- (2) Sec. 5 (local option tax administration fee) shall apply to all returns filed with the department on or after July 1, 2010.
- (3) Sec. 7 (Vermont economic growth incentive recapture) shall take effect retroactively on January 1, 2010.
- (4) Secs. 11–15 (property transfer tax) shall apply to transfers occurring on or after January 1, 2011.
- (5) Secs. 17 and 19 (definition of modified adjusted gross income; computation) shall apply to homestead property tax adjustments claims made in 2010 and after and shall apply to renter rebate claims made in 2011 and after.
- (6) Secs. 18 and 20 (definitions of household income, modified adjusted gross income, and allocable rent; landlord certificate) shall apply to property tax adjustment and renter rebate claims made in 2011 and after.
- (7) Sec. 23 (estate tax petition for refund) shall apply to decedents dying after December 31, 2009.
- (8) Sec. 25 (link to Internal Revenue Code) shall apply to taxable years beginning on and after January 1, 2009.
- (9) Sec. 27 (compensating use tax percentage) shall apply to taxable years beginning on and after January 1, 2010.
- (10) Sec. 28 (increasing the per-site disbursement cap) shall apply to any remediation currently in progress and all future remediation.
 - (11) Sec. 29 (petroleum cleanup fund) shall take effect on July 1, 2010.
- (12) Sec. 30 (fuel gross receipts tax) shall apply to sales of fuels on or after July 1, 2010.
- (13) Sec. 31 (add-back of one-third of production activity deduction) shall apply to tax years beginning on and after January 1, 2010, and before January 1, 2012.
- (14) Sec. 32 (full flow-through of production activity deduction) shall apply to tax years beginning on and after January 1, 2012.
- (15) Sec. 34 (machinery and equipment investment tax credit) shall apply to taxable years beginning on and after January 1, 2012.

- (16) Sec. 37 (income tax return checkoff for Vermont veterans' fund) shall apply to income tax returns for taxable years 2010 and after.
- (17) Secs. 39 and 40 of this act (insurance credit certificates) shall take effect upon passage and shall apply to tax years beginning on or after January 1, 2010.
 - (18) Secs. 43–45 (tobacco taxes) shall take effect on July 1, 2010.
 - (19) Sec. 48K shall take effect on April 15, 2011.

And by renumbering all sections and cross-references to be numerically correct.

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

Senator Shumlin Assumes the Chair

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Finance?, Senator Racine requested that the *fifth* proposal of amendment with respect to Sec. 24 be voted on separately.

Which was agreed to.

Senator Mazza Assumes the Chair

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance in the *first* through *fourth*, *fifth* (*Secs.* 19-23) and *sixth* through *thirteenth* proposals of amendment?, on motion of Senator Campbell the Senate recessed until 1:00 P.M.

Called to Order

At 1:00 P.M. the Senate was called to order by the President *pro tempore*.

Consideration Resumed; Proposals of Amendment; Third Reading Ordered

H. 783.

Consideration was resumed on Senate bill entitled:

An act relating to miscellaneous tax provisions.

Thereupon, pending the question Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance in the *first* through *fourth*, *fifth* (Secs. 19-23), and *sixth* through *thirteenth* proposals of amendment?, Senator Flory moved to strike out the *third* and *fourth* proposals of amendment of the Committee on Finance.

Thereupon, pending the question, Shall the proposal of amendment of the Committee on Finance be amended as recommended by Senator Flory?, Senator Cummings requested and was granted leave to withdraw the *third* and *fourth* proposals of amendment of the Committee on Finance.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance in the *first*, *second*, *fifth* (*Secs.* 19-23), and *sixth* through *thirteenth* proposals of amendment?, Senator Sears requested that the *tenth* proposal of amendment be voted on separately, which 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 in the *first*, *second*, *fifth* (*Secs. 19-23*), *sixth* through *ninth* and *eleventh* through *thirteenth* proposals of amendment?, Senator Kittell requested that the *twelfth* proposal of amendment with respect to Sec. 48F be voted on separately, which was agreed to.

Thereupon, the pending question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance in the *first*, second, fifth (Secs. 19-23), sixth through ninth, eleventh, twelfth (Secs. 48A-48E and Secs. 48G-48K) and thirteenth proposals of amendment?, were collectively agreed to.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance in the *fifth* proposal of amendment with respect to Sec. 24?, Senator Cummings, on behalf of the Committee on Finance, moved to amend its *fifth* proposal of amendment in Sec. 24(a)(1), by striking out the figure "\$1.37" and inserting in lieu thereof the figure \$1.36, and in Sec 24(a)(2) by striking out the figure "\$0.88" and inserting in lieu thereof the figure 0.87

Which was agreed to.

Thereupon, the pending question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance in the *fifth* proposal of amendment with respect to Sec. 24, as amended?, was decided in the affirmative on a roll call, Yeas 22, Nays 6.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, Miller, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: Brock, Flanagan, Flory, McCormack, Nitka, Racine.

Those Senators absent or not voting were: Mullin, Shumlin (presiding).

President Assumes the Chair

Thereupon, the pending question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance in the *twelfth* (Sec. 48F) proposal of amendment?, Senator Cummings requested and was granted leave to withdraw the *twelfth* (Sec. 48F) proposal of amendment of the Committee on Finance.

Thereupon, the pending question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance in the *tenth* proposal of amendment?, was decided in the affirmative on a roll call, Yeas 16, Nays 13.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Bartlett, Carris, Cummings, Doyle, Flanagan, Giard, Hartwell, MacDonald, McCormack, Nitka, Racine, Scott, Snelling, White.

Those Senators who voted in the negative were: Brock, Campbell, Choate, Flory, Illuzzi, Kitchel, Kittell, Lyons, Mazza, Miller, Sears, Shumlin, Starr.

The Senator absent and not voting was: Mullin.

Thereupon, pending the question, Shall the bill be read the third time?, Senator Campbell moved to amend the Senate proposal of amendment by adding a new section to be numbered Sec. 48G to read as follows:

Sec. 48G. 32 V.S.A. § 7702 is amended to read:

* * *

(6) "Little eigars cigar" means any rolls of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a eigarette within the meaning of subdivision (1) of this section) and as to which 1,000 units weigh not more than three pounds roll for smoking made wholly or in part of tobacco (other than any roll of tobacco which is a cigarette within the meaning of subdivision (1) of this section) which includes a cellulose acetate filter or other integrated filter, or as to which 1,000 units weigh not more than three pounds.

(21) "Integrated filter" means a component attached to the mouth end of a roll of tobacco, typically consisting of cellulose acetate, but which may incorporate or consist of other materials, which filters smoke prior to the smoke's entering the mouth.

And by renumbering Sec. 48G-48K to be numerically correct.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read the third time?, Senators Scott, Brock, Choate, Doyle, Flory, Mazza, Miller, Mullin and Starr moved that the Senate propose to the House that the bill be amended by striking out Secs. 38, 39 and 40 (requiring temporary income tax add-back of one-third of production activity deduction) in their entirety and by striking out Sec. 49(17) in its entirety.

Which was disagreed to on a roll call, Yeas 12, Nays 17.

Senator Scott 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, Choate, Doyle, Flory, Giard, Illuzzi, Mazza, Miller, Nitka, Scott, Starr.

Those Senators who voted in the negative were: Ayer, Bartlett, Campbell, Carris, Cummings, Flanagan, Hartwell, Kitchel, Kittell, Lyons, MacDonald, McCormack, Racine, Sears, Shumlin, Snelling, White.

The Senator absent and not voting was: Mullin.

*Senator Snelling explained her vote as follows:

"The budget choices this year have been extremely difficult, and in January the task seemed impossible. Later today we will present a balanced budget. Sometimes in this building there are issues that become politically black and white. I am an advocate for business, and I am also an advocate for vulnerable Vermonters. Some are asking me to choose as if this is now my only opportunity to demonstrate my loyalty to a positive business climate. I disagree. What we need is balance. I look at the recent 8.6 million jobs bill and the millions of ARRA funds that are all investments in business and jobs. Vermont must do many things to improve its image to business. However, I cannot abandon my responsibility to all Vermonters."

Thereupon, third reading of the bill was ordered.

Rules Suspended; Proposal of Amendment; Third Reading Ordered H. 647.

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

An act relating to misclassification of employees to lower premiums for workers' compensation and unemployment compensation.

Was taken up for immediate consideration.

Senator Ashe, for the Committee on Economic Development, Housing and General Affairs, 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. DEPARTMENT OF LABOR MISCLASSIFICATION; ENFORCEMENT PERSONNEL; FUNDING

- (a) No later than August 1, 2010, the department of labor shall have a total of four limited service workers' compensation fraud investigator employees to investigate classifications and enforce the laws relating to worker, business, and job duty classifications.
- (b) In addition to the percentage of premiums to be paid by employers into the workers' compensation administration fund pursuant to 21 V.S.A. § 711, employers shall pay an additional 0.055 percent to fund one of the investigator positions required pursuant to subsection (a) of this section.
- Sec. 2. 13 V.S.A. § 2024 is amended to read:

§ 2024. WORKERS' COMPENSATION FRAUD; CRIMINAL PENALTIES

Any person, including an employee, employer, medical case manager, health care provider, vocational rehabilitation provider, or workers' compensation insurance carrier who, knowingly and with intent to defraud makes a false statement or representation for the purpose of obtaining, affecting, or denying any benefit or payment under the provisions of chapter 9 of Title 21 or the provisions of Part 3, relating to Insurance, of Title 8, either for her herself or himself or for any other person, shall forfeit all benefits or payments obtained as a result of the false statement or representation and all or a portion of any right to compensation under the provisions of chapter 9 of Title 21 as determined by the commissioner and:

- (1) For fraud involving \$10,000.00 or more, be fined not more than \$100,000.00 or imprisoned not more than three years, or both.
- (2) For fraud involving less than \$10,000.00, be fined not more than \$10,000.00 or imprisoned not more than two years, or both.

Sec. 3. 21 V.S.A. § 692 is amended to read:

§ 692. PENALTIES; FAILURE TO INSURE; STOP WORK ORDERS

- (a) <u>Failure to insure</u>. If after hearing under section 688 of this title, the commissioner determines that an employer has failed to comply with the provisions of section 687 of this title, the employer shall be assessed an administrative penalty of not more than \$100.00 for every day the employer neglected to secure liability.
- (b) Stop work orders. Additionally, If an employer who fails to comply with the provisions of section 687 of this title for a period of five days after notice from investigation by the commissioner, the commissioner shall issue an emergency order to that employer to stop work until the employer has secured workers' compensation insurance. If the commissioner determines that issuing a stop-work order would immediately threaten the safety or health of the public, the commissioner may permit work to continue until the immediate threat to public safety or health is removed. The commissioner shall document the reasons for permitting work to continue, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than \$250.00 for every day after five days that the employer fails to secure workers' compensation coverage as required in section 687 of this title. The When a stop work order is issued, the commissioner may, after giving notice and after the expiration of the five-day period, shall post a notice at a conspicuous place on the premises worksite of the employer informing the employees that their employer has failed to comply with the provisions of section 687 of this title and ordering the premises closed that work at the worksite has been ordered to cease until workers' compensation insurance is secured. The stop-work order shall be rescinded as soon as the commissioner determines that the employer is in compliance with section 687 of this title.
- (c) If any employer fails to secure or retain workers' compensation insurance within two years after receiving an order to obtain insurance or a notice that the commissioner intends to order the premises closed as described in subsection (b) of this section, without further notice the commissioner shall order the premises of that employer closed and that all business operations cease until the employer has secured workers' compensation insurance.

Penalty for violation of stop work order. An employer who violates a stop work order described in subsection (b) of this section is subject to:

(1) A civil penalty of not more than \$5,000.00 for the first violation and a civil penalty of not more than \$10,000.00 for a second or subsequent violation; or

- (2) A criminal fine of not more than \$10,000.00 or imprisonment for not more than 30 days, or both.
- Sec. 4. 4 V.S.A. § 1102(b) is amended to read:
 - (b) The judicial bureau shall have jurisdiction of the following matters:

* * *

- (19) Violations of 21 V.S.A. § 692(c)(1).
- Sec. 5. 21 V.S.A. § 708 is amended to read:

§ 708. PENALTY FOR FALSE REPRESENTATIONS

- (a) Action by the commissioner of labor. A person who willfully makes a false statement or representation, for the purpose of obtaining any benefit or payment under the provisions of this chapter, either for her herself or himself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$5,000.00 total, and shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the commissioner after a determination by the commissioner that the person has willfully made a false statement or representation of a material fact.
- (b) 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 the commissioner's consideration of enforcement pursuant to 8 V.S.A. § 3661(c).
- (c) Any penalty assessed or order issued under this chapter or 8 V.S.A. § 3661 shall continue in effect against any successor employer that has one or more of the same principals or corporate officers as the employer against which the penalties were assessed or order issued and is engaged in the same or similar business.
- (d) Notwithstanding the assessment of an administrative penalty under this section, a person may be prosecuted under 13 V.S.A. § 2024.
- Sec. 6. 21 V.S.A. § 1314 is amended to read:
- § 1314. —REPORTS AND RECORDS; <u>FAILURE TO REPORT</u> EMPLOYMENT INFORMATION

* * *

(h) Any employing unit which that fails to report employment and separation information with respect to a claimant and wages paid to a claimant

required under subsection (b) of this section shall be subject to a penalty of \$35.00 \$100.00 for each such report not received by the prescribed due date, which penalty shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may, in his or her discretion, waive the penalty.

Sec. 7. DEPARTMENT OF LABOR; EMPLOYEE MISCLASSIFICATION REPORTING SYSTEM

The department of labor shall create and maintain an online employee misclassification reporting system. The system shall be designed to allow individuals to report suspected cases of employee misclassification, failure to have appropriate insurance coverage, and claimant fraud to the department to ensure that this information is distributed to appropriate departments and agencies.

Sec. 8. 21 V.S.A. § 710 is amended to read:

§ 710. UNLAWFUL DISCRIMINATION

* * *

- (c) At the request of an individual who has alleged that an employer has made a false statement or misclassified one or more employees, the department shall not include the individual's name or contact information in any publication or public report, unless it is required by law or necessary to enable enforcement of this chapter.
- (d) An employer shall not retaliate or take any other negative action against an individual because the employer knows or suspects that the individual has filed a complaint with the department or other authority, or reported a violation of this chapter, or cooperated in an investigation of misclassification, discrimination, or other violation of this chapter.
- (e) The attorney general or a state's attorney may enforce the provisions of this section by restraining prohibited acts, seeking civil penalties, obtaining assurance and conducting civil investigations in accordance with the procedures established in sections 2458-2461 of Title 9 9 V.S.A. §§ 2458-2461 as though discrimination under this section were an unfair act in commerce.

Sec. 9. 21 V.S.A. § 1314a is amended to read:

§ 1314a. —QUARTERLY WAGE REPORTING REQUIRED ; MISCLASSIFICATION; PENALTIES

* * *

- (f)(1) Any employing unit or employer which that fails to file:
- (A) File any report required by this section shall be subject to a penalty of \$35.00 \$100.00 for each such report not received by the prescribed due dates, which.
- (B) Properly classify an individual regarding the status of employment is subject to a penalty of not more than \$5,000.00 for each improperly classified employee.
- (2) Penalties under this subsection shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may waive the penalty.

* * *

Sec. 10. 21 V.S.A. § 1328 is amended to read:

§ 1328. FILING <u>EMPLOYER QUARTERLY TAX CONTRIBUTION</u> REPORTS; FAILURE

The commissioner shall impose a penalty of \$35.00 \$100.00 for each failure by an employer to file any contribution report required under section 1322 of this title on or before the date on which the report is due, which shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employer demonstrates that its failure was due to a reasonable cause, the commissioner may waive the penalty.

Sec. 11. 21 V.S.A. § 1369 is amended to read:

§ 1369. FALSE STATEMENTS TO AVOID CHAPTER <u>UNEMPLOYMENT PROGRAM OBLIGATIONS</u>

A person shall not who wilfully and intentionally make makes a material false statement or representation to avoid becoming or remaining subject to this chapter, or to avoid or reduce a contribution or other payment required of an employer under this chapter for either herself or himself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$5,000.00.

Sec. 12. 21 V.S.A. § 1373 is amended to read:

§ 1373. GENERAL PENALTY; CIVIL

A person who violates a provision of this chapter or any lawful rule or regulation of the board, for which no other penalty is provided, shall be fined assessed an administrative penalty of not more than \$50.00 or be imprisoned not more than 30 days, or both \$5,000.00.

Sec. 13. EMPLOYEE MISCLASSIFICATION; INVESTIGATION AND ENFORCEMENT; INTERAGENCY REPORT

The department of banking, insurance, securities, and health care administration and the department of labor shall report on or before January 15, 2011, and again on January 15, 2012, to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs regarding their investigation and enforcement efforts as they relate to employee misclassification and the enforcement of Vermont labor standards, including all the following:

- (1) The number and outcome of departmental audits and investigations.
- (2) An assessment of the efficacy of the new workers' compensation fraud staff positions created in Sec. 106 of No. 54 of the Acts of 2009.
 - (3) The financial costs of misclassification and miscoding.
- (4) The success of the employee misclassification public education and outreach program.

Sec. 14. 21 V.S.A. § 643a is amended to read:

§ 643a. DISCONTINUANCE OF BENEFITS

Unless an injured worker has successfully returned to work, an employer shall notify both the commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to discontinue payments shall be filed on forms prescribed by the commissioner and shall include the date of the proposed discontinuance and, the reasons for it, and, if the employee has been out of work for 90 days, a verification that the employer offered vocational rehabilitation screening and services as required under this chapter. All relevant evidence, including evidence that does not support discontinuance in the possession of the employer not already filed, shall be filed with the notice. The liability for the payments shall continue for seven days after the notice is received by the commissioner and the employee. Those payments shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the commissioner determines that the discontinuance is warranted or if otherwise

ordered by the commissioner. Every notice shall be reviewed by the commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, upon after review of all the evidence in the file, the commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the commissioner shall order that payments continue until a hearing is held and a decision is rendered. Prior to a formal hearing, an injured worker may request reinstatement of benefits by providing additional new evidence to the department that establishes that a preponderance of all evidence now supports the claim. If the commissioner's decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce such a repayment order in any court of law having jurisdiction of the amount involved.

Sec. 15. 21 V.S.A. § 650 is amended to read:

§ 650. PAYMENT; AVERAGE WAGE; COMPUTATION

* * *

- (e) If weekly compensation benefits or weekly accrued benefits are not paid within 21 days after becoming due and payable pursuant to an order of the commissioner, or in cases in which the overdue benefit is not in dispute, 10 percent of the overdue amount shall be added and paid to the employee, in addition to interest and any other penalties. In the case of an initial claim, benefits are due and payable upon entering into an agreement pursuant to subsection 662(a) of this title, upon issuance of an order of the commissioner pursuant to subsection 662(b) of this title, or if the employer has not denied the claim within 21 days after the claim is filed. Benefits are in dispute if the claimant has been provided actual written notice of the dispute within 21 days of the benefit being due and payable and the evidence reasonably supports the denial. Interest shall accrue and be paid on benefits that are found to be compensable during the period of nonpayment. The commissioner shall promptly review requests for payment under this section and, consistent with the criteria in department rule 10.13 subsection 678(d) of this title, shall allow for the recovery of reasonable attorney fees associated with an employee's successful request for payment under this subsection.
- (f) When benefits have been awarded or are not in dispute as provided in subsection (e) of this section, the employer shall establish a weekday on which payment shall be mailed or deposited and notify the claimant and the department of that day. The employer shall ensure that each weekly payment is mailed or deposited on or before the day established. If the benefit payment

is not mailed or deposited on the day established, the employer shall pay to the claimant a late fee of \$10.00 or five percent of the benefit amount, whichever is greater, for each weekly payment that is made after the established day. For the purposes of this subsection, "paid" means the payment is mailed to the claimant's mailing address or, in the case of direct deposit, transferred into the designated account. In the event of a dispute, proof of payment shall be established by affidavit.

Sec. 16. 21 V.S.A. § 655 is amended to read:

§ 655. PROCEDURE IN OBTAINING COMPENSATION; MEDICAL EXAMINATION; VIDEO AND AUDIO RECORDING

After an injury and during the period of disability, if so requested by his or her employer, or ordered by the commissioner, the employee shall submit himself or herself to examination, at reasonable times and places, to by a duly licensed physician or surgeon designated and paid by the employer. The employee shall have the right to may make a video or audio recording of any examination performed by the insurer's physician or surgeon or have a physician or surgeon licensed health care provider designated and paid by himself or herself the employee present at such the examination. Such The employer may make an audio recording of the examination. The right, however, of the employee to record the examination shall not be construed to deny to the employer's physician the right to visit the injured employee at all reasonable times and under all reasonable conditions during total disability. If an employee refuses to submit himself or herself to or in any way obstructs such the examination, his or her the employee's right to take or prosecute any proceeding under the provisions of this chapter shall be suspended until such the refusal or obstruction ceases, and compensation shall not be payable for the period during which such the refusal or obstruction continues.

Sec. 17. Sec. 32 of No. 54 of the Acts of 2009 is amended to read:

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:

* * *

(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, including confirmation that contractors, subcontractors, and independent contractors have the appropriate workers' compensation coverage for all workers at the jobsite, 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, and shall be available to the public.

* * *

(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 or any project for which the state granted, allocated, or awarded 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. In the event that the most recently updated Davis-Bacon wages cannot be determined due to the simultaneous updating by two or more counties, the agencies may select the minimum state-required wage for a state contract subject to Davis-Bacon wages under ARRA from among those counties.

Sec. 18. EFFECTIVE DATES

This act shall take effect on July 1, 2010, except for this section and Secs. 1, 7, 8, 14, and 17, which shall take effect on passage.

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

Senator Carris, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass in concurrence when so amended.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of proposal of amendment was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senators Illuzzi, Campbell, Choate and Shumlin moved that the Senate proposal of amendment be amended as follows:

<u>First</u>: By adding a new section to be numbered Sec. 17b to read as follows: Sec. 17b. 18 V.S.A. § 906(8) is amended to read:

- (8) Establishing, by rule, levels of individual certification and application forms for advanced emergency medical care. The commissioner may shall use the guidelines established by the National Highway Transportation Traffic Safety Administration (NHTSA) in the U.S. Department of Transportation as a standard or other comparable standards, except that a felony conviction shall not necessarily disqualify an applicant. The rules shall also provide that:
- (A) An individual may apply for and obtain one or more additional certifications, including certification as an advanced emergency medical technician or as a paramedic.
- (B) An individual certified by the commissioner as an emergency medical technician, advanced emergency medical technician, or a paramedic, who is affiliated with a licensed ambulance service, fire department, or rescue service, shall be able to practice fully within the statewide scope of practice for such level of certification as established by the commissioner by rule, which shall be adopted and implemented on a statewide basis no later than January 1, 2011, provided that such person is affiliated with a rescue service, fire department, or licensed ambulance service, or other state licensed medical facility defined by NHTSA's National EMS Scope of Practice Model, and subject to the medical direction of the commissioner or designee, and notwithstanding any law or rule to the contrary.
- (C) An Unless otherwise provided under this section, an individual seeking any level of certification shall be required to pass an examination approved by the commissioner for that level of certification.
- (D) If there is a hardship imposed on any applicant for a certification under this section because of unusual circumstances, the applicant may apply to the commissioner for a temporary or permanent waiver of one or more of the certification requirements, which the commissioner may waive grant for good cause.
- (E) An applicant who has served as an advanced emergency medical technician, such as a hospital corpsman or a medic in the United States Armed Forces, or who is licensed as a registered nurse or a physician's assistant shall be granted a permanent waiver of the training requirements to become a certified emergency medical technician, an advanced emergency medical technician, or a paramedic, provided the applicant passes the applicable examination approved by the commissioner for that level of certification, and

further provided that the applicant is affiliated with a rescue service, fire department, or licensed ambulance service.

(F) An applicant who is certified on the National Registry of Emergency Medical Technicians as an EMT-basic, EMT-intermediate, or a paramedic shall be granted certification as a Vermont EMT-basic, EMT-intermediate, or paramedic without the need for further testing, provided he or she is affiliated with an ambulance service, fire department, or rescue service, or is serving as a medic with the Vermont National Guard.

(E)(G) No advanced certification shall be required for a trainee in established advanced training programs leading to certification as an advanced emergency medical technician, provided that the trainee is supervised by an individual holding a level of certification for which the trainee is training and the student is enrolled in an approved certification program.

<u>Second</u>: By adding a new section to be numbered Sec. 17c to read as follows:

Sec. 17c. UPDATED RULES FOR ADVANCE EMERGENCY MEDICAL CARE

No later than March 1, 2011, the commissioner of health shall repeal or amend any existing departmental rules on emergency medical care to ensure they are in compliance with the provisions of 18 V.S.A. § 906(8).

<u>Third</u>: By adding a new section to be numbered Sec. 17d to read as follows:

Sec. 17d. STUDY; STATEWIDE LICENSING OF EMS PROVIDERS

The commissioner of health, in consultation with the Vermont secretary of state's office of professional regulation, the Professional Firefighters of Vermont, the Vermont Career Fire Chiefs Association, the Vermont State Firefighters' Association, the Vermont Ambulance Association, a representative from the Initiative for Rural Emergency Medical Services program at the University of Vermont, and a representative of three of Vermont's existing 13 EMS districts chosen jointly by the speaker of the house and the president pro tempore of the senate, one of whom shall be a medical director and one of whom shall be a volunteer certified emergency medical technician, shall develop a proposal for a statewide licensing mechanism for emergency medical services (EMS) providers, and shall assess the state's EMS capabilities and training requirements. The commissioner of health shall prepare a proposal on a statewide licensing mechanism in the form of draft legislation, and submit that proposal along with other findings and recommendations on Vermont's EMS services to the house committee on

commerce and economic development and the senate committee on economic development, housing and general affairs no later than January 15, 2012.

<u>Fourth</u>: By striking out Sec. 18 in its entirety and by inserting in lieu thereof a new Sec. 18 to read as follows:

Sec. 18. EFFECTIVE DATES

This act shall take effect on July 1, 2010, except for this section and Secs. 1, 7, 8, 14, 17, 17b, 17c and 17d which shall take effect on passage.

Which was agreed to on a roll call, Yeas 21, Nays 5.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Bartlett, Brock, Campbell, Carris, Doyle, Flory, Giard, Hartwell, Illuzzi, Kitchel, MacDonald, Mazza, McCormack, Miller, Nitka, Scott, Sears, Shumlin, White.

Those Senators who voted in the negative were: Flanagan, Kittell, Lyons, Racine, Snelling.

Those Senators absent and not voting were: Choate, Cummings, Mullin, Starr.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Ashe, on behalf of the Committee on Economic Development, Housing and General Affairs, moved to amend the Senate proposal of amendment in Sec. 3, 21 V.S.A. § 692 (c), subdivision (2), by striking out the words "30 days" and inserting in lieu thereof the following: 180 days

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Thereupon, Senator Campbell, moved that the rules be suspended and the bill be placed on all remaining stages of its passage forthwith.

Thereupon, pending the question, Shall the bill be placed on all remaining stages of passage forthwith?, Senator Campbell requested and was granted leave to withdraw his motion.

Message from the House No. 60

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. 287. An act relating to the licensing and regulation of loan servicers.

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

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

S. 282. An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles.

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

Rep. Brennan of Colchester Rep. Aswad of Burlington Rep. Courcelle of Rutland City

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

H. 759. An act relating to executive branch fees.

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. Branagan of Georgia Rep. Masland of Thetford Rep. Zuckerman of Burlington

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

H. 784. An act relating to the state's transportation program.

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. Brennan of Colchester Rep. Corcoran of Bennington Rep. Potter of Clarendon

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

S. 264. An act relating to stop and hauling charges.

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. Malcolm of Pawlet Rep. McAllister of Highgate Rep. Ainsworth of Royalton

The Governor has informed the House that on the April 23, 2010, he approved and signed bills originating in the House of the following titles:

- **H. 539.** An act relating to amending the charter of the town of Hartford.
- **H. 658.** An act relating to the issuance of certificates of need for home health agencies and addressing patient transportation services in certificate of need applications.

Pursuant to Senate request, the House returns custody of a bill originating in the House of the following title:

H. 788. An act relating to approval of amendments to the charter of the town of Berlin.

Message from the Governor

A message was received from His Excellency, the Governor, by David Coriell, 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 April, 2010 he approved and signed a bill originating in the Senate of the following title:

S. 28. An act relating to the regulation of landscape architects.

Adjournment

On motion of Senator Campbell, the Senate adjourned, to reconvene on Monday, April 26, 2010, at one o'clock in the afternoon pursuant to J.R.S. 62.

MONDAY, APRIL 26, 2010

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

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

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

Message from the House No. 61

A message was received from the House of Representatives by Mr. William M. MaGill, its First 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. 88. An act relating to health care financing and universal access to health care in Vermont.

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

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

H. 647.

House bill entitled:

An act relating to misclassification of employees to lower premiums for workers' compensation and unemployment compensation.

Was taken up.

Thereupon, pending third reading of the bill, Senator Racine, Choate Flanagan, Kittell and Lyons moved to amend the Senate proposal of amendment as follows:

<u>First</u>: In Sec. 17b. 18 V.S.A. § 906(8) by striking out subparagraph (B) in its entirety and inserting in lieu thereof a new subparagraph (B) to read as follows:

(B) An individual certified by the commissioner as an emergency medical technician, advanced emergency medical technician, or a paramedic, who is affiliated with a licensed ambulance service, fire department, or rescue service, shall be able to practice fully within the statewide scope of practice for such level of certification as established by the commissioner by rule, which shall be adopted and implemented on a statewide basis no later than January 1, 2011, provided that such person is affiliated with a rescue service, fire department, or licensed ambulance service, or other state licensed medical facility defined by NHTSA's National EMS Scope of Practice Model notwithstanding any law or rule to the contrary, and subject to the medical direction of the commissioner or designee.

<u>Second</u>: By striking out Sec. 17d in it entirety and inserting in lieu thereof a new Sec. 17d to read as follows:

Sec. 17d. STUDY: STATEWIDE LICENSING OF EMS PROVIDERS

- (a) The commissioner of health, in consultation with the Vermont secretary of state's office of professional regulation, the Professional Firefighters of Vermont, the Vermont Career Fire Chiefs Association, the Vermont State Firefighters' Association, the Vermont Ambulance Association, the Vermont Association of Hospitals and Health Systems; a representative from the Initiative for Rural Emergency Medical Services program at the University of Vermont, and a representative of three of Vermont's existing 13 EMS districts chosen jointly by the speaker of the house and the president pro tempore of the senate, one of whom shall be a medical director and one of whom shall be a volunteer certified emergency medical technician, shall develop a proposal for a statewide licensing mechanism for emergency medical services (EMS) providers, and shall assess the state's EMS capabilities and training requirements. The commissioner of health shall prepare a report along with other findings and recommendations on Vermont's EMS services to the house committees on commerce and economic development and house human services, and the senate committees on economic development, housing and general affairs and health and welfare no later than January 15, 2012.
- (b) The study committee shall also consider whether there should be certain course training requirements for those licensed as a registered nurse or physician's assistant.

Which was agreed to.

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

Proposal of Amendment; Third Reading Ordered H. 789.

Senator Bartlett, for the Committee on Appropriations, to which was referred House bill entitled:

An act making appropriations for the support of government.

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. A.100 SHORT TITLE

(a) This bill may be referred to as the BIG BILL - Fiscal Year 2011 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 2011. It is the express intent of the legislature 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, 2010. Agency and department heads are directed to implement staffing and service levels at the beginning of fiscal year 2011 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 2011.
- (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, and 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, 2011.

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 2011, 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 2011, federal funds available to the state of Vermont and designated as federal in this and other acts of the 2010 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:

Connecticut river flood control

Public service department - sale of power

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 credited to 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 2011 except for new positions authorized by the 2010 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 appropriation 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	<u>Labor</u>
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	<u>Transportation</u>
B.1000-B.1099 and E.1000-E.1099	<u>Debt Service</u>
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	779,981
Operating expenses	73,832
Total	853,813
Source of funds	
General fund	658,760
Global Commitment fund	<u>195,053</u>
Total	853,813

Sec. B.101 Information and innovation - communications and information technology

Personal services	6,842,098
Operating expenses	2,505,878
Grants	<u>700,000</u>
Total	10,047,976
Source of funds	
General fund	20,911
Internal service funds	10,027,065
Total	10.047.976

Sec. B.102 Finance and management - budget and management

Personal services	880,871
Operating expenses	234,515
Total	1,115,386
Source of funds	
General fund	882,783
Interdepartmental transfers	232,603
Total	1,115,386

Sec. B.103 Finance and management - financial operations

Personal services	2,474,557
Operating expenses	552,210
Total	3,026,767

Source of funds Internal service funds Total	3,026,767 3,026,767
Sec. B.104 Human resources - operation	S
Personal services Operating expenses Total Source of funds	2,543,406 414,786 2,958,192
General fund Special funds Interdepartmental transfers Total	1,689,278 280,835 <u>988,079</u> 2,958,192
Sec. B.105 Human resources - employee	
Personal services Operating expenses Total	1,152,032 <u>647,868</u> 1,799,900
Source of funds Internal service funds Interdepartmental transfers Total	1,760,047 <u>39,853</u> 1,799,900
Sec. B.106 Libraries	
Personal services Operating expenses Grants Total Source of funds General fund	1,857,236 1,804,985 62,500 3,724,721 2,534,917
Special funds Federal funds Interdepartmental transfers Total	132,656 955,372 101,776 3,724,721
Sec. B.107 Tax - administration/collection	on
Personal services Operating expenses Total Source of funds Tobacco fund General fund Special funds	12,536,124 3,138,092 15,674,216 58,000 14,379,315 1,039,901

	Interdepartmental transfers Total	197,000 15,674,216
Sec. B.108	Buildings and general services -	- administration
	Personal services Operating expenses Total	1,487,119 <u>153,311</u> 1,640,430
S	ource of funds Interdepartmental transfers Total	1,640,430 1,640,430
Sec. B.109	Buildings and general services -	- engineering
S	Personal services Operating expenses Total ource of funds Interdepartmental transfers	2,124,181 <u>341,604</u> 2,465,785 <u>2,465,785</u>
	Total	2,465,785
Sec. B.110	Buildings and general services -	information centers
	Personal services Operating expenses Grants Total	3,060,509 1,324,371 <u>45,000</u> 4,429,880
S	ource of funds General fund Special funds Total	4,379,880 <u>50,000</u> 4,429,880
Sec. B.111	Buildings and general services -	- purchasing
S	Personal services Operating expenses Total ource of funds	642,843 <u>149,518</u> 792,361
	General fund Total	792,361 792,361
Sec. B.112 Buildings and general services - postal services		
S	Personal services Operating expenses Total ource of funds	636,412 <u>148,967</u> 785,379
	General fund	35,716

	Internal service funds Total	749,663 785,379	
Sec. B.113	Buildings and general services - c	opy center	
So	Personal services Operating expenses Total ource of funds	715,491 <u>122,107</u> 837,598	
2	Internal service funds Total	837,598 837,598	
Sec. B.114	Buildings and general services - f	leet management services	
Q.	Personal services Operating expenses Total ource of funds	473,550 119,974 593,524	
Si	Internal service funds Total	<u>593,524</u> 593,524	
Sec. B.115 Buildings and general services - federal surplus property			
So	Personal services Operating expenses Total ource of funds	91,690 <u>44,687</u> 136,377	
	Enterprise funds Total	136,377 136,377	
Sec. B.116 Buildings and general services - state surplus property			
Se	Personal services Operating expenses Total ource of funds Internal service funds Total	66,974 <u>99,806</u> 166,780 <u>166,780</u> 166,780	
Sec. B.117 Buildings and general services - property management			
Se	Personal services Operating expenses Total ource of funds	1,120,071 <u>1,457,881</u> 2,577,952	
	Internal service funds Total	<u>2,577,952</u> 2,577,952	

Sec. B.118 Buildings and general services	s - workers' compensation insurance
Personal services	1,295,161
Operating expenses	271,331
Total	1,566,492
Source of funds	
Internal service funds	<u>1,566,492</u>
Total	1,566,492
Sec. B.119 Buildings and general services	s - general liability insurance
Personal services	304,042
Operating expenses	<u>76,203</u>
Total	380,245
Source of funds	
Internal service funds	<u>380,245</u>
Total	380,245
Sec. B.120 Buildings and general services	s - all other insurance
Personal services	39,531
Operating expenses	<u>30,469</u>
Total	70,000
Source of funds	
Internal service funds	<u>70,000</u>
Total	70,000
Sec. B.121 Buildings and general services	s - fee for space
Personal services	13,357,546
Operating expenses	<u>13,886,975</u>
Total	27,244,521
Source of funds	
Internal service funds	<u>27,244,521</u>
Total	27,244,521
Sec. B.122 Geographic information system	m
Grants	<u>408,700</u>
Total	408,700
Source of funds	
Special funds	<u>408,700</u>
Total	408,700
Sec. B.123 Executive office - governor's of	office

1,169,079

391,275

Personal services

Operating expenses

Total	1,560,354
Source of funds General fund	1,366,854
Interdepartmental transfers	193,500
Total	1,560,354
Sec. B.124 Legislative council	
Personal services	2,090,029
Operating expenses	<u>192,964</u>
Total	2,282,993
Source of funds	
General fund	<u>2,282,993</u>
Total	2,282,993
Sec. B.125 Legislature	
Personal services	3,608,557
Operating expenses	3,329,011
Total	6,937,568
Source of funds	
General fund	<u>6,937,568</u>
Total	6,937,568
Sec. B.126 Legislative information tec	hnology
Personal services	376,107
Operating expenses	<u>504,480</u>
Total	880,587
Source of funds	000 505
General fund	880,587
Total	880,587
Sec. B.127 Joint fiscal committee	
Personal services	1,391,465
Operating expenses	113,201
Total	1,504,666
Source of funds	1 504 666
General fund Total	1,504,666
	1,504,666
Sec. B.128 Sergeant at arms	
Personal services	477,005
Operating expenses	<u>82,428</u>
Total	559,433
Source of funds	

	MONDAT, AI	KIL 20, 2010
	General fund	<u>559,433</u>
	Total	559,433
Sec. B.129	Lieutenant governor	
	Personal services	150,836
	Operating expenses	<u>16,376</u>
	Total	167,212
Se	ource of funds	
	General fund	<u>167,212</u>
	Total	167,212
Sec. B.130	Auditor of accounts	
	Personal services	2,900,631
	Operating expenses	139,445
	Total	3,040,076
Se	ource of funds	
	General fund	399,951
	Special funds	53,099
	Internal service funds	<u>2,587,026</u>
	Total	3,040,076
Sec. B.131	State treasurer	
	Personal services	2,522,619
	Operating expenses	331,089
	Grants	16,484
	Total	2,870,192
Se	ource of funds	, ,
	General fund	1,130,500
	Special funds	1,636,099
	Interdepartmental transfers	103,593
	Total	2,870,192
Sec. B.132	State treasurer - unclaimed pr	operty
	Personal services	670,521
	Operating expenses	243,474
	Total	913,995
Se	ource of funds	, ,,,,
~	Private purpose trust funds	913,995
	Total	913,995
Sec. B.133	Vermont state retirement syst	ŕ
	Personal services	6,370,747
	Operating expenses	27,934,748
	operating expenses	<u>~1,737,170</u>

	Total	34,305,495
S	ource of funds	
	Pension trust funds	34,305,495
	Total	34,305,495
Sec. B.134	Municipal employees' retire	ment system
	Personal services	2,002,388
	Operating expenses	<u>451,355</u>
	Total	2,453,743
S	ource of funds	
	Pension trust funds	2,453,743
	Total	2,453,743
G D 105		2,433,743
Sec. B.135	State labor relations board	
	Personal services	161,823
	Operating expenses	38,452
	Total	200,275
S	ource of funds	,
۵	General fund	194,699
	Special funds	2,788
	-	
	Interdepartmental transfers	<u>2,788</u>
	Total	200,275
Sec. B.136	VOSHA review board	
	Personal services	42,635
	Operating expenses	<u>10,531</u>
	Total	53,166
S	ource of funds	,
_	General fund	26,583
	Interdepartmental transfers	<u>26,583</u>
	Total	
		53,166
Sec. B.137	Homeowner rebate	
	Grants	16,320,000
	Total	16,320,000
S	ource of funds	-,,
۵	General fund	16,320,000
	Total	16,320,000
Coo D 120		10,320,000
sec. B.138	Renter rebate	
	Grants	<u>8,300,000</u>
	Total	8,300,000
S	ource of funds	

	1/101/2111,1111	112 20, 2010
	General fund Education fund Total	2,500,000 <u>5,800,000</u> 8,300,000
Sec. B.139	Tax department - reappraisal ar	nd listing payments
S	Grants Total ource of funds Education fund	3,243,196 3,243,196 3,243,196
	Total	3,243,196
Sec. B.140	Municipal current use	-, -, -
S	Grants Total ource of funds General fund Total	11,700,000 11,700,000 11,700,000 11,700,000
Sec. B.141	Lottery commission	
S	Personal services Operating expenses Total ource of funds Enterprise funds Total	1,658,986 1,096,215 2,755,201 2,755,201 2,755,201
Sec. B.142	Payments in lieu of taxes	
S	Grants Total ource of funds Special funds	5,650,000 5,650,000 5,650,000
C D 142	Total	5,650,000
Sec. B.143	Payments in lieu of taxes - Mor	-
S	Grants Total ource of funds	184,000 184,000
5	Special funds Total	184,000 184,000
Sec. B.144	Payments in lieu of taxes - corr	ectional facilities
	Grants Total	<u>40,000</u> 40,000

Sc	ource of funds Special funds Total	<u>40,000</u> 40,000
Sec. B.145	Total General government	189,219,147
So	General fund Education fund Special funds Tobacco fund Global Commitment fund Federal funds Enterprise funds Internal service funds Pension trust funds Private purpose trust funds Interdepartmental transfers Total	71,344,967 9,043,196 9,478,078 58,000 195,053 955,372 2,891,578 51,587,680 36,759,238 913,995 5,991,990 189,219,147
Sec. B.200	Attorney general	
Sc	Personal services Operating expenses Total ource of funds Tobacco fund General fund Special funds Federal funds Interdepartmental transfers Total	6,942,359 1,095,205 8,037,564 625,000 3,785,911 990,000 707,526 1,929,127 8,037,564
Sec. B.201	Vermont court diversion	
Sc	Grants Total Durce of funds General fund	1,724,773 1,724,773 1,204,776
	Special funds Total	519,997 1,724,773
Sec. B.202	Defender general - public def	fense
	Personal services Operating expenses Total	7,631,450 <u>890,945</u> 8,522,395

S	ource of funds	
۵	General fund	8,009,107
	Special funds	513,288
	Total	8,522,395
Sec. B.203	Defender general - assigned o	counsel
	Personal services	3,414,589
	Operating expenses	<u>41,909</u>
	Total	3,456,498
S	ource of funds	
	General fund	3,331,234
	Special funds	125,264
	Total	3,456,498
Sec. B.204	Judiciary	
	Personal services	27,254,775
	Operating expenses	10,118,692
	Grants	<u>70,000</u>
	Total	37,443,467
S	ource of funds	
	Tobacco fund	39,871
	General fund	30,784,588
	Special funds	3,105,455
	Federal funds	1,435,418
	Interdepartmental transfers	<u>2,078,135</u>
	Total	37,443,467
Sec. B.205	State's attorneys	
	Personal services	9,398,345
	Operating expenses	<u>1,137,233</u>
	Total	10,535,578
S	ource of funds	
	General fund	8,329,655
	Special funds	32,775
	Federal funds	31,000
	Interdepartmental transfers	<u>2,142,148</u>
	Total	10,535,578
Sec. B.206	Special investigative unit	
	Grants	1,060,950
	Total	1,060,950
S	ource of funds	

	General fund	<u>1,060,950</u>
	Total	1,060,950
Sec. B.207	Sheriffs	
	Personal services	3,261,904
	Operating expenses	<u>283,826</u>
	Total	3,545,730
Se	ource of funds	
	General fund	3,545,730
	Total	3,545,730
Sec. B.208	Public safety - administration	
	Personal services	1,619,185
	Operating expenses	<u>197,234</u>
	Total	1,816,419
Se	ource of funds	
	General fund	1,776,694
	Federal funds	<u>39,725</u>
	Total	1,816,419
Sec. B.209	Public safety - state police	
	Personal services	45,090,220
	Operating expenses	8,211,814
	Grants	<u>854,866</u>
	Total	54,156,900
Se	ource of funds	
	ARRA funds	969,703
	General fund	19,301,332
	Transportation fund	27,635,057
	Special funds	2,116,262
	Federal funds	2,826,886
	Interdepartmental transfers	<u>1,307,660</u>
	Total	54,156,900
Sec. B.210	Public safety - criminal justice	e services
	Personal services	6,625,882
	Operating expenses	3,291,327
	Grants	5,977,000
	Total	15,894,209
Se	ource of funds	
	ARRA funds	640,956
	General fund	5,546,732
	Special funds	1,972,320

	Federal funds	7,645,784
	Interdepartmental transfers Total	88,417 15,894,209
Sec. B.211	Public safety - emergency m	anagement
	Personal services	2,716,202
	Operating expenses	879,113
	Grants	1,602,000
	Total	5,197,315
So	ource of funds	
	General fund	63,969
	Special funds	224,014
	Federal funds	4,889,332
	Interdepartmental transfers	20,000
	Total	5,197,315
Sec. B.212	Public safety - fire safety	
	Personal services	4,953,243
	Operating expenses	1,281,790
	Grants	55,000
	Total	6,290,033
So	ource of funds	, ,
	General fund	714,083
	Special funds	5,275,683
	Federal funds	255,267
	Interdepartmental transfers	45,000
	Total	6,290,033
Sec. B.213	Public safety - homeland sec	curity
	Personal services	9,213,757
	Operating expenses	718,374
	Grants	2,380,000
	Total	12,312,131
So	ource of funds	, ,
	ARRA funds	295,267
	General fund	430,545
	Federal funds	11,586,319
	Total	12,312,131
Sec. B.214	Radiological emergency res	ponse plan
	Personal services	657,163
	Operating expenses	215,438
	Grants	876,975

a	Total	1,749,576
	rce of funds	1 740 576
3	pecial funds Total	1,749,576 1,749,576
		1,749,370
Sec. B.215 M	Ailitary - administration	
P	ersonal services	548,148
C	perating expenses	198,427
G	Grants	<u>100,000</u>
	Total	846,575
	rce of funds	
G	General fund	<u>846,575</u>
	Total	846,575
Sec. B.216 M	Military - air service contract	
P	ersonal services	4,618,657
C	perating expenses	1,214,629
	Total	5,833,286
Sou	rce of funds	
G	Seneral fund	468,392
F	ederal funds	5,364,894
	Total	5,833,286
Sec. B.217 M	Military - army service contract	
P	ersonal services	3,729,599
C	Operating expenses	9,185,720
	Total	12,915,319
Sou	rce of funds	
G	Seneral fund	112,380
F	ederal funds	12,802,939
	Total	12,915,319
Sec. B.218 M	Military - building maintenance	
P	ersonal services	983,598
C	Operating expenses	386,580
	Total	1,370,178
Sou	rce of funds	
G	Seneral fund	1,370,178
	Total	1,370,178
Sec. B.219 M	Military - veterans' affairs	
P	ersonal services	467,788
C	perating expenses	132,754

Grants Total	163,815 764,357
Source of funds	
General fund	605,099
Special funds	83,529
Federal funds	<u>75,729</u>
Total	764,357
Sec. B.220 Center for crime victims' serv	vices
Personal services	1,314,211
Operating expenses	302,306
Grants	9,634,587
Total	11,251,104
Source of funds	, ,
ARRA funds	571,809
General fund	1,118,448
Special funds	5,550,448
Federal funds	4,010,399
Total	11,251,104
Sec. B.221 Criminal justice training coun	ncil
Personal services	1,222,580
Operating expenses	1,265,675
Total	2,488,255
Source of funds	
General fund	1,592,462
Special funds	531,285
Interdepartmental transfers	<u>364,508</u>
Total	2,488,255
Sec. B.222 Agriculture, food and market	s - administration
Personal services	764,915
Operating expenses	323,363
Grants	<u>538,351</u>
Total	1,626,629
Source of funds	, ,
General fund	1,097,260
Special funds	377,465
Federal funds	109,904
Interdepartmental transfers	42,000
Total	1,626,629

Sec. B.223 Agriculture, food and markets - food safety and consumer protection

Personal services	2,717,103
Operating expenses	635,855
Grants	2,400,000
Total	5,752,958
Source of funds	
General fund	2,147,861
Special funds	3,095,426
Federal funds	502,671
Interdepartmental transfers	<u>7,000</u>
Total	5,752,958

Sec. B.224 Agriculture, food and markets - agricultural development

Personal services	1,062,108
Operating expenses	398,437
Grants	1,718,200
Total	3,178,745
Source of funds	
General fund	319,093
Special funds	1,536,567
Federal funds	1,023,085
Interdepartmental transfers	300,000
Total	3,178,745

Sec. B.225 Agriculture, food and markets - laboratories, agricultural resource management and environmental stewardship

Personal services	2,877,085
Operating expenses	857,259
Grants	880,952
Total	4,615,296
Source of funds	
General fund	1,764,182
Special funds	2,148,284
Federal funds	518,072
Interdepartmental transfers	<u>184,758</u>
Total	4,615,296

Sec. B.226 Banking, insurance, securities, and health care administration - administration

Personal services	2,094,388
Operating expenses	110,601

Total	2,204,989	
Source of funds Special funds Total	2,204,989 2,204,989	
Sec. B.227 Banking, insurance, banking	securities, and health	care administration -
Personal services Operating expenses Total Source of funds Special funds	1,338,504 <u>243,041</u> 1,581,545 <u>1,581,545</u>	
Total	1,581,545	
Sec. B.228 Banking, insurance, insurance	securities, and health	care administration -
Personal services Operating expenses Total Source of funds Special funds	2,768,091 <u>433,803</u> 3,201,894 <u>3,201,894</u>	
Total	3,201,894	
Sec. B.229 Banking, insurance, captive	securities, and health	care administration -
Personal services Operating expenses Total Source of funds	3,237,368 439,405 3,676,773	
Special funds Total	3,676,773 3,676,773	
Sec. B.230 Banking, insurance, securities	securities, and health	care administration -
Personal services Operating expenses Total	447,065 <u>140,714</u> 587,779	
Source of funds Special funds Total	<u>587,779</u> 587,779	

Sec. B.231 Banking, insurance, securities, and health care administration - health care administration

4,421,102 <u>320,805</u> 4,741,907
2,843,083 1,898,824 4,741,907
5,639,766 2,010,915 <u>1,000,000</u> 8,650,681
1,741,157 4,834,524 2,000,000 <u>75,000</u> 8,650,681
nd energy
7,227,506 703,315 <u>21,203,466</u> 29,134,287 15,796,250 12,180,237
12,180,237 1,157,800 29,134,287
2,716,697 <u>364,000</u> 3,080,697 265,834 <u>2,814,863</u> 3,080,697

Sec. B.235 Enhanced 9-1-1 Board	
Personal services Operating expenses Grants	2,441,508 1,252,574 911,721
Total	4,605,803
Source of funds	
Special funds	4,605,803
Total	4,605,803
Sec. B.236 Human rights commission	
Personal services	402,730
Operating expenses Total	<u>86,264</u> 488,994
Source of funds	400,994
General fund	318,255
Federal funds	<u>170,739</u>
Total	488,994
Sec. B.237 Liquor control - administration	ion
Personal services	1,442,422
Operating expenses	625,578
Total Source of funds	2,068,000
Tobacco fund	6,661
Enterprise funds	1,811,339
Interdepartmental transfers	250,000
Total	2,068,000
Sec. B.238 Liquor control - enforcement	t and licensing
Personal services	1,930,027
Operating expenses	<u>377,524</u>
Total	2,307,551
Source of funds Tobacco fund	289,645
Enterprise funds	2,017,906
Total	2,307,551
Sec. B.239 Liquor control - warehousin	
Personal services	813,769
Operating expenses	<u>329,615</u>
Total	1,143,384
Source of funds	

Enterprise funds	<u>1,143,384</u>
Total	1,143,384

Sec. B.240 Total Protection to persons and property289,860,524

Source of funds General fund 101,386,648 Transportation fund 27,635,057 Special funds 68,479,128 Tobacco fund 961,177 Global Commitment fund 1,898,824 Federal funds 57,153,489 ARRA funds 18,539,819 Enterprise funds 4,972,629 Interdepartmental transfers 8,833,753

Sec. B.300 Human services - agency of human services - secretary's office

289,860,524

Personal services	8,997,483
Operating expenses	2,427,168
Grants	5,095,241
Total	16,519,892
Source of funds	
Tobacco fund	423,330
General fund	4,811,040
Special funds	7,517
Global Commitment fund	415,000
Federal funds	7,444,102
Interdepartmental transfers	3,418,903
Total	16,519,892

Sec. B.301 Secretary's office - global commitment

Total

Grants	<u>1,069,889,436</u>
Total	1,069,889,436
Source of funds	
ARRA funds	114,839,217
Tobacco fund	35,848,873
General fund	67,263,134
Special funds	11,398,028
State health care resources for	und175,395,700
Catamount fund	18,978,195
Federal funds	645,808,622
Interdepartmental transfers	<u>357,667</u>
Total	1,069,889,436

Sec. B.302	Rate setting	
	Personal services	858,339
	Operating expenses	70,029
	Total	928,368
S	ource of funds	
	Global Commitment fund	<u>928,368</u>
	Total	928,368
Sec. B.303	Developmental disabilities of	council
	Personal services	269,694
	Operating expenses	51,991
	Grants	<u>220,000</u>
	Total	541,685
S	ource of funds	
	Federal funds	<u>541,685</u>
	Total	541,685
Sec. B.304	Human services board	
	Personal services	282,894
	Operating expenses	<u>67,804</u>
	Total	350,698
S	ource of funds	
	General fund	49,713
	Federal funds	150,493
	Interdepartmental transfers	<u>150,492</u>
	Total	350,698
Sec. B.305	AHS - administrative fund	
	Personal services	250,000
	Operating expenses	<u>4,750,000</u>
	Total	5,000,000
S	ource of funds	
	Interdepartmental transfers	<u>5,000,000</u>
	Total	5,000,000
Sec. B.306	Department of Vermont hea	lth access - administration
	Personal services	43,922,367
	Operating expenses	2,397,618
	Grants	<u>3,973,674</u>
	Total	50,293,659
S	ource of funds	
	General fund	1,549,943

Special funds	3,016,174
Global Commitment fund	32,844,084
Federal funds	12,883,458
Total	50,293,659

Sec. B.307 Department of Vermont health access - Medicaid program - global commitment

Grants	<u>632,041,657</u>
Total	632,041,657
Source of funds	
Global Commitment fund	632,041,657
Total	632,041,657

Sec. B.308 Department of Vermont health access - Medicaid program - long term care waiver

Grants	<u>206,518,359</u>
Total	206,518,359
Source of funds	
ARRA funds	22,351,327
General fund	62,909,625
Federal funds	121,257,407
Total	206,518,359

Sec. B.309 Department of Vermont health access - Medicaid program - state only

Grants	18,026,949
Total	18,026,949
Source of funds	
General fund	16,296,293
Global Commitment fund	1,730,656
Total	18,026,949

Sec. B.310 Department of Vermont health access - Medicaid non-waiver matched

Grants	48,367,662
Total	48,367,662
Source of funds	
General fund	17,328,535
Federal funds	31,039,127
Total	48,367,662

Sec. B.311	Health - administration and s	support
	Personal services	5,741,814
	Operating expenses	2,182,153
	Grants	2,612,000
	Total	10,535,967
S	ource of funds	, ,
	General fund	1,070,058
	Special funds	232,148
	Global Commitment fund	3,400,011
	Federal funds	<u>5,833,750</u>
	Total	10,535,967
Sec. B.312	Health - public health	
	Personal services	32,322,118
	Operating expenses	7,193,132
	Grants	34,113,459
	Total	73,628,709
S	ource of funds	
	Tobacco fund	1,166,803
	General fund	7,737,787
	Special funds	4,783,956
	Global Commitment fund	26,019,847
	Catamount fund	2,510,319
	Federal funds	30,795,573
	Permanent trust funds	10,000
	Interdepartmental transfers	604,424
	Total	73,628,709
Sec. B.313	Health - alcohol and drug ab	use programs
	Personal services	2,931,722
	Operating expenses	709,845
	Grants	27,987,483
	Total	31,629,050
S	ource of funds	
	Tobacco fund	2,382,834
	General fund	3,019,387
	Special funds	232,084
	Global Commitment fund	17,503,430
	Federal funds	8,341,315
	Interdepartmental transfers	<u>150,000</u>
	Total	31,629,050

Sec. B.314	Mental	health -	mental	health
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Personal services	5,363,774
Operating expenses	904,685
Grants	128,312,179
Total	134,580,638
Source of funds	
General fund	792,412
Special funds	6,836
Global Commitment fund	127,939,561
Federal funds	5,821,829
Interdepartmental transfers	20,000
Total	134,580,638

Sec. B.315 Mental health - Vermont state hospital

Personal services	20,934,634
Operating expenses	2,234,840
Grants	82,335
Total	23,251,809
Source of funds	
General fund	22,687,045
Special funds	50,000
Global Commitment fund	1,200
Federal funds	213,564
Interdepartmental transfers	300,000
Total	23,251,809

Sec. B.316 Department for children and families - administration & support services

Personal services	31,767,592
Operating expenses	7,451,074
Grants	852,829
Total	46,071,495
Source of funds	
General fund	15,054,158
Global Commitment fund	17,233,385
Federal funds	13,783,952
Total	46.071.495

Sec. B.317 Department for children and families - family services

Personal services	22,899,710
Operating expenses	3,344,491
Grants	63,337,675

Total	89,581,876
Source of funds	
ARRA funds	705,724
Tobacco fund	275,000
General fund	21,435,381
Special funds	1,691,637
Global Commitment fund	37,870,954
Federal funds	27,503,180
Interdepartmental transfers	100,000
Total	89,581,876

Sec. B.318 Department for children and families - child development

Personal services	3,265,859
Operating expenses	498,925
Grants	56,136,434
Total	59,901,218
Source of funds	
ARRA funds	2,282,687
General fund	23,198,997
Special funds	1,820,000
Global Commitment fund	5,448,940
Federal funds	27,011,087
Interdepartmental transfers	139,507
Total	59,901,218

Sec. B.319 Department for children and families - office of child support

Personal services	9,071,791
Operating expenses	4,122,248
Total	13,194,039
Source of funds	
ARRA funds	431,230
General fund	2,690,672
Special funds	455,718
Federal funds	9,228,819
Interdepartmental transfers	<u>387,600</u>
Total	13,194,039

Sec. B.320 Department for children and families - aid to aged, blind and disabled

Personal services	1,801,009
Grants	10,738,080
Total	12,539,089

Source of funds

General fund	8,789,089
Global Commitment fund	3,750,000
Total	12,539,089

Sec. B.321 Department for children and families - general assistance

Grants	<u>5,850,928</u>
Total	5,850,928
Source of funds	
ARRA funds	1,699,412
General fund	2,700,196
Global Commitment fund	340,000
Federal funds	1,111,320
Total	5,850,928

Sec. B.322 Department for children and families - food stamp cash out

Grants	<u>22,610,178</u>
Total	22,610,178
Source of funds	
ARRA funds	575,000
Federal funds	22,035,178
Total	22,610,178

Sec. B.323 Department for children and families - reach up

Grants	49,229,159
Total	49,229,159
Source of funds	
ARRA funds	1,127,346
General fund	19,927,750
Special funds	19,916,856
Global Commitment fund	374,400
Federal funds	7,882,807
Total	49,229,159

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	266,289
Operating expenses	78,339
Grants	<u>4,747,762</u>
Total	5,092,390
Source of funds	
General fund	1,241,285
Special funds	57,990
Federal funds	<u>3,793,115</u>
Total	5,092,390

Sec. B.326 Department for children and families - OEO - weatherization assistance

Personal services	183,254
Operating expenses	130,762
Grants	14,959,936
Total	15,273,952
Source of funds	
ARRA funds	8,421,288
Special funds	4,602,998
Federal funds	2,249,666
Total	15,273,952

Sec. B.327 Department for children and families - Woodside rehabilitation center

Personal services	3,453,113
Operating expenses	578,399
Total	4,031,512
Source of funds	
General fund	3,976,620
Interdepartmental transfers	54,892
Total	4,031,512

Sec. B.328 Department for children and families - disability determination services

Personal services	4,353,948
Operating expenses	1,133,361
Total	5,487,309
Source of funds	
Global Commitment fund	246,517

Federal funds	<u>5,240,792</u>
Total	5,487,309

Sec. B.329 Disabilities, aging and independent living - administration & support

Personal services	24,109,012
Operating expenses	3,661,592
Total	27,770,604
Source of funds	
General fund	7,131,010
Special funds	889,246
Global Commitment fund	6,014,470
Federal funds	11,246,096
Interdepartmental transfers	2,489,782
Total	27,770,604

Sec. B.330 Disabilities, aging and independent living - advocacy and independent living grants

Grants	22,233,616
Total	22,233,616
Source of funds	
ARRA funds	404,000
General fund	9,908,037
Global Commitment fund	3,638,762
Federal funds	7,645,317
Interdepartmental transfers	637,500
Total	22,233,616

Sec. B.331 Disabilities, aging and independent living - blind and visually impaired

Grants	<u>1,481,457</u>
Total	1,481,457
Source of funds	
General fund	364,064
Special funds	223,450
Global Commitment fund	245,000
Federal funds	648,943
Total	1,481,457

Sec. B.332 Disabilities, aging and independent living - vocational rehabilitation

Grants	<u>7,302,971</u>
Total	7,302,971

Se	ource of funds	
	ARRA funds	1,334,000
	General fund	1,535,695
	Global Commitment fund	7,500
	Federal funds	4,132,389
	Interdepartmental transfers	<u>293,387</u>
	Total	7,302,971
Sec. B.333	Disabilities, aging and indep	endent living - d
	Grants	149,922,473
		1.40.000.450

developmental services

Grants	<u> 149,922,473</u>
Total	149,922,473
Source of funds	
General fund	155,125
Special funds	15,463
Global Commitment fund	149,392,028
Federal funds	<u>359,857</u>
Total	149,922,473

Sec. B.334 Disabilities, aging and independent living -TBI home and community based waiver

389,059

389,059

389,059

community ous	ied warver	
Gra	ants	4,044,899
	Total	4,044,899
Sourc	ce of funds	
Glo	obal Commitment fund	4,044,899
	Total	4,044,899
Sec. B.335 Co.	rrections - administration	
Per	sonal services	1,984,192
Op	erating expenses	<u>215,304</u>
	Total	2,199,496
Sourc	e of funds	
Ge	neral fund	2,199,496
	Total	2,199,496
Sec. B.336 Co.	rrections - parole board	
Per	rsonal services	328,861
Op	erating expenses	<u>60,198</u>

Total

Total

Source of funds General fund

Sec. B.337	Corrections -	correctional	education
DCC. D.331	Collections	Collectional	Caacation

Personal services	4,419,709
Operating expenses	306,274
Total	4,725,983
Source of funds	
General fund	368,863
Special funds	696,991
Interdepartmental transfers	3,660,129
Total	4,725,983

Sec. B.338 Corrections - correctional services

Personal services	80,054,352
Operating expenses	33,761,401
Grants	3,722,953
Total	117,538,706
Source of funds	
Tobacco fund	87,500
General fund	113,305,822
Special funds	483,963
Global Commitment fund	3,094,144
Federal funds	170,962
Interdepartmental transfers	<u>396,315</u>
Total	117,538,706

Sec. B.339 Correctional services-out of state beds

Personal services

Personal services	17,008,240
Total	17,008,240
Source of funds	
General fund	17,008,240
Total	17,008,240

Sec. B.340 Corrections - correctional facilities - recreation

Operating expenses	<u>342,362</u>
Total	817,868
Source of funds	
General fund	125,000
Special funds	<u>692,868</u>
Total	817,868

475,506

Sec. B.341	1 Corrections - Vermont offender work program		
	Personal services Operating expenses Total	986,255 <u>554,103</u> 1,540,358	
So	ource of funds	1,0 .0,000	
	Internal service funds Total	1,540,358 1,540,358	
Sec. B.342	Vermont veterans' home - car	re and support services	
	Personal services Operating expenses Total	15,385,424 <u>3,673,019</u> 19,058,443	
So	Special funds Special funds Global Commitment fund Federal funds Total	11,615,802 1,410,956 <u>6,031,685</u> 19,058,443	
Sec. B.343	Commission on women		
a	Personal services Operating expenses Total	235,132 66,690 301,822	
50	ource of funds General fund Special funds Total	296,822 5,000 301,822	
Sec. B.344 Retired senior volunteer program			
So	Grants Total ource of funds	131,096 131,096	
	General fund Total	131,096 131,096	
Sec. B.345	Total Human services	3,039,047,438	
So	ource of funds General fund Special funds Tobacco fund Global Commitment fund State health care resources for Catamount fund	457,447,449 62,894,725 40,184,340 1,075,935,769 and175,395,700 21,488,514	

Federal funds	1,031,818,754
ARRA funds	154,171,231
Permanent trust funds	10,000
Internal service funds	1,540,358
Interdepartmental transfers	<u>18,160,598</u>
Total	3,039,047,438
Sec. B.400 Labor - administration	
Personal services	2,746,693
Operating expenses	577,547
Grants	<u>30,000</u>
Total	3,354,240
Source of funds	
ARRA funds	348,824
General fund	272,756
Special funds	459,031
Catamount fund	76,844
Federal funds	2,001,785
Interdepartmental transfers	<u>195,000</u>
Total	3,354,240
Sec. B.401 Labor - programs	
Personal services	23,010,309
Operating expenses	5,488,024
Grants	3,719,147
Total	32,217,480
Source of funds	
ARRA funds	4,222,948
General fund	2,288,674
Special funds	2,912,759
Catamount fund	317,228
Federal funds	21,170,870
Interdepartmental transfers	<u>1,305,001</u>
Total	32,217,480
Sec. B.402 Total Labor	35,571,720
Source of funds	
General fund	2,561,430
Special funds	3,371,790
Catamount fund	394,072
Federal funds	23,172,655
ARRA funds	4,571,772

Interdepartmental transfers	<u>1,500,001</u>
Total	35,571,720
Sec. B.500 Education - finance and adm	inistration
Personal services	5,666,454
Operating expenses	1,715,341
Grants	11,384,730
Total	18,766,525
Source of funds	
General fund	3,103,135
Education fund	427,526
Special funds	12,395,755
Global Commitment fund	823,092
Federal funds	2,012,287
Interdepartmental transfers	<u>4,730</u>
Total	$18,76\overline{6,525}$
Sec. B.501 Education - education service	es
Personal services	12,293,389
Operating expenses	1,598,645
Grants	166,683,243
Total	180,575,277
Source of funds	
ARRA funds	46,719,169
General fund	4,805,426
Education fund	1,131,751
Special funds	2,061,526
Federal funds	125,832,574
Interdepartmental transfers	<u>24,831</u>
Total	180,575,277
Sec. B.502 Education - special education	n: 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 stud	lents
Grants	16,400,000
Total	16,400,000
Source of funds	

Total 16,400,000 Sec. B.504 Education - adult education and literacy Grants 6,463,656 Total 6,463,656 Source of funds 787,995 Education fund 4,800,000 Federal funds 875,661 Total 6,463,656 Sec. B.505 Education - adjusted education payment			<u>16,400,000</u>
Grants 6,463,656 Total 6,463,656 Source of funds 787,995 Education fund 4,800,000 Federal funds 875,661 Total 6,463,656		Total	16,400,000
Total 6,463,656 Source of funds General fund 787,995 Education fund 4,800,000 Federal funds 875,661 Total 6,463,656	Sec. B.504	Education - adult education a	nd literacy
Source of funds 787,995 General fund 787,995 Education fund 4,800,000 Federal funds 875,661 Total 6,463,656		Grants	6,463,656
General fund 787,995 Education fund 4,800,000 Federal funds 875,661 Total 6,463,656			6,463,656
Education fund 4,800,000 Federal funds 875,661 Total 6,463,656	So		
Federal funds 875,661 Total 6,463,656			
Total 6,463,656			
, ,			
Sec. R 505 Education - adjusted education payment		Total	6,463,656
Sec. B.505 Education - adjusted education payment	Sec. B.505	Education - adjusted education	on payment
Grants <u>1,137,155,536</u>		Grants	1,137,155,536
Total 1,137,155,536		10001	1,137,155,536
Source of funds	So		
ARRA interdepartmental transfer38,575,036			
Education fund $\underline{1,098,580,500}$			
Total 1,137,155,536		Total	1,137,155,536
Sec. B.506 Education - transportation	Sec. B.506	Education - transportation	
Grants <u>15,782,031</u>		Grants	15,782,031
Total 15,782,031		Total	15,782,031
Source of funds	So	ource of funds	
Education fund $\underline{15,782,031}$		Education fund	<u>15,782,031</u>
Total 15,782,031		Total	15,782,031
Sec. B.507 Education - small school grants	Sec. B.507	Education - small school gran	nts
Grants <u>7,000,000</u>		Grants	7,000,000
Total 7,000,000		Total	7,000,000
Source of funds	So	ource of funds	
Education fund $7,000,000$		Education fund	7,000,000
Total 7,000,000		Total	7,000,000
Sec. B.508 Education - capital debt service aid	Sec. B.508	Education - capital debt servi	ce aid
Grants <u>180,000</u>		Grants	180,000
Total 180,000		Total	
Source of funds	So	ource of funds	
Education fund <u>180,000</u>		Education fund	<u>180,000</u>
Total 180,000		Total	180,000

Sec. B.509 Education - tobacco litigati	on
Personal services	129,931
Operating expenses	46,222
Grants	812,764
Total	988,917
Source of funds	
Tobacco fund	<u>988,917</u>
Total	988,917
Sec. B.510 Education - essential early	education grant
Grants	<u>5,679,216</u>
Total	5,679,216
Source of funds	
Education fund	<u>5,679,216</u>
Total	5,679,216
Sec. B.511 Education - technical educa	ntion
Grants	12,784,382
Total	12,784,382
Source of funds	
Education fund	12,784,382
Total	12,784,382
Sec. B.512 Education - Act 117 cost co	ontainment
Personal services	1,059,820
Operating expenses	131,887
Grants	<u>91,000</u>
Total	1,282,707
Source of funds	
Special funds	1,282,707
Total	1,282,707
Sec. B.513 Appropriation and transfer	to education fund
Grants	240,803,945
Total	240,803,945
Source of funds	
General fund	<u>240,803,945</u>
Total	240,803,945
Sec. B.514 State teachers' retirement sy	ystem
Personal services	7,269,278
Operating expenses	20,964,109

Grants		<u>46,913,381</u>
Total		75,146,768
So	ource of funds	
	General fund	46,913,381
	Pension trust funds	28,233,387
	Total	75,146,768
		73,110,700
Sec. B.515	Total General education	1,861,696,935
So	ource of funds	
	General fund	296,413,882
	Education fund	1,305,223,381
	Special funds	15,739,988
	Tobacco fund	988,917
	Global Commitment fund	1,053,092
	Federal funds	
		128,720,522
	ARRA funds	46,719,169
	Pension trust funds	28,233,387
	Interdepartmental transfers	29,561
	ARRA interdepartmental tra	ansfer <u>38,575,036</u>
	Total	1,861,696,935
Sec. B.600	University of Vermont	
	Grants	40,746,633
	Total	40,746,633
Co	ource of funds	40,740,033
		26740 477
	General fund	36,740,477
	Global Commitment fund	4,006,156
	Total	40,746,633
Sec. B.601	Vermont Public Television	
	Grants	547,683
	Total	
C -		547,683
	ource of funds	7.17.coo
	General fund	547,683
	Total	547,683
Sec. B.602	Vermont state colleges	
	Grants	23.107.247
	Total	23,107,247 23,107,247
C.	ource of funds	23,107,247
		02 107 047
	General fund	23,107,247
	Total	23,107,247

Sec. B.603	Vermont state colleges - allied	health
(Grants Total	1,116,503 1,116,503
	urce of funds	711 006
	General fund Global Commitment fund	711,096 405,407
'	Total	1,116,503
Sec. B.604	Vermont interactive television	
(Grants	<u>785,679</u>
	Total	785,679
	urce of funds	-00
•	General fund	785,679
	Total	785,679
Sec. B.605	Vermont student assistance co	rporation
•	Grants	18,363,607
	Total	18,363,607
	urce of funds	
•	General fund	18,363,607
	Total	18,363,607
Sec. B.606	New England higher education	n compact
	Grants	84,000
	Total	84,000
So	urce of funds	
•	General fund	84,000
	Total	84,000
Sec. B.607	University of Vermont - Morg	an Horse Farm
•	Grants	<u>1</u>
_	Total	1
	urce of funds	4
•	General fund	<u>l</u>
	Total	1
Sec. B.608	Total Higher education	84,751,353
So	urce of funds	
	General fund	80,339,790
	Global Commitment fund	4,411,563
	Total	84,751,353

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Sec. B.700	Natural resources - agency of	of natural resources - administration
	Personal services	3,496,740
	Operating expenses	1,107,048
	Grants	<u>70,510</u>
	Total	4,674,298
S	ource of funds	
	General fund	4,269,265
	Special funds	17,797
	Federal funds	174,332
	Interdepartmental transfers	<u>212,904</u>
	Total	4,674,298
Sec. B.701	Natural resources - state land	d local property tax assessment
	Operating expenses	<u>2,128,733</u>
	Total	2,128,733
S	ource of funds	
	General fund	1,707,233
	Interdepartmental transfers	<u>421,500</u>
	Total	2,128,733
Sec. B.702	Fish and wildlife - support a	nd field services
	Personal services	12,803,506
	Operating expenses	4,897,176
	Grants	904,333
	Total	18,605,015
S	ource of funds	
	General fund	1,157,253
	Fish and wildlife fund	17,113,525
	Interdepartmental transfers	<u>334,237</u>
	Total	18,605,015
Sec. B.703	Forests, parks and recreation	a - administration
	Personal services	918,024
	Operating expenses	621,179
	Grants	<u>1,815,491</u>
	Total	3,354,694
S	ource of funds	
	ARRA funds	50,000
	General fund	1,033,816
	Special funds	1,307,878
	Federal funds	<u>963,000</u>
	Total	3,354,694

Sec. B.704	Forests,	parks a	and re	ecreation	- forestry
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4,511,199
531,567
501,000
5,543,766
252,750
3,221,738
679,372
1,259,906
130,000
5,543,766

Sec. B.705 Forests, parks and recreation - state parks

Personal services	5,503,357
Operating expenses	<u>1,984,815</u>
Total	7,488,172
Source of funds	
ARRA funds	70,000
General fund	532,197
Special funds	6,751,451
Interdepartmental transfers	<u>134,524</u>
Total	7,488,172

Sec. B.706 Forests, parks and recreation - lands administration

Personal services	450,413
Operating expenses	1,209,166
Total	1,659,579
Source of funds	
General fund	385,374
Special funds	179,205
Federal funds	1,050,000
Interdepartmental transfers	<u>45,000</u>
Total	1,659,579

Sec. B.707 Forests, parks and recreation - youth conservation corps

Grants	<u>670,541</u>
Total	670,541
Source of funds	
General fund	42,320
Special funds	284,221
Federal funds	94.000

Interdepartmental transfers Total	250,000 670,541
Sec. B.708 Forests, parks and recreation - forest highway maintenance	
Personal services Operating expenses Total	20,000 <u>134,925</u> 154,925
Source of funds General fund Total	154,925 154,925
Sec. B.709 Environmental conservation - management and support services	
Personal services Operating expenses Grants Total Source of funds General fund Special funds Federal funds Interdepartmental transfers Total	3,745,984 1,119,601 100,000 4,965,585 691,248 2,366,427 1,397,800 510,110
Total 4,965,585 Sec. B.710 Environmental conservation - air and waste management	
Personal services Operating expenses Grants Total Source of funds ARRA funds General fund Special funds Federal funds Interdepartmental transfers Total	7,715,537 6,426,547 1,756,800 15,898,884 540,966 560,448 10,909,314 3,583,156 305,000 15,898,884
Sec. B.711 Environmental conservation - office of water programs	
Personal services Operating expenses Grants Total Source of funds	13,400,525 1,967,669 <u>2,246,681</u> 17,614,875
ARRA funds	553,471

General fund	5,708,472
Special funds	4,705,975
Federal funds	6,136,957
Interdepartmental transfers	<u>510,000</u>
Total	17,614,875
Sec. B.712 Environmental conservation	- tax-loss-Co

Sec. B.712 Environmental conservation - tax-loss-Connecticut river flood control

Operating expenses	<u>34,700</u>
Total	34,700
Source of funds	
General fund	3,470
Special funds	31,230
Total	34,700

Sec. B.713 Natural resources board

Personal services	2,375,663
Operating expenses	<u>356,939</u>
Total	2,732,602
Source of funds	
General fund	766,716
Special funds	<u>1,965,886</u>
Total	2,732,602

Sec. B.714 Total Natural resources 85,526,369

Source of funds	
General fund	20,234,475
Fish and wildlife fund	17,113,525
Special funds	29,198,756
Federal funds	14,659,151
ARRA funds	1,467,187
Interdepartmental transfers	2,853,275
Total	85,526,369

Sec. B.800 Commerce and community development - agency of commerce and community development - administration

Personal services	1,925,799
Operating expenses	1,078,886
Grants	<u>1,486,390</u>
Total	4,491,075
Source of funds	
ARRA funds	350,000
General fund	2,726,075

Sec. B.801 Economic, housing, and community development Personal services 4,364,330 Operating expenses 1,360,756 Grants 18,162,346 Total 23,887,432 Source of funds 40,091,95 General funds 6,108,660 Special funds 4,131,257 Federal funds 13,557,320 Total 23,887,432 Sec. B.802 Historic sites - special improvements Personal services 40,000 Operating expenses 40,670 Total 80,670 Source of funds 20,000 Federal funds 40,000 Interdepartmental transfers 20,670 Total 80,670 Sec. B.803 Community development block grants Grants 8,535,530 Source of funds 4,089,000 Federal funds 1,089,000 Federal funds 7,446,530 Total 8,535,530 Sec. B.804 Downtown transportation and capital improvement fund Personal services 79,326 Gr	Federal funds Interdepartmental transfers Total	800,000 <u>615,000</u> 4,491,075
Operating expenses 1,360,756 Grants 18,162,346 Total 23,887,432 Source of funds ARRA funds 90,195 General fund 6,108,660 Special funds 13,557,320 Total 23,887,432 Sec. B.802 Historic sites - special improvements Personal services 40,000 Operating expenses 40,670 Total 80,670 Source of funds Special funds 20,000 Federal funds 40,000 Interdepartmental transfers 20,670 Total 80,670 Sec. B.803 Community development block grants Grants 8,535,530 Total 8,535,530 Source of funds ARRA funds 1,089,000 Federal funds 1,089,000 Federal funds 7,446,530 Total 8,535,530 Sec. B.804 Downtown transportation and capital improvement fund Personal services 79,326 Grants 320,674 Total 400,000 Source of funds Source of funds Special funds 320,674 Total 400,000 Source of funds Source of funds Special funds 400,000	Sec. B.801 Economic, housing, and con	nmunity development
Source of funds	Operating expenses Grants	1,360,756 <u>18,162,346</u>
ARRA funds 90,195 General fund 6,108,660 Special funds 4,131,257 Federal funds 13,557,320 Total 23,887,432 Sec. B.802 Historic sites - special improvements Personal services 40,000 Operating expenses 40,670 Total 80,670 Source of funds Special funds 20,000 Federal funds 40,000 Interdepartmental transfers 20,670 Total 80,670 Sec. B.803 Community development block grants Grants 8,535,530 Total 8,535,530 Source of funds ARRA funds 1,089,000 Federal funds 1,089,000 Federal funds 7,446,530 Total 8,535,530 Source of funds ARRA funds 1,089,000 Federal funds 7,446,530 Total 8,535,530 Sec. B.804 Downtown transportation and capital improvement fund Personal services 79,326 Grants 320,674 Total 400,000 Source of funds Special funds 400,000		23,007,432
Sec. B.802 Historic sites - special improvements Personal services 40,000 Operating expenses 40,670 Total 80,670 Source of funds Special funds 20,000 Federal funds 40,000 Interdepartmental transfers 20,670 Total 80,670 Sec. B.803 Community development block grants Grants 8,535,530 Total 8,535,530 Source of funds ARRA funds 1,089,000 Federal funds 7,446,530 Total 8,535,530 Sec. B.804 Downtown transportation and capital improvement fund Personal services 79,326 Grants 320,674 Total 400,000 Source of funds Source of funds Special funds 400,000	General fund Special funds Federal funds	6,108,660 4,131,257 13,557,320
Personal services 40,000 Operating expenses 40,670 Total 80,670 Source of funds 20,000 Special funds 40,000 Federal funds 40,000 Interdepartmental transfers 20,670 Total 80,670 Sec. B.803 Community development block grants Grants 8,535,530 Source of funds 1,089,000 ARRA funds 1,089,000 Federal funds 7,446,530 Total 8,535,530 Sec. B.804 Downtown transportation and capital improvement fund Personal services 79,326 Grants 320,674 Total 400,000 Source of funds Special funds		,
Operating expenses 40,670 Total 80,670 Source of funds 20,000 Special funds 40,000 Interdepartmental transfers 20,670 Total 80,670 Sec. B.803 Community development block grants Grants 8,535,530 Total 8,535,530 Source of funds 1,089,000 Federal funds 7,446,530 Total 8,535,530 Sec. B.804 Downtown transportation and capital improvement fund Personal services 79,326 Grants 320,674 Total 400,000 Source of funds Special funds	-	
Special funds 20,000 Federal funds 40,000 Interdepartmental transfers 20,670 Total 80,670 Sec. B.803 Community development block grants Grants 8,535,530 Total 8,535,530 Source of funds ARRA funds 1,089,000 Federal funds 7,446,530 Total 8,535,530 Sec. B.804 Downtown transportation and capital improvement fund Personal services 79,326 Grants 320,674 Total 400,000 Source of funds Special funds 400,000	Operating expenses	40,670
Federal funds	Source of funds	
Interdepartmental transfers	<u> </u>	
Total 80,670 Sec. B.803 Community development block grants Grants 8,535,530 Total 8,535,530 Source of funds 1,089,000 Federal funds 7,446,530 Total 8,535,530 Sec. B.804 Downtown transportation and capital improvement fund Personal services 79,326 Grants 320,674 Total 400,000 Source of funds 5pecial funds		*
Sec. B.803 Community development block grants Grants Total Source of funds ARRA funds Federal funds Total Total Sec. B.804 Downtown transportation and capital improvement fund Personal services Grants Total Personal services Total Source of funds Source of funds Source of funds Special funds $\frac{400,000}{400,000}$		· · · · · · · · · · · · · · · · · · ·
Total 8,535,530 Source of funds ARRA funds 1,089,000 Federal funds 7,446,530 Total 8,535,530 Sec. B.804 Downtown transportation and capital improvement fund Personal services 79,326 Grants 320,674 Total 400,000 Source of funds Special funds 400,000	Sec. B.803 Community development blo	,
ARRA funds Federal funds Total Total Sec. B.804 Downtown transportation and capital improvement fund Personal services Grants Total Total Source of funds Special funds 1,089,000 8,535,530 7,446,530 8,535,530 89,326 490,000 400,000	Total	
Federal funds Total Total Total Total Total Total Total Total Total Personal services Total Source of funds Special funds Total Tot		1 000 000
Total 8,535,530 Sec. B.804 Downtown transportation and capital improvement fund Personal services 79,326 Grants 320,674 Total 400,000 Source of funds Special funds 400,000		
Personal services 79,326 Grants 320,674 Total 400,000 Source of funds 400,000 Special funds 400,000		
Grants 320,674 Total 400,000 Source of funds 400,000 Special funds 400,000	Sec. B.804 Downtown transportation an	d capital improvement fund
	Grants Total Source of funds Special funds	320,674 400,000 400,000

Sec. B.805	Tourism and marketing	
	Personal services Operating expenses	1,503,826 1,751,984
S	Grants Total ource of funds	80,000 3,335,810
D.	General fund Special funds	3,329,810 <u>6,000</u>
	Total	3,335,810
Sec. B.806	Vermont life	
	Personal services Operating expenses Total	723,536 <u>89,881</u> 813,417
So	ource of funds Enterprise funds Total	813,417 813,417
Sec. B.807	Vermont council on the arts	
	Grants Total	507,607 507,607
Se	ource of funds	507.607
	General fund Total	507,607 507,607
Sec. B.808	Vermont symphony orchestra	
S	Grants Total ource of funds	113,821 113,821
5.	General fund Total	113,821 113,821
Sec. B.809	Vermont historical society	
~	Grants Total	795,669 795,669
So	ource of funds General fund Total	795,669 795,669
Sec. B.810	Vermont housing and conservat	ion board
	Grants Total	23,789,348 23,789,348

S	ource of funds	
	Special funds	6,606,662
	Federal funds	17,182,686
	Total	23,789,348
Sec. B.811	Vermont humanities council	
	Grants	172,670
	Total	172,670
S	ource of funds	
	General fund	<u>172,670</u>
	Total	172,670
	Total Commerce and commu	=
developme	nt	66,923,049
S	ource of funds	
	General fund	13,754,312
	Special funds	11,163,919
	Federal funds	39,026,536
	ARRA funds	1,529,195
	Enterprise funds	813,417
	Interdepartmental transfers	635,670
	Total	66,923,049
Sec. B.900	Transportation - finance and a	administration
	Personal services	9,737,904
	Operating expenses	2,720,073
	Grants	385,000
	Total	12,842,977
S	ource of funds	
	Transportation fund	11,883,975
	Federal funds	959,002
	Total	12,842,977
Sec. B.901	Transportation - aviation	
	Personal services	2,643,444
	Operating expenses	20,173,198
	Grants	<u>160,000</u>
	Total	22,976,642
S	ource of funds	
	ARRA funds	3,500,000
	Transportation fund	3,035,642
	Federal funds	16,441,000
	Total	22,976,642

Sec. B.902	Transportation	۱ -	buildings
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Operating expenses	2,467,500
Total	2,467,500
Source of funds	
TIB fund	190,000
Transportation fund	1,517,500
Federal funds	<u>760,000</u>
Total	2,467,500

Sec. B.903 Transportation - program development

Personal services	36,339,478
Operating expenses	220,453,550
Grants	<u>26,819,421</u>
Total	283,612,449
Source of funds	
ARRA funds	45,034,600
TIB fund	14,856,273
Transportation fund	18,937,922
Local match	1,434,254
Federal funds	199,707,420
Interdepartmental transfers	<u>3,641,980</u>
Total	283,612,449

Sec. B.904 Transportation - rest areas

Personal services	270,000
Operating expenses	4,550,000
Total	4,820,000
Source of funds	
TIB fund	283,800
Transportation fund	405,144
Federal funds	4,131,056
Total	4.820.000

Sec. B.905 Transportation - maintenance state system

Personal services	34,530,658
Operating expenses	32,821,229
Grants	30,000
Total	67,381,887
Source of funds	
Transportation fund	65,552,943
Federal funds	1.728.944

	Interdepartmental transfers Total	100,000 67,381,887	
Sec. B.906	Sec. B.906 Transportation - planning, outreach and community affa		
S	Personal services Operating expenses Grants Total ource of funds	3,080,461 1,350,317 <u>4,969,488</u> 9,400,266	
	Transportation fund Federal funds Interdepartmental transfers Total	1,986,265 7,166,001 <u>248,000</u> 9,400,266	
Sec. B.907	Transportation - rail Personal services Operating expenses	3,344,027 48,385,856	
S	Total ource of funds ARRA funds TIB fund Transportation fund Local match Federal funds Total	51,729,883 26,231,846 1,609,000 10,026,291 250,000 <u>13,612,746</u> 51,729,883	
Sec. B.908	Transportation - public transit		
S	Personal services Operating expenses Grants Total ource of funds ARRA funds Transportation fund Federal funds Total	707,567 168,602 23,863,535 24,739,704 2,000,000 6,842,927 15,896,777 24,739,704	
Sec. B.909	Transportation - central garage		
S	Personal services Operating expenses Total ource of funds	3,347,147 14,130,716 17,477,863	

·	/
Internal service funds	17,477,863
Total	17,477,863
Sec. B.910 Department of motor vehicles	S
Personal services	15,786,441
Operating expenses	8,303,553
Grants	<u>136,476</u>
Total	24,226,470
Source of funds	22 022 720
Transportation fund	23,022,730
Federal funds	1,203,740
Total	24,226,470
Sec. B.911 Transportation - town highway	y structures
Grants	<u>5,833,500</u>
Total	5,833,500
Source of funds	- 000 - 00
Transportation fund	<u>5,833,500</u>
Total	5,833,500
Sec. B.912 Transportation - town highway	y Vermont local roads
Grants	<u>390,000</u>
Total	390,000
Source of funds	227.000
Transportation fund	235,000
Federal funds	155,000 200,000
Total	390,000
Sec. B.913 Transportation - town highway	y class 2 roadway
Grants	<u>7,248,750</u>
Total	7,248,750
Source of funds	7.240.750
Transportation fund	<u>7,248,750</u>
Total	7,248,750
Sec. B.914 Transportation - town highway	y bridges
Personal services	3,600,000
Operating expenses	<u>15,489,340</u>
Total	19,089,340
Source of funds	2.000.070
ARRA funds	3,990,070
TIB fund	1,616,014
Transportation fund	658,224

	Local match Federal funds Total	766,631 12,058,401 19,089,340
Sec. B.915 Transportation - town highway aid program		
	Grants Total	24,982,744 24,982,744
S	ource of funds Transportation fund Total	<u>24,982,744</u> 24,982,744
Sec. B.916	Transportation - town highway	class 1 supplemental grants
S	Grants Total ource of funds	128,750 128,750
	Transportation fund Total	128,750 128,750
Sec. B.917 Transportation - town highway emergency fund		
c	Grants Total ource of funds	750,000 750,000
5	Transportation fund Total	750,000 750,000
Sec. B.918	Transportation - municipal mitig	gation grant program
S	Grants Total ource of funds	<u>2,112,998</u> 2,112,998
	Transportation fund Federal funds Total	247,998 <u>1,865,000</u> 2,112,998
Sec. B.919 Transportation - public assistance grant program		ce grant program
S	Grants Total ource of funds	200,000 200,000
5	Federal funds Total	200,000 200,000
Sec. B.920	Transportation board	
	Personal services Operating expenses	75,633 10,911

Total	86,544
Source of funds	
Transportation fund	86,544
Total	86,544
Sec. B.921 Total Transportation	582,498,267
Source of funds	
Transportation fund	183,382,849
TIB fund	18,555,087
Local match	2,450,885
Federal funds	275,885,087
ARRA funds	80,756,516
Internal service funds	17,477,863
Interdepartmental transfers	3,989,980
Total	582,498,267
Sec. B.1000 Debt service	, ,
Debt service	70,976,314
Total	70,976,314
Source of funds	, 0, > , 0, 5 1 .
General fund	65,794,622
Transportation fund	3,477,902
Special funds	1,026,225
Federal funds	677,565
Total	70,976,314
Sec. B.1001 Total Debt service	70,976,314
Source of funds	
General fund	65,794,622
Transportation fund	3,477,902
Special funds	1,026,225
Federal funds	677,565
Total	70,976,314
1 VIII	, 0,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

Sec. B.1100 FISCAL YEAR 2011 NEXT GENERATION APPROPRIATION AND TRANSFERS

- (a) In fiscal year 2011, \$4,793,000 is appropriated or transferred from the next generation initiative fund, created in 16 V.S.A. § 2887, as prescribed below:
 - (1) Workforce development: \$1,948,500 as follows:
- (A) Workforce Education Training Fund (WETF). The sum of \$1,300,500 is transferred to the Vermont workforce education and training

fund and subsequently appropriated to 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. § 522, to unemployed and underemployed Vermont adults. Centers receiving funding shall provide to the department the social security number of each individual who has completed a training program within 30 days of the completion of the program. The department shall include the Adult Education Program in the table required by Section 6(b) of No. 46 of the Acts of 2007 as added by Section 8 of No. 54 of the Acts of 2009.
- (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: \$2,544,500 as follows:
- (A) Nondegree VSAC Grants. The amount of \$494,500 is appropriated to the Vermont Student Assistance Corporation. These funds 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 these funds 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 these funds 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. § 856.
- (C) Scholarships. The sum of \$1,500,000 is appropriated to the University of Vermont, the Vermont State Colleges, and the Vermont Student Assistance Corporation for need-based scholarships to Vermont residents. These funds shall be divided equally among the University of Vermont, the Vermont State Colleges, and the Vermont Student Assistance Corporation. The Vermont Student Assistance Corporation shall reserve these funds for students attending institutions other than the University of Vermont or the Vermont State Colleges. None of these funds shall be used for administrative overhead.
- (D) Dual Enrollment Programs. The sum of \$400,000 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. B.1101 FISCAL YEAR 2011 BASE REDUCTIONS

- (a) In fiscal year 2011, the secretary of administration is authorized to reduce the following amounts from appropriations and shall provide a report to the joint fiscal committee by November 15, 2010 on these reductions:
- (1) Labor contract savings due to negotiated contract. The secretary of administration is authorized to reduce fiscal year 2011 appropriations consistent with these contract savings:

 General fund

 \$5,548,030
 - (2) Adjustment to state employees' retirement.

General fund \$1,768,800 Transportation fund \$686,400

Sec. B.1102 FISCAL YEAR 2011 CONTRACT IMPLEMENTATION

(a) There is appropriated to the secretary of administration for contract nonsalary items, to be transferred to departments as the secretary may determine to be necessary:

General fund

\$556,500

Sec. B.1103 FISCAL YEAR 2011 ONE-TIME APPROPRIATIONS

(a) In fiscal year 2011, the following amounts are appropriated:

(1) To the secretary of administration for the 27th payday in fiscal year 2011, to be transferred to departments as the secretary may determine to be necessary:

General fund \$9,485,885 Transportation fund \$2,288,340

(2) To the department of finance and management, for the governor's transition. These funds are for costs incurred by the transitions of the executive office. No funds shall be used for inaugural celebrations. Any unexpended portion of these funds shall revert to the general fund:

General fund \$75,000

(3) To the secretary of state for the 2010 elections:

General fund \$610,000

(4) To ACCD for communities to utilize the sales tax reallocation in fiscal year 2011 pursuant to Sec. C.4 of H.791 of 2010:

General fund \$600,000

(5) To the department of environmental conservation for transition of the geological survey program to the University of Vermont:

General fund \$125,000

(6) To the military department, division of veterans' affairs for Supplemental Assistance to Survivors (DeptID 2150890501) to be used in accordance with the guidelines as set forth in Sec. 72b of No. 66 of the Acts of 2003, as amended by Sec. 16 of No. 80 and Sec. 72 of No. 122 of 2004:

General fund \$30,000

(7) To the department of finance and management for ARRA audits:

General fund \$351,000

(8) To the University of Vermont: General fund \$2,587,646

(9) To the Vermont State Colleges: General fund \$1,722,837

(10) To the Vermont Student Assistance Corporation:

General fund \$1.244.995

- (11) To the department of health to be allocated by the tobacco evaluation and review board:

 General fund
 \$1,250,000
- (12) To the state treasurer for deposit in the Emergency Personnel Survivors Benefit Fund:

 General fund

 \$43,333
- (13) To the department of tourism and marketing for a grant to the Shires of Vermont: General fund \$35,000

- (14) To the department of mental health for a grant to the Howard center for mental health services provided to Vermont National Guard personnel and their families:

 General fund \$100,000
- (15) To the secretary of state for initial costs associated with reapportionment, it is anticipated that in fiscal year 2012 additional costs will be incurred:

 General fund \$30,000
- (16) To the department of Vermont health access for a grant to Porter Hospital for costs incurred related to closure of the Crown Point Lake Champlain Bridge:

 General fund

 \$40,000
- (17) To the agency of commerce and community development for a grant to the Bennington county industrial corporation for expansion of the composites industry cluster:

 General fund \$35,000
- (b) In fiscal year 2011, the following amount is appropriated to the secretary of administration (DeptID 1100020000) from the American Recovery and Reinvestment Act: State Fiscal Stabilization Fund to be transferred and expended in Sec. B.505 adjusted education payment:

\$38,575,036

Sec. C.100 Sec. B.309 of No. 1 of the Acts of the 2009 Special Session as amended by Sec. 21 of No. 67 of the Acts of 2010 is further amended to read:

Sec. B.309 Office of Vermont health access - Medicaid program - state only

Grants	34,701,782	24,801,782
Total	34,701,782	24,801,782
Source of funds		
General fund	26,015,203	16,115,203
Global Commitment fund	1,550,377	1,550,377
Catamount fund	7,136,202	7,136,202
Total	34,701,782	24,801,782

Sec. C.100.1 Sec. B.345 of No. 1 of the Acts of the 2009 Special Session as amended by Sec. 40 of No. 67 of the Acts of 2010 is further amended to read:

2,002,737,1012,072,037,101	Sec. B.345	Total human services	2,882,737,164 2,872,837,164
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Source of funds		
ARRA funds	167,300,631	167,300,631
General fund	454,794,342	444,894,342
Special funds	62,339,324	62,339,324
Tobacco fund	40,173,740	40,173,740
Global Commitment fund	967,449,491	967,449,491
State health care resources fund	154,368,435	154,368,435

Catamount fund	27,895,990	27,895,990
Federal funds	988,751,818	988,751,818
Permanent trust funds	10,000	10,000
Internal service funds	1,709,076	1,709,076
Interdepartmental transfers	17,944,317	17,944,317
Total	2,882,737,164 2	2,872,837,164

Sec. C.101 Sec. 60 of No. 67 of the Acts of 2010 is amended to read:

Sec. 60. FUND TRANSFERS

- (a) Notwithstanding any other provisions of law, in fiscal year 2010:
- (1) The following amounts shall be transferred to the general fund from the funds indicated:

the fullus	malcatca.	
21405	Fidelity/interest earnings	51,797 Approx.
21500	Inter-Unit Transfer (Bus Unit #01150) - Buildin Services	gs & General 186,135
21500	Inter-Unit Transfers Spec Fd (Bus Unit #01120) Resources	23,020 - Human
21525	Conference Fee Special Fund (Bus Unit #05100) - Education 3,000
21584	Surplus Property (Bus Unit #1130) - Libraries	2,237
21584	Surplus Property (Bus Unit #04100) - Labor	741
21585	Pers-Human Resources Development	13,282
21638	Attny Gen Fees - Reimbursements	1,500,000 Approx.
21844	PERS - Recruitment Services	12,506
21904	Wallace Foundation - SAELP	1,406
21991	Clean Energy Development Fund (VEDA Foo	d & Fuel) 150,000
21991	Clean Energy Development Fund	143,672
21500	Inter-unit Transfers Special Fund (Bus Unit # 01110) - Finance and Management	<u>293,672</u>
22005	AHS Central Office earned federal receipts	1,500,000
50300	Liquor Control	836,516
62100	Abandoned property	1,993,024 Approx.
Caledonia	a Fair	5,000
North Co	untry Hospital Loan	24,250

* * *

Sec. C.102 FISCAL YEAR 2010 CONTINGENT RESERVES, TRANSFERS AND APPROPRIATIONS

- (a) Notwithstanding 32 V.S.A. §308c, and 32 V.S.A. §308(d), after the general fund budget stabilization reserve attains its statutory maximum up to \$14,560,000 of any additional unreserved and undesignated general fund balance shall be retained in the general fund for expenditure during fiscal year 2011 consistent with the enacted budget.
- (b) After satisfying subsection (a) of this section, any additional unreserved and undesignated general fund balance shall be reserved in accordance with 32 V.S.A. § 308c and 32 V.S.A. § 308d. If the provisions of Sec. D.106(a) of this act result in the preclusion of the provisions Sec.D.106(c)(1)(B) of this act, then of the amount reserved in accordance with 32 V.S.A. § 308c of this subsection, the first \$9,000,000 shall be transferred to the Vermont information systems fund established by 3 V.S.A. § 2222b.

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 \$233,000 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 \$233,000 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 \$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.

Sec. D.101 FUND TRANSFERS AND RESERVES

- (a) The following amounts are transferred or reserved 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: \$300,000.
- (B) next generation initiative fund established by 16 V.S.A. § 2887: \$4,793,000.
- (C) reserved for expenditure in fiscal year 2011 in the human services caseload reserve created by 32 V.S.A. § 308b: \$62,770,000.
- (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: \$450,000.

Sec. D.102 TOBACCO LITIGATION SETTLEMENT FUND BALANCE

(a) Notwithstanding 18 V.S.A. § 9502(b), the actual balances at the end of fiscal year 2010 in the tobacco litigation settlement fund shall remain for appropriation in fiscal year 2011.

Sec. D.103 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 2011 shall be transferred from the tobacco trust fund to the tobacco litigation settlement fund in fiscal year 2011.

Sec. D.104 EDUCATION MEDICAID RECEIPTS IN FISCAL YEAR 2011

(a) Notwithstanding 16 V.S.A. § 2959a(g), during fiscal year 2011, after the application of subsections (a) through (f), any remaining Medicaid reimbursement funds shall be deposited in the general fund.

Sec. D.105 GROSS RECEIPTS TAX IN FISCAL YEAR 2011

(a) In fiscal year 2011, notwithstanding 33 V.S.A. § 2503(c), the first \$2,300,000 of gross receipts tax revenue shall be deposited in the general fund.

Sec. D.106 HUMAN SERVICES CASELOAD RESERVE

- (a) If the commissioner of finance and management determines that state funding needed to support the Medicaid program including the "Part D Clawback" payment is not adequate as a result of the federal government not extending the ARRA Enhanced Federal Medical Assistance Percentage (EFMAP) to June 30, 2010, then the amount determined to be inadequate by the commissioner shall be appropriated from the human services caseload reserve established in 32 V.S.A. § 308b in fiscal year 2011 and the commissioner shall report such action to the joint fiscal committee.
- (b) Of the reserve balance remaining after the requirements of subsection (a) of this section have been met, the secretary of administration in fiscal year 2011 shall authorize the secretary of human services to include up to \$13,500,000 of funds available in the reserve 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 2011 and submitting these rates for approval by the Centers for Medicare and Medicaid Services.
- (c) Any balance remaining after the requirements of subsections (a) and (b) of this section have been met shall be allocated to the extent available as follows:
- (1) \$42,100,000 shall be appropriated to the secretary of administration of which:
- (A) \$15,000,000 is allocated for planning and construction of a 15-bed secure residential mental health facility in Waterbury;
- (B) \$20,000,000 is be transferred and deposited in the Vermont state information systems fund. Of the amounts deposited in the information system fund up to \$3,000,000 may be used for expenditures related to the Financial and Human Resource System, and up to \$6,000,000 may be used for expenditures related to the Vermont Integrated Eligibility Workflow System (VIEWS), and up to \$6,000,000 may be used for the computer server consolidation virtualization project and other information system investments that will further successful outcomes in implementation of "Challenge for Change" initiatives. Any remainder shall be allocated by the secretary in accordance with the provisions of 3 V.S.A. § 2283b; and
- (C) \$2,000,000 shall be made available to the agency of human services, department of corrections, for investments which will result in lower long-term expenses within the correctional system. At least \$200,000 of these funds shall be used for substance abuse treatment for the probation and parole population.

- (D) \$3,000,000 shall be made available to the department of Vermont health access to be used to provide payment amounts for outpatient hospital services closer to levels paid by Medicare, the department of Vermont health access shall increase payment rates to hospitals by an amount estimated to equal a total of \$8,400,000 for outpatient hospital services. The department of Vermont health access shall provide quarterly reports to hospitals indicating the additional amounts paid for outpatient hospital services.
- (E) \$2,100,000 shall be made available to the department of Vermont health access to fund a fifty-third week of claims in the long-term care program in fiscal year 2011.
- (d) Any remaining funds shall be reserved for expenditure and or transfer during the fiscal year 2011 budget adjustment process.
- Sec. D.107 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. The amount of \$38,575,036, which is one-half of Vermont's SFSF, funds is available 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.
 - * * * 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.

Sec. E.100.1 3 V.S.A. § 2222 is amended to read:

§ 2222. POWERS AND DUTIES; BUDGET AND REPORT

(a) In addition to the duties expressly set forth elsewhere by law the secretary shall:

* * *

(9) Submit to the general assembly concurrent with the governor's annual budget request required under 32 V.S.A. § 306, a strategic plan for information technology which outlines the significant deviations from the previous year's information technology plan, and which details the plans for information technology activities of state government for the following fiscal year as well as the administration's financing recommendations for these activities. All such plans shall be reviewed and approved by the commissioner of information and innovation prior to being included in the governor's annual budget request. The plan shall identify the proposed sources of funds for each project identified. The plan shall also contain a review of state of information technology and an identification of priority projects by agency. The plan shall include, for any proposed new computer system or system upgrade information technology activity with a cost in excess of \$150,000.00 \$100,000.00:

* * *

- (E) a statewide budget for all information technology activities with a cost in excess of \$100,000.
- (10) The secretary shall annually submit to the general assembly a fiveyear information technology plan which indicates the anticipated information technology activities of the legislative, executive, and judicial branches of state government. For purposes of this subdivision section, "information technology activities" shall mean:

* * *

Sec. E.100.2 3 V.S.A. § 2222b is added to read:

§ 2222b. VERMONT INFORMATION SYSTEMS FUND

- (a) There is created a Vermont information systems fund which shall be used:
- (1) to purchase, develop and upgrade information technology systems needed for the effective operations of state government; and

- (2) to act as a revolving fund to provide upfront financing for information technology improvements that can be made with identified fund repayments from departmental budgets in future years.
- (b) The Vermont information systems fund is designed to provide a long term source of financial capacity for technology improvements throughout state government. The secretary of administration is authorized to approve acquisitions and activities financed through this fund, provided such financing has been included as part of the strategic plan for information technology submitted in accordance with 3 V.S.A. § 2222(a)(9), and after review and approval of the plan as part of the legislative budget development process.
 - (c) For the purposes stated in subsections (a) and (b) of this section:
- (1) In fiscal year 2011, to the extent that funds are available, \$20,000,000 shall be transferred to the Vermont information systems fund pursuant to Sec. D.106(c)(1)(B) of this act.
- (2) Beginning in fiscal year 2013 and annually thereafter an amount shall be transferred to the Vermont information systems fund two-thirds of one percent of the prior year appropriations from the general fund, the transportation fund, and, as determined by the commissioner of finance and management, up to two-thirds of one percent of the prior year appropriations from special funds. Special fund participation should relate to past, present or future information system investments. In total not less than \$10,000,000.00, shall be transferred prior to August 1 from the respective funds to the Vermont information systems fund. All expenditures from this fund shall be appropriated by the general assembly and used exclusively for the purchase of information technology systems as authorized in subsections (a) and (b) of this section.
- (d) Agencies or departments acquiring information technology improvements pursuant to subdivision (a)(2) shall repay the fund through their regular operating budgets according to an amortization schedule established by the commissioner of finance and management.
- (e) The secretary of administration will report to the chairs of the legislative government operations committees, and the joint fiscal committee at its September meeting each year on information technology systems purchased, developed or upgraded through this fund in the prior fiscal year, plans for systems financed through the fund for the current fiscal year, and the extent to which expenditures from the funds are matched, the status of the fund, and a consolidated amortization schedule.
- (f) The commissioner of finance and management may anticipate receipts to this fund and issue warrants based thereon.

Sec. E.100.3 3 V.S.A. § 2283b is amended to read:

§ 2283b. DEPARTMENT OF INFORMATION AND INNOVATION

The department of information and innovation is created within the agency of administration and is charged with all of the responsibilities assigned to it by law. In addition to other duties assigned to it by law, the department shall administer the programs and perform the functions assigned to it in chapter 15 of Title 22.

Sec. E.100.4 22 V.S.A. § 901 is amended to read:

§ 901. Creation of department DEPARTMENT OF INFORMATION AND INNOVATION

There is created the <u>The</u> department of information and innovation within the agency of administration. The department, created in 3 V.S.A. Sec. 2283b, shall have all the responsibilities assigned to it by law, including the following:

* * *

- (5) to review and approve computer systems or computer system upgrades in all departments with a cost in excess of \$150,000.00 \$100,000.00, and annually submit to the general assembly a strategic plan for information technology as required of the secretary of administration by subdivision 2222(a)(9) of Title 3;
- (6) to review and approve information technology activities in all departments with a cost in excess of \$100,000.00, and annually submit to the general assembly a budget for information technology as required of the secretary of administration by subdivision 2222(a)(9) of Title 3. For purposes of this section, "information technology activities" is defined in 3 V.S.A. Sec. 2222(a)(10);
- (7) to administer the independent review responsibilities of the secretary of administration described in subsection 2222(g) of Title 3;
- (7) (8) to perform the responsibilities of the secretary of administration under section 227b of Title 30;
- (8) (9) to administer communication, information, and technology services, which are transferred from the department of buildings and general services;
 - (9) (10) to inventory technology assets within state government;
- (10) (11) to coordinate information technology training within state government;

(11) (12) to support the statewide development of broadband telecommunications infrastructure and services, in a manner consistent with the telecommunications plan prepared pursuant to 30 V.S.A. § 202d and community development objectives established by the agency of commerce and community development, by:

* * *

(12) (13) 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.100.5 REVIEW BY JOINT FISCAL COMMITTEE

- (a) The general assembly recognizes that acts of appropriations and their sources of funding reflect the priorities for expenditures of public funds enacted by the general assembly, and that reductions in expenditures and programs which are considered as a means of accomplishing the goals of the Challenges for Change Act, H. 792 as enacted, and this act, ought to reflect these legislated priorities. Therefore, if the general assembly is not in session, the secretary of administration shall report to the joint fiscal committee any proposal for a reduction in excess of five percent of the expenditure of the appropriated funding for any single function, program, service or benefit as a part of its plan of implementation of Challenges for Change and this act, and will include in the report an analysis of how the reduction is designed to achieve the outcomes expressed in the Challenges for Change Act and H. 792 as enacted, and how the reduction is designed to achieve legislated policy priorities. The joint fiscal committee may within 21 days after receipt of the secretary's report consider the proposed reduction in expenditures and report its approval or disapproval, and the reasons in support of its decision, to the secretary and to the general assembly. If the report is disapproved, the secretary may submit a revised plan to the joint fiscal committee for its review and approval or disapproval, or may proceed as originally proposed.
- Sec. E.101 Information and innovation communications and information technology (Sec. B.101, #1105500000)
- (a) Of this appropriation, \$300,000 is for a grant to the Vermont telecommunications authority established in 30 V.S.A. § 8061.
- Sec. E.103 Finance and management financial operations (Sec. B.103, #1115001000)
- (a) Pursuant to 32 V.S.A. § 307(e), financial management fund charges not to exceed \$6,266,531 plus the costs of fiscal year 2011 salary adjustments

bargained as part of the state/VSEA agreement are hereby approved. Of this amount, \$3,239,764 plus the costs of fiscal year 2011 salary adjustments 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 Tax – administration/collection (Sec. B.107, #1140010000)

(a) Pursuant to Sec. 79 of No. 67 of the Acts of 2010, the timing of hiring and filling the six additional positions in fiscal year 2011 and the five additional positions in fiscal year 2012 designed to augment the department of taxes' compliance efforts shall be determined by the commissioner. However, the commissioner shall ensure that fiscal year 2011 and fiscal year 2012 compliance revenue targets are achieved. These targets, relative to the close of fiscal year 2010, are an increase of \$2,721,276 in revenue in fiscal year 2011 and an increase of \$4,543,506 in fiscal year 2012.

Sec. E.109 Buildings and general services - engineering (Sec. B.109, #1150300000)

(a) The \$2,465,785 interdepartmental transfer in this appropriation shall be from the general bond fund appropriation in the Capital Appropriations Act of the 2010 session.

Sec. E.114 [DELETED]

Sec. E.118 Buildings and general services – workers' compensation insurance (Sec. B.118, #1160450000)

(a) Pursuant to 32 V.S.A. § 307(e), workers' compensation fund charges not to exceed \$9,800,000 are hereby approved.

Sec. E.121 Buildings and general services – fee-for-space (Sec. B.121, #1160550000)

(a) Pursuant to 29 V.S.A. § 160a(b)(3), facilities operations fund charges not to exceed \$27,244,521 plus the costs of fiscal year 2011 salary adjustments bargained as part of the state/VSEA agreement are hereby approved.

Sec. E.125 Legislature (Sec. B.125, #1210002000)

(a) It is the intent of the general assembly that funding for the legislature in fiscal year 2012 and beyond be included at a level sufficient to support an 18-week legislative session.

Sec. E.127 Joint Fiscal Committee (Sec. B.127, #1220000000)

(a) Notwithstanding 3 V.S.A. § 2222(g) and the general requirements of the bulletin 3.5 (Contracting Procedures), up to \$149,700 shall be used for the purposes of retaining a consultant on healthcare information technology. In that the consultant's services are provided, in part to executive branch entities,

the committee is authorized to negotiate interdepartmental transfers to offset some of the consultant's cost.

Sec. E.127.1 Sec. 5.012.2 of No. 192 of the Acts of the 2008 is amended to read:

Sec. 5.012.2. JOINT FISCAL COMMITTEE – NUCLEAR ENERGY ANALYSIS (Sec. 2.031)

- (a) The joint fiscal committee may authorize or retain consultant services to assist the general assembly in any <u>legislative</u> proceeding commenced under <u>or related to 30 V.S.A. § 248(e) or chapter 157 of Title 10</u>.
- (b) Consultants retained pursuant to subsection (a) of this section shall work under the direction of a special committee consisting of the chairs of the house and senate committees on natural resources and energy and the joint fiscal committee.
- (c) The public service board shall allocate expenses incurred pursuant to subsection (a) of this section to the applicant or the public service company or companies involved in those proceedings and such allocation and expense may be reviewed by the public service board pursuant to 30 V.S.A. § 21.

Sec. E.127.2 32 V.S.A. Sec. 5(a)(2) is amended to read:

(2) The governor's approval shall be final unless within 30 days of receipt of such information a member of the joint fiscal committee requests such grant be placed on the agenda of the joint fiscal committee, or, when the general assembly is in session, be held for legislative approval. In the event of such request, the grant shall not be accepted until approved by the joint fiscal committee or the legislature. The 30 day period may be reduced where expedited consideration is warranted in accordance with adopted joint fiscal committee policies. During the legislative session the joint fiscal committee shall file a notice with the house and senate clerks for publication in the respective calendars of any grant approval requests that are submitted by the administration.

Sec. E.128 REVERSION; SERGEANT AT ARMS FUNDS

(a) Notwithstanding any other provisions of law, the first \$50,000 of general funds carried forward from fiscal year 2010 in the sergeant at arms appropriation shall revert to the general fund in fiscal year 2011.

Sec. E.131 State treasurer (Sec. B.131, #1260010000)

(a) Of this general fund appropriation, \$16,484 shall be deposited into the armed services scholarship fund established in 16 V.S.A. § 2541.

Sec. E.131.1 [DELETED]

- Sec. E.133 Vermont state retirement system (Sec. B.133, #1265020000):
- (a) Notwithstanding 3 V.S.A. § 473(d), in fiscal year 2011, investment fees shall be paid from the corpus of the fund.
- Sec. E.139 16 V.S.A. § 4025(c) is amended to read:
- (c) An equalization and reappraisal account is established within the education fund. Moneys from this account are to be used by the division of property valuation and review to assist towns with maintenance or reappraisal on a case-by-case basis; and for reappraisal and grand list maintenance assistance payments pursuant to section 32 V.S.A. §§ 4041a of Title 32 and 5405(f).
- Sec. E.141 Lottery commission (Sec. B.141, #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.142 Payments in lieu of taxes (Sec. B.142, #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.143 Payments in lieu of taxes Montpelier (Sec. B.143, #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.144 Payments in lieu of taxes correctional facilities (Sec. B.144, #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) Notwithstanding any other provisions of law, the office of the attorney general, Medicaid fraud control unit, is authorized to retain, subject to appropriation, 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.

- (b) Of the revenue available to the attorney general under 9 V.S.A. § 2458(b)(4), \$510,000 is appropriated in Sec. B.200 of this act.
- (c) The establishment of one new exempt position—enforcement attorney—is authorized in fiscal year 2011. This position shall be transferred and converted from existing vacant positions in the executive branch of state government.
- (d) The attorney general shall develop measures to evaluate the success of the position carrying out the purpose in subsection (c) of this section. This evaluation shall be submitted with the fiscal year 2012 budget materials to the house and senate committees on appropriations.

Sec. E.201 3 V.S.A. § 163(c)(9) is amended to read:

(9) Each participant shall pay a fee to the local juvenile court diversion project. The amount of the fee shall be determined by project officers based upon the financial capabilities of the participant. The fee shall not exceed \$150.00. The fee shall be a debt due from the participant, and payment of such shall be required for successful completion of the program. Fees Notwithstanding 32 V.S.A. § 502(a), fees collected under this subdivision shall be paid to the court diversion fund and shall be retained and used solely for the purpose of the court diversion program.

Sec. E.201.1 3 V.S.A. § 164(c)(9) is amended to read:

(9) Each participant shall pay a fee to the local adult court diversion project. The amount of the fee shall be determined by project officers or employees based upon the financial capabilities of the participant. The fee shall not exceed \$300.00. The fee shall be a debt due from the participant, and payment of such shall be required for successful completion of the program. Fees Notwithstanding 32 V.S.A. § 502(a), fees collected under this subdivision shall be paid to the court diversion fund and shall be retained and used solely for the purposes of the court diversion program.

Sec. E.201.2 3 V.S.A. § 166 is amended to read:

§ 166. COURT DIVERSION FUND

The court diversion fund is hereby established in the state treasury. All fees and assessments of the juvenile and adult court diversion programs shall be deposited recorded in the fund. Interest earned on the fund and any remaining balance shall be retained in the fund for the purposes of this subchapter. Annually Quarterly, the director of each court diversion program shall report to the attorney general in a manner as prescribed by the attorney general's office on all fees paid under sections 163 and 164 of this title. An independent audit that includes all state funding sources shall be required biennially.

Sec. E.204 Judiciary (Sec. B.204, #2120000000)

- (a) For compensation paid from July 1, 2010 to June 30, 2011, 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 non-bargaining unit employees.
- (b) The chief justice is authorized to apply provisions of the judiciary collective bargaining unit to exempt permanent state employees of the judicial branch who are not judicial officers.

Sec. E.205 24 V.S.A. § 362 is amended to read:

§ 362. FULL-TIME STATE'S ATTORNEYS; PRIVATE LAW PRACTICE

State's Elected state's attorneys and all full-time deputy state's attorneys shall devote full time to their duties and during their terms shall not engage in the private practice of law nor be a partner or associate of any person practicing law. However, a full-time state's attorney or full-time deputy state's attorney may render legal assistance to a municipality or a municipal planning agency provided a fee is not charged. The state's attorneys of Essex and Grand Isle counties shall not serve on a full-time basis and shall not be subject to this section.

Sec. E.205.1 24 V.S.A. § 363 is amended to read:

§ 363. DEPUTY STATE'S ATTORNEYS

(a) 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.

- (b) A state's attorney, with the approval of the executive committee of state's attorneys of the department of state's attorneys and sheriffs, may employ or retain the services of one or more part-time deputy state's attorneys as a way to allow flexible work schedules, maintain an experienced staff, and achieve cost efficiencies.
- Sec. E.207 Sheriffs (Sec. B.207, #2130200000)
- (a) In fiscal year 2011, the compensation of all sheriffs shall be reduced by five percent from the rate of compensation which would otherwise be paid under the provisions of 32 V.S.A. § 1182.
- 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.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 RADIO TOWER REPLACEMENT

- (a) Up to \$20,000 of any remaining balance in the radiological response plan fund at the end of fiscal year 2010 shall be used to replace the radio tower of WTSA, any balance available above this amount will remain in the fund. If there are insufficient funds for this purpose at the close of fiscal year 2010, the remaining amount needed for WTSA shall be taken out of unexpended funds in the fiscal year 2011 budget and any remaining balance shall remain in the 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, \$5,000 shall granted to the Vermont state council of the Vietnam Veterans of America to fund the service officer program, and \$5,000 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 \$806,195 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 in fiscal year 2011 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. \$1712(1).
- (b) Of the appropriation in this section, \$50,000 shall be for a grant to certified batterer intervention programs.
- (c) Of the appropriation in this section, \$65,000 shall be for a grant for the anti-violence partnership at the University of Vermont.
- Sec. E.220.1 20 V.S.A. § 2365 is amended to read:
- § 2365. DOMESTIC VIOLENCE TRAINING
- (a) In order to remain certified, law enforcement officers shall receive by 2010 2011 at least eight hours of domestic violence training in a program

approved by the Vermont criminal justice training council and the Vermont network against domestic and sexual violence.

- (b) Law enforcement officers shall receive domestic violence retraining every two years in a program approved by the Vermont criminal justice training council.
- (c) The Vermont police academy shall employ a domestic violence trainer. Funding for this position shall be transferred by the center for crime victims services from the victims' compensation fund created by 13 V.S.A. § 5359.

Sec. E.222 Agriculture, food and markets – administration

(a) It is the intent of the general assembly that when the fiscal year 2012 budget is prepared for the two plus two scholarship program the agency of agriculture, food and markets examine whether there would be potential cost savings if the funds were appropriated directly to the Vermont state colleges and the University of Vermont through the next generation fund. The agency shall report its finding to the house and senate committees on appropriations during the fiscal year 2012 budget presentations.

Sec. E.230 FEDERAL HEALTH CARE GRANT FUNDING TO SUPPORT CATAMOUNT HEALTH

- (a) It is the intent of the general assembly that the state maximize federal funding opportunities to expand access to health care coverage for uninsured and underinsured Vermonters. The general assembly is aware of upcoming federal funding opportunities related to the creation of a high-risk pool and supports using the Catamount Health program, to the extent practicable, to leverage applicable federal funds while keeping eligibility standards consistent across all of the state's health care programs.
- (b) With the approval of the secretary of administration, the commissioner of banking, insurance, securities, and health care administration may request approval from the joint fiscal committee to proceed with an application for federal funding under the high-risk health insurance pool program authorized by Section 1101 of the Patient Protection and Affordable Care Act of 2010, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, for the purpose of supporting the Catamount Health program or the market security trust provided for in 8 V.S.A. § 4062d. After approval by a majority of voting members of the joint fiscal committee, the commissioner may apply for funding under the high-risk health insurance pool program.
- (c) In accordance with 32 V.S.A. § 5, the commissioner of banking, insurance, securities, and health care administration may accept a grant under the high-risk pool program only if acceptance will be budget neutral or

financially beneficial to the state, as determined by the commissioner in consultation with the commissioner of the department of Vermont health access and with the approval of the joint fiscal committee.

(d) Upon approval by the joint fiscal committee as part of the review under subsection (b) of this section or at a later meeting and notwithstanding 8 V.S.A. § 4080f (Catamount Health), 33 V.S.A. § 1973 (Vermont health access program), 33 V.S.A. § 1974 (employer-sponsored insurance assistance program) and 33 V.S.A. Chapter 19, Subchapter 3A (Catamount Health assistance program), the commissioner of banking, insurance, securities, and health care administration and the secretary of human services may waive the statutory requirements establishing the 12-month uninsured requirement and the pre-existing condition exclusion provisions if necessary to permit the state to accept grant funds under the federal high-risk pool program. The request to waive the statutory requirements shall specify a time period ending no later than June 30, 2011.

Sec. E.230.1 8 V.S.A. § 4062d is amended to read:

§ 4062d. NONGROUP MARKET SECURITY TRUST

- (a) The commissioner shall <u>may</u> establish the nongroup <u>a</u> market security trust for the purpose of lowering the cost of and thereby increasing access to health care coverage in the individual or nongroup health insurance market.
- (b) The commissioner shall permit nongroup carriers to transfer five percent of the carriers' claims costs to the nongroup market security trust, based on the earned premium as reported on the most recent annual statement of the carrier. At the close of the year, the commissioner shall reconcile the amount paid against the actual expenses of the carriers and collect or expend the necessary funds to ensure that five percent of the actual expenses are paid under this section. The individuals incurring the claims shall remain enrolled policyholders, members, or subscribers of the carrier's or insurer's plan, and shall be subject to the same terms and conditions of coverage, premiums, and cost sharing as any other policyholder, member, or subscriber.
- (c) The If the commissioner may develop the nongroup develops a market security trust pursuant to this section, the commissioner shall do so in a manner that permits the trust to be eligible for a federal grant grants to administer the trust, including a grant grants under the federal Trade Adjustment Act Patient Protection and Affordable Care Act of 2010, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152.
- (d)(c) All of the revenues appropriated shall be deposited into the nongroup market security trust to be administered by the commissioner for the sole

purpose of providing financial support for the nongroup market security trust authorized by this section. The trust shall be administered in accordance with subchapter 5 of chapter 7 of Title 32, except that interest earned shall remain in the trust A market security trust established pursuant to this section shall be budget neutral or financially beneficial to the state.

- (e)(d) The commissioner may adopt rules <u>pursuant to chapter 25 of Title 3</u> for the nongroup market security trust relating to:
- (1) Criteria governing the circumstances under which a nongroup carrier may transfer five percent of the claims expenses of the carrier to the trust as provided for in this section.
- (2) Eligibility criteria for providing financial support to carriers under this section, including carrier claims' expenses eligible for financial support, standards and procedures for the treatment and chronic care management as defined in section 701 of Title 18, and any other eligibility criteria established by the commissioner.
 - (3)(2) The operation of the trust.
- (4)(3) Any other standards or procedures necessary or desirable to carry out the purposes of this section.
- (f) As used in this section, "nongroup carrier" means a nongroup carrier registered under section 4080b of this title that has an annual earned premium in excess of \$100,000.00.
- Sec. E.231 Banking, insurance, securities, and health care administration health care administration (Sec. B.231, #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.
- Sec. E.232 Secretary of state (Sec. B.232, #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 [DELETED]

* * * HUMAN SERVICES * * *

Sec. E.300 DEPARTMENT FOR CHILDREN AND FAMILY GRANT REDUCTIONS

- (a) The department for children and families shall not reduce the following grants or programs: financial assistance provided by the division of family services to families who have adopted a child, financial assistance provided by the division of family services to foster families, grants to substitute care programs, and grants to emergency housing shelters.
- 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 \$30,608,548 is anticipated to be certified as state matching funds under the Global Commitment as follows:
- (1) \$12,395,683 certified state match available from local education agencies for eligible special education school-based Medicaid services under the Global Commitment. This amount combined with \$28,104,317 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 for direct 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) \$1,775,817 certified state match available from local education agencies for eligible services as allowed by federal regulation for early periodic screening, diagnosis, and treatment programs for school-aged children.

- (4) \$1,913,490 certified state match available via the University of Vermont's child health improvement program for quality improvement initiatives for the Medicaid program.
- (5) \$547,113 certified state match available via the University of Vermont's child health improvement program for expanded quality improvement initiatives for the Medicaid program.
- (6) \$5,020,198 certified state match available from local designated mental health and developmental services agencies for eligible mental health services provided under 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 (6) of Sec. E.301 of this act shall be retained in the Global Commitment fund and shall not be transferred to the certifying entity.
- Sec. E.302 PAYMENT RATES FOR PRIVATE NONMEDICAL INSTITUTIONS PROVIDING RESIDENTIAL CHILD CARE SERVICES
- (a) Notwithstanding any other provisions of law, for state fiscal year 2011, the division of rate setting shall calculate payment rates for private nonmedical institutions (PNMI) providing residential child care services as follows.
- (1) General rule. The division of rate setting shall calculate PNMI per diem rates for state fiscal year 2011 as 100 percent of each program's final per diem rate in effect on June 30, 2010. These rates shall be issued as final.
 - (2) Reporting requirements.
- (A) Providers are required to submit annual audited financial statements to the division within thirty days of receipt from the certified public accountant, but no later than four months following the end of each provider's fiscal year.
- (B) Providers are not required to submit funding applications pursuant to section 3 of the PNMI rate setting rules for state fiscal year 2011.
- (3) Exception to the general rule. For programs categorized by the placement authorizing departments (PADs) as crisis/stabilization programs with typical lengths of stay from 0-10 days, final rates for state fiscal year 2011 are set retroactively as follows:

- (A) The allowable budget is 100 percent of the final approved budget for the rate year which includes June 30, 2010. The monthly allowable budget is the allowable budget divided by 12.
- (B) Within five days of the end of each month in state fiscal year 2011, the program will submit the prior month's census to the division of rate setting. The per diem rate will 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.
- (4) Adjustments to rates. Rate adjustment applications may not be used as a tool to circumvent the rate setting process for state fiscal year 2011 in order to submit a new budget for the entire program or for the sole reason that actual costs incurred by the facility exceed the rate of payment.
- (A) The following provisions amend section 8 of the PNMI rules regarding adjustments to rates for state fiscal year 2011.
- (i) The three-month waiting period of section 8.1(b) for the submission of a rate adjustment application is waived.
- (ii) In rate adjustment applications, the division will only consider budget information specific to the program change and limited to direct program costs. Providers may not apply for increases to costs that are part of the current program and rate structure before the program change.
- (iii) In its findings and order, the division may elect to use financial information from prior approved budget submissions to determine allowable costs related to the program change.
- (iv) The materiality test in section 8.1(c) is waived for changes to rates based on a change in licensed capacity.
- (v) The effective date for approved rate adjustments based on a change in licensed capacity is the effective date of the change in licensed capacity.
- (B) Adjustments to rates based on changes in licensed capacity. Programs that increase or decrease licensed capacity in state fiscal year 2011 shall provide prior written notification to the division of the change in licensed capacity.
- (i) Decreased licensed capacity. In the case of programs that decrease licensed capacity in state fiscal year 2011, programs must have prior written approval from the PADs before applying to the division for an adjustment to the state fiscal year 2011 per diem rate.

- (I) The allowable budget amount for state fiscal year 2011 may be no more than the final approved budget for the rate year which includes June 30, 2010.
- (II) In its application for a rate adjustment, a program must provide to the division financial and staffing information directly related to the decrease in licensed capacity.
- (III) In its findings and order, the division shall reduce the allowable budget amount by any decreased costs directly related to the change in licensed capacity.
- (IV) The division shall divide the final allowable budget amount by the estimated occupancy level at the new licensed capacity to calculate the per diem rate.
- (ii) Increased licensed capacity. In the case of programs that increase licensed capacity in state fiscal year 2011, the division shall automatically adjust the program's rate as follows.
- (I) The initial allowable budget is 100 percent of the final approved budget amount for the rate year that includes June 30, 2010.
- (II) With prior written approval from the PADs, programs may apply to the division for an adjustment to the allowable budget for costs directly related to the program change.
- (III) The division shall divide the final allowable budget amount by the estimated occupancy level at the new licensed capacity to calculate the per diem rate.
- Sec. E.306 Office of Vermont health access administration (Sec. B.306, #3410010000)
- (a) The establishment of six (6) new full-time positions is authorized in fiscal year 2011 to expand program integrity efforts. These positions shall be transferred and converted from vacant positions in the executive branch of state government.
- (b) The office shall develop measures to evaluate the success of these new positions carrying out the purpose in subsection (a) of this section. This evaluation shall be submitted with the fiscal year 2012 budget materials to the house and senate committees on appropriations.

Sec. E.308 FISCAL YEAR 2011 NURSING HOME RATE SETTING

(a) Notwithstanding any other provisions of law, for state fiscal year 2011, the division of rate setting shall modify its methodology for calculating Medicaid rates for nursing homes as follows:

- (1) Inflation. For state fiscal year 2011 rate setting, the division shall calculate the incremental inflation amount between state fiscal years 2010 and 2011 for the following cost categories: nursing care, director of nursing, resident care, and indirect. The division shall add that incremental inflation amount to the inflation percentages used in state fiscal year 2010 rate setting.
- (2) Case-mix weights. For state fiscal year 2011, the division shall decrease by one-half the case-mix weights for the following resource utilization groups: Impaired Cognition A (IA1), Challenging Behavior A (BA1), Reduced Physical Functioning A 2 (PA2) and Reduced Physical Functioning A 1 (PA1).

Sec. E.309 HOSPITAL RATES

(a) In order to provide payment amounts for inpatient hospital services closer to levels paid by Medicare, the department of Vermont health access shall increase payment rates to hospitals by an amount estimated to equal a total of \$20,000,000 for inpatient hospital services. The department of Vermont health access shall provide quarterly reports to hospitals indicating the additional amounts paid for inpatient hospital services.

Sec. E.309.1 MEDICAID; BENEFIT LIMITATIONS; RATES

- (a) The department of Vermont health access may impose the following limitations and process requirements on benefits for adults in Medicaid and VHAP:
- (1) Physical, occupational, or speech therapy visits may be limited to 30 visits per year, except that the department shall allow additional visits through the prior authorization process for individuals with the following diagnoses: spinal cord injury, traumatic brain injury, stroke, amputation, or severe burn. This limit shall not apply to therapy services provided by home health agencies.
- (2) Urine drug tests may be limited to 8 tests per month. The department of Vermont health access shall develop standard protocols for appropriate use of urine drug tests, including the frequency of testing, exceptions to the limitation to 8 tests, and other appropriate utilization requirements.
- (3) Emergency room visits may be limited to 12 visits per year, except that the department shall not include in the limitation emergency room visits resulting in the individual being admitted to the facility, resulting in the individual being transferred to another inpatient facility, or during which the individual becomes deceased.
- (b) The department of Vermont health access may institute a prior authorization process for high-tech imaging, including scans such as computed

- tomography (CT), computed tomographic angiography (CTA), magnetic resonance imaging (MRI), magnetic resonance angiography (MRA), positron emission tomography (PET), positron emission tomography-computed tomography (PET-CT). The prior authorization process shall not apply to x-ray, ultrasound, mammogram, or dual x-ray absorptiometry (DXA) images and shall not apply to imaging ordered by emergency departments or during an inpatient admission. The prior authorization process shall include the following requirements:
- (1) Approval guidelines shall be transparent, readily available to health care professionals upon request, based on peer-reviewed, published clinical standards, and include citations for the sources of the standards.
- (2) Decisions on prior authorization requests shall be made in a timely manner and the department shall have sufficient clinical staff to provide timely access by health care professionals making requests.
- (3) The department shall form an advisory committee comprised of health care professionals to comment on: the evidence-based guidelines used, and the process for prior authorization with the goal of minimizing the administrative burden on health care professionals, including any forms and the timelines for the process.
- (4) If the department uses a vendor for prior authorization of imaging, the terms of the contract shall prohibit the vendor from creating financial incentives for the utilization management reviewer to deny requests for imaging services. The vendor chosen shall have relevant business experience and the department shall ensure that the vendor has information about the imaging-related findings in the report required by No. 49 of the Acts of 2009 that found Vermont health care professionals' imaging rates are among the lowest in the country.
- (5) The department or its vendor shall conduct training about the prior authorization process at least 60 days prior to the implementation of the process. This training shall include:
 - (A) face to face regional meetings and demonstrations;
 - (B) webinars: and
 - (C) other training as requested by health care professionals.
- (6) The department or its vendor shall distribute information about the prior authorization approval guidelines and the process to all participating providers at least 60 days prior to the implementation of the prior authorization process. The department or its vendor shall provide an on-line tool to allow

health care professionals to determine if prior authorization is required for a particular service.

- (7) The department shall track and report the following information:
- (A) imaging usage rates, including usage in emergency departments; the aggregate amount reimbursed for imaging by the department; and net savings from implementing the prior authorization process;
- (B) the number of requests processed, including numbers of approvals and denials, and number of requests by method, including through a website, by telephone, by fax and by mail;
- (C) the average transaction time by method of request, including web response time, call waiting time, and fax response time.
- (D) the number of requests where additional clinical information was requested by the department or its vendor;
- (E) the average time between the receipt of clinical information and the decision on the request; and
- (F) the number of prior authorization requests where a professional requesting prior authorization asked for a discussion with a health care professional peer, including the average number of contacts required to engage in this discussion.
- (8) The department or its vendor shall perform a satisfaction survey of health care professionals annually, and meet with health care professionals and the Vermont medical society to discuss the survey results.
- (9) The department or its vendor shall establish a process to exempt health care professionals from the prior authorization process when the health care professionals routinely orders imaging consistent with the department's evidence-based guidelines and whose prior authorization requests are routinely granted by the department. In developing this exemption, the department shall review its data and meet with health care professionals and the Vermont medical society to discuss the appropriate process for this exemption.
- (c) The department of Vermont health access may reduce the reimbursement rate to a laboratory for urine drug testing to \$10.49 per test.
- (d) The department of Vermont health access may modify the reimbursement amount paid pharmacies for any drug priced utilizing the Average Wholesale Price (AWP) methodology to reflect the current published price.
- (e) The department of Vermont health access shall increase the dispensing fee to an independent pharmacy from \$4.75 to \$5.75 per prescription filled.

An "independent pharmacy" means a retail pharmacy with three or fewer stores owned by the same individual or corporate entity.

Sec. E.309.2 HEALTH INSURANCE PREMIUM PROGRAM

(a) The department of Vermont health access may expand the health insurance premium program to new applicants to Medicaid, which enrolls a Medicaid beneficiary in employer-sponsored or private health insurance plan available to the beneficiary if it is cost-effective to the state to do so. The department may offer current beneficiaries the option of enrolling in an employer-sponsored or private health insurance plan available to the beneficiary.

Sec. E.309.3 SUSPENSION OF AUTOMATIC PREMIUM INCREASES; MAINTENANCE OF ELIGIBILITY REQUIREMENTS

- (a) It is the intent of the general assembly to ensure compliance with Section 5001(f) of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 and Section 2001 of the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 [maintenance of eligibility] by maintaining the premiums at levels due on June 15, 2008 for individuals enrolled in health benefit plans or premium assistance funded by Medicaid. By maintaining the premiums and eligibility for programs included in Global Commitment to Health and Choices for Care, the state will remain eligible for funds available for Medicaid and Medicaid-waiver programs.
- (b) Notwithstanding 33 V.S.A. §§ 1974(j) and 1984(b), individuals receiving Catamount Health premium assistance or employer-sponsored premium assistance shall not have the premiums automatically indexed.
- (c) This section of the Act shall supersede any agency rules establishing premium amounts above the amounts due on June 15, 2008.
- (d) By January 15, 2011, if the state has or is projected to have a budget deficit in state fiscal years 2011 or 2012, the secretary of human services may propose to the house committees on appropriations, on health care, and on human services and the senate committees on appropriations and health and welfare a proposal for certifying the proposed or actual deficit to the secretary of the U.S. Department of Health and Human Services under Section 2001 of the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, including a proposal for modifying eligibility requirements for adults with incomes above 133% of the federal poverty guidelines who are not pregnant and do not have a disability, including by increasing premium amounts in the Vermont Health

Access Plan, VPharm, VermontRx, employer-sponsored premium assistance, or Catamount Health assistance.

Sec. E.309.4 33 V.S.A. § 1953 is amended to read:

§ 1953. HOSPITAL ASSESSMENT

- (a) Hospitals shall be subject to an annual assessment as follows:
- (1) Beginning January 1, 2008, each Each hospital's annual assessment, except for hospitals assessed under subdivision (2) of this subsection, shall be 5.5 percent of its net patient revenues (less chronic, skilled, and swing bed revenues) for the hospital's fiscal year as determined annually by the director commissioner of Vermont health access from the hospital's financial reports and other data filed with the department of banking, insurance, securities, and health care administration. The annual assessment shall be based on data from a hospital's third most recent full fiscal year for which data has been reported to the department of banking, insurance, securities, and health care administration.
- (2) Beginning July 1, 2004, each mental hospital or psychiatric facility's annual assessment shall be 4.21 percent, provided that the United States Department of Health and Human Services grants a waiver to the uniform assessment rate, pursuant to 42 C.F.R. § 433.68(e). If the United States Department of Health and Human Services fails to grant a waiver, mental hospitals and psychiatric facilities shall be assessed under subdivision (1) of this subsection.
- (b) Each hospital shall be notified in writing by the <u>office department</u> of the assessment made pursuant to this section. If no hospital submits a request for reconsideration under section 1958 of this title, the assessment shall be considered final.
- (c) Each hospital shall submit its assessment to the <u>office department</u> according to a payment schedule adopted by the <u>director commissioner</u>. Variations in payment schedules shall be permitted as deemed necessary by the <u>director</u> commissioner.
- (d) Any hospital that fails to make a payment to the <u>office department</u> on or before the specified schedule, or under any schedule for delayed payments established by the <u>director commissioner</u>, shall be assessed not more than \$1,000.00. The <u>director commissioner</u> may waive this late payment assessment provided for in this subsection for good cause shown by the hospital.

(e) [Repealed.]

Sec. E.309.5 8 V.S.A. § 4080f(c)(1) is amended to read:

- (c)(1) Catamount Health shall provide coverage for primary care, preventive care, chronic care, acute episodic care, and hospital services. The benefits for Catamount Health shall be a preferred provider organization plan with:
- (A) a \$250.00 \$500.00 deductible for an individual and a \$500.00 \$1,000.00 deductible for a family for health services received in network, and a \$500.00 \$1,000.00 deductible for an individual and a \$1,000.00 \$2,000.00 deductible for a family for health services received out of network;
 - (B) 20 percent co-insurance, in and out of network;
 - (C) a \$10.00 office co-payment;
- (D) prescription drug coverage without a deductible, \$10.00 co-payments for generic drugs, \$30.00 \$35.00 co-payments for drugs on the preferred drug list, and \$50.00 \$55.00 co-payments for nonpreferred drugs;
- (E) out-of-pocket maximums of $\$800.00 \ \$1,050.00$ for an individual and $\$1,600.00 \ \$2,100.00$ for a family for in-network services and $\$1,500.00 \ \$2,100.00$ for an individual and $\$3,000.00 \ \$4,000.00$ for a family for out-of-network services; and
- (F) a waiver of the deductible and other cost-sharing payments for chronic care for individuals participating in chronic care management and for preventive care.

* * *

Sec. E.309.6 21 V.S.A. § 2003(b) is amended to read:

(b) For any quarter in fiscal years 2007 and 2008, the amount of the health care fund contribution shall be \$91.25 for each full-time equivalent employee in excess of eight. For each fiscal year after fiscal year 2008, the number of excluded full-time equivalent employees shall be adjusted in accordance with subsection (a) of this section, and the amount of the health care fund contribution shall be adjusted by a percentage equal to any percentage change in premiums for Catamount Health for that fiscal year; provided, however, that to the extent that Catamount Health premiums decrease due to changes in benefit design or deductible amounts, the health care fund contribution shall not be decreased by the percentage change attributable to such benefit design or deductible changes.

Sec. E.309.7 33 V.S.A. § 1984(b) is amended to read:

(b) The agency of administration or designee shall establish individual and family contribution amounts for Catamount Health under this subchapter based

on the individual contributions established in subsection (c) of this section and shall index the contributions annually to the overall growth in spending per enrollee in Catamount Health as established in section 4080f of Title 8; provided, however, that to the extent that spending per Catamount Health enrollee decreases as a result of changes in benefit design or deductible amounts, contributions shall not be decreased by the percentage change attributable to such benefit design or deductible changes. The agency shall establish family contributions by income bracket based on the individual contribution amounts and the average family size.

Sec. E.309.8 33 V.S.A. § 1984(c)(2) is amended to read:

Sec. E.309.9 33 V.S.A. § 2073(d)(2) is amended to read:

- (2) An individual shall contribute the following base cost-sharing amounts which shall be indexed to the increases established under 42 C.F.R. § 423.104(d)(5)(iv) and then rounded to the nearest dollar amount:
- (A) In the case of recipients whose household income is no greater than 150 percent of the federal poverty level, such premium shall be \$17.00 \$15.00 per month.
- (B) In the case of recipients whose household income is greater than 150 percent of the federal poverty level and no greater than 175 percent of the federal poverty level, the premium shall be \$23.00 \$20.00 per month.

* * *

Sec. E.309.10 33 V.S.A. § 2074(c) is amended to read:

- (c) Benefits under VermontRx shall be subject to payment of a premium and co-payment amounts by the recipient in accordance with the provisions of this section.
- (1) In the case of recipients whose household income is no greater than 150 percent of the federal poverty level, the premium shall be \$17.00 \(\) \$15.00 per month.
- (2) In the case of recipients whose household income is greater than 150 percent of the federal poverty level and no greater than 175 percent of the federal poverty level, the premium shall be \$23.00 \$20.00 per month.

Sec. E.309.11 MEDICARE PRESCRIPTION DRUG BENEFIT; ONE-TIME PAYMENT

(a) Notwithstanding 33 V.S.A. § 2073 [VPharm assistance program], the agency of human services or designee or the department of human resources or

designee may utilize one or more of the strategies provided for in subsection (b) of this section to seek reimbursement for the rebate or refund provided by the U.S. Department of Health and Human Services (HHS) as described in Sec. 3315 of the Patient Protection and Affordability Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010. The agency shall not recoup an amount greater than the refund or rebate paid to the individual by HHS nor an amount greater than that paid by the agency for that individual's benefits covered by VPharm.

- (b)(1) The agency of human services or designee or the department of human resources or designee may recoup the refund or rebate amount from the individual enrolled in VPharm, from HHS or the Medicare program, or from a Medicare prescription drug plan.
- (2) The agency of human services or designee may require that an individual eligible for the refund incur up to \$250 in out-of-pocket expenses for the Medicare prescription drug benefit during the calendar year in which the rebate is received by the individual.

Sec. E.309.12 HIT FUND

(a) Health information technology funds shall not be used for the implementation or purchase of software creating an electronic health record (EHR), unless the EHR is capable of providing data to the Blueprint for Health established in 33 V.S.A. chapter 13 through the state health information exchange network using the current interoperability exchange standards approved by the United States Department of Health and Human Services.

Sec. E.309.13 MEDICAID SUPPLEMENTAL DRUG REBATES

(a) The department of Vermont health access shall make every effort to increase the supplemental rebates provided by pharmaceutical manufacturers in order to offset the reduction in supplemental rebate amounts anticipated from the modifications to the mandatory federal drug rebates as provided for in the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010.

Sec. E.309.14 EXPEDITED RULEMAKING; MEDICAID

(a) Notwithstanding the provisions of chapter 25 of Title 3, in order to administer Sec. E.309.1(a), (b) [benefit limits], and (d) [AWP] of this act relating to limiting the annual number of covered visits for physical therapy, occupational therapy, speech therapy, emergency room services, instituting a prior authorization for imaging, and limiting the monthly number of drug tests, the agency of human services shall adopt rules pursuant to the following process:

- (1) The secretary shall file final proposed rules with the secretary of state and the legislative committee on administrative rules under 3 V.S.A. § 841, after publication, in three daily newspapers with the highest average circulation in the state, of a notice that lists the rules to be adopted pursuant to this process and a seven-day public comment period following publication.
- (2) The secretary shall file final proposed rules with the legislative committee on administrative rules no later than 28 days after the effective date of this act.
- (3) The legislative committee on administrative rules shall review, and may approve or object to, the final proposed rules under 3 V.S.A. § 842, except that its action shall be completed no later than 14 days after the final proposed rules are filed with the committee.
- (4) The secretary may adopt a properly filed final proposed rule after the passage of 14 days from the date of filing final proposed rules with the legislative committee on administrative rules or after receiving notice of approval from the committee, provided the secretary:
- (A) has not received a notice of objection from the legislative committee on administrative rules; or
- (B) after having received a notice of objection from the committee, has responded pursuant to 3 V.S.A. § 842.
- (5) Rules adopted under this section shall be effective upon being filed with the secretary of state and shall have the full force and effect of rules adopted pursuant to chapter 25 of Title 3. Rules filed by the secretary of the agency of human services with the secretary of state pursuant to this section shall be deemed to be in full compliance with 3 V.S.A. § 843, and shall be accepted by the secretary of state if filed with a certification by the secretary of the agency of human services that the rule is required to meet the purposes of this section.
- Sec. E.309.15 33 V.S.A. § 1901(a)(4) is added to read:
- (4) A manufacturer of pharmaceuticals purchased by individuals receiving State pharmaceutical assistance in programs administered under chapter 19 of Title 33 shall pay to the department of Vermont health access, as the secretary's designee, a state rebate in an amount at least as favorable as the rebate paid to the department in connection with the Medicaid program as provided under section 1396-r of Title 42 of the United States Code.
- Sec. E.309.16 33 V.S.A. § 2073(f) is amended to read:
- (f) A manufacturer of pharmaceuticals purchased by individuals receiving assistance from VPharm established under this section shall pay to OVHA

<u>DVHA</u>, as a condition of participation in the program <u>as required by section 1901 of this title</u>, a rebate in an amount at least as favorable as the rebate paid to OVHA DVHA in connection with the Medicaid program.

Sec. E.309.17 33 V.S.A. § 2074(d) is amended to read:

(d) Any manufacturer of pharmaceuticals purchased by individuals receiving assistance from VermontRx established under this section shall pay to OVHA DVHA, as a condition of participation in the program as required by section 1901 of this title, a rebate in an amount at least as favorable as the rebate paid to OVHA DVHA in connection with the Medicaid program.

Sec. E.312 Health - public health (Sec. B.312, #3420021000)

(a) AIDS/HIV funding:

- (1) In fiscal year 2011 and as provided for in this section, the department of health shall provide grants in the amount of \$335,000 in Global Commitment funds to Vermont AIDS service and peer-support organizations for client-based support services. It is the intent of the general assembly that if the Global Commitment funds appropriated in this subsection are unavailable, the funding for Vermont AIDS service 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 service advisory committee (HASAC) with current information and data relating to service initiatives. The funds shall be allocated as follows:
 - (A) AIDS Project of Southern Vermont, \$69,709;
 - (B) ACORN, \$32,400;
 - (C) IMANI, \$32,400;
 - (D) VT CARES, \$135,491;
 - (E) Twin States Network, \$30,000;
 - (F) People with AIDS Coalition, \$35,000.
- (2) Ryan White Title II funds for AIDS services and the AIDS Medication Assistance Program shall be distributed in accordance with federal guidelines. The federal guidelines shall not apply to programs or services funded solely by state general funds.
- (3) The amount of \$140,000 general fund carry-forward funds from fiscal year 2010 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.

- (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) In fiscal year 2011, the funds to Vermont AIDS service organizations and other Vermont HIV/AIDS prevention providers shall be \$100,000 in general funds to the department of health for grants to Vermont AIDS service organizations and other Vermont HIV/AIDS prevention providers for community-based HIV prevention programs and services. 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 are distributed shall be determined by mutual agreement of the department of health and the Vermont AIDS service organizations and other Vermont HIV/AIDS prevention providers.
- (6) 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.
- 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) Notwithstanding any other provision of law to the contrary, for the purpose of meeting the need for outpatient substance abuse services for

individuals as risk of incarceration or re-incarceration by the department of corrections, a state qualified Licensed Alcohol and Drug Abuse Counselor (LADC) is authorized to participate as a Medicaid provider to deliver clinical and case coordination services, and receive Medicaid payment if there is a referral from the department of corrections, the department for children and families, or the judiciary.

- (c)(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.
- (d) An amount of \$240,000 in global commitment funds are allocated to the Howard Center for the integrated Howard Center/Maple Leaf Farm Intensive Outpatient Program.
- (e) An amount of \$150,000 in global commitment funds are allocated to support enhanced medical and psychiatric services at Maple Leaf Farm that produce such outcomes as reducing psychiatric unit and detoxification stays at hospitals, and shall be used as a medical supplement of \$13.82/day to increase the publicly funded daily rate to a total daily rate of \$264.11 per day.
- (f) Of the funds appropriated, \$90,000 shall be for grant of \$45,000 each to two new recovery centers.
- Sec. E.314 DEPARTMENT OF MENTAL HEALTH; GRANT REDUCTION
- (a) The department of mental health shall implement a five-percent reduction in general funds, totaling \$7,472 to community support programs for

mental health treatment by allowing the programs to determine the most appropriate method to implement the reduction.

Sec. E.314.1 VERMONT STATE HOSPITAL; CANTEEN

- (a) The general assembly finds that the availability of a cafeteria, also known as "the canteen," for use by patients of the Vermont state hospital is therapeutic for them and should be available for their use, as well as for their guests, hospital staff, and members of the general public.
- (b) From any appropriation contained in any act of the general assembly to the department of buildings and general services, the sum of up to \$25,000 shall be used to make necessary repairs and upgrades to bring up to code the premises used as the canteen, which repairs and upgrades shall be completed by October 30, 2010.
- (c) On or before November 1, 2010, the secretary of human services shall cause the canteen to reopen for no fewer than five days per week for a reasonable number of hours per day, for use by state hospital patients, their guests, staff, and members of the public. Notwithstanding any other provisions of law, the cafeteria service shall be provided either by state employees or a contracted vendor, so long as the operation is cost-neutral to the general fund. If the cafeteria service is offered by a vendor, the premises used by the vendor shall be leased at an annual cost of \$1.00, and the leased premises shall otherwise be offered to the vendor on the same terms and conditions as those offered to the vendor who operates the state house cafeteria.
- (d) The canteen service shall continue in operation unless closure is authorized by act of the general assembly.
- (e) The vendor shall strive to offer affordable lower-cost food prices to state hospital patients.

Sec. E.316 ELIGIBILITY DETERMINATION; QUALITY CONTROL

- (a) The establishment of six (6) new full-time positions is authorized in fiscal year 2011 to enhance quality control efforts related to eligibility for Medicaid, Medicaid waiver programs, and programs administered by the agency of human services. These positions shall be transferred and converted from vacant positions in the executive branch of state government.
- (b) The department shall develop measures to evaluate the success of these positions carrying out the purpose in subsection (a) of this section. This evaluation shall be submitted with the fiscal year 2012 budget materials to the house and senate committees on appropriations.

Sec. E.317 Department for children and families – family services

(a) The following grants are made to reduce the number of Vermont youth and young adults who are at risk of incarceration or re-incarceration: \$140,000 to Lamoille County people in partnership program for wrap-around services for at risk youth; \$15,000 for a grant to the project against violent encounters for a program for substance abuse prevention and mentoring for youth; and \$100,000 is reserved for a grant for a juvenile community coordinator initiative to be developed by to the Chittenden County state's attorney and the Burlington police department, in consultation with the judiciary, the department for children and families, and the department of corrections.

Sec. E.318 CHILD CARE ELIGIBILITY; PROCESSING

- (a) Until February 1, 2011, the department for children and families shall continue to contract with community agencies for the determination of eligibility for the child care services program established in 33 V.S.A. § 3212.
- (b) Before February 1, 2011 the department for children and families shall work with the community agencies to apply technology in a manner that most appropriately balances centralized services with community-based services so that these services will most efficiently and effectively address the needs of families and child care providers and so that community-based agencies can achieve \$200,000 in savings.

Sec. E.319 4 V.S.A. § 461 is amended to read:

§ 461. OFFICE OF MAGISTRATE; JURISDICTION; SELECTION; TERM

- (a) The office of magistrate is created within the family <u>division of the superior</u> court. Except as provided in section 463 of this title, the office of magistrate shall have <u>nonexclusive</u> jurisdiction concurrent with the family court to hear and dispose of the following cases <u>and proceedings</u>:
- (1) Proceedings for the establishment, modification, and enforcement of child support.
 - (2) Cases arising under the Uniform Interstate Family Support Act.
- (3) Child support in parentage cases after parentage has been determined.
- (4) Cases arising under section 5533 of Title 33 33 V.S.A. § 5116, when delegated by the family a presiding judge of the superior court.
- (5) Proceedings to establish, modify, or enforce temporary orders for spousal maintenance in accordance with sections 15 V.S.A. §§ 594a and 752 of Title 15.

- (6) Proceedings to modify or enforce temporary or final parent-child contact orders issued pursuant to this title.
 - (7) Proceedings to establish parentage.
- (8) Proceedings to establish temporary parental rights and responsibilities and parent-child contact.

Sec. E.319.1 15 V.S.A. § 658(f) is amended to read:

- (f)(1) The court shall order either or both parents owing a duty of support to provide a cash contribution or medical coverage for a child, provided that medical coverage is available to the parent at a reasonable cost. Medical coverage is presumed to be available to a parent at a reasonable cost only if the amount payable for the individual's contribution to the insurance or health benefit plan premium cost of adding the child to an existing insurance or health benefit plan or the difference between providing coverage to the individual alone and family coverage under an existing insurance or health benefit plan is five percent or less of the parent's gross income. The court, in its discretion, retains the right to order a parent to obtain medical coverage even if the cost exceeds five percent of the parent's gross income if the cost is deemed reasonable under all the circumstances after considering the factors pursuant to section 659 of this title.
- (2) If private health insurance or an employer-sponsored health benefit plan is not available at a reasonable cost, the court may order one or both parents owing a duty of support to contribute a cash contribution of up to five percent of gross income toward the cost of health care coverage of a child under public or private health insurance or a health benefit plan. The court also may order a cash contribution if a child receives coverage or health benefits under Medicaid, a Medicaid waiver program, Dr. Dynasaur, or is uninsured. A cash contribution under this section shall be considered child support for tax purposes. When calculating the contribution of a parent whose child receives coverage under Medicaid, a Medicaid waiver program, or Dr. Dynasaur, the court shall not order a contribution greater than the premium amount charged by the agency of human services for the child's coverage.
- (3) The court, in its discretion, may order a parent to provide a cash contribution or coverage under a public or private insurance or health benefit plan even if the cost exceeds five percent of the parent's gross income, if the cost is deemed reasonable under the totality of the circumstances after considering the factors pursuant to section 659 of this title.

Sec. E.319.2 15 V.S.A. § 653 is amended to read:

§ 653. DEFINITIONS

As used in this subchapter:

- (1) "Available income" means gross income, less
- (A) the amount of spousal support or preexisting child support obligations actually paid;
- (B) the actual cost to a parent of providing adequate health insurance coverage or a cash contribution as provided for in section 658 of this title for the children who are the subject of the order;

* * *

Sec. E.319.3 OFFICE OF CHILD SUPPORT; POSITIONS

- (a) From existing funds or increased collections, the office of child support may fill two existing positions in order to increase collections of medical support and cash contributions, including from families with incomes between 185 and 300 percent of the federal poverty level.
- (b) The office shall develop measures to evaluate the success of these positions carrying out the purpose in subsection (a) of this section. This evaluation shall be submitted with the fiscal year 2012 budget materials to the house and senate committees on appropriations.
- Sec. E.321 Department for children and families general assistance (Sec. B.321, #3440060000)
- (a) Commencing July 1, 2010, the commissioner for children and families may amend the maximum amount for death benefits paid at public expense through the general assistance program to \$1100 per burial.
- (b) If the department for children and families receives additional funds through the recoupment of Supplemental Security Income (SSI) funds for participants in the general assistance program, the commissioner shall use up to \$500,000 of these recouped funds to fund homelessness assistance provided through general assistance under Sec. E.321.2 of this act.
- (c) The department for children and families may not reduce or eliminate the personal needs (PNI) amount provided to individuals eligible for and receiving ongoing general assistance without legislative approval.

Sec. E.321.1 33 V.S.A. § 2301 is amended to read:

§ 2301. BURIAL RESPONSIBILITY

- (a)(1) When a person dies in this state, or a resident of this state dies within the state or elsewhere, and the decedent was a recipient of assistance under Title IV or XVI of the Social Security Act, or nursing home care under Title XIX of the Social Security Act, or assistance under state aid to the aged, blind or disabled, or an honorably discharged veteran of any branch of the U.S. military forces to the extent funds are available and to the extent authorized by department regulations rules, the decedent's burial shall be arranged and paid for by the department if the decedent was without sufficient known assets to pay for burial. The department shall pay burial expenses when arrangements are made other than by the department to the maximum permitted by its regulations for decedents that meet the requirements of this section in an amount not to exceed a maximum established by rule. In any case where other contributions are made, these payments shall be deducted from the amount otherwise paid by the department but in no case is the department responsible for any payment when the person arranging the burial selects a funeral the price of which exceeds the department's maximum, pursuant to the process established by rule. This section does not preclude the next-of-kin from paying for or receiving contributions to pay for additional disposition expenses.
- (2) The department shall notify the directors of all funeral homes within the state and within close proximity to the state's borders of its regulations rules with respect to those services for which it shall make payment pays and the amount of payment authorized for such those services. All payments shall be made directly to the appropriate funeral director.
- (3) As a condition of payment when arrangements are made other than by the department, funeral directors shall be required to do the following:
- (A) the funeral director shall determine from the person making the arrangements if the decedent was a recipient of assistance or an eligible veteran as specified in subdivision (a)(1) of this section;
- (B) If, and if the decedent was such a recipient, give notice to the party person making the arrangements of the department's regulations rules.
- (4) If the funeral home director does not advise the person making the arrangements of the department's regulations rules then that person shall not be liable for expenses incurred.

* * *

- (c) When a person other than one described in subsection (a) or (b) of this section dies in the town of domicile without sufficient known assets to pay for burial, the burial shall be arranged and paid for by the town. The department shall reimburse the town up to \$250.00 for expenses incurred.
- (d) In all other cases the department shall arrange for and pay for the burial of persons who die in this state or residents of this state who die within the state or elsewhere when such persons are without sufficient known assets to pay for their burial.

(e) [Omitted.]

- (f)(c) In all cases where the department is responsible for funeral and/or or burial expenses or both under this chapter, the department shall provide specify, by rule, the specific services that are to be provided at public expense, and on an itemized basis the maximum price to be paid by the department for each such service.
- (g)(d) For the purpose of this chapter, "burial" means the act of interring or cremating the human dead and the ceremonies directly related to that cremation or interment at the gravesite; and "funeral" means the ceremonies prior to burial of the body by interment, cremation, or other method.

Sec. E.321.2 GENERAL ASSISTANCE BENEFITS; FLEXIBILITY PROGRAM

- (a) Commencing with state fiscal year 2007, the agency of human services may establish 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 in a consistent manner 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. The assistance provided under this section is not an entitlement and may be discontinued when the appropriation has been fully spent.
- (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.321.3 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.321.2 of this act and existing rules.
- (b) Commencing 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 ongoing delivery and evaluation of the program.
- (d)(1) The agency shall maintain procedures established in fiscal year 2010 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 maintain reporting procedures established in fiscal year 2010 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.321.4 EXPEDITED RULEMAKING FOR GENERAL ASSISTANCE PROGRAMS

(a) Notwithstanding the provisions of chapter 25 of Title 3, if necessary to implement Secs. E.321 and E.321.1 (general assistance burial) of this act, in a timely fashion, the department for children and families shall adopt rules pursuant to the following procedure:

- (1) The commissioner shall file final proposed rules with the secretary of state and the legislative committee on administrative rules under 3 V.S.A. § 841, after publication, in three daily newspapers with the highest average circulation in the state, of a notice that lists the rules to be adopted pursuant to this process and a seven-day public comment period following publication.
- (2) The commissioner shall file final proposed rules with the legislative committee on administrative rules no later than 28 days after the effective date of this act.
- (3) The legislative committee on administrative rules shall review, and may approve or object to, the final proposed rules under 3 V.S.A. § 842, except that its action shall be completed no later than 14 days after the final proposed rules are filed with the committee.
- (4) The commissioner may adopt a properly filed final proposed rule after the passage of 14 days from the date of filing final proposed rules with the legislative committee on administrative rules or after receiving notice of approval from the committee, provided the secretary:
- (A) has not received a notice of objection from the legislative committee on administrative rules; or
- (B) after having received a notice of objection from the committee, has responded pursuant to 3 V.S.A. § 842.
- (5) Rules adopted under this section shall be effective upon being filed with the secretary of state and shall have the full force and effect of rules adopted pursuant to chapter 25 of Title 3. Rules filed by the commissioner for families and children with the secretary of state pursuant to this section shall be deemed to be in full compliance with 3 V.S.A. § 843, and shall be accepted by the secretary of state if filed with a certification by the commissioner for families and children that the rule is required to meet the purposes of this section.

Sec. E.323 REPEAL

- (a) Sec. 106 of No. 4 of the Acts of 2010 (Reach Ahead sunset) is repealed. Sec. E.323.1 33 V.S.A. § 1116(c)(1) is amended to read:
- (c)(1)(A) For a first, second and third month in which a participating adult is not in compliance with a family development plan or work requirement and has not demonstrated good cause for such noncompliance, the family's financial assistance grant shall be reduced by the amount of \$75.00 for each adult sanctioned.

- (B) For a second month in which a participating adult is not in compliance with a family development plan or work requirement and has not demonstrated good cause for such noncompliance, the family's financial assistance grant shall be reduced by the amount of \$100.00 for each adult sanctioned.
- (C) For a third month in which a participating adult is not in compliance with a family development plan or work requirement and has not demonstrated good cause for such noncompliance, the family's financial assistance grant shall be reduced by the amount of \$125.00 for each adult sanctioned.

Sec. E.323.2 33 V.S.A. § 1116(h) is amended to read:

- (h)(1) To receive payments during the fiscal sanction period, an adult who is the subject of the sanction shall meet no less than once each month to report his or her circumstances to the case manager or to participate in assessments as directed by the case manager. In addition, this meeting shall be for initial assessment and development of the family development plan when such tasks have not been completed; reassessment or review and revision of the family development plan, if appropriate; and to encourage the participant to fulfill the work requirement. Meetings required under this section may take place in the district office, a community location, or in the participant's home. Facilitation of meeting the participant's family development plan goals shall be a primary consideration in determining the location of the meeting. The commissioner may waive any meeting when extraordinary circumstances prevent a participant from attending. The commissioner shall adopt rules to implement this subsection.
- (2) To receive payments during the fourth month of fiscal sanction in a 12-month period, the participating adults shall engage in an assessment that includes the employability and life skills capabilities of the adult participants. If the evaluation reveals that a sanctioned adult should have had a modified or deferred work requirement during the current month of sanction or earlier months of sanction, the department shall strike the sanction, reinstate the full grant amount to which the family is entitled, and modify the participant's family development plan. The months of sanction incorrectly assessed shall be treated as if the months were forgiven as provided for under subsection (d) of this section. The assessment may be conducted by a team consisting of service providers familiar with the family and with an individual family member's needs.

Sec. E.323.3 33 V.S.A. § 1122(b) is amended to read:

(b) The program authorized by this section shall be administered by the commissioner or by a contractor designated by the commissioner, and. The

program shall be supported with funds other than federal TANF block grant funds provided under Title IV-A of the Social Security Act, except that the commissioner may fund financial assistance grants and support services of families participating in the postsecondary education program with TANF block grant or state maintenance of effort funds when the participating adult's educational activities are a countable work activity under federal law and when it will further one or more of the purposes in subdivision 1121(c)(1) of this title.

Sec. E.323.4 POSTSECONDARY EDUCATION; CASE MANAGEMENT

- (a) The department for children and families may reduce its contract by \$150,000 with postsecondary institutions for case management services to families participating in the postsecondary education program provided for in 33 V.S.A. § 1122 as follows:
- (1) by renegotiating the amount in the contract attributable to administrative services provided by the postsecondary institution; and
- (2) if renegotiation does not achieve the savings required in this section, then by transferring case management for a portion of the families participating in the program to the Reach Up program. The department shall evaluate student outcomes by comparing the outcomes of students receiving case management through the postsecondary institution with outcomes of students receiving case management through Reach Up and provide this information with its annual budget proposal.

Sec. E.323.5 TANF; ARRA

- (a) The department for children and families may use excess receipts authority to spend additional funds from the Temporary Assistance for Needy Families (TANF) emergency contingency fund for any of the purposes provided for in Section 2101 of the American Recovery and Reinvestment Act of 2009 (ARRA) which are subsidized employment, caseload increase, and short-term nonrecurrent benefits.
- 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 \$450,000 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, 2010, 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 2010–2011 crisis set-aside and for seasonal home heating fuel assistance through December 31, 2010, and if LIHEAP funds awarded as of December 31, 2010, for fiscal year 2011 do not exceed \$2,550,000, subsequent payments under the home heating fuel assistance program shall not be made prior to January 30, 2011. 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, 2010, the commissioner of finance and management may anticipate receipts into the home weatherization assistance trust fund.

- 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.325.1 INDIVIDUAL DEVELOPMENT SAVINGS PROGRAM

- (a) In fiscal year 2011, the funding for the individual development (IDA) savings program established in 33 V.S.A. § 1123 shall be from multiple sources, including general funds, community services block grant funds, and federal funds for economic development. It is the intent of the general assembly to fully fund the IDA program in future fiscal years as an important tool for the state's economic development through providing matched savings for starting small businesses and through promotion of financial literacy.
- 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) 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.329 VERMONT VETERANS' HOME; REGIONAL BED CAPACITY

- (a) The agency of human services shall not include the bed count at the Vermont veterans' home when recommending and implementing policies that are based on or intended to impact regional nursing home bed capacity in the state.
- Sec. E.330 Disabilities, aging, and independent living advocacy and independent living (Sec. B.330, #3460020000)
- (a) 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.
- (b) 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 2010.
- 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.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.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.

* * * 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 16 V.S.A. § 4001(1) is amended to read:

§ 4001. DEFINITIONS

For the purpose of this chapter:

(1) "Average daily membership" of a school district, or if needed in order to calculate the appropriate homestead tax rate, of the municipality as defined in 32 V.S.A. § 5401(9), in any year means:

* * *

- (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 determined 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.
- (iii) Notwithstanding subdivision (ii) of this subdivision or any other provision limiting the number of prekindergarten children a district may include within its average daily membership, if the commissioner determines that a school district or a school within the district has made insufficient progress in improving student performance as required by subsection 165(b) of this title or federal law, then until the commissioner determines that sufficient progress is being made, the school district may include within its average daily membership the total number of children enrolled in prekindergarten education offered by or through a school district.
- Sec. E.501 Sec. E. 501(a) of No. 1 of the Acts of 2009 (Special Session) is amended to read:
- (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. 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.501.1 Sec. 9.001(d) of No. 192 of the Acts of 2008 (sunset; teen parent education programs), as amended by Sec. E.501.1 of No. 1 of the Acts of the Special Session of 2009, 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, 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).
- (b) Of the appropriation authorized in this section, and notwithstanding any other provision of law, an amount not to exceed \$3,300,654 shall be used by the department of education in fiscal year 2011 as funding for 16 V.S.A.

- § 2967(b)(2)–(6). In distributing such funds, the commissioner shall not be limited by the restrictions contained within 16 V.S.A. § 2969(c) and (d). In addition to funding for 16 V.S.A. § 2967(b)(2)–(6), up to \$169,061 may be used by the department of education for its participation in the higher education partnership plan.
- 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).
- (b) The education fund appropriated in this section shall be notwithstanding 16 V.S.A. § 1049a(c).
- Sec. E.505 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 2011, those revenues and appropriations included \$38,575,036 in additional revenues and \$38,575,036 in additional expenditures.

Sec. E.505.1 COMMUNITY HIGH SCHOOL OF VERMONT GRANT

- (a) From the education funds appropriated in Sec. B.505 in 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 2011, this total grant shall be set at the base education amount 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.512 Education Act 117 cost containment (Sec. B.512, #5100310000)
- (a) Notwithstanding any 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 of the statewide total special education expenditures of funds which are not derived from federal sources.

- Sec. E.513 Appropriation and transfer to education fund (Sec. B.513, #1110020000)
- (a) Notwithstanding 16 V.S.A. § 4025(a)(2), for fiscal year 2011, the general fund transfer to the education fund shall be \$240,803,945.
- 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 annual contribution to the Vermont state teachers' retirement system shall be \$48,233,006 in fiscal year 2011.
- (b) In accordance with 16 V.S.A. § 1944(c)(2), of the annual contribution, \$10,270,041 is the "normal contribution", and \$37,962,965 is the "accrued liability contribution."
- (c) A combination of \$46,913,381 in general fund, and an estimated \$1,319,625 million of Medicare Part D reimbursement funds is 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, \$407,113 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, \$459,801 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 93 percent of grants shall be used for direct student aid.
- (c) Of state funds available to the Vermont Student Assistance Corporation pursuant to Secs. E.215(a) and B.1100(a)(3)(B) of this act, \$250,000 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.701 REPEAL

- (a) 10 V.S.A. § 7553(h)(4) is repealed and the subsequent subdivisions of 10 V.S.A. § 7553(h) are renumbered accordingly.
- (b) Subsections 6b(b) and (c)(transfer of funds from the solid waste management account for implementation of electronic waste program) of S.77 of 2010 as enacted are repealed.

Sec. E.701.1 Subsection 6c of S.77 of 2010 as enacted is amended to read:

Sec. 6c. ANR DISBURSEMENTS; APPROPRIATIONS

- (a) In fiscal years year 2011 and 2012, the secretary of natural resources may authorize disbursements from the electronic waste collection and recycling account within the waste management assistance fund for the purpose of paying the costs of administering and implementing the electronic waste collection program set forth under chapter 166 of Title 10.
- (b) In addition to any other funds appropriated to the agency of natural resources in fiscal year 2011, there is appropriated from the general fund to the agency \$50,000.00 in fiscal year 2011 from the waste management assistance fund under 10 V.S.A. § 6618 from fees assessed under 10 V.S.A. § 7553(g) for the purpose of administering and implementing the electronic waste collection and recycling program under chapter 166 of Title 10.
- (c) Pursuant to 32 V.S.A. § 588(4)(C), the commissioner of finance and management may authorize the secretary to pay from anticipated receipts of the waste management assistance fund from fees assessed under 10 V.S.A. section 7553 the costs incurred by the secretary in implementing the standard plan established under 10 V.S.A. section 7552 in the first quarter of the program year beginning July 1, 2011.
- Sec. E.702 Fish and wildlife support and field services (Sec. B.702, #6120000000)
- (a) It is the intent of the general assembly that the fiscal year 2011 budget provides funding to fill five (5) game warden positions that are vacant as of January 1, 2010, and funds two (2) limited service Fish and Wildlife Scientist II positions (position numbers 640148 and 640150). The Scientist II positions shall continue to perform the same functions in fiscal year 2011 as they have in previous fiscal years.
- (b) The department shall develop measures to evaluate the success of these positions carrying out the purpose in subsection (a) of this section. This evaluation shall be submitted with the fiscal year 2012 budget materials to the house and senate committees on appropriations.
- Sec. E.704 Forests, parks and recreation forestry (Sec. B.704, #6130020000)
- (a) This special fund appropriation shall be authorized, notwithstanding 3 V.S.A. § 2807(c).

* * * COMMERCE AND COMMUNITY DEVELOPMENT * * *

Sec. 800 10 V.S.A. § 328 is amended to read:

§ 328. CREATION OF THE SUSTAINABLE JOBS FUND PROGRAM

(a) There is created a sustainable jobs fund program to create quality jobs that are compatible with Vermont's natural and social environment.

* * *

- (c) Notwithstanding the provisions of section 216(14) of this title, the authority may contribute not more than \$1,000,000.00 to the capital of the corporation formed under this section, and the The board of directors of the corporation formed under this section shall consist of three members of the authority designated by the authority, the secretary of commerce and community development, and seven members who are not officials or employees of a governmental agency appointed by the governor, with the advice and consent of the senate, for terms of five years, except that the governor shall stagger initial appointments so that the terms of no more than two members expire during a calendar year 11 members for terms of five years, which shall be staggered so that the terms of no more than three members expire during a calendar year.
- (d) The Vermont economic development authority may hire or assign a program director to administer, manage, and direct the affairs and business of the board, subject to the policies, control, and direction of the corporation formed under this section.
- (e) Annually, on or before May 30, the sustainable jobs fund program shall submit a grant application and proposed work plan to the secretary of commerce and community development who in consultation with the department of economic development shall review the application to assure that it complements the goals and priorities of the department. The secretary at any time may request the sustainable jobs fund program to submit information that the secretary determines necessary or desirable to consider the annual application, assess the effectiveness of the grant, or carry out the purposes of this chapter.

* * *

Sec. 800.1 BOARD OF DIRECTORS; SUSTAINABLE JOBS FUND

(a) Upon passage, the secretary of the agency of commerce and community development and the three other members designated by the secretary shall cease to serve on the sustainable jobs fund board of directors. The seven remaining members appointed by the governor may resign or may serve out the remainder of their terms.

(b) All authority and responsibility for the administration and implementation of the sustainable jobs fund and the sustainable jobs program established under chapter 15A of Title 10 is transferred from the agency of commerce and community development to the sustainable jobs fund board of directors. The sustainable jobs fund's board of directors shall be the successor to all rights and obligations of the agency in any matter pertaining to the fund and the program effective upon enactment of this act.

Sec. E.801 [DELETED]

Sec. E.801.1 REPEAL

(a) 10 V.S.A. § 1 (commission on the future of economic development) is repealed.

Sec. E.801.2 [DELETED]

Sec. E.801.3 [DELETED]

Sec. E.801.4 [DELETED]

Sec. E.803 Community development block grants (Sec. B.803, #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 the 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 fund 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, to preserve affordable housing developments and extend their useful life, serve families and individuals at or below 30 percent HUD area median income and people with special needs. Housing for seniors should be considered a priority when it meets clear unmet needs in the region for the lowest income seniors.
- (4) CDBG and other public funds are intended to create and preserve affordable housing for households for income-eligible families, seniors and those with special needs. Limited public funding must focused on these

households. Therefore, no additional consideration shall be given to projects which intend to serve households which exceed the CDBG income limits.

- (5) Projects shall be given to projects that maintain the historic settlement patterns for compact village and downtown centers separated by a rural landscape. Funds generally should not be awarded on projects that promote or constitute sprawl, defined as dispersed development outside compact urban and village centers or along highways and in rural areas.
- (6) The department of economic, housing and community development may not restrict CDBG applications for housing to projects which have been previously awarded federal low income housing tax credits.

Sec. E.803.1 Sec 10a(a) of S.288 of the 2010 session is amended to read:

(a) The amount of \$100,000.00 shall be transferred to is reserved in the general fund in fiscal year 2011 2010 to cover the fiscal year 2011 costs of allocating \$100,000.00 worth of tax credits in calendar year 2010 under the downtown and village center program pursuant to 32 V.S.A. § 5930ee, which amount is authorized in addition to the statutory cap of \$1,700,000.00.

Sec. E.805 Tourism and Marketing (Sec. B.805, #7130000000)

- (a) Of the funds appropriated for tourism and marketing, \$100,000 shall be used to support the Vermont convention bureau.
- (b) The department shall submit a report with the fiscal year 2012 budget materials that describes the outcomes established for this grant and the method of evaluating these outcomes that includes the impact of the convention bureau on the economies of the regions or counties of Vermont.

Sec. E.806 [DELETED]

Sec. E.810 10 V.S.A. § 321(c) is amended to read:

(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, Division A, Title 1, Subtitle B, Section 1228 1131 of the Federal Housing and Economic Reform Finance Regulatory Reform Act of 2008 (P.L. 110-289) to increase perpetually affordable rental housing and home ownership for low and very low income families. The board is also authorized to receive and administer federal funds or enter in to cooperative agreements for a shared appreciation and/or community land trust demonstration program that increases perpetually affordable homeownership options for lower income Vermonters and promotes such options both within and outside Vermont.

Sec. E.810.1 10 V.S.A. § 311(b)(5) is amended to read:

(5) Three public members shall be appointed by the governor with the advice and consent of the senate. They 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.

Sec. E.810.2 10 V.S.A. § 311(c) is amended to read:

(c) The public members shall serve terms of three years beginning July February 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.

Sec. E.810.3 VERMONT HOUSING AND CONSERVATION BOARD-PRIVATE ACTIVITY BOND CAP

(a) Sec. 22 of H.790 of 2010, An Act Relating to Capital Construction and State Bonding appropriates funds to the Vermont housing and conservation board (VHCB) and establishes a percentage allocation between affordable housing and conservation investments it may make with such funds. However, if less than \$4,000,000 of the state's private activity bond cap is made available to the VHCB for eligible affordable housing investments, VHCB may increase the amount it allocates to conservation grant awards from its capital appropriation notwithstanding Sec. 22 of H.790, provided that VHCB increases its affordable housing investments in the same amount from the funds appropriated in Sec.B.810 as result of the allocation in Sec. D.100(a)(2) of this act.

* * * TRANSPORTATION * * *

Sec. E.909 Transportation – central garage (Sec. B.909, #8110000200)

(a) Of this appropriation, \$6,316,751 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.915 Transportation – town highway aid program (Sec. B.915, #810003000)

(a) This appropriation is authorized, notwithstanding 19 V.S.A. § 306(a).

Sec. F. [Reserved]

Sec. G.100 EFFECTIVE DATES

- (a) This section and Secs. C.100, C.101, C.101.1, C.102, E.100.5, E.127.2, E.220.1, E.230, E.230.1, E.309.11 (Medicare One-Time Payment), E.309.12 (Expedited rules for OVHA), E.321.4 (Expedited Rules for DCF), E.323 (Repeal Reach Ahead sunset), E.501.1, E.800, E.800.1, E.801.1, E.803.1, and E.810 of this act shall take effect upon passage.
- (b) Secs. E.319.1 (OCS medical support) and E.319.2 (OCS definitions) of this act shall apply to child support cases filed on or after July 1, 2010.
- (c) Sec. E.323.1 (Reach Up Sanctions) shall be implemented no earlier than October 1, 2010, in order to maximize the TANF emergency contingency funds reimbursable under the American Recovery and Reinvestment Act.
- (d) Secs. E.701(a) (repeal of electronic waste collection program implementation costs) and E.701(b) (repeal of use of solid waste management account for implementation of electronic waste collection program); and E.701.1 (ANR appropriations for electronic waste collection program) of this act shall take effect as of the date of enactment of S.77 of 2010.
- (e) Sec. E.127.1 (nuclear energy analysis) shall be in effect from July 1, 2008 to July 1, 2012.
- (f) Sec E.810.1 is effective upon passage however senate consent shall be required for members appointed by the governor on February 1, 2011 and thereafter.
- (g) Sec. E.810.2 is effective on passage and the terms of all public members currently appointed to Vermont Housing And Conservation Trust Fund by the Governor or legislature under 10 V.S.A. § 311 shall be extended from June 30 to January 31.

Sec. H. [Reserved]

* * * DESIGNATING OVHA AS A DEPARTMENT * * *

Sec. I.1 2 V.S.A. § 852(b)(3) is amended to read:

(3) The office department of Vermont health access.

Sec. I.2 2 V.S.A. § 902(c)(1) is amended to read:

(c)(1) The commission may request analysis from the <u>office department</u> of Vermont health access, the department of banking, insurance, securities, and health care administration, and other appropriate agencies. The agencies shall report to the commission at such times and with such information as the commission determines is necessary to fulfill its oversight responsibilities.

Sec. I.3 2 V.S.A. § 903(b)(1)(B)(ii) is amended to read:

(ii) recommend a method and format for reporting employer costs in the monthly financial reports submitted to the general assembly by the office department of Vermont health access;

Sec. I.4 2 V.S.A. § 903(b)(1)(C) is amended to read:

- (C) The <u>office department</u> of Vermont health access shall provide the commission with access to any information requested in order to conduct the activities specified in subdivision (B) of this subdivision (1), except the following:
- (i) Names, addresses, and Social Security numbers of recipients of and applicants for services administered by the office department.
 - (ii) Medical services provided to recipients.
- (iii) Social and economic conditions or circumstances, except such de-identified information as the <u>office department</u> may compile in the aggregate.
 - (iv) Agency evaluation of personal information.
- (v) Medical data, including diagnosis and past history of disease or disability.
- (vi) Information received for verifying income eligibility and amount of medical assistance payments, except such de-identified information as the office department may compile in the aggregate.
- (vii) Any additional types of information the <u>office department</u> has identified for safeguarding pursuant to the requirements of 42 C.F.R. § 431.305.

Sec. I.5 3 V.S.A. § 3002(a)(6) is amended to read:

(6) The office department of Vermont health access.

Sec. I.6 3 V.S.A. § 3004 is amended to read:

§ 3004. PERSONNEL DESIGNATION

The secretary, deputy secretary, commissioners, deputy commissioners, attorneys, directors of the offices of state economic opportunity, alcohol and drug abuse programs, Vermont health access, and child support, and all members of boards, committees, commissions, or councils attached to the agency for support are exempt from the classified state service. Except as authorized by section 311 of this title or otherwise by law, all other positions shall be within the classified service.

Sec. I.7 3 V.S.A. § 3084(a) is amended to read:

(a) The department for children and families is created within the agency of human services as the successor to and the continuation of the department of social and rehabilitation services, the department of prevention, assistance, transition, and health access, excluding the office department of Vermont health access, the office of economic opportunity, and the office of child support. The department shall also include a division of child development programs.

Sec. I.8 3 V.S.A. § 3088 is amended to read:

§ 3088. OFFICE DEPARTMENT OF VERMONT HEALTH ACCESS

The office department of Vermont health access is created within the agency of human services.

Sec. I.9 3 V.S.A. § 3091(a) is amended to read:

(a) An applicant for or a recipient of assistance, benefits, or social services from the department for children and families, the office department of Vermont health access, and the department of disabilities, aging, and independent living, or the department of mental health, or an applicant for a license from one of those departments or offices, or a licensee, may file a request for a fair hearing with the human services board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits, or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other agency action affecting his or her receipt of assistance, benefits, or services, or license or license application; or because the individual is aggrieved by agency policy as it affects his or her situation.

Sec. I.10 8 V.S.A. § 4080a(h)(2)(B) is amended to read:

(B) The commissioner's rules shall permit a carrier, including a hospital or medical service corporation and a health maintenance organization,

to establish rewards, premium discounts, split benefit designs, rebates, or otherwise waive or modify applicable co-payments, deductibles, or other cost-sharing amounts in return for adherence by a member or subscriber to programs of health promotion and disease prevention. The commissioner shall consult with the commissioner of health, the director of the Blueprint for Health, and the director commissioner of the office of Vermont health access in the development of health promotion and disease prevention rules that are consistent with the Blueprint for Health. Such rules shall:

* * *

Sec. I.11 8 V.S.A. § 4080b(h)(2)(B) is amended to read:

(B) The commissioner's rules shall permit a carrier, including a hospital or medical service corporation and a health maintenance organization, to establish rewards, premium discounts, rebates, or otherwise waive or modify applicable co-payments, deductibles, or other cost-sharing amounts in return for adherence by a member or subscriber to programs of health promotion and disease prevention. The commissioner shall consult with the commissioner of health and the director commissioner of the office of Vermont health access in the development of health promotion and disease prevention rules. Such rules shall:

* * *

Sec. I.12 8 V.S.A. § 4080f(a)(9)(A)(i)(II)(aa) is amended to read:

(II)(aa) A self-employed individual who was insured through the nongroup market whose insurance coverage ended as the direct result of either the termination of a business entity owned by the individual or the individual's inability to continue in his or her line of work, if the individual produces satisfactory evidence to the office department of Vermont health access of the business termination or certifies by affidavit to the office department of Vermont health access that he or she is not employed and is no longer seeking employment in the same line of work;

Sec. I.13 8 V.S.A. § 4089b(h)(2) is amended to read:

(2) the <u>director commissioner</u> of the <u>office of Vermont health access or</u> a designee;

Sec. I.14 8 V.S.A. § 4185(c)(2)(B) is amended to read:

(B) the amounts provided by contract between a hospital provider and the <u>office department</u> of Vermont health access for similar services to recipients of Medicaid; or

Sec. I.15 9 V.S.A. § 2480h(l)(5) is amended to read:

(5) The economic services division of the department for children and families or the <u>office department</u> of Vermont health access or its agents or assignee acting to investigate welfare or Medicaid fraud.

Sec. I.16 12 V.S.A. § 3169(a)(3) is amended to read:

(3) whether the judgment debtor has been a recipient of assistance from the Vermont department for children and families or the office department of Vermont health access within the two months preceding the date of the hearing; and

Sec. I.17 12 V.S.A. § 3170(a) is amended to read:

(a) No order approving the issuance of trustee process against earnings shall be entered against a judgment debtor who was, within the two-month period preceding the hearing provided in section 3169 of this title, a recipient of assistance from the Vermont department for children and families or the office department of Vermont health access. The judgment debtor must establish this exemption at the time of hearing.

Sec. I.18 15 V.S.A. § 658(b) is amended to read:

(b) A request for support may be made by either parent, a guardian, or the department for children and families or the <u>office</u> <u>department</u> of Vermont health access, if a party in interest. A court may also raise the issue of support on its own motion.

Sec. I.19 18 V.S.A. § 702(c)(1) is amended to read:

(c)(1) The secretary shall establish an executive committee to advise the director of the Blueprint on creating and implementing a strategic plan for the development of the statewide system of chronic care and prevention as described under this section. The executive committee shall consist of no fewer than 10 individuals, including the commissioner of health; a representative from the department of banking, insurance, securities, and health care administration; a representative from the office department of Vermont health access; a representative from the Vermont medical society; a representative from a statewide quality assurance organization; a representative from the Vermont association of hospitals and health systems; two representatives of private health insurers; a consumer; a representative of the complementary and alternative medicine profession; a primary care professional serving low income or uninsured Vermonters; and a representative of the state employees' health plan, who shall be designated by the director of human resources and who may be an employee of the third-party administrator contracting to provide services to the state employees' health plan. In addition, the director of the commission on health care reform shall be a nonvoting member of the executive committee.

Sec. I.20 18 V.S.A. § 1130(g)(2) is amended to read:

(2) The advisory committee shall include representatives from the three largest health insurers licensed to do business in Vermont and the office department of Vermont health access and shall be chaired by the chief of the immunization program for the department of health.

Sec. I.21 18 V.S.A. § 4621 is amended to read:

§ 4621. DEFINITIONS

For Except as otherwise specified, for the purposes of this subchapter:

* * *

Sec. I.22 18 V.S.A. § 4622 is amended to read:

§ 4622. EVIDENCE-BASED EDUCATION PROGRAM

- (a)(1) The department of health, in collaboration with the attorney general, the University of Vermont area health education centers program, and the office department of Vermont health access, shall establish an evidence-based prescription drug education program for health care professionals designed to provide information and education on the therapeutic and cost-effective utilization of prescription drugs to physicians, pharmacists, and other health care professionals authorized to prescribe and dispense prescription drugs. To the extent practicable, the program shall use the evidence-based standards developed by the blueprint for health. The department of health may collaborate with other states in establishing this program.
- (2) The program shall notify prescribers about commonly used brandname drugs for which the patent has expired within the last 12 months or will expire within the next 12 months. The department departments of health and the office of Vermont health access shall collaborate in issuing the notices.
- (3) To the extent permitted by funding, the program may include the distribution to prescribers of vouchers for samples of generic medicines used for health conditions common in Vermont.
- (b) The department of health shall request information and collaboration from physicians, pharmacists, private insurers, hospitals, pharmacy benefit managers, the drug utilization review board, medical schools, the attorney general, and any other programs providing an evidence-based education to prescribers on prescription drugs in developing and maintaining the program.

- (c) The department of health may contract for technical and clinical support in the development and the administration of the program from entities conducting independent research into the effectiveness of prescription drugs.
- (d) The department of health and the attorney general shall collaborate in reviewing the marketing activities of pharmaceutical manufacturing companies in Vermont and determining appropriate funding sources for the program, including awards from suits brought by the attorney general against pharmaceutical manufacturers.

Sec. I.23 18 V.S.A. § 4632(a)(6) is amended to read:

(6) The <u>office department</u> 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 <u>office department</u> may select the data most relevant to its analysis. The <u>office department</u> shall report its analysis annually to the general assembly and the governor on or before October 1.

Sec. I.24 18 V.S.A. § 7401(19) is amended to read:

(19) ensure the development of chronic care services, addressing mental health and substance abuse, for children and adults and ensure the coordination of these services with other chronic care initiatives, including the Blueprint for Health, and the care coordination and case management programs of the office department of Vermont health access;

Sec. I.25 18 V.S.A. § 9351(b) and (c) are amended to read:

(b) The health information technology plan shall:

* * *

(7) integrate the information technology components of the Blueprint for Health established in chapter 13 of this title, the agency of human services' enterprise master patient index, and all other Medicaid management information systems being developed by the office department of Vermont health access, information technology components of the quality assurance system, the program to capitalize with loans and grants electronic medical record systems in primary care practices, and any other information technology initiatives coordinated by the secretary of administration pursuant to section 3 V.S.A. § 2222a of Title 3; and

The secretary of administration or designee shall update the plan annually to reflect emerging technologies, the state's changing needs, and such other areas as the secretary or designee deems appropriate. The secretary or designee shall solicit recommendations from Vermont Information Technology Leaders, Inc. (VITL) and other entities in order to update the health information technology plan pursuant to this section, including applicable standards, protocols, and pilot programs, and may enter into a contract or grant agreement with VITL or other entities to update some or all of the plan. Upon approval by the secretary, the updated plan shall be distributed to the commission on health care reform; the commissioner of information and innovation; the commissioner of banking, insurance, securities, and health care administration; the director commissioner of the office of Vermont health access; the secretary of human services; the commissioner of health; the commissioner of mental health; the commissioner of disabilities, aging, and independent living; the senate committee on health and welfare; the house committee on health care; affected parties; and interested stakeholders.

Sec. I.26 18 V.S.A. § 9352(e) is amended to read:

(e) Report. No later than January 15 of each year, VITL shall file a report with the commission on health care reform; the secretary of administration; the commissioner of information and innovation; the commissioner of banking, insurance, securities, and health care administration; the director commissioner of the office of Vermont health access; the secretary of human services; the commissioner of health; the commissioner of mental health; the commissioner of disabilities, aging, and independent living; the senate committee on health and welfare; and the house committee on health care. The report shall include an assessment of progress in implementing health information technology in Vermont and recommendations for additional funding and legislation required. In addition, VITL shall publish minutes of VITL meetings and any other relevant information on a public website.

Sec. I.27 18 V.S.A. § 9410(a)(2)(B) is amended to read:

(B) The commissioner shall convene a working group composed of the commissioner of mental health, the director commissioner of the office of Vermont health access, health care consumers, the office of the health care ombudsman, employers and other payers, health care providers and facilities, the Vermont program for quality in health care, health insurers, and any other individual or group appointed by the commissioner to advise the commissioner on the development and implementation of the consumer health care price and quality information system.

Sec. I.28 18 V.S.A. § 9418(a) is amended to read:

(a) Except as otherwise specified, as used in this subchapter:

* * *

- (3) "Contracting entity" means any entity that contracts directly or indirectly with a health care provider for either the delivery of health care services or the selling, leasing, renting, assigning, or granting of access to a contract or terms of a contract. For purposes of this subchapter, the office department of Vermont health access, health care providers, physician hospital organizations, health care facilities, and stand-alone dental plans are not contracting entities.
- (4) "Covered entity" means an organization that enters into a contract with a contracting entity to gain access to a provider network contract. For purposes of this subchapter, the <u>office department</u> of Vermont health access is not a covered entity.

* * *

- (14) "Payer" means any person or entity that assumes the financial risk for the payment of claims under a health care contract or the reimbursement for health care services rendered to an insured by a participating provider under the health care contract. The term "payer" does not include:
 - (A) the office department of Vermont health access; or

* * *

Sec. I.29 18 V.S.A. § 9421(d) is amended to read:

(d) The department's reasonable expenses of the department of banking, insurance, securities, and health care administration in administering the provisions of this section may be charged to pharmacy benefit managers in the manner provided for in section 8 V.S.A. § 18 of Title 8. These expenses shall be allocated in proportion to the lives of Vermonters covered by each pharmacy benefit manager as reported annually to the commissioner in a manner and form prescribed by the commissioner. The department of banking, insurance, securities, and health care administration shall not charge its expenses to the pharmacy benefit manager contracting with the office department of Vermont health access if the office department of Vermont health access notifies the department of banking, insurance, securities, and health care administration of the conditions contained in its contract with a pharmacy benefit manager.

Sec. I.30 24 V.S.A. § 1173 is amended to read:

§ 1173. TOWN OR VILLAGE REPORTS

The clerk of a municipality shall supply annually each library in such municipality with two copies of the municipal report, upon its publication. The clerk shall also mail to the state library two copies thereof, and one copy each to the secretary of state, commissioner of taxes, highway board, state board of health, commissioner for children and families, director commissioner of the office of Vermont health access, auditor of accounts, and board of education. Officers making these reports shall supply the clerk of the municipality with the printed copies necessary for him or her to comply with the provisions of this section and section 1174 of this title.

Sec. I.31 32 V.S.A. § 308b(a) is amended to read:

(a) There is created within the general fund a human services caseload management reserve. Expenditures from the reserve shall be subject to an appropriation by the general assembly or approval by the emergency board. Expenditures from the reserve shall be limited to agency of human services caseload related needs primarily in the departments for children and families, of health, of mental health, and of disabilities, aging, and independent living, and in the office of Vermont health access.

Sec. I.32 32 V.S.A. § 9530 is amended to read:

§ 9530. DEFINITIONS

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

- (1) "Director" "Commissioner" means the director commissioner of the office department of Vermont health access.
 - (2) "Division" means the division of rate setting.

* * *

Sec. I.33 32 V.S.A. § 9533(b) and (e) are amended to read:

- (b) The tax shall be paid by the transferor to the <u>office department</u> of Vermont health access within 10 days after the date of the transfer, accompanied by the nursing home transferor tax form prescribed by the commissioner.
- (e) Upon the receipt of the full amount of the tax, the director commissioner shall deposit receipts from the transferor tax in the health care trust resources fund established pursuant to 33 V.S.A. § 1956 33 V.S.A. § 1901d and shall send a certificate of payment to the transferor, the transferee, and the division showing the date when the tax was received.

Sec. I.34 32 V.S.A. § 9535 is amended to read:

§ 9535. REVIEW AND APPEALS

- (a) At any time before, or within 10 days after the date of a transfer of a nursing home, a transferor may request from the <u>director commissioner</u> a determination of the transferor's liability to pay or the amount of the nursing home transfer tax due. The <u>director commissioner</u> shall render a decision within 30 days of the receipt of all information that the <u>director commissioner</u> deems necessary to make a determination.
- (b) Within 30 days of the date of issuance of the director's commissioner's determination, a transferor aggrieved by that determination may request review by the secretary or the secretary's designee. This review shall not be subject to the provisions of 3 V.S.A. chapter 25 of Title 3.
- Sec. I.35 32 V.S.A. § 10301(c)(2) is amended to read:
- (2) contributions from the <u>office department</u> of Vermont health access, as appropriated by the general assembly; and

Sec. I.36 33 V.S.A. § 102 is amended to read:

§ 102. DEFINITIONS AND CONSTRUCTION

(a) Unless otherwise expressly provided, the words and phrases in this chapter mean:

* * *

- (12) Director: the director of the office of Vermont health access.
- (13) Office: the office of Vermont health access.

* * *

Sec. I.37 33 V.S.A. § 114 is amended to read:

§ 114. ALLOCATION OF PAYMENTS WHEN APPROPRIATION INSUFFICIENT

Should the funds available for assistance be insufficient to provide assistance to all those eligible, the amounts of assistance granted in any program or portion thereof shall be reduced equitably, in the discretion of the commissioner for children and families or the director commissioner of Vermont health access by rule.

Sec. I.38 33 V.S.A. § 121 is amended to read:

§ 121. CANCELLATION OF ASSISTANCE OR BENEFITS

If at any time the commissioner <u>for children and families</u> or the <u>director commissioner of Vermont health access</u> has reason to believe that assistance or benefits have been improperly obtained, he or she shall cause an investigation to be made and may suspend assistance or benefits pending the investigation. If on investigation the commissioner <u>for children and families</u> or the <u>director commissioner of Vermont health access</u> is satisfied that the assistance or benefits were illegally obtained, he or she shall immediately cancel them. A person having illegally obtained assistance or benefits shall not be eligible for reinstatement until his or her need has been reestablished.

Sec. I.39 33 V.S.A. § 122 is amended to read:

§ 122. RECOVERY OF PAYMENTS

- (a) The amount of assistance or benefits may be changed or cancelled at any time if the commissioner <u>for children and families</u> or <u>director the commissioner of Vermont health access</u> finds that the recipient's circumstances have changed. Upon granting assistance or benefits the department <u>for children and families</u> or <u>office the department of Vermont health access</u> shall inform the recipient that changes in his or her circumstances must be promptly reported to the department.
- (b) When on the death of a person receiving assistance it is found that the recipient possessed income or property in excess of that reported to the department for children and families or office the department of Vermont health access, up to double the total amount of assistance in excess of that to which the recipient was lawfully entitled may be recovered by the commissioner for children and families or director the commissioner of Vermont health access as a preferred claim from the estate of the recipient. The commissioner for children and families or director the commissioner of Vermont health access shall calculate the amount of the recovery by applying the legal interest rate to the amount of excess recovery paid, except that the recovery shall be capped at double the excess assistance paid.
- (c) When the commissioner for children and families or director the commissioner of Vermont health access finds that a recipient of benefits received assistance in excess of that to which the recipient was lawfully entitled, because the recipient possessed income or property in excess of department standards, the commissioner for children and families or director the commissioner of Vermont health access may take actions to recover the overpayment.

(d) In the event of recovery, an amount may be retained by the commissioner <u>for children and families</u> or <u>director the commissioner of Vermont health access</u> in a special fund for use in offsetting program expenses and an amount equivalent to the pro rata share to which the United States of America is equitably entitled shall be paid promptly to the appropriate federal agency.

Sec. I.40 33 V.S.A. § 141(e) is amended to read:

(e) A person providing service for which compensation is paid under a state or federally-funded assistance program who requests, and receives, either actually or constructively, any payment or contribution through a payment, assessment, gift, devise, bequest, or other means, whether directly or indirectly, from either a recipient of assistance from the assistance program or from the family of the recipient shall notify the commissioner for children and families or director the commissioner of Vermont health access, on a form provided by him or her, of the amount of the payment or contribution and of such other information as specified by the commissioner for children and families or director the commissioner of Vermont health access within 10 days after the receipt of the payment or contribution or, if the payment or contribution is to become effective at some time in the future, within 10 days of the consummation of the agreement to make the payment or contribution. Failure to notify the commissioner for children and families or director the commissioner of Vermont health access within the time prescribed is punishable as provided in section 143 of this title.

Sec. I.41 33 V.S.A. § 143(b) and (c) are amended to read:

- (b) If the person convicted is receiving assistance, benefits, or payments, the commissioner <u>for children and families</u> or <u>director the commissioner of Vermont health access</u> may recoup the amount of assistance or benefits wrongfully obtained by reducing the <u>assistance</u>, benefits, or payments periodically paid to the recipient, as limited by federal law, until the amount is fully recovered.
- (c) If a provider of services is convicted of a violation of subsection 141(d) or (e) of this title, the director commissioner of Vermont health access shall, within 90 days of the conviction, suspend the provider from further participation in the medical assistance program administered under Title XIX of the Social Security Act for a period of four years. The suspension required by this subsection may be waived by the secretary of human services only upon a finding that the recipients served by the convicted provider would suffer substantial hardship through a denial of medical services that could not reasonably be obtained through another provider.

Sec. I.42 33 V.S.A. § 143b is amended to read:

§ 143b. EDUCATION AND INFORMATION

Within six months of the effective date of section 143a of this title, the office department of Vermont health access shall issue rules establishing a procedure for health care providers enrolled in state and federally funded medical assistance programs to obtain advisory opinions regarding coverage and reimbursement under those programs. Each advisory opinion issued by the office department of Vermont health access shall be binding on the office that department and the party or parties requesting the opinion only with regard to the specific questions posed in the opinion, the facts and information set forth in it, and the statutes and rules specifically noted in the opinion.

Sec. I.43 33 V.S.A. § 1901 is amended to read:

§ 1901. ADMINISTRATION OF PROGRAM

- (d)(1) To enable the state to manage public resources effectively while preserving and enhancing access to health care services in the state, the office department of Vermont health access is authorized to serve as a publicly operated managed care organization (MCO).
- (2) To the extent permitted under federal law, the office department of Vermont health access shall be exempt from any health maintenance organization (HMO) or MCO statutes in Vermont law and shall not be considered to be an HMO or MCO for purposes of state regulatory and reporting requirements. The MCO shall comply with the federal rules governing managed care organizations in Part 438 of Chapter IV of Title 42 of the United States Code. The Vermont rules on the primary care case management in the Medicaid program shall be amended to apply to the MCO except to the extent that the rules conflict with the federal rules.
- (3) The agency of human services and office department of Vermont health access shall report to the health access oversight committee about implementation of Global Commitment in a manner and at a frequency to be determined by the committee. Reporting shall, at a minimum, enable the tracking of expenditures by eligibility category, the type of care received, and to the extent possible allow historical comparison with expenditures under the previous Medicaid appropriation model (by department and program) and, if appropriate, with the amounts transferred by the another department to the office department of Vermont health access. Reporting shall include spending in comparison to any applicable budget neutrality standards.

- (e)(1) The department for children and families and the <u>office</u> <u>department</u> of Vermont health access shall monitor and evaluate and report quarterly beginning July 1, 2006 on the disenrollment in each of the Medicaid or Medicaid waiver programs subject to premiums, including:
- (A) The number of beneficiaries receiving termination notices for failure to pay premiums;
- (B) The number of beneficiaries terminated from coverage as a result of failure to pay premiums as of the second business day of the month following the termination notice. The number of beneficiaries terminated from coverage for nonpayment of premiums shall be reported by program and income level within each program; and
- (C) The number of beneficiaries terminated from coverage as a result of failure to pay premiums whose coverage is not restored three months after the termination notice.
- (2) The department <u>for children and families</u> and the <u>office department</u> <u>of Vermont health access</u> shall submit reports at the end of each quarter required by subdivision (1) of this subsection to the house and senate committees on appropriations, the senate committee on health and welfare, the house committee on human services, the health access oversight committee, and the Medicaid advisory board.

* * *

Sec. I.44 33 V.S.A. § 1901b is amended to read:

§ 1901b. PHARMACY PROGRAM ENROLLMENT

- (a) The office department of Vermont health access and the department for children and families shall monitor actual caseloads, revenue and expenditures, anticipated caseloads, revenue and expenditures, and actual and anticipated savings from implementation of the preferred drug list, supplemental rebates, and other cost containment activities in each state pharmaceutical assistance program, including VPharm and VermontRx. The department and the office departments shall allocate supplemental rebate savings to each program proportionate to expenditures in each program. During the second week of each month, the office department of Vermont health access shall report such actual and anticipated caseload, revenue, expenditure and savings information to the joint fiscal committee and to the health access oversight committee.
- (b)(1) If at any time expenditures for VPharm and VermontRx are anticipated to exceed the aggregate amount of state funds expressly appropriated for such state pharmaceutical assistance programs during any fiscal year, the office department of Vermont health access shall recommend to

the joint fiscal committee and notify the health access oversight committee of a plan to cease new enrollments in VermontRx for individuals with incomes over 225 percent of the federal poverty level.

- (2) If at any time expenditures for VPharm and VermontRx are anticipated to exceed the aggregate amount of state funds expressly appropriated for such state pharmaceutical assistance programs during any fiscal year, even with the cessation of new enrollments as provided for in subdivision (1) of this subsection, the office department of Vermont health access shall recommend to the joint fiscal committee and notify the health access oversight committee of a plan to cease new enrollments in the VermontRx for individuals with incomes more than 175 percent and less than 225 percent of the federal poverty level.
- (3) The office's determinations of the department of Vermont health access under subdivisions (1) and (2) of this subsection shall be based on the information and projections reported monthly under subsection (a) of this section, and on the official revenue estimates under section 32 V.S.A. § 305a of Title 32. An enrollment cessation plan shall be deemed approved unless the joint fiscal committee disapproves the plan after 21 days notice of the office's recommendation and financial analysis of the department of Vermont health access.
- (4) Upon the approval of or failure to disapprove an enrollment cessation plan by the joint fiscal committee, the <u>office department of Vermont health access</u> shall cease new enrollment in VermontRx for the individuals with incomes at the appropriate level in accordance with the plan.
- (c)(1) If at any time after enrollment ceases under subsection (b) of this section expenditures for VermontRx, including expenditures attributable to renewed enrollment, are anticipated, by reason of increased federal financial participation or any other reason, to be equal to or less than the aggregate amount of state funds expressly appropriated for such state pharmaceutical assistance programs during any fiscal year, the office department of Vermont health access shall recommend to the joint fiscal committee and notify the health access oversight committee of a plan to renew enrollment in VermontRx, with priority given to individuals with incomes more than 175 percent and less than 225 percent, if adequate funds are anticipated to be available for each program for the remainder of the fiscal year.
- (2) The office's determination of the department of Vermont health access under subdivision (1) of this subsection shall be based on the information and projections reported monthly under subsection (a) of this section, and on the official revenue estimates under section 32 V.S.A. § 305a of Title 32. An enrollment renewal plan shall be deemed approved unless the

joint fiscal committee disapproves the plan after 21 days notice of the office's recommendation and financial analysis of the department of Vermont health access.

(3) Upon the approval of, or failure to disapprove an enrollment renewal plan by the joint fiscal committee, the <u>office</u> <u>department of Vermont health</u> access shall renew enrollment in VermontRx in accordance with the plan.

(d) As used in this section:

(1) "State pharmaceutical assistance program" means any health assistance programs administered by the agency of human services providing prescription drug coverage, including but not limited to, the Medicaid program, the Vermont health access plan, VPharm, VermontRx, the state children's health insurance program, the state of Vermont AIDS medication assistance program, the General Assistance program, the pharmacy discount plan program, and any other health assistance programs administered by the agency providing prescription drug coverage.

* * *

Sec. I.45 33 V.S.A. § 1901c is amended to read:

§ 1901c. MEDICAL CARE ADVISORY COMMITTEE

- (a) The director of the office commissioner of Vermont health access shall appoint a medical care advisory committee to advise the office department of Vermont health access about health care and medical services, consistent with the requirements of federal law.
- (b) The medical care advisory committee shall be given an opportunity to participate in policy development and program administration for Medicaid, the Vermont health access plan, VPharm, and VermontRx. It shall have an opportunity to review and comment upon agency policy initiatives pertaining to health care benefits and beneficiary eligibility. It also shall have the opportunity to comment on proposed rules prior to commencement of the rulemaking process and on waiver or waiver amendment applications prior to submission to the Centers for Medicare and Medicaid Services. Prior to the annual budget development process, the office department of Vermont health access shall engage the medical care advisory committee in priority setting, including consideration of scope of benefits, beneficiary eligibility, funding outlook, financing options, and possible budget recommendations.
- (c) The medical care advisory committee shall make policy recommendations on office proposals of the department of Vermont health access proposals to the office department, the health access oversight committee, and the standing committees senate committee on health and

welfare, and the house committee on human services. When the general assembly is not in session, the director commissioner shall respond in writing to these recommendations, a copy of which shall be provided to each of the legislative committees.

- (d) During the legislative session, the <u>director commissioner</u> shall provide the committee at regularly scheduled meetings updates on the status of policy and budget proposals.
- (e) The <u>director commissioner</u> shall convene the medical care advisory committee at least six times each year.
- (f) At least one-third of the members of the medical care advisory committee shall be recipients of Medicaid, VHAP, or VermontRx. Such members shall receive per diem compensation and reimbursement of expenses pursuant to section 32 V.S.A. § 1010 of Title 32, including costs of travel, child care, personal assistance services, and any other service necessary for participation on the committee approved by the director commissioner.
- (g) The <u>director commissioner</u> shall appoint members of the medical care advisory committee for staggered three-year terms. The <u>director commissioner</u> may remove members of the committee who fail to attend three consecutive meetings and appoint replacements.
- (h) For purposes of this section, "program administration" means annual and long-term strategic planning, including priority setting, relative to scope of benefits, beneficiary eligibility, funding outlook, financing options, and possible budget recommendations.

Sec. I.46 33 V.S.A. § 1901e is amended to read:

§ 1901e. GLOBAL COMMITMENT FUND

- (a) The Global Commitment fund is created in the treasury as a special fund. The fund shall consist of the revenues received by the treasurer as payment of the actuarially certified premium from the agency of human services to the managed care organization within the office department of Vermont health access for the purpose of providing services under the Global Commitment for Health waiver approved by the Centers for Medicare and Medicaid Services under Section 1115 of the Social Security Act.
- (b) The monies in the fund shall be disbursed as allowed by appropriation of the general assembly, and shall be disbursed by the treasurer on warrants issued by the commissioner of finance and management, when authorized by the director commissioner of the office of Vermont health access and approved by the commissioner of finance and management consistent with the interdepartmental agreements between the managed care organization within

the office department of Vermont health access and departments delivering eligible services under the waiver. The office department of Vermont health access may not modify an appropriation through an interdepartmental agreement or any other mechanism. A department or agency authorized to spend monies from this fund under an interdepartmental agreement may spend monies appropriated as a base Medicaid expense for an allowable managed care organization investment under Term and Condition 40 of the Global Commitment for Health Medicaid Section 1115 waiver only after receiving approval from the agency of human services.

(c) At the close of the fiscal year, the agency shall provide a detailed report to the joint fiscal committee which describes the managed care organization's investments under Term and Condition 40 of the Global Commitment for Health Medicaid Section 1115 waiver, including the amount of the investment and the agency, department, or office or departments authorized to make the investment.

Sec. I.47 33 V.S.A. § 1903 is amended to read:

§ 1903. CONTRACT AUTHORIZED

- (a) The <u>director of the office commissioner</u> of Vermont health access may contract with a private organization to operate, under his or her control and supervision, parts of the medical assistance program.
- (b) The contract shall provide that either party may cancel it upon reasonable notice to the other party.
- (c) In furtherance of the purposes of the contract, the director commissioner of Vermont health access may requisition funds for the purposes of this subchapter, with the approval of the governor, and the commissioner of finance and management shall issue a warrant in favor of the contracting party to permit the contracting party to make payments to vendors under the contract. The director commissioner of Vermont health access shall quarterly, and at other times as the commissioner of finance and management requires, render an account in a form as the commissioner of finance and management prescribes of the expenditures of moneys so advanced.

Sec. I.48 33 V.S.A. § 1903a(a) is amended to read:

(a) The secretary of administration or designee shall create a chronic care management program as provided for in this section, which shall be administered or provided by a private entity for individuals with one or more chronic conditions who are enrolled in Medicaid, the Vermont health access plan (VHAP), or Dr. Dynasaur. The program shall not include individuals who are also eligible for Medicare, who are enrolled in the Choices for Care Medicaid Section 1115 waiver or who are in an institute for mental disease as

defined in 42 C.F.R. §435.1009. The secretary may also exclude individuals who are eligible for or participating in the Medicaid care coordination program established through the office department of Vermont health access.

Sec. I.49 33 V.S.A. § 1904 is amended to read:

§ 1904. DEFINITIONS

When used in this subchapter, unless otherwise indicated:

* * *

- (4) "Director" means the director of the office of Vermont health access.
- (5) "Insurer" means any insurance company, prepaid health care delivery plan, self-funded employee benefit plan, pension fund, hospital or medical service corporation, managed care organization, pharmacy benefit manager, prescription drug plan, retirement system, or similar entity that is under an obligation to make payments for medical services as a result of an injury, illness, or disease suffered by an individual.
- (6)(5) "Legally liable representative" means a parent or person with an obligation of support to a recipient whether by contract, court order or statute.
- (7)(6) "Provider" means any person that has entered into an agreement with the state to provide any medical service.
- (8)(7) "Recipient" means any person or group of persons who receive Medicaid.
 - (9)(8) "Secretary" means the secretary of the agency of human services.
- (10)(9) "Third party" means a person having an obligation to pay all or any portion of the medical expense incurred by a recipient at the time the medical service was provided. The obligation is not discharged by virtue of being undiscovered or undeveloped at the time a Medicaid claim is paid. Third parties include:

- (11)(10) "Tobacco" means all products listed in 7 V.S.A. § 1001(3).
- (12)(11) "Tobacco manufacturer" means any person engaged in the process of designing, fabricating, assembling, producing, constructing or otherwise preparing a product containing tobacco, including packaging or labeling of these products, with the intended purpose of selling the product for gain or profit. "Tobacco manufacturer" does not include persons whose activity is limited to growing natural leaf tobacco or to selling tobacco products at wholesale or retail to customers. "Tobacco manufacturer" also does not include any person who manufactures or produces firearms, dairy

products, products containing alcohol or other nontobacco products, unless such person also manufactures or produces tobacco products.

Sec. I.50 33 V.S.A. § 1908a(c)(1)(F) is amended to read:

(F) information to the purchaser about available consumer information and public education provided by the department of banking, insurance, securities, and health care administration and the office department of Vermont health access; and

Sec. I.51 33 V.S.A. § 1950(b) is amended to read:

(b) The secretary and the <u>director commissioner</u> shall interpret and administer the provisions of this subchapter so as to maximize federal financial participation and avoid disallowances of federal financial participation.

Sec. I.52 33 V.S.A. § 1951 is amended to read:

§ 1951. DEFINITIONS

As used in this subchapter:

* * *

(3) "Director" "Commissioner" means the director commissioner of the office of Vermont health access.

* * *

(12) "Office" "Department" means the office department of Vermont health access.

* * *

Sec. I.53 33 V.S.A. § 1952 is amended to read:

§ 1952. GENERAL PROVISIONS

* * *

(b) The <u>office department</u> may use not more than one percent of the assessments received under the provisions of this subchapter for necessary administrative expenses associated with this subchapter.

* * *

(f) If a health care provider fails to pay its assessments under this subchapter according to the schedule or a variation thereof adopted by the director commissioner, the director commissioner may, after notice and opportunity for hearing, deduct these assessment arrears and any late-payment penalties from Medicaid payments otherwise due to the provider. The

deduction of these assessment arrears may be made in one or more installments on a schedule to be determined by the director commissioner.

Sec. I.54 33 V.S.A. § 1954 is amended to read:

§ 1954. NURSING HOME ASSESSMENT

- (a) Beginning July 1, 2007, each nursing home's annual assessment shall be \$4,322.90, and beginning January 1, 2008, \$3,962.66 per bed licensed pursuant to section 7105 of this title on June 30 of the immediately preceding fiscal year. The annual assessment for each bed licensed as of the beginning of the fiscal year shall be prorated for the number of days during which the bed was actually licensed and any over payment shall be refunded to the facility. To receive the refund, a facility shall notify the director commissioner in writing of the size of the decrease in the number of its licensed beds and dates on which the beds ceased to be licensed.
- (b) The <u>office</u> <u>department</u> shall provide written notification of the assessment amount to each nursing home. The assessment amount determined shall be considered final unless the home requests a reconsideration. Requests for reconsideration shall be subject to the provisions of section 1958 of this title.
- (c) Each nursing home shall submit its assessment to the <u>office</u> <u>department</u> according to a schedule adopted by the <u>director</u> <u>commissioner</u>. The <u>director</u> <u>commissioner</u> may permit variations in the schedule of payment as deemed necessary.
- (d) Any nursing home that fails to make a payment to the <u>office department</u> on or before the specified schedule, or under any schedule of delayed payments established by the <u>director commissioner</u>, shall be assessed not more than \$1,000.00. The <u>director commissioner</u> may waive this late-payment assessment provided for in this subsection for good cause shown by the nursing home.

Sec. I.55 33 V.S.A. § 1955 is amended to read:

§ 1955. ICF/MR ASSESSMENT

- (b) The <u>office department</u> shall provide written notification of the assessment amount to each ICF/MR. The assessment amount determined shall be considered final unless the facility requests a reconsideration. Requests for reconsideration shall be subject to the provisions of section 1958 of this title.
- (c) Each ICF/MR shall remit its assessment to the <u>office department</u> according to a schedule adopted by the director commissioner. The director

<u>commissioner</u> may permit variations in the schedule of payment as deemed necessary.

(d) Any ICF/MR that fails to make a payment to the <u>office department</u> on or before the specified schedule, or under any schedule of delayed payments established by the <u>director commissioner</u>, shall be assessed not more than \$1,000.00. The <u>director commissioner</u> may waive this late-payment assessment provided for in this subsection for good cause shown by the ICF/MR.

Sec. I.56 33 V.S.A. § 1955a is amended to read:

§ 1955a. HOME HEALTH AGENCY ASSESSMENT

- (a) Beginning July 1, 2009, each home health agency's assessment shall be 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 commissioner 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 department. For providers who begin operations as a home health agency after January 1, 2005, the tax shall be assessed as follows:
- (1) Until such time as the home health agency submits audited financial statements for its first full year of operation as a home health agency, the director commissioner, in consultation with the home health agency, shall annually estimate the amount of tax payable and shall prescribe a schedule for interim payments.
- (2) At such time as the full-year audited financial statement is filed, the final assessment shall be determined, and the home health agency shall pay any underpayment or the office department shall refund any overpayment. The assessment for the state fiscal year in which a provider commences operations as a home health agency shall be prorated for the proportion of the state fiscal year in which the new home health agency was in operation.
- (b) Each home health agency shall be notified in writing by the office department of the assessment made pursuant to this section. If no home health agency submits a request for reconsideration under section 1958 of this title, the assessment shall be considered final.
- (c) Each home health agency shall submit its assessment to the office department according to a payment schedule adopted by the director commissioner. Variations in payment schedules shall be permitted as deemed necessary by the director commissioner.

(d) Any home health agency that fails to make a payment to the office department on or before the specified schedule, or under any schedule for delayed payments established by the director commissioner, shall be assessed not more than \$1,000.00. The director commissioner may waive this late payment assessment provided for in this subsection for good cause shown by the home health agency.

Sec. I.57 33 V.S.A. § 1955b is amended to read:

§ 1955b. PHARMACY ASSESSMENT

- (a) Beginning July 1, 2005, each pharmacy's monthly assessment shall be \$0.10 for each prescription filled and refilled.
- (b) Each pharmacy shall declare and provide supporting documentation to the <u>director commissioner</u> of the total number of prescriptions filled and refilled in the previous month and remit the assessment due for that month. The declaration and payment shall be due by the end of the following month.
- (c) Each pharmacy shall submit its assessment payment to the office department monthly. Variations in payment timing shall be permitted as deemed necessary by the director commissioner.
- (d) Any pharmacy that fails to pay an assessment to the office department on or before the due date shall be assessed a late payment penalty of two percent of the assessment amount for each month it remains unpaid; but late payment penalties for any one quarter shall not exceed \$500.00. The director commissioner may waive a penalty under this subsection for good cause shown by the pharmacy, as determined by the director commissioner in his or her discretion.

Sec. I.58 33 V.S.A. § 1957 is amended to read:

§ 1957. AUDITS

The <u>director commissioner</u> may require the submission of audited information as needed from health care providers to determine that amounts received from health care providers were correct. If an audit identifies amounts received due to errors by the <u>office department</u>, the <u>director commissioner</u> shall make payments to any health care provider which the audit reveals paid amounts it should not have been required to pay. Payments made under this section shall be made from the fund.

Sec. I.59 33 V.S.A. § 1958 is amended to read:

§ 1958. APPEALS

(a) Any health care provider may submit a written request to the office department for reconsideration of the determination of the assessment within

20 days of notice of the determination. The request shall be accompanied by written materials setting forth the basis for reconsideration. If requested, the office department shall hold a hearing within 20 days from the date on which the reconsideration request was received. The office department shall mail written notice of the date, time, and place of the hearing to the health care provider at least 10 days before the date of the hearing. On the basis of the evidence submitted to the office department or presented at the hearing, the office department shall reconsider and may adjust the assessment. Within 20 days of the hearing, the office department shall provide notice in writing to the health care provider of the final determination of the amount it is required to pay based on any adjustments made by it. Proceedings under this section are not subject to the requirements of 3 V.S.A. chapter 25 of Title 3.

- (b) Upon request, the director commissioner shall enter into nonbinding arbitration with any health care provider dissatisfied with the office's department's decision regarding the amount it is required to pay. The arbitrator shall be selected by mutual consent, and compensation shall be provided jointly.
- (c) Any health care provider may appeal the decision of the office department as to the amount it is required to pay either before or after arbitration, to the superior court having jurisdiction over the health care provider.

Sec. I.60 33 V.S.A. § 1971 is amended to read:

§ 1971. DEFINITIONS

As used in this subchapter:

* * *

(2) "Office" "Department of Vermont health access" means the office department administering the Medicaid program for the agency of human services and includes the managed care organization established in section 1901 of this title.

* * *

Sec. I.61 33 V.S.A. § 1997 is amended to read:

§ 1997. DEFINITIONS

As used in this subchapter:

* * *

(2) "Director" "Commissioner" means the director commissioner of the office of Vermont health access.

* * *

(4) "Office" "Department" means the office department of Vermont health access.

* * *

Sec. I.62 33 V.S.A. § 1998 is amended to read:

§ 1998. PHARMACY BEST PRACTICES AND COST CONTROL PROGRAM ESTABLISHED

(a) The <u>director commissioner</u> of <u>the office of</u> Vermont health access shall establish and maintain a pharmacy best practices and cost control program designed to reduce the cost of providing prescription drugs, while maintaining high quality in prescription drug therapies. The program shall include:

- (8) Any other cost containment activity adopted, by rule, by the director commissioner that is designed to reduce the cost of providing prescription drugs while maintaining high quality in prescription drug therapies.
- (b) The <u>director commissioner</u> shall implement the pharmacy best practices and cost control program for Medicaid and all other state public assistance program health benefit plans to the extent permitted by federal law.
- The director commissioner may implement the pharmacy best practices and cost control program for any other health benefit plan within or outside this state that agrees to participate in the program. For entities in Vermont, the director commissioner shall directly or by contract implement the program through a joint pharmaceuticals purchasing consortium. The joint pharmaceuticals purchasing consortium shall be offered on a voluntary basis no later than January 1, 2008, with mandatory participation by state or publicly funded, administered, or subsidized purchasers to the extent practicable and consistent with the purposes of this chapter, by January 1, 2010. If necessary, the office department of Vermont health access shall seek authorization from the Centers for Medicare and Medicaid to include purchases funded by Medicaid. "State or publicly funded purchasers" shall include the department of corrections, the division department of mental health, Medicaid, the Vermont Health Access Program (VHAP), Dr. Dynasaur, Vermont Rx, VPharm, Healthy Vermonters, workers' compensation, and any other state or publicly funded purchaser of prescription drugs.
- (2) The <u>director commissioner</u> of the <u>office of Vermont health access</u>, and the secretary of administration shall take all steps necessary to enable Vermont's participation in joint prescription drug purchasing agreements with

any other health benefit plan or organization within or outside this state that agrees to participate with Vermont in such joint purchasing agreements.

- (3) The commissioner of human resources shall take all steps necessary to enable the state of Vermont to participate in joint prescription drug purchasing agreements with any other health benefit plan or organization within or outside this state that agrees to participate in such joint purchasing agreements, as may be agreed to through the bargaining process between the state of Vermont and the authorized representatives of the employees of the state of Vermont.
- (4) The actions of the commissioners, the director, and the secretary shall include:
- (A) active collaboration with the National Legislative Association on Prescription Drug Prices;
- (B) active collaboration with the Pharmacy RFP Issuing States initiative organized by the West Virginia Public Employees Insurance Agency;
- (C) the execution of any joint purchasing agreements or other contracts with any participating health benefit plan or organization within or outside the state which the <u>director commissioner of Vermont health access</u> determines will lower the cost of prescription drugs for Vermonters while maintaining high quality in prescription drug therapies; and
- (D) with regard to participation by the state employees health benefit plan, the execution of any joint purchasing agreements or other contracts with any health benefit plan or organization within or outside the state which the director commissioner of Vermont health access determines will lower the cost of prescription drugs and provide overall quality of integrated health care services to the state employees health benefit plan and the beneficiaries of the plan, and which is negotiated through the bargaining process between the state of Vermont and the authorized representatives of the employees of the state of Vermont.
- (5) The director and the commissioner commissioners of human resources and of Vermont health access may renegotiate and amend existing contracts to which the office departments of Vermont health access and the department of human resources are parties if such renegotiation and amendment will be of economic benefit to the health benefit plans subject to such contracts, and to the beneficiaries of such plans. Any renegotiated or substituted contract shall be designed to improve the overall quality of integrated health care services provided to beneficiaries of such plans.
- (6) The director, the commissioners, and the secretary shall report quarterly to the health access oversight committee and the joint fiscal

committee on their progress in securing Vermont's participation in such joint purchasing agreements.

- (7) The director commissioner of Vermont health access, the commissioner of human resources, the commissioner of banking, insurance, securities, and health care administration, and the secretary of human services shall establish a collaborative process with the Vermont medical society, pharmacists, health insurers, consumers, employer organizations and other health benefit plan sponsors, the National Legislative Association on Prescription Drug Prices, pharmaceutical manufacturer organizations, and other interested parties designed to consider and make recommendations to reduce the cost of prescription drugs for all Vermonters.
- (d) A participating health benefit plan other than a state public assistance program may agree with the <u>director commissioner</u> to limit the plan's participation to one or more program components. The <u>director commissioner</u> shall supervise the implementation and operation of the pharmacy best practices and cost control program, including developing and maintaining the preferred drug list, to carry out the provisions of the subchapter. The <u>director commissioner</u> may include such insured or self-insured health benefit plans as agree to use the preferred drug list or otherwise participate in the provisions of this subchapter. The purpose of this subchapter is to reduce the cost of providing prescription drugs while maintaining high quality in prescription drug therapies.
- (e) The director commissioner of the office of Vermont health access shall develop procedures for the coordination of state public assistance program health benefit plan benefits with pharmaceutical manufacturer patient assistance programs offering free or low cost prescription drugs, including the development of a proposed single application form for such programs. The director commissioner may contract with a nongovernmental organization to develop the single application form.
- (f)(1) The drug utilization review board shall make recommendations to the director commissioner 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 18 V.S.A. § 4622 of Title 18. The director commissioner shall provide the board with evidence-based information about clinical efficacy, adverse side effects, safety, and appropriate clinical trials, and shall provide information about cost-effectiveness of available drugs in the same therapeutic class.

(3) To the extent feasible, the board shall review all drug classes included in the preferred drug list at least every 12 months, and may recommend that the <u>director commissioner</u> make additions to or deletions from the preferred drug list.

* * *

- (6) The director commissioner shall encourage participation in the joint purchasing consortium by inviting representatives of the programs and entities specified in subdivision (c)(1) of this section to participate as observers or nonvoting members in the drug utilization review board, and by inviting the representatives to use the preferred drug list in connection with the plans' prescription drug coverage.
- (g) The office department shall seek assistance from entities conducting independent research into the effectiveness of prescription drugs to provide technical and clinical support in the development and the administration of the preferred drug list and the evidence-based education program established in subchapter 2 of chapter 91 of Title 18.

Sec. I.63 33 V.S.A. § 2000 is amended to read:

§ 2000. PHARMACY BENEFIT MANAGEMENT

The <u>director commissioner</u> may implement all or a portion of the pharmacy best practices and cost control program through a contract with a third party with expertise in the management of pharmacy benefits.

Sec. I.64 33 V.S.A. § 2001 is amended to read:

§ 2001. LEGISLATIVE OVERSIGHT

(a) In connection with the pharmacy best practices and cost control program, the <u>director commissioner</u> of the <u>office of Vermont health access</u> shall report for review by the health access oversight committee, prior to initial implementation, and prior to any subsequent modifications:

* * *

(c) The <u>director commissioner</u> of <u>the office of Vermont health access shall</u> report quarterly to the health access oversight committee concerning the following aspects of the pharmacy best practices and cost control program:

* * *

(e)(1) [Repealed.]

(2) The <u>director commissioner</u> shall not enter into a contract with a pharmacy benefit manager unless the pharmacy benefit manager has agreed to disclose to the <u>director commissioner</u> the terms and the financial impact on Vermont and on Vermont beneficiaries of:

* * *

(3) The director commissioner shall not enter into a contract with a pharmacy benefit manager who has entered into an agreement or engaged in a practice described in subdivision (2) of this subsection, unless the director commissioner determines, and certifies in the fiscal report required by subdivision (d)(4) of this section, that such agreement or practice furthers the financial interests of Vermont, and does not adversely affect the medical interests of Vermont beneficiaries.

Sec. I.65 33 V.S.A. § 2002 is amended to read:

§ 2002. SUPPLEMENTAL REBATES

- (a) The director commissioner of the office of Vermont health access, separately or in concert with the authorized representatives of any participating health benefit plan, shall use the preferred drug list authorized by the pharmacy best practices and cost control program to negotiate with pharmaceutical companies for the payment to the director commissioner of supplemental rebates or price discounts for Medicaid and for any other state public assistance health benefit plans designated by the director commissioner, in addition to those required by Title XIX of the Social Security Act. The director commissioner may also use the preferred drug list to negotiate for the payment of rebates or price discounts in connection with drugs covered under any other participating health benefit plan within or outside this state, provided that such negotiations and any subsequent agreement shall comply with the provisions of 42 U.S.C. § 1396r-8. The program, or such portions of the program as the director commissioner shall designate, shall constitute a state pharmaceutical assistance program under 42 U.S.C. § 1396r-8(c)(1)(C).
- (b) The director commissioner shall negotiate supplemental rebates, price discounts, and other mechanisms to reduce net prescription drug costs by means of any negotiation strategy which the director commissioner determines will result in the maximum economic benefit to the program and to consumers in this state, while maintaining access to high quality prescription drug therapies. The director commissioner may negotiate through a purchasing pool or directly with manufacturers. The provisions of this subsection do not authorize agreements with pharmaceutical manufacturers whereby financial support for medical services covered by the Medicaid program is accepted as consideration for placement of one or more prescription drugs on the preferred drug list.

(c) The <u>office department</u> of Vermont health access shall prohibit the public disclosure of information revealing company-identifiable trade secrets (including rebate and supplemental rebate amounts, and manufacturer's pricing) obtained by the <u>office department</u>, and by any officer, employee, or contractor of the department in the course of negotiations conducted pursuant to this section. Such confidential information shall be exempt from public disclosure under subchapter 3 of chapter 5 of Title 1 (open records law).

Sec. I.66 33 V.S.A. § 2003 is amended to read:

§ 2003. PHARMACY DISCOUNT PLANS

(a) The director commissioner of the office of Vermont health access shall implement pharmacy discount plans, to be known as the "Healthy Vermonters" program, for Vermonters without adequate coverage for prescription drugs. The provisions of subchapter 8 of this chapter shall apply to the director's commissioner's authority to administer the pharmacy discount plans established by this section.

* * *

(c) As used in this section:

* * *

(7) "Rebate amount" means the rebate negotiated by the director commissioner and required from a drug manufacturer or labeler under this section. In determining the appropriate rebate, the director commissioner shall:

* * *

(8) "Secondary discounted cost" means, under the Healthy Vermonters program, the price of the drug based on the Medicaid fee schedule, less payment by the state of at least two percent of the Medicaid rate, less any rebate amount negotiated by the <u>director commissioner</u> and paid for out of the Healthy Vermonters dedicated fund established under subsection (j) of this section and, under the Healthy Vermonters Plus program, the average wholesale price of the drug, less payment by the state of at least two percent of the Medicaid rate, less any rebate amount negotiated by the <u>director commissioner</u> and paid for out of the Healthy Vermonters dedicated fund established under subsection (j).

* * *

(e) The Vermont board of pharmacy shall adopt standards of practice requiring disclosure by participating retail pharmacies to beneficiaries of the amount of savings provided as a result of the pharmacy discount plans. The

standards must consider and protect information that is proprietary in nature. The office department of Vermont health access may not impose transaction charges under this program on pharmacies that submit claims or receive payments under the plans. Pharmacies shall submit claims to the department to verify the amount charged to beneficiaries under the plans. On a weekly or biweekly basis, the office department must reimburse pharmacies for the difference between the initial discounted price or the average wholesale price and the secondary discounted price provided to beneficiaries.

- (f) The names of drug manufacturers and labelers who do and do not enter into rebate agreements under pharmacy discount plans are public information. The office department of Vermont health access shall release this information to health care providers and the public on a regular basis and shall publicize participation by manufacturers and labelers. The office department shall impose prior authorization requirements in the Medicaid program, as permitted by law, to the extent the office department determines it is appropriate to do so in order to encourage manufacturer and labeler participation in the pharmacy discount plans and so long as the additional prior authorization requirements remain consistent with the goals of the Medicaid program and the requirements of Title XIX of the federal Social Security Act.
- (g) The director commissioner of the office of Vermont health access shall establish, by rule, a process to resolve discrepancies in rebate amounts claimed by manufacturers, labelers, pharmacies, and the office department.
- (h) The Healthy Vermonters dedicated fund is established to receive revenue from manufacturers and labelers who pay rebates as provided in this section and any appropriations or allocations designated for the fund. The purposes of the fund are to reimburse retail pharmacies for discounted prices provided to individuals enrolled in the pharmacy discount plans; and to reimburse the office department of Vermont health access for contracted services, including pharmacy claims processing fees, administrative and associated computer costs, and other reasonable program costs. The fund is a nonlapsing dedicated fund. Interest on fund balances accrues to the fund. Surplus funds in the fund must be used for the benefit of the program.
- (i) Annually, the <u>office</u> <u>department</u> of Vermont health access shall report the enrollment and financial status of the pharmacy discount plans to the health access oversight committee by September 1, and to the general assembly by January 1.
- (j) The office department of Vermont health access shall undertake outreach efforts to build public awareness of the pharmacy discount plans and maximize enrollment. Outreach efforts shall include steps to educate retail pharmacists on the purposes of the Healthy Vermonters dedicated fund, in

particular as it relates to pharmacy reimbursements for discounted prices provided to program enrollees. The <u>office department</u> may adjust the requirements and terms of the pharmacy discount plans to accommodate any new federally funded prescription drug programs.

- (k) The <u>office</u> <u>department</u> of Vermont health access may contract with a third party or third parties to administer any or all components of the pharmacy discount plans, including outreach, eligibility, claims, administration, and rebate recovery and redistribution.
- (l) The office department of Vermont health access shall administer the pharmacy discount plans and other medical and pharmaceutical assistance programs under this title in a manner advantageous to the programs and enrollees. In implementing this section, the office department may coordinate the other programs and the pharmacy discount plans and may take actions to enhance efficiency, reduce the cost of prescription drugs, and maximize benefits to the programs and enrollees, including providing the benefits of pharmacy discount plans to enrollees in other programs.
- (m) The <u>office department</u> of Vermont health access may adopt rules to implement the provisions of this section.
- (n) The office department of Vermont health access shall seek a waiver from the Centers for Medicare and Medicaid Services (CMS) requesting authorization necessary to implement the provisions of this section, including application of manufacturer and labeler rebates to the pharmacy discount plans. The secondary discounted cost shall not be available to beneficiaries of the pharmacy discount plans until the office department receives written notification from CMS that the waiver requested under this section has been approved and until the general assembly subsequently approves all aspects of the pharmacy discount plans, including funding for positions and related operating costs associated with eligibility determinations.

Sec. I.67 33 V.S.A. § 2004(a) is amended to read:

(a) Annually, each pharmaceutical manufacturer or labeler of prescription drugs that are paid for by the <u>office department</u> of Vermont health access for individuals participating in Medicaid, the Vermont Health Access Program, Dr. Dynasaur, VPharm, or Vermont Rx shall pay a fee to the agency of human services. The fee shall be 0.5 percent of the previous calendar year's prescription drug spending by the <u>office department</u> and shall be assessed based on manufacturer labeler codes as used in the Medicaid rebate program.

Sec. I.68 33 V.S.A. § 2007 is amended to read:

§ 2007. CANADIAN PRESCRIPTION DRUG INFORMATION PROGRAM

The <u>office</u> <u>department</u> of Vermont health access shall establish a website and prepare written information to offer guidance to Vermont residents seeking information about ordering prescription drugs through the mail or otherwise from a participating Canadian pharmacy.

Sec. I.69 33 V.S.A. § 2010 is amended to read:

§ 2010. ACTUAL PRICE DISCLOSURE AND CERTIFICATION

(a) A manufacturer of prescription drugs dispensed in this state under a health program directed or administered by the state shall, on a quarterly basis, report by National Drug Code the following pharmaceutical pricing criteria to the director commissioner of the office of Vermont health access for each of its drugs:

- (b) When reporting the prices as provided for in subsection (a) of this section, the manufacturer shall include a summary of its methodology in determining the price. The office department may accept the standards of the National Drug Rebate agreement entered into by the U.S. Department of Health and Human Services and Section 1927 of the Social Security Act for reporting pricing methodology.
- (c) The pricing information required under this section is for drugs defined under the Medicaid drug rebate program and must be submitted to the director commissioner following its submission to the federal government in accordance with 42 U.S.C. § 1396r-8(b)(3).
- (d) When a manufacturer of prescription drugs dispensed in this state reports the information required under subsection (a) of this section, the president, chief executive officer, or a designated employee of the manufacturer shall certify to the office department, on a form provided by the director commissioner of the office of Vermont health access, that the reported prices are the same as those reported to the federal government as required by 42 U.S.C. § 1396r-8(b)(3) for the applicable rebate period. A designated employee shall be an employee who reports directly to the chief executive officer or president and who has been delegated to make the certification under this section.
- (e) Notwithstanding any provision of law to the contrary, information submitted to the office department under this section is confidential and is not a public record as defined in subsection 1 V.S.A. § 317(b) of Title 1. Disclosure may be made by the office department to an entity providing

services to the <u>office</u> <u>department</u> under this section; however, that disclosure does not change the confidential status of the information. The information may be used by the entity only for the purpose specified by the <u>office</u> <u>department</u> in its contract with the entity. Data compiled in aggregate form by the <u>office</u> <u>department</u> for the purposes of reporting required by this section are public records as defined in <u>subsection</u> <u>1 V.S.A. §</u> 317(b) <u>of Title 1</u>, provided they do not reveal trade information protected by state or federal law.

* * *

Sec. I.70 33 V.S.A. § 2071 is amended to read:

§ 2071. DEFINITIONS

For purposes of this subchapter:

* * *

(4) "OVHA" "DVHA" means the office department of Vermont health access.

* * *

Sec. I.71 33 V.S.A. § 2073 is amended to read:

§ 2073. VPHARM ASSISTANCE PROGRAM

* * *

(c) VPharm shall provide supplemental benefits by paying or subsidizing:

* * *

(4) pharmaceuticals that are not covered after the individual has exhausted the Medicare part D prescription drug plan's appeal process or the prescription drug plan's transition plan approved by the Centers for Medicare and Medicaid Services, and that are deemed medically necessary by the individual's prescriber in a manner established by the director commissioner of the office of Vermont health access. The coverage decision under this subdivision shall not be subject to the exceptions process established under Medicaid. An individual may appeal to the human services board or pursue any other remedies provided by law.

* * *

(e) In order to ensure the appropriate payment of claims, OVHA DVHA may expand the Medicare advocacy program established under chapter 67 of this title to individuals receiving benefits from the VPharm program.

Sec. I.72 33 V.S.A. § 2074 is amended to read:

§ 2074. VERMONTRX PROGRAM

- (a) Effective January 1, 2006, VermontRx is established within the office department of Vermont health access and shall be the continuation of the state pharmaceutical programs in existence upon passage of this subchapter for those individuals not eligible for Medicare part D. VermontRx is a pharmaceutical assistance program for individuals age 65 or older who are not eligible for Medicare and for individuals with disabilities who are receiving Social Security disability benefits and who are not eligible for Medicare. VermontRx may retain the current program names of VHAP-Pharmacy, VScript, and VScript Expanded if it is cost-effective to retain the current names in lieu of combining the current programs into one program.
- (1) The program shall be administered by OVHA DVHA which, to the extent funding permits, shall establish application, eligibility, coverage, and payment standards. In addition to the general eligibility requirements established in section 2072 of this title, an individual must not be eligible for Medicare in order to be eligible for benefits under VermontRx.
- (2) To the extent necessary under federal law, OVHA DVHA shall administer VermontRx in such a manner as to ensure that any permissible federal funding may be received to support the program. OVHA DVHA may establish a division of the VermontRx program to administer federal Medicaid funds separately in accordance with a federal waiver pursuant to Section 1115 of the Social Security Act.
- (3) If permissible under federal law, OVHA DVHA shall use the same forms and application process for individuals to enroll in VermontRx, regardless of the funding source for the program.

* * *

(e) Under VermontRx, a pharmaceutical may be dispensed to an eligible recipient provided such dispensing is pursuant to and in accordance with any contractual arrangement that OVHA DVHA may enter into or approve for the group discount purchase of pharmaceuticals. When a person or business located in Vermont and employing citizens of this state has submitted a bid for the group discount purchase of pharmaceuticals and has not been selected, the director commissioner of OVHA DVHA shall record the reason for nonselection. The director's commissioner's report shall be a public record available to any interested person. All bids or quotations shall be kept on file in the director's commissioner's office and open to public inspection.

Sec. I.73 33 V.S.A. § 2076(c) is amended to read:

(c) OVHA DVHA shall seek any waivers of federal law, rule, or regulation necessary to implement the provisions of this section.

Sec. I.74 33 V.S.A. § 2077 is amended to read:

§ 2077. ADMINISTRATION

- (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 DVHA 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.
- (b) Upon determining that an applicant is eligible under this subchapter, OVHA DVHA shall issue an identification card to the applicant.
- (c) A pharmacy which dispenses a pharmaceutical to an individual eligible for a pharmaceutical program established under this subchapter shall collect payment for the pharmaceutical from OVHA DVHA.

Sec. I.75 33 V.S.A. § 2081(b) is amended to read:

(b) OVHA DVHA shall report on the status of the pharmaceutical assistance programs established by this subchapter to the health access oversight committee.

Sec. I.76 33 V.S.A. § 6501 is amended to read:

§ 6501. DEFINITIONS

For purposes of this chapter:

(1) "Balance bill" means to charge to or collect from a Medicare or general assistance beneficiary any amount in excess of the reasonable charge for that service as determined by the United States Secretary of Health and Human Services, or the director commissioner of the office of Vermont health access, as the case may be.

Sec. I.77 33 V.S.A. § 6703 is amended to read:

§ 6703. CONTRACT FOR SERVICES

- (a) Subject to the provisions of subsection (b) of this section, the director commissioner of the office of Vermont health access shall contract on an annual basis with individuals or private organizations to provide services authorized by this chapter to dual eligible individuals including pursuit of subrogation claims under section 6705 of this chapter.
- (b) The <u>director commissioner</u> shall not be required to enter into contracts under this section if:
- (1) the amount of the state's share of recoveries to the Medicaid program from awards obtained under this chapter during the preceding year did not exceed the payments to the contractors during that year; and
- (2) the director commissioner determines that the program is not accomplishing its goal of protecting dual eligible individuals from improper denials of Medicare coverage. The director commissioner shall base his or her determination under this subdivision on information obtained from the contractors, providers of health care, area agencies on aging, and other individuals and organizations affected by the program.

Sec. I.78 33 V.S.A. § 6705 is amended to read:

§ 6705. SUBROGATION

- (a) Upon furnishing medical assistance under chapter 19 of this title to any individual, the office department of Vermont health access shall be subrogated, to the extent of the expenditure for medical care furnished, to any rights such individual may have to third party reimbursement for such care.
- (b) The office department of Vermont health access or its designee shall be entitled to obtain from any medical service provider any records of the treatment of any individual covered by subsection (a) of this section which are in any way relevant to the treatment paid for through medical assistance without regard to any other privilege or right of confidentiality or privacy which may exist. The office department shall ensure that any records obtained are not released to any other individual, agency or other entity except insofar as is necessary to pursue the office's department's rights of subrogation.
- (c) The <u>office department</u> of Vermont health access may contract with a private attorney or attorneys, or other private persons, for the purpose of obtaining third party reimbursement for Medicaid expenditures under this section. In awarding contracts under this section, the <u>office department</u> shall give preference to bidders who maintain a place of business in this state.

Sec. I.79 33 V.S.A. chapter 4 is added to read:

CHAPTER 4. DEPARTMENT OF VERMONT HEALTH ACCESS

§ 401. COMPOSITION OF DEPARTMENT

The department of Vermont health access, created under 3 V.S.A. § 3088, shall consist of the commissioner of Vermont health access, the medical director, and all divisions within the department, including the divisions of managed care; health care reform; and Medicaid policy, fiscal, and support services.

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

Senator Illuzzi Assumes the Chair Senator Shumlin Assumes the Chair

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposal of amendment was agreed to.

Thereupon, Senator Illuzzi, moved to amend the Senate proposal of amendment by striking out Sec. E.321.1 in its entirety and inserting in lieu thereof the following:

Sec. E.321.1. 33 V.S.A. § 2301 is amended to read:

§ 2301. BURIAL RESPONSIBILITY

(a)(1) When a person dies in this state, or a resident of this state dies within the state or elsewhere, and the decedent was a recipient of assistance under Title IV or XVI of the Social Security Act, or nursing home care under Title XIX of the Social Security Act, or assistance under state aid to the aged, blind or disabled, or an honorably discharged veteran of any branch of the U.S. military forces to the extent funds are available and to the extent authorized by department regulations rules, the decedent's burial shall be arranged and paid for by the department if the decedent was without sufficient known assets to pay for burial. The department shall pay burial expenses when arrangements are made other than by the department to the maximum permitted by its regulations for individuals that meet the requirements of this section in an amount not to exceed a maximum established by rule and shall establish by rule a process for reducing the maximum payment amount by the amount of other assets available to pay for the burial. In any case where other contributions are made, these payments shall be deducted from the amount otherwise paid by the department but in no case is the department responsible for any payment when the person arranging the burial selects a funeral the price of which exceeds the department's maximum. The maximum payment by the department does not preclude the next-of-kin from paying for or receiving contributions to pay for additional disposition expenses.

- (2) The department shall notify the directors of all funeral homes within the state and within close proximity to the state's borders of its regulations rules with respect to those services for which it shall make payment pays and the amount of payment authorized for such those services. All payments shall be made directly to the appropriate funeral director. In order to receive payment under this section, the funeral director shall provide the department and the party making the funeral arrangements with an itemized invoice for the specific services that are to be provided at public expense.
- (3) As a condition of payment when arrangements are made other than by the department, funeral directors shall be required to do the following:
- (A) the funeral director shall determine from the person making the arrangements if the decedent was a recipient of assistance or an eligible veteran as specified in subdivision (a)(1) of this section;
- (B) If, and if the decedent was such a recipient, give notice to the party person making the arrangements of the department's regulations rules.
- (4) If the funeral home director does not advise the person making the arrangements of the department's <u>regulations</u> then that person shall not be liable for expenses incurred.

* * *

- (c) When a person other than one described in subsection (a) or (b) of this section dies in the town of domicile without sufficient known assets to pay for burial, the burial shall be arranged and paid for by the town. The department shall reimburse the town up to \$250.00 for expenses incurred.
- (d) (c) In all other cases the department shall arrange for and pay <u>up to the maximum amount established by rule</u> for the burial of <u>eligible</u> persons who die in this state or residents of this state who die within the state or elsewhere when <u>such the</u> persons are without sufficient known assets to pay for their burial.

(e) [Omitted.]

- (f) In all cases where the department is responsible for funeral and/or or burial expenses under this chapter, the department shall provide, by rule, the specific services that are to be provided at public expense, and on an itemized basis the maximum price to be paid by the department for each such service.
- (g)(d) For the purpose of this chapter, "burial" means the act of final disposition of human remains including interring or cremating the human dead

<u>a decedent</u> and the ceremonies directly related to that <u>cremation or</u> interment at the gravesite; and "funeral" means the ceremonies prior to burial of the body by interment, cremation, or other method.

Which was agreed to.

Thereupon, Senator Bartlett moved to amend the Senate proposal of amendment by adding two new sections to be numbered Secs. E.401.1 and E.401.2 to read as follows:

Sec. E.401.1 21 V.S.A. chapter 17, subchapter 4 is added to read:

Subchapter 4. Benefits for Approved Job Training Program

§ 1471. TRAINING BENEFIT PROGRAM

- (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 and any other available federally funded extension, is entitled to a maximum of 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 either a state-approved training program or a job training program authorized under the workforce investment act of 1998.
- (b) To be eligible for training benefits under this section an individual shall be in compliance with both the following:
- (1) The individual has been separated from a declining occupation or has been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment.
- (2) The individual is enrolled in a program designed to train the individual for entry into a high demand occupation.

Sec. E.401.2 21 V.S.A. § 1101 is amended to read:

§ 1101. APPRENTICESHIP DIVISION AND COUNCIL

The apprenticeship division and state apprenticeship council, hereinafter referred to as the "council," shall be located within the department of labor. The commissioner of labor shall supervise the work of the division. The council shall consist of 11 10 members, five four ex officio members and six members who shall be appointed by the governor. Of the ex officio members, one shall be the commissioner of labor, one shall be the director of workforce development, one shall be the chief of licensing within the department of commissioner of public safety, or designee, one shall be the director of career and lifelong learning within the department commissioner of education or

designee, and one shall be the state director of the apprenticeship division who shall act as secretary of the council without vote. Of the appointive members, three shall be individuals who on account of previous vocation, employment, occupation, or affiliation can be classed as employers and three shall be individuals who on account of previous vocation, employment, occupation, or affiliation can be classed as employees. Appointment of the employer and the employee members shall be made for the term of three years except the employer and employee members first appointed shall be appointed for the term of one, two, and three years respectively. The governor shall annually designate one member of the council as chair. Each member of the council who is not a salaried official or employee of the state shall be entitled to compensation and expenses as provided in 32 V.S.A. § 1010.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Proposals of Amendment; Bill Passed in Concurrence with Proposals of Amendment

H. 783.

House bill entitled:

An act relating to miscellaneous tax provisions.

Was taken up.

Thereupon, pending third reading of the bill, Senator Cummings moved that the Senate proposal of amendment be amended by striking out Sec. 16 in its entirety and inserting in lieu thereof a new Sec. 16 to read as follows:

Sec. 16. 32 V.S.A. § 9608(a) is amended to read:

(a) Except as to transfers which are exempt pursuant to subdivision 9603(17) of this title, no town clerk shall record, or receive for recording, any deed to which has not been affixed an acknowledgment of return and tax payment under section 9607 of this title is not attached a properly executed transfer tax return, complete and regular on its face, and a certificate in the form prescribed by the land use panel of the natural resources board and the commissioner of the department of taxes signed under oath by the seller or the seller's legal representative, that the conveyance of the real property and any development thereon by the seller is in compliance with or exempt from the provisions of chapter 151 of Title 10. The certificate shall indicate whether or not the conveyance creates the partition or division of land. If the conveyance creates a partition or division of land, there shall be appended the current "Act 250 Disclosure Statement," required by 10 V.S.A. § 6007. A town clerk who violates this section shall be fined \$50.00 for the first such offense and \$100.00

for each subsequent offense. A person who purposely or knowingly falsifies any statement contained in the certificate required is punishable by fine of not more than \$500.00 or imprisonment for not more than one year, or both.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Cummings, on behalf of the Committee on Finance, moved that the Senate proposal of amendment be amended by adding the following:

<u>Third</u>: By striking out Sec. 13 in its entirety and inserting in lieu thereof a new Sec. 13 to read as follows:

Sec. 13. 32 V.S.A. § 9605(a) is amended to read:

(a) The tax imposed by this chapter shall be paid to a town clerk the commissioner at the time of the delivery to that clerk for recording of a deed evidencing a transfer of title to property subject to the tax.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Cummings moved that the Senate proposal of amendment be amended in the *ninth* proposal of amendment, in Sec. 41, in 32 V.S.A. § 5930ll(f)(2) by striking out subdivision (f)(2) in its entirety and inserting in lieu thereof the a new subdivision (f)(2) to read as follows:

(2) A qualified taxpayer's business shall be considered to be substantially curtailed when the average number of the taxpayer's full-time jobs in Vermont for any calendar year prior to December 31, 2023, is less than 60 percent of the highest average number of its full-time jobs in Vermont for any calendar year in the investment period. For purposes of the preceding calculation, the qualified taxpayer's full-time jobs in Vermont shall include all full-time jobs in Vermont of its related business units with which it files a combined or consolidated return for Vermont income tax purposes. A business shall not be considered to be substantially curtailed when the assets of the business have been sold but the business continues to be located in Vermont provided that the employment test of this subdivision is met.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator MacDonald moved that the Senate proposal of amendment be amended in the *twelfth* proposal of amendment by adding the following:

* * *Current Use Advisory Board * * *

Sec. 48F. CURRENT USE ADVISORY BOARD USE VALUE CALCULATION

The current use advisory board established pursuant to 32 V.S.A. § 3753 has provided to the general assembly a document entitled Methodology and Criteria used in the Determination of Vermont's Use Values for the Current Use Program" and dated April 12, 2010. The general assembly hereby deems that said document shall have the force and effect of administrative rules adopted pursuant to chapter 25 of Title 3 of the Vermont Statutes Annotated.

Which was agreed to.

Thereupon, pending third reading of the bill, Senators Racine, Campbell, Sears and Shumlin moved to reinstate Sec. 46 by striking out the *tenth* Senate proposal of amendment in its entirety and inserting in lieu thereof the following:

<u>Tenth</u>: By striking out Secs. 43, 44 and 45 in their entirety.

Which was agreed to.

Thereupon, pending third reading of the bill, Senators Sears and Shumlin moved to amend the Senate proposal of amendment by striking out the *eleventh* Senate proposal of amendment and inserting in lieu thereof a new *eleventh* proposal of amendment to read as follows:

Eleventh: In Sec. 47, by striking out "20 V.S.A. § 1606 is added to read:

§ 1606. VERMONT VETERANS' FUND" and inserting in lieu thereof

20 V.S.A. § 1548 is added to read:

§ 1548. VERMONT VETERANS' FUND

Which was disagreed to.

Senator Ayer Assumes the Chair

Thereupon, pending third reading of the bill, Senators Shumlin, Mazza, Ashe, Campbell, Carris, Flanagan, Kittell, Lyons, Miller, Racine, Scott, Sears and White moved that the Senate propose to the House to amend the bill as follows:

<u>First</u>: By adding a new section to be numbered Sec. 48a to read as follows:

Sec. 48a. 32 V.S.A. § 9743(3)(B) is amended to read:

(B) Amusement charges by, and sales to or uses by such organizations shall be exempt from the tax under this chapter; except performances jointly produced or presented by a qualified organization and another person shall not

be exempt from amusement tax under this section unless the organization bears the entire risk of loss of the production; the other person does not share in the profits of, and is not a party to any contracts with the performers related to, the production; and the organization is solely responsible for collection of all receipts and payment of all expenses associated with the production and accounts for the receipts and expenses on its books and records. A performance shall not be considered to be jointly produced or presented with another person, nor will another person be considered to be sharing in the profits of a production, solely by reason of the organization's payment of all or a portion of gross revenues realized from the production, directly to the performer who provides entertainment at the performance, including artists, dancers, actors, singers, comedians, musicians and other performance artists, or to a business entity on behalf of the performer, as compensation for the performance.

<u>Second</u>: By adding a new subsection to the effective dates section to read as follows:

(19) Sec. 48a of this act (amusement tax exemption for 501(c)(3) organizations) shall take effect upon passage and apply to all related amusement charges on and after January 1, 2006.

Which was agreed to.

Senator Shumlin Assumes the Chair

Thereupon, pending third reading of the bill, Senators Hartwell and Sears moved to amend the Senate proposal of amendment in the *eleventh* proposal of amendment, in Sec. 47, in subsection (a), by striking out the following: "sevenmember committee" and inserting in lieu thereof the following: nine-member committee; and at the end of subdivision (a)(6) by striking out the word "and" and before the period at the end of subdivision (a)(7) by inserting the following: and (8) two members of the governor's veterans' council to be appointed by that council

Which was agreed to.

Senator Ayer Assumes the Chair

Thereupon, pending third reading of the bill, Senators Shumlin, Campbell, Ashe and Brock move that the Senate proposal of amendment be amended by adding a new section to be numbered Sec. 47a to read as follows:

Sec. 47a. 32 V.S.A. § 6067 is amended to read:

§ 6067. CREDIT LIMITATIONS

- (a) Only one individual per household per taxable year shall be entitled to a benefit under this chapter. An individual who received a homestead exemption or adjustment with respect to property taxes assessed by another state for the taxable year shall not be entitled to receive an adjustment under this chapter. No taxpayer shall receive total adjustments under this chapter in excess of \$8,000.00 related to any one property tax year.
- (b) To be eligible for an adjustment under this chapter a claimant shall verify under the pains of penalties of perjury on a form prescribed by the commissioner that the aggregate net worth of all members of the household does not exceed \$1,000,000.00. If the claim for adjustment is prepared by a professional tax preparer, the preparer shall affirm, after reasonable inquiry that, to the best of his or her knowledge, the claim regarding net worth is accurate and complete. For purposes of this subsection, "net worth" means the excess of total assets over total liabilities; provided, however, that in determining net worth, the claimant shall disregard both the value of and the liability, if any, on the claimant's primary residence.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senators Shumlin, Campbell, Ashe and Brock?, Senator Shumlin requested and granted leave to withdraw the proposal of amendment.

Thereupon, pending third reading of the bill, Senators Shumlin, Campbell, Ashe and Brock moved that the bill be amended by adding a new Sec. 47a to read as follows:

Sec. 47a. 32 V.S.A. § 6067 is amended to read:

§ 6067. CREDIT LIMITATIONS

- (a) Only one individual per household per taxable year shall be entitled to a benefit under this chapter. An individual who received a homestead exemption or adjustment with respect to property taxes assessed by another state for the taxable year shall not be entitled to receive an adjustment under this chapter. No taxpayer shall receive total adjustments under this chapter in excess of \$8,000.00 related to any one property tax year.
- (b) To be eligible for an adjustment under this chapter a claimant shall verify under the pains of penalties of perjury on a form prescribed by the commissioner that the aggregate net worth of all members of the household does not exceed \$1,000,000.00. If the claim for adjustment is prepared by a professional tax preparer, the preparer shall affirm, after reasonable inquiry

that, to the best of his or her knowledge, the claim regarding net worth is accurate and complete. For purposes of this subsection, "net worth" means the excess of total assets over total liabilities; provided, however, that in determining net worth, the claimant shall disregard the following:

- (a) Both the value of and the liability, if any, on the claimant's primary residence; and
- (b) The value of any non-revocable trust fund established for the benefit of a minor or a disabled adult.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senators Shumlin, Campbell, Ashe and Brock?, Senator Racine moved to amend the proposal of amendment of Senators Shumlin, Campbell, Ashe and Brock in Sec. 47a, 32 V.S.A. § 6067 subsection (b) by striking out the following: "under the pains of penalties of perjury"

Which was agreed to.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended by Senators Shumlin, Campbell, Ashe and Brock, as amended?, was agreed to on a roll call, Yeas 21, Nays 5.

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, Bartlett, Brock, Campbell, Carris, Choate, Doyle, Flanagan, Flory, Illuzzi, Kitchel, Kittell, Mazza, Miller, Nitka, Scott, Sears, Shumlin, Snelling, Starr, White.

Those Senators who voted in the negative were: Cummings, Giard, Hartwell, MacDonald, Racine.

Those Senators absent or not voting were: Ayer (presiding), Lyons, McCormack, Mullin.

Thereupon, pending third reading of the bill, Senator Miller moved that the Senate proposal of amendment be amended by adding three new sections to be numbered new Secs. 47a, 47b, and 47c to read as follows:

Sec. 47a. 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;
- (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;
- (ii) with respect to adjusted net capital gain income as defined in Section 1(h) of the Internal Revenue Code:
- (I) for adjusted net capital gain income from the sale of a farm or from the sale of standing timber, each as defined in subdivision (27) of this section, 40 percent of adjusted net capital gain income but the total amount of decrease under this subdivision (B)(ii)(I) shall not exceed 40 percent of federal taxable income:
- (II) provided that the total amount of decrease under this subdivision (B)(ii)(II) does not exceed the percentage of exclusion provided for in the following table, for adjusted net capital gain income from the sale of an interest in a business that has been incorporated or otherwise registered to do business in Vermont not less than seven years:

If the net proceeds of

The percent

the sale are:

excluded shall be:

Up to \$500,000.00 40

More than \$500,000.00 but

Less than \$2,000,000.00 30

More than \$2,000,000.00 but

Less than \$5,000,000.00 20

More than \$5,000,000.0015

- (II) (III) for all other capital gain income, the first \$5,000.00 of adjusted net capital gain income; and
- (iii) recapture of state and local income tax deductions not taken against Vermont income tax.

Sec. 47b. 32 V.S.A. § 9701(48) and (49) are added to read:

- (48) <u>Candy: means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.</u>
- (49) Soft drinks: means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than 50 percent of vegetable or fruit juice by volume.
- Sec. 47c. 32 V.S.A. § 9741(13) is amended to read:
- (13) Sales of food, food stamps, purchases made with food stamps, food products, and beverages (other than candy and soft drinks), sold for human consumption off the premises where sold.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Miller?, Senator Miller requested and was granted leave withdraw the proposal 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 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, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, MacDonald, Mazza, Miller, Nitka, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: Flory, Racine.

Those Senators absent or not voting were: Lyons, McCormack, Mullin, Shumlin (presiding).

Consideration Postponed

House bill entitled:

H. 213.

An act to provide fairness to tenants in cases of contested housing security deposit withholding.

Was taken up.

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

Bills Passed in Concurrence with Proposals of Amendment H. 507.

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

An act relating to fostering connections to success in guardianships.

H. 590.

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

An act relating to mediation in foreclosure proceedings.

Proposals of Amendment; Third Reading Ordered H. 562.

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

An act relating to the regulation of professions and occupations.

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

<u>First</u>: By striking out Sec. 4 in its entirety and inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. 18 V.S.A. § 4606 is amended to read:

§ 4606. BRAND CERTIFICATION

If the prescriber does not wish substitution to take place, he or she shall write "brand necessary" or "no substitution" in his or her own handwriting on the prescription blank, together with a written statement that the generic equivalent has not been effective, or with reasonable certainty is not expected to be effective, in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient. In the case of an unwritten prescription, there shall be no substitution if the prescriber expressly indicates to the pharmacist that the brand name drug is necessary and substitution is not allowed because the generic equivalent has not been effective, or with reasonable certainty is not expected to be effective, in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient.

If the prescriber has determined that the generic equivalent of a drug being prescribed has not been effective or with reasonable certainty is not expected to be effective in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient, the prescriber shall indicate "brand necessary," "no substitution," "dispense as written," or "DAW" in the prescriber's own handwriting on the prescription blank and the pharmacist shall not substitute the generic equivalent. If a prescription is unwritten and the prescriber has determined that the generic equivalent of the drug being prescribed has not been effective or with reasonable certainty is not expected to be effective in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient, the prescriber shall expressly indicate to the pharmacist that the brand-name drug is necessary and substitution is not allowed and the pharmacist shall not substitute the generic equivalent.

<u>Second</u>: By striking out Sec. 5 in its entirety and inserting in lieu thereof a new Sec. 5 to read as follows:

Sec. 5. 18 V.S.A. § 4607 is amended to read:

§ 4607. INFORMATION; LABELING

(a) Every pharmacy in the state shall have posted a sign in a prominent place that is in clear unobstructed view which shall read: "Vermont law requires pharmacists in some cases to select a less expensive generic equivalent for the drug prescribed unless you or your physician direct otherwise. Substitution will be noted on your prescription label by an "S" in the lower left corner. Ask your pharmacist."

* * *

(c) If a generically equivalent substitution has been made, an "S" will be noted in the lower left corner of the prescription label.

<u>Third</u>: By adding a new section to be numbered Sec. 8a to read as follows: Sec. 8a. 26 V.S.A. § 805(b) is amended to read:

(b) Notwithstanding the provisions of subsection (a) of this section and any other provision of law, a dentist <u>or dental hygienist</u> who holds an unrestricted license in all jurisdictions in which the dentist <u>or dental hygienist</u> is currently licensed, who certifies to the Vermont board of dental examiners that he or she will limit his or her practice in Vermont to providing pro bono services at a free or reduced fee clinic in Vermont and who meets the criteria of the board, shall be licensed by the board within 60 days of the licensee's certification without further examination, interview, fee or any other requirement for board licensure. The dentist or dental hygienist shall file with the board, on forms

provided by the board and based on criteria developed by the board, information on dental qualifications, professional discipline, criminal record, malpractice claims or any other such information as the board may require. A license granted under this subsection shall authorize the licensee to practice dentistry or dental hygiene on a voluntary basis in Vermont.

<u>Fourth</u>: By adding a new section to be numbered Sec. 8b to read as follows: Sec. 8b. 26 V.S.A. § 761 is amended to read:

§ 761. STATE BOARD OF DENTAL EXAMINERS; CREATION; QUALIFICATIONS

The state board of dental examiners is created and shall consist of five six dental practitioners of good standing, who have practiced in this state for a period of five years or more, are in active practice, and are legal residents of the state of Vermont, two registered dental hygienists certified pursuant to subchapter 4 of this chapter, who have practiced in the state of Vermont for a period of three years immediately preceding the appointment, are in active practice and are legal residents of the state of Vermont, one dental assistant registered pursuant to section 863 of this title who has practiced in the state of Vermont for a period of three years immediately preceding the appointment, is in active practice, and is a legal resident of the state of Vermont, and two members of the public not associated with the practice of dentistry. Board members shall be appointed by the governor pursuant to sections 129b and 2004 of Title 3. No member of the board may be an officer or serve on a committee of his or her respective state or local professional dental or dental hygienist organization nor shall any member of the board be on the faculty of a school of dentistry or dental hygiene.

<u>Fifth</u>: By striking out Sec. 31 in its entirety and inserting in lieu thereof a new Sec. 31 to read as follows:

Sec. 31. 26 V.S.A. § 3175 is amended to read:

§ 3175a. FIREARMS AND GUARD DOG TRAINING; INSTRUCTOR LICENSURE; PROGRAM OF INSTRUCTION

(a) An applicant for a private detective or security guard license to provide armed services shall demonstrate to the board competence in the safe use of firearms in a firearms training program approved by the board and taught by an instructor currently licensed under this section. Firearms training may include evidence of law enforcement or military training in firearms. An applicant for a license to provide guard dog services shall demonstrate to the board competence in the handling of guard dogs in a guard dog training program approved by the board and taught by an instructor currently licensed under this section.

- (b) The board shall license <u>firearms training course</u> instructors of such training courses private investigators and security guards licensed under this <u>chapter</u> and shall adopt rules governing the licensure of instructors and the approval of firearms and guard dog training programs.
- (e)(b) The board shall not issue a license as a firearms training program instructor without first obtaining and approving all of the following:

* * *

- (d) The board shall not issue a license as a guard dog training program instructor without first obtaining and approving the following:
 - (1) The application filed in the proper form.
- (2) The application fee established in subdivision 3178a(5)(A) of this title.
 - (3) Evidence that the applicant has obtained the age of majority.
 - (4) A copy of the applicant's training program.
- (5) Proof of certification as an instructor from an instructor's course approved by the board.
 - (6) A federal background check.
- (e)(c) Instructors licensed under this section are subject to the same renewal requirements as others licensed under this chapter, and prior to renewal are required to show proof of current instructor licensure and pay the renewal fee established in subdivision 3178a(5)(B) of this title.
- (f) Hunter safety instructors shall be exempt from the licensure requirements of this section for the purpose of hunter safety instruction.

<u>Sixth</u>: In Sec. 48, 26 V.S.A. § 3323(b)(4), at the end of the subdivision, by inserting the following: <u>This subdivision shall not affect a licensee's or a registrant's professional liability to consumers or to other licensees or registrants.</u>

<u>Seventh</u>: By adding five new sections to be numbered Secs. 19a, 19b, 19c, 19d and 19e, to read as follows:

Sec. 19a. 26 V.S.A. chapter 52 is added to read:

CHAPTER 52. RADIOLOGIST ASSISTANTS

§ 2851. DEFINITIONS

As used in this chapter:

- (1) "ARRT" means the American Registry of Radiologic Technologists or its successor, as recognized by the board.
- (2) "Board" means the state board of medical practice established under chapter 23 of this title.
- (3) "Contract" means a legally binding written agreement containing the terms of employment of a radiologist assistant.
- (4) "Disciplinary action" means any action taken by the board against a certified radiologist assistant or an applicant or an appeal of that action when that action suspends, revokes, limits, or conditions certification in any way or when it results in a reprimand of the person.
- (5) "Protocol" means a detailed description of the duties and scope of practice delegated by a radiologist to a radiologist assistant.
- (6) "Radiologist" means a person licensed to practice medicine or osteopathy under chapter 23 or 33 of this title and who is certified by or eligible for certification by the American Board of Radiology or the American Osteopathic Board of Radiology or their predecessors or successors or who is credentialed by a hospital to practice radiology and engages in the practice of radiology at that hospital full-time.
- (7) "Radiologist assistant" means a person certified by the state of Vermont under this chapter who is qualified by education, training, experience, and personal character to provide medical services under the direction and supervision of a radiologist.
- (8) "Supervision" means the direction and review by a supervising radiologist, as determined to be appropriate by the board, of the medical services provided by the radiologist assistant. At a minimum, supervision shall mean that a radiologist is readily available for consultation and intervention. A radiologist assistant may provide services under the direction and review of more than one supervising radiologist during the course of his or her employment, subject to the limitations on his or her scope of practice as set forth in this chapter and the protocol filed under subsection 2853(b) of this title.

§ 2852. CERTIFICATION AND RULEMAKING

The board shall certify radiologist assistants, and the commissioner of health shall adopt rules regarding the training, practice, supervision, qualification, scope of practice, places of practice, and protocols for radiologist assistants and regarding patient notification and consent.

§ 2853. APPLICATION

- (a) An application for certification shall be accompanied by an application by the proposed primary supervising radiologist that shall contain a statement that the radiologist shall be responsible for all professional activities of the radiologist assistant.
- (b) An application for certification shall be accompanied by a protocol signed by one proposed supervising radiologist and proof of employment of the radiologist assistant by that radiologist or by the hospital at which the radiologist practices. The supervising radiologist who signs the protocol shall be deemed the primary supervisor of the radiologist assistant for the purposes of this chapter.
- (c) The applicant shall submit to the board any other information the board considers necessary to evaluate the applicant's qualifications.

§ 2854. ELIGIBILITY

To be eligible for certification as a radiologist assistant, an applicant shall:

- (1) have obtained a degree from a radiologist assistant educational program that is recognized by the ARRT under its "Recognition Criteria for Radiologist Assistant Educational Programs" adopted on July 1, 2005, as periodically revised and updated;
- (2) have satisfactorily completed the radiologist assistant certification examination given by the ARRT and be currently certified by the ARRT;
- (3) be certified as a radiologic technologist in radiography by the ARRT; and
- (4) be licensed as a radiologic technologist in radiography in this state under chapter 51 of this title.

§ 2855. TEMPORARY CERTIFICATION

- (a) The board may issue a temporary certification to a person who applies for certification for the first time in this state and meets the educational requirements under subsection 2854 of this title.
- (b) Temporary certification may be issued only for the purpose of allowing an otherwise qualified applicant to practice as a radiologist assistant until the applicant takes and passes the next ARRT certification examination and a determination is made that he or she is qualified to practice in this state.
- (c) Temporary certification shall be issued upon payment of the specified fee for a fixed period of time to be determined by the board and shall only be renewed by the board if the applicant demonstrates proof of an exceptional cause.

§ 2856. RENEWAL OF CERTIFICATION

- (a) Certifications shall be renewable every two years upon payment of the required fee and submission of proof of current, active ARRT certification, including compliance with continuing education requirements.
- (b) A certification that has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay back renewal fees for the periods when certification was lapsed. However, if certification remains lapsed for a period of three years, the board may, after notice and an opportunity for hearing, require reexamination as a condition of renewal.

§ 2857. SUPERVISION AND SCOPE OF PRACTICE

- (a) The number of radiologist assistants permitted to practice under the direction and supervision of a radiologist shall be determined by the board after review of the system of care delivery in which the supervising radiologist and radiologist assistants propose to practice. Scope of practice and levels of supervision shall be consistent with guidelines adopted by the American College of Radiology, the American Society of Radiologic Technologists, and the ARRT. The authority of a radiologist assistant to practice shall terminate immediately upon termination of the radiologist assistant's employment, and the primary supervising radiologist shall immediately notify the board and the commissioner of the department of health of the termination. The radiologist assistant's authority to practice shall not resume until he or she provides proof of other employment and a protocol as required under this chapter.
- (b) Subject to the limitations set forth in subsection (a) of this section, the radiologist assistant's scope of practice shall be limited to that delegated to the radiologist assistant by the primary supervising radiologist and for which the radiologist assistant is qualified by education, training, and experience. At no time shall the practice of the radiologist assistant exceed the normal scope of the supervising radiologist's practice. A radiologist assistant may not interpret images, make diagnoses, or prescribe medications or therapies.

§ 2858. UNPROFESSIONAL CONDUCT

- (a) The following conduct by a certified radiologist assistant constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of certification:
 - (1) fraudulent procuring or use of certification;
- (2) occupational advertising that is intended or has a tendency to deceive the public;

- (3) exercising undue influence on or taking improper advantage of a person using the radiologist assistant's services or promoting the sale of professional goods or services in a manner that exploits a person for the financial gain of the radiologist assistant or of a third party;
- (4) failing to comply with provisions of federal or state law governing the profession;
- (5) conviction of a crime related to the profession or conviction of a felony, whether or not related to the practice of the profession;
 - (6) conduct that evidences unfitness to practice in the profession;
- (7) making or filing false professional reports or records, impeding or obstructing the proper making or filing of professional reports or records, or failing to file the proper professional report or record;
 - (8) practicing the profession when mentally or physically unfit to do so;
 - (9) professional negligence;
- (10) accepting and performing responsibilities that the person knows or has reason to know that he or she is not competent to perform;
- (11) making any material misrepresentation in the practice of the profession, whether by commission or omission;
- (12) holding one's self out as or permitting one's self to be represented as a licensed physician;
- (13) performing otherwise than at the direction and under the supervision of a radiologist licensed by the board;
- (14) accepting the delegation of or performing or offering to perform a task or tasks beyond the person's scope of practice as defined by the board;
- (15) administering, dispensing, or prescribing any controlled substance other than as authorized by law;
- (16) failing to comply with an order of the board or violating any term or condition of a certification restricted by the board;
- (17) delegating professional responsibilities to a person whom the certified professional knows or has reason to know is not qualified by training, experience, education, or licensing credentials to perform;
- (18) in the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill, and proficiency that is commonly exercised by the ordinary skillful, careful, and prudent professional engaged in similar practice

under the same or similar conditions, whether or not actual injury to a patient has occurred; or

- (19) revocation of certification to practice as a radiologist assistant in another jurisdiction on one or more of the grounds specified in subdivisions (1)–(18) of this subsection.
- (b) A person aggrieved by a final order of the board may, within 30 days of the order, appeal that order to the Vermont supreme court on the basis of the record created before the board.

§ 2859. DISPOSITION OF COMPLAINTS

- (a) Complaints and allegations of unprofessional conduct shall be processed in accordance with the rules of procedure of the board.
- (b) The board shall accept complaints from a member of the public, a physician, a hospital, a radiologist assistant, a state or federal agency, or the attorney general. The board shall initiate an investigation of a radiologist assistant when a complaint is received or may act on its own initiative without having received a complaint.
- (c) If the board determines that the action of a radiologist assistant that is the subject of a complaint falls entirely within the scope of practice of a radiologic technologist in radiography, the board shall refer the complaint to the board of radiologic technology for review under chapter 51 of this title.
- (d) After giving opportunity for hearing, the board shall take disciplinary action against a radiologist assistant or applicant found guilty of unprofessional conduct.
- (e) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. That agreement may include any of the following conditions or restrictions which may be in addition to or in lieu of suspension:
 - (1) a requirement that the person submit to care or counseling;
- (2) a restriction that the person practice only under supervision of a named person or a person with specified credentials;
- (3) a requirement that the person participate in continuing education in order to overcome specified practical deficiencies;
- (4) a requirement that the scope of practice permitted be restricted to a specified extent.
- (f) Upon application, the board may modify the terms of an order under this section and, if certification has been revoked or suspended, order reinstatement on terms and conditions it deems proper.

§ 2860. USE OF TITLE

Any person who is certified to practice as a radiologist assistant in this state shall have the right to use the title "radiologist assistant" or "registered radiologist assistant" and the abbreviation "R.A." or "R.R.A." No other person may assume that title or use that abbreviation or any other words, letters, signs, or devices to indicate that the person using them is a radiologist assistant. A radiologist assistant shall not so represent himself or herself unless there is currently in existence a valid employment arrangement between the radiologist assistant and his or her employer or primary supervising radiologist and unless the protocol under which the radiologist assistant's duties are delegated is on file with and has been approved by the board.

§ 2861. LEGAL LIABILITY

- (a) The primary supervising radiologist delegating activities to a radiologist assistant shall be legally liable for the activities of the radiologist assistant, and the radiologist assistant shall in this relationship be the radiologist's agent.
- (b) Nothing contained in this chapter shall be construed to apply to nurses acting pursuant to chapter 28 of this title.

§ 2862. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1)(A)(i) Original application for certification \$115.00;

(ii) Each additional application \$50.00;

(B) The board shall use at least \$10.00 of these fees to support the costs of the creation and maintenance of a Vermont practitioner recovery network which will monitor recovering chemically dependent licensees for the protection of the public.

(2)(A)(i) Biennial renewal \$115.00;

(ii) Each additional renewal \$50.00;

(B) The board shall use at least \$10.00 of these fees to support the costs of the creation and maintenance of a Vermont practitioner recovery network that will monitor recovering chemically dependent licensees for the protection of the public. In addition to the fee, an applicant for certification renewal shall submit evidence in a manner acceptable to the board that he or she continues to meet the certification requirements of the ARRT and is licensed as a radiologic technologist under chapter 51 of this title.

(3) Transfer of certification

\$15.00.

§ 2863. NOTICE OF USE OF RADIOLOGIST ASSISTANTS

A radiologist who uses the services of a radiologist assistant shall post a notice to that effect in an appropriate place and include language in the patient consent form that the radiologist uses a radiologist assistant.

§ 2864. PENALTY

- (a) A person who, not being certified, holds himself or herself out to the public as being certified under this chapter shall be liable for a fine of not more than \$1,000.00.
- (b) In addition to the penalty provided in subsection (a) of this section, the attorney general or a state's attorney may bring a civil action to restrain continuing violations of this section.
- Sec. 19b. 26 V.S.A. § 1842(b)(12) is added to read:
- (12) Use of the services of a radiologist assistant in a manner that is inconsistent with the provisions of chapter 52 of this title.
- Sec. 19c. 26 V.S.A. § 1354(a) is amended to read:
- (a) The board shall find that any one of the following, or any combination of the following, whether or not the conduct at issue was committed within or outside the state, constitutes unprofessional conduct:

* * *

- (31) use of the services of an anesthesiologist assistant by an anesthesiologist in a manner that is inconsistent with the provisions of chapter 29 of this title;
- (32) use of the services of a radiologist assistant by a radiologist in a manner that is inconsistent with the provisions of chapter 52 of this title.
- Sec. 19d. 26 V.S.A. § 1351(e) is amended to read:
- (e) The commissioner of health shall adopt, amend, and repeal rules of the board which the commissioner determines necessary to carry out the provisions of this chapter and chapters 7, 29, and 31, and 52 of this title.
- Sec. 19e. 26 V.S.A. § 1352(a) is amended to read:
- (a) The commissioner of health shall issue annually a report to the secretary of human services and the secretary of the Vermont medical society which shall contain:
- (1) a separate record of the name, residence, college, and date of graduation of each individual licensed or certified by the board;

- (2) a list of all physicians, physician's assistants, podiatrists, <u>radiologist</u> <u>assistants</u>, and anesthesiologist assistants practicing in the state;
- (3) a summary of all disciplinary actions undertaken by the board during the year of the report; and
- (4) an accounting of all fees and fines received by the board and all expenditures and costs of the board for such year. A sufficient number of copies shall be printed to supply the needs of the board and the state library.

<u>Eighth</u>: By adding a new section to be numbered Sec. 54 to read as follows:

Sec. 54. DEPARTMENT OF HEALTH

The department of health shall evaluate its procedures for application for licensure for under 18 V.S.A. § 1395(c). On or before March 15, 2011 the department shall report to the house and senate committees on government operations its findings regarding facilitating the granting of licenses to qualified physicians who will limit their practice in Vermont to providing probono services at a free or reduced fee health care clinic in Vermont while assuring that these physicians meet all the standards required of physicians fully licensed to practice in Vermont.

<u>Ninth:</u> By adding a new section to be numbered Sec. 55 to read as follows: Sec. 55. EFFECTIVE DATE

This section and Secs. 19a, 19b, 19c, 19d, and 19e of this act shall take effect upon passage.

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

Senator Ayer, for the Committee on Finance, 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 Government Operations.

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

Senator Mazza Assumes the Chair Proposals of Amendment; Third Reading Ordered H. 772.

Senator Miller, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to alcoholic beverage tastings and other liquor licensing issues.

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

<u>First</u>: In Sec. 1, 7 V.S.A. § 2, by striking out subdivision (28) in its entirety and inserting in lieu thereof a new subdivision (28) to read as follows:

(28) "Fourth class license" or "farmers' market license": the license granted by the liquor control board permitting a manufacturer or rectifier of malt or vinous beverages or spirits to sell fortified wines manufactured by the licensed manufacturer or rectifier and vinous beverages by the bottle unopened container and distribute, by the glass with or without charge, those beverages by the glass manufactured by the licensee. No more than a combined total of ten fourth class and farmers' market licenses may be granted to a licensed manufacturer or rectifier. At only one fourth class license location, a manufacturer or rectifier of vinous beverages may sell by the unopened container and distribute by the glass, with or without charge, vinous beverages produced by no more than three additional manufacturers or rectifiers, provided these beverages are purchased on invoice from the manufacturer or rectifier. A manufacturer or rectifier of vinous beverages may sell its product to no more than three additional manufacturers or rectifiers. A fourth class licensee may distribute by the glass no more than two ounces of malt or vinous beverage with a total of eight ounces to each retail customer and no more than one-quarter ounce of spirits with a total of one ounce to each retail customer for consumption on the manufacturer's premises or at a farmers' market. A farmers' market license is valid for all dates of operation for a specific farmers' market location.

<u>Second</u>: In Sec. 3, 7 V.S.A. § 67(a), by striking out subdivisions (1) and (2) in their entirety and inserting in lieu thereof new subdivisions (1) and (2) to read as follows:

(1) A second class licensee. The permit authorizes the employees of the permit holder to dispense vinous or malt beverages to retail customers of legal age on the licensee's premises vinous or malt beverages by the glass not to exceed two ounces of each vinous or malt beverage with a total of eight ounces of vinous or malt beverages. Vinous or malt beverages for the tasting shall be from the inventory of the licensee or purchased from a wholesale dealer. Pursuant to this permit, a second class licensee may conduct no more than 30 48 tastings a year. In addition to the 48 tastings, a second class licensee may conduct no more than five beverage tastings per week, provided the tastings are conducted as part of an educational food preparation class or course

conducted by the licensee on the licensee's premises and provided the licensee has acquired a permit for each tasting.

(2) A licensed manufacturer or rectifier of vinous or malt beverages. The permit authorizes the permit holder to dispense beverages produced by the manufacturer or rectifier to retail customers of legal age for consumption on the premises of a second class licensee or at a farmers' market beverages produced by the manufacturer or rectifier by the glass not to exceed two ounces of each beverage with a total of eight ounces of vinous or malt beverages. Pursuant to this permit, a A manufacturer or rectifier may conduct no more than one tasting a day on the premises of a second class licensee. No more than four tasting permits per month for a tasting event held on the premises of second class licensees shall be permitted 48 tastings per year.

<u>Third</u>: In Sec. 6, 7 V.S.A. § 231(a)(21), by striking out the following: "\$200.00" and inserting in lieu thereof the following: \$15.00

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

Senator Carris, for the Committee on Finance, 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 Economic Development, Housing and General Affairs.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposals of amendment were collectively agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Miller, on behalf of the Committee on Economic Development, Housing and General Affairs, moved that the Senate propose to the House to amend the bill in Sec. 1, 7 V.S.A. § 2, by striking out subdivision (15) in its entirety and inserting in lieu thereof a new subdivision (15) to read as follows:

(15) "Manufacturer's or rectifier's license": a license granted by the liquor control board that permits the holder to manufacture or rectify, as the case may be, spirituous liquors for export and sale to the liquor control board, or malt beverages and vinous beverages for export and for sale to bottlers or wholesale dealers, or spirituous liquors for export and for sale to the liquor control board, upon application of a manufacturer or rectifier and the payment to the liquor control board of the license fee as required by subdivision 231(1) of this title for either license. This license permits a manufacturer of vinous beverages to receive from another manufacturer licensed in or outside this state bulk shipments of vinous beverages to rectify with the licensee's own product, provided that the vinous beverages produced by a Vermont manufacturer may contain no more than 25 percent imported vinous beverage. The liquor control

board may grant to a licensed manufacturer or rectifier a first class restaurant or cabaret license or first and third class restaurant or cabaret license permitting the licensee to sell alcoholic beverages to the public only at the manufacturer's premises, which for the purposes of a manufacturer of malt beverages includes up to two licensed establishments that are located on the contiguous real estate of the holder of the manufacturer's license, provided the manufacturer owns or has direct control over those establishments. manufacturer of malt beverages who also holds a first class restaurant or cabaret license may serve to a customer malt beverage by the glass, not to exceed eight glasses at one time and not to exceed four ounces in each glass. The liquor control board may grant to a licensed manufacturer or a rectifier of malt or vinous beverages a second class license permitting the licensee to sell alcoholic beverages to the public only at anywhere on the manufacturer's or rectifier's premises. A licensed manufacturer or rectifier of vinous beverages may serve, with or without charge, at an event held on premises of the licensee or the vineyard property, spirits and vinous and malt beverages, provided the licensee gives the department written notice of the event, including details required by the department, at least 15 five days before the event. beverages not manufactured by the licensee and served at the event shall be purchased on invoice from a licensed manufacturer or wholesale dealer or liquor control board. Upon application and payment of the license fee as required by subdivision 231(11) of this title, the liquor control board may grant to a licensed manufacturer or rectifier of vinous beverages fourth class or farmers' market licenses permitting the licensee to sell fortified wines and vinous beverages by the bottle to the public at the licensed premises or at a farmers' market, provided that the beverages were produced by the manufacturer or rectifier. No more than a combined total of ten fourth class and farmers' market licenses may be granted to any licensed manufacturer or rectifier. An application for a farmers' market license shall include copies of the farmers' market regulations, the agreement between the farmers' market and the applicant, and the location and dates of operation of the farmers' market. A farmers' market license shall be valid for all dates of operation for a specific farmers' market location. However, in no case may a person with an interest in more than one manufacturer's or rectifier's license have an interest in more than four fourth class licenses. The manufacturer or rectifier shall pay directly to the commissioner of taxes the sum of \$0.265 cents per gallon for every gallon of malt beverage and the sum of \$0.55 cents per gallon for each gallon of vinous beverage manufactured by the manufacturer or rectifier and provided for sale pursuant to the first class license or the second class license or the fourth class license or combination thereof held by the manufacturer or rectifier. Holders of a manufacturer's or rectifier's second class license for malt beverages may distribute, with or without charge, malt beverages by the glass, not to exceed two ounces per product and eight ounces in total, to all persons of legal drinking age. The malt beverages must be consumed upon the premises of the holder of the license. At the request of a person holding a first class or second class license, a holder of a manufacturer's or rectifier's license for malt beverages may distribute without charge to the management and staff of the license holder, provided they are of legal drinking age, no more than four ounces per person of a malt beverage for the purpose of promoting the beverage. Written notice shall be provided to the department of liquor control at least 10 days prior to the date of the tasting. A licensed manufacturer or rectifier of spirits may do either or both of the following only on the manufacturer's or rectifier's premises:

- (A) Sell by the glass or bottle to the public spirits manufactured by the licensee.
- (B) Dispense by the glass, with or without charge, spirits manufactured by the licensee, provided that no more than one quarter ounce per product and no more than one ounce in total is dispensed to each individual of legal age.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

House Proposals of Amendment to Senate Proposal of Amendment Concurred In

H. 765.

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

An act relating to establishing the Vermont agricultural innovation authority.

Were taken up.

The House proposes to the Senate to amend the Senate proposal of amendment as follows:

<u>First</u>: In Sec. 1, 6 V.S.A. § 2962, in subdivision (b)(2), by inserting the word industry after the word "livestock"

<u>Second</u>: In Sec. 1, 6 V.S.A. § 2962, in subdivision (b)(3), by striking out the following: "<u>president pro tempore</u>" and inserting in lieu thereof the following: <u>committee on committees</u>

Third: In Sec. 1, 6 V.S.A. § 2962, in subdivision (b)(3), by relettering "(C)" to (B)

<u>Fourth:</u> In Sec. 1, 6 V.S.A. § 2962, by striking out subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

- (d) Any vacancy occurring among the members of the board shall be filled by the respective appointing authority pursuant to this section. A board member may be reappointed, provided that no board member, except the secretary of agriculture, food and markets, may serve more than two consecutive three-year terms. Each member of the board shall serve a three-year term, except:
- (1) the governor shall appoint initially one member to a one-year term, one member to a two-year term, and two members to a three-year term;
- (2) the speaker of the house shall appoint initially two members to a one-year term, one member to a two-year term, and one member to a three-year term; and
- (3) the committee on committees shall appoint initially one member to a one-year term, two members to a two-year term, and one member to a three-year term.

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; Bills Messaged

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

H. 507, H. 590, H. 647, H. 765, H. 783.

Committee of Conference Appointed

H. 784.

An act relating to the state's transportation program.

Was taken up. Pursuant to the request of the House, the acting President *pro tempore* announced the appointment of

Senator Mazza Senator Kitchel Senator Scott

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

Senate Concurrent Resolution

The following joint concurrent resolution, 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, is hereby adopted on the part of the Senate:

By All Members of the Senate,

S.C.R. 49.

Senate concurrent resolution honoring former Senator Rita Whalen McCaffrey on her career accomplishments at Dismas of Vermont, Inc.

Adjournment

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

TUESDAY, APRIL 27, 2010

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

Devotional Exercises

A moment of silence was observed in lieu of devotions.

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. 63. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, April 30, 2010, or Saturday, May 1, 2010, it be to meet again no later than Tuesday, May 4, 2010.

Appointment to Committee of Conference

H. 540.

The President pro tempore announced the appointment of

Senator Hartwell

as a replacement for

Senator Mazza

as a member of the committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses upon House bill entitled:

An act relating to motor vehicles passing vulnerable users on the highway and to bicycle operation.

Bill Passed in Concurrence with Proposals of Amendment H. 772.

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

An act relating to alcoholic beverage tastings and other liquor licensing issues.

House Proposals of Amendment Concurred In

S. 239.

House proposals of amendment to Senate bill entitled:

An act relating to retiring outdoor wood-fired boilers that do not meet the 2008 emission standard for particulate matter.

Were taken up.

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

<u>First</u>: In Sec. 2, 10 V.S.A. § 584, in subdivision (e)(1), after the following: "<u>another</u>" by striking out the following: <u>type of</u>

<u>Second</u>: In Sec. 2, 10 V.S.A. § 584, in subsection (g), after the word "<u>health</u>" by adding the word <u>care</u> and in the phrase "<u>and has resulted or results</u>" by striking out the word "<u>and</u>" and inserting in lieu thereof the word <u>or</u>

<u>Third</u>: In Sec. 2, 10 V.S.A. § 584, in subsection (i), in the first sentence, in the phrase "<u>closer than 100 feet</u>" by striking out the following: "<u>100 feet</u>" and inserting in lieu thereof the following: the setback distance

Fourth: By adding a new section to be numbered Sec. 3 to read as follows:

Sec. 3. USE OF FUNDS

The agency of natural resources is authorized to use funds from the American Electric Power Service Corporation Settlement Funds described in 10 V.S.A. § 584(b), for the purposes of this act, as follows:

(1) In fiscal year 2011, the agency is authorized to use \$360,000.00 of these funds, which amount is included in the sum appropriated in Sec. B.710 of H. 789 of the 2009 adjourned session, as enacted; and

(2) In fiscal year 2012, it is the intent of the general assembly that the agency be authorized to use at least \$140,000.00 from that same Settlement Fund source.

And by renumbering the existing Sec. 3 as Sec. 4

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

Proposals of Amendment; Third Reading Ordered H. 243.

Senator Flory, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to the creation of a mentored hunting license.

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

<u>First</u>: In Sec. 1, 10 V.S.A. § 4256, by adding a new subsection (j) to read as follows:

(j) No person shall hunt under this section on privately owned land without first obtaining the permission of the owner or occupant.

<u>Second</u>: By adding two new sections to be numbered Secs. 5 and 6 to read as follows:

Sec. 5. DEPARTMENT OF FISH AND WILDLIFE REPORT ON MENTORED HUNTING

On or before January 15 annually, the commissioner of fish and wildlife shall report to the senate committee on natural resources and energy and the house committee on fish, wildlife and water resources regarding implementation of the mentored hunting license program under 10 V.S.A. § 4256. The report shall include:

- (1) The number of mentored hunting licenses issued in the previous calendar year;
- (2) The number of deer or other game taken by a mentored hunter in the previous calendar year, if discernible;
- (3) A summary of each hunter safety incident or personal injury related to an individual hunting under a mentored license that occurred in the previous calendar year; and
- (4) Any recommendation by the commissioner to improve or address implementation of the mentored hunting program, including whether 10 V.S.A. § 4256 should be amended or repealed.

Sec. 6. EFFECTIVE DATE

This act shall take effect January 1, 2011.

And that the bill ought to pass in concurrence with such proposals 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 proposals 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, and pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Natural Resources?, Senator Sears requested that the question be divided.

Thereupon, the question, Shall the Senate propose to the House that the bill be amended as *firstly* recommended by the Committee on Natural Resources and Energy?, was disagreed to on a roll call, Yeas 9, Nays 20.

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, Ayer, Hartwell, Lyons, MacDonald, *McCormack, Racine, Snelling, Starr.

Those Senators who voted in the negative were: Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Illuzzi, Kitchel, Kittell, Mazza, Miller, Mullin, Nitka, Scott, Sears, White.

The Senator absent or not voting was: Shumlin (presiding).

*Senator McCormack explained his vote as follows:

"Mr. President:

In the debate on this question the issue of constitutionality has been raised. It would be unfortunate for anyone to interpret either a yes vote or a no vote on the question as a vote for or against the constitution. Rather it is possible for intelligent people of goodwill, acting in goodwill, to develop intelligent interpretations of the constitution that disagree with one another. The disagreement is not over whether or not to conform to the constitution. The argument is over what the constitution means."

Thereupon, the pending question, Shall the Senate propose to the House that the bill be amended as *secondly* proposed by the Committee on Natural Resources and Energy?, was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator MacDonald moved that the Senate propose to the House to amend the bill in Sec. 1, 10 V.S.A. § 4256, by striking out the first sentence of subsection (a) and inserting in lieu thereof the following:

An individual who holds a mentored hunting license shall be entitled to hunt only when accompanied by an unarmed individual, 21 years of age or older, who holds a valid hunting license under subsection 4254(b) of this title.

Which was disagreed to.

Senator White Assumes the Chair

Thereupon, third reading of the bill was ordered on a roll call, Yeas 28, Nays 1.

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, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, Miller, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr.

The Senator who voted in the negative was: McCormack.

The Senator absent or not voting was: White (presiding).

Senator Shumlin Assumes the Chair

Recess

On motion of Senator Campbell the Senate recessed until the fall of the gavel.

Called to Order

At one o'clock and twenty-five minutes the Senate was called to order by the President *pro tempore*.

Message from the House No. 62

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 bill originating in the Senate of the following title:

S. 173. An act relating to technical corrections to the trust laws.

And has passed the same in concurrence.

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

- **S. 165.** An act relating to eliminating the statute of limitations for felonies.
- **S. 268.** An act relating to the building bright futures council.

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. 783. An act relating to miscellaneous tax provisions.

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. Ancel of Calais

Rep. Obuchowski of Rockingham

Rep. Condon of Colchester

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

H. 790. An act relating to capital construction and state bonding.

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. Emmons of Springfield

Rep. Myers of Essex

Rep. Rodgers of Glover

Proposals of Amendment; Point of Order; Bill Passed in Concurrence with Proposals of Amendment

H. 789.

House bill entitled:

An act making appropriations for the support of government.

Was taken up.

Thereupon, pending third reading of the bill, Senator Bartlett, on behalf of the Committee on Appropriations, moved that the Senate proposal of amendment be amended as follows:

<u>First</u>: By adding a new section to be numbered Sec. E. 100.6 to read as follows:

Sec. E 100.6 32 V.S.A. § 704b is added to read:

§704b. PROPOSED REDUCTION IN WORK FORCE WHEN GENERAL ASSEMBLY NOT IN SESSION

- (a) The general assembly recognizes that after it adjourns, it may nonetheless be necessary to take significant measures to achieve savings in order to ensure a balanced budget in the general fund due to unknown and unforeseen circumstances. As a result, if the general assembly is not in session, and the secretary of administration proposes to eliminate, by reduction in force, position elimination, or both, more than one percent of the entire state workforce in one fiscal year, as measured cumulatively from July 1 in that fiscal year, the secretary shall first submit a plan which complies with the standards outlined in subdivision (1) through (7) of this subsection to the joint fiscal committee for its consideration. For the purposes of this section, "entire state workforce" means full-time, permanent, classified and exempt state employees.
- (1) The plan shall outline the proportional impacts on exempt employees, classified confidential employees, and all other employee classifications, and shall not have an unduly disproportionate impact on any employee classification;
- (2) The plan shall not have an unduly disproportionate effect on any single function, program, service, or benefit;
- (3) The plan shall describe how it will minimize any negative impacts of delivery of services to the public, public health, and safety;
- (4) The plan shall describe how it will minimize cost impacts on other departments, agencies, or areas of government;

- (5) The plan shall describe all proposed reductions in expenditures authorized by a general appropriations or budget adjustment act;
- (6) The plan shall describe why other alternatives to the proposed elimination of positions are not utilized in the plan; and
- (7) The plan shall reflect the priorities established by the general assembly in law.
- (b) A plan developed under subsection (a) of this section shall be filed with the joint fiscal committee and shall not be implemented unless approved by the joint fiscal committee as set forth under this subsection. The joint fiscal committee shall meet within 14 days of the date the secretary's plan is filed, to review and act upon the plan in accordance with the standards in subsection (a) of this section. The committee shall approve or disapprove the plan, and if disapproved, the plan shall not be implemented.

<u>Second</u>: By adding a new section to be numbered Sec. E.100.7 to read as follows:

Sec. E.100.7 STATE MONITORING OF INTERNET USE; FINDINGS; AUTHORITY; AGENCIES COVERED; WEB-CONTENT FILTERING COMMITTEE

(a) Findings. The general assembly finds that:

- (1) The Personnel Policies and Procedures Manual (PPPM) for the state of Vermont authorizes limited personal use of Internet services. Although Number 5.6 of the PPPM specifies that "employees shall not use, or attempt to use, State personnel, property, or equipment for their private use or for any use not required for the proper discharge of their official duties," under Number 11.7 of the PPPM, "that policy has been interpreted to allow a limited degree of personal use of State telephones for private calls when such use meets certain guidelines," and similar allowances are permitted for Internet, electronic and wireless communication devices and services, and email capabilities.
- (2) Although the rules for Internet services under Number 11.7 of the PPPM give agencies the right to monitor their systems and the Internet activities of their employees, such right is not unlimited. For example, Rule 10 of Number 11.7 specifies that internet monitoring "may occur in, but is not limited to, circumstances when there is a reason to suspect that an employee is involved in activities that are prohibited by law, violate State policy or regulations, or jeopardize the integrity and/or performance of the computer systems of the State government." The rule goes on to further specify that "[m]onitoring may also occur in the normal course of network administration

and trouble-shooting, or on a random basis using electronic tools designed to monitor Internet usage."

- (3) The Vermont department of information and innovation, pursuant to a directive by the secretary of administration, chose a server-based web activity monitoring and policing software suite, known as Marshall 86, to be implemented statewide. Upon implementation, Marshall 86 has the capability of collecting reports on the usage and durations of usage on every website visited through a state computer, including websites visited for personal use such as e-mail or online banking. According to a memorandum by the commissioner to the senate appropriations committee dated April 22, 2010, Marshall 86 will not collect reports on the content of any site visited. In addition, the software will block users from visiting 28 categories of sites. Mobile electronics, such as laptops, will be installed with client software that will activate a similar blocking feature, irrespective of whether a public or a private internet connection is used.
- (4) According to a memorandum by the commissioner to the senate appropriations committee dated April 22, 2010, the human resources staff of each state agency or department will be "responsible for managing the reporting features of" Marshall 86. The memorandum contains no reference to any kind of statewide standard as to how and when the software will be engaged by such personnel to determine if an employee's internet usage may be in violation of the limited personal use exception contained in the PPPM. Presumably such decisions would be within the broad discretion of the affected agencies and departments.
- (5) The general assembly finds that extensive tracking of Internet usage with monitoring software such as Marshall 86, including the generation of reports detailing visits to personal websites for legitimate, lawful, and personal purposes, would be inconsistent with the stated policies in PPPM Numbers 5.6 and 11.7, and inconsistent with fostering a positive, working relationship with the state's workforce.
- (6) The potential extensive nature of Internet monitoring by software such as Marshall 86 has not been thoroughly and adequately vetted with regard to the use of and access to reports generated by the software; the implications for records containing privileged or confidential information; the obligation to report and act on information contained in reports generated; and, the repercussions on a state agency's rights and responsibilities under Vermont's public records law, 1 V.S.A. § 315, et seq.
- (b) Monitoring Criteria. Web-content filtering software such as Marshall 86 shall not be used to track individual employee usage of the Internet, including websites visited, time spent at each site, the total amount of time

- spent "surfing" the Internet, and the day and time that each site is visited, unless the agency seeking to monitor that usage has a reason to suspect that an employee is involved in activities that are prohibited by law, violate State policy or regulations, or jeopardize the integrity or performance of the computer systems of the State government; or unless the monitoring is done in the normal course of network administration and trouble-shooting, or on a random basis. The human resources staff of each agency and department shall adopt written policies on computer use not inconsistent with the policies established by the secretary of administration.
- (c) Elected Offices. Unless authorized by the elected heads of the following offices, web-content filtering software such as Marshall 86 shall not be deployed on the computers of employees in: the office of the secretary of state, the office of the attorney general, the office of the state auditor, the office of the state treasurer, the office of each state's attorney, and the office of each sheriff. The authorization, if granted, shall expire every two years and may be renewed only by the elected head of each office. Such offices, however, shall prepare written policies on internet use not inconsistent with state policy.
- (d) Legislative and Judicial Branches. Web-content filtering software purchased by the executive branch, such as Marshall 86, shall not be used to monitor content or block websites by the legislative or judicial branches of government. Those branches may purchase and install monitoring and policing software deemed appropriate by them.
- (e) Web-content Filtering Committee. The commissioners of human resources and of information and innovation or designees, the director and the chair of the board of trustees of the Vermont state employees association or designees, and one representative of exempt state workers jointly selected by the other four members shall comprise the web-content filtering committee. Administrative support shall be provided by the department of information and innovation. The committee shall decide which sites are blocked based on a list of categories identified by the vendor providing internet monitoring services for the state, such as Marshall 86. The committee shall ensure that the URLs of websites deemed to contain "adult" material not suitable for the workplace are blocked. The committee shall publish its decisions to all state workers who shall be subject to the decisions of the committee.

<u>Third</u>: By adding a new section to be numbered Sec. E.309.18 to read as follows:

Sec. E.309.18 PEDIATRIC PALLIATIVE CARE

(a) The agency of human services shall request a provision allowing Vermont to provide its Medicaid- and SCHIP-eligible children who have life-limiting illnesses with concurrent palliative services and curative care, either as

part of its renewal of the state's Global Commitment for Health Medicaid Section 1115 waiver or as an amendment following renewal.

Fourth: In Sec. E.317(a) by striking out the word "juvenile"

<u>Fifth</u>: By striking out Sec. E.318 in its entirety and inserting in lieu thereof a new Sec. E.318 to read as follows:

Sec. E.318 CHILD CARE ELIGIBILITY; PROCESSING

- (a) Until February 1, 2011, the department for children and families shall continue to contract with community agencies for the determination of financial eligibility for the child care services program established in 33 V.S.A. § 3212. Between February 1, 2011 and June 30, 2011, the department for children and families shall continue to contract with community agencies to support families and child care providers with eligibility and payment needs so they can effectively and efficiently navigate the new system during the transition period and beyond.
- (b) Before February 1, 2011, the department for children and families shall work with the community agencies to apply technology in a manner that most appropriately balances centralized services with community-based services so that these services will most efficiently and effectively address the needs of families and child care providers.

<u>Sixth</u>: By adding a new section to be numbered Sec. E.329.1 to read as follows:

Sec. E.329.1 Sec. E.308.1 of No. 1 of the Acts of 2009 (Special Session) is amended to read:

Sec. E.308.1 FISCAL YEAR 2010 NURSING HOMES; HIT INCENTIVES

(a) The By fiscal year 2014, the division of rate setting shall examine the need to 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. In examining the need for an incentive or rate adjustment, the division shall consider the availability and likelihood of federal funding opportunities to achieve the intended purpose of this section.

<u>Seventh</u>: In Sec. E.605 by inserting a new subsection (d) to read as follows:

(d) The commission on higher education funding shall review the responsibilities and funding sources for the Vermont Student Assistance Corporation (VSAC) as its allowable activities under federal law change in order to determine the appropriate priority for services provided by VSAC. By January 15, 2011, the commission shall report to the general assembly with its recommendations for modifying VSAC's responsibilities and priorities.

<u>Eighth</u>: In Sec. E.803 by striking out subdivision (b)(4) and inserting in lieu thereof a new subdivision (b)(4) to read as follows:

(4) CDBG and other public funds are intended to create and preserve affordable housing for households for income-eligible families, seniors and those with special needs. Limited public funding must focused on these households. Therefore, funding for projects which intend to serve households which exceed the CDBG income limits shall be consistent with the Vermont housing finance agency's qualified allocation plan.

<u>Ninth</u>: In Sec. G.100 by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) This section and Secs. C.100, C.101, C.101.1, C.102, E.100.5, E.100.6 (Proposed Reduction in Work Force), E.100.7 (Web Filtering), E.127.2, E.220.1, E.230, E.230.1, E.309.11 (Medicare One-Time Payment), E.309.12 (Expedited rules for OVHA), E.309.18 (Pallative Care), E.321.4 (Expedited Rules for DCF), E.323 (Repeal Reach Ahead sunset), E.501.1, E.800, E.800.1, E.801.1, E.803.1, and E.810 of this act shall take effect upon passage.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Bartlett on behalf of the Committee on Appropriations?, Senator Bartlett requested and was granted leave to withdraw the *seventh* proposal of amendment.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended in the *first* through *sixth* and *eighth* and *ninth* proposals of amendment?, Senator Brock moved that the *second* proposal of amendment be voted separately.

Which was agreed to.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended in the *first*, *third* through *sixth* and *eighth* and *ninth* proposals of amendment?, were collectively agreed to.

Thereupon, pending third reading of the bill?, Senator Illuzzi moved that the Senate proposal of amendment be amended by adding three new sections to be numbered Secs. E.605.1, E.605.2 and E.605.3 to read as follows:

Sec. E.605.1. VERMONT STUDENT ASSISTANCE CORPORATION; REPORT

Findings.

- (a) The U.S. Congress in March 2010 eliminated the ability of the Vermont Student Assistance Corporation (VSAC) to make new federal education loans, which will result in a substantially reduced workload at VSAC. Between \$200 and \$300 million in fewer loans will need to be processed.
- (b) The federal Higher Education Act shifts from lenders like VSAC to institutions of higher education tasks such as the monthly reconciliation of loan accounts, entrance and exit counseling including consumer information relating to loan obligations, and loan counseling.
- (c) Colleges and universities across America, as well as the federal government, are staffing up and training existing staff to address the shifting of responsibilities of making new federal education loans. Public institutions of higher education are justifying in part budget increases due to new responsibilities which the federal Higher Education Act places on them.
- (d) Although VSAC has engaged in outreach programs for many years, those duties are to various levels duplicated, or will be duplicated, by private and public colleges, universities and high schools across America.
- (e) Notwithstanding the major part of its work and revenue disappearing because of the action of the U.S. Congress, VSAC intends to continue its current staffing levels by reducing by up to \$1.3 million the amount of direct student grants and loans to Vermonters.
- (f) Although VSAC reports it has eliminated 47 positions from its workforce, reducing the number of employees from 375 to 336, further reductions in force will be necessary as a result of the action taken by the U.S. Congress.
- Sec. E.605.2 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 Secs. E.215(a) and B.1100(a)(3)(B) of this act, \$250,000 shall be used for the purposes of 16 V.S.A. § 2856. Any unexpended funds from these allocations shall carry forward for this purpose.

Sec. E.605.3 REPORT

The Vermont student assistance corporation (VSAC) shall file a report with the general assembly by January 15, 2011. The report shall detail VSAC's changing role as a result of the federal Higher Education Act and its plans to reduce spending and adjust staffing levels.

Senator Mazza Assumes the Chair

Which was disagreed to.

Thereupon, pending third reading of the bill, Senator Illuzzi moved that the Senate proposal of amendment be amended by adding a new section to be numbered Sec. E.605.1 to read as follows:

Sec. E.605.1. VERMONT STUDENT ASSISTANCE CORPORATION; REPORT

Findings.

- (a) The U.S. Congress in March 2010 eliminated the ability of the Vermont Student Assistance Corporation (VSAC) to make new federal education loans, which will result in a substantially reduced workload at VSAC. Between \$200 and \$300 million in fewer loans will need to be processed.
- (b) The federal Higher Education Act shifts from lenders like VSAC to institutions of higher education tasks such as the monthly reconciliation of loan accounts, entrance and exit counseling including consumer information relating to loan obligations, and loan counseling.
- (c) Colleges and universities across America, as well as the federal government, are staffing up and training existing staff to address the shifting of responsibilities of making new federal education loans. Public institutions of higher education are justifying in part budget increases due to new responsibilities which the federal Higher Education Act places on them.
- (d) Although VSAC has engaged in outreach programs for many years, those duties are to various levels duplicated, or will be duplicated, by private and public colleges, universities and high schools across America.
- (e) Notwithstanding the major part of its work and revenue disappearing because of the action of the U.S. Congress, VSAC intends to continue its current staffing levels by reducing by up to \$1.3 million the amount of direct student grants and loans to Vermonters.

(f) Although VSAC reports it has eliminated 47 positions from its workforce, reducing the number of employees from 375 to 336, further reductions in force will be necessary as a result of the action taken by the U.S. Congress.

Senator Shumlin Assumes the Chair

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Illuzzi (re: Sec. E.605.1) Senator Cummings raised a point of order, that the Senate could not consider this proposal of amendment since the Senate had rejected it when it voted not to adopt Senator Illuzzi's first proposal of amendment with respect to Secs. E.605.1, E.605.2 and E.605.3. The President *pro tempore overruled* the point of order, noting that Senate Rule 90 did not apply in that the two proposal of amendment were different questions. The Senate having voted on the proposals to amendment Secs. E.605.1, E.605.2 and E.605.3 as a group, it was permissible to offer a separate amendment on Sec. E.605.1 by itself.

Thereupon, the recurring question, Shall the Senate proposal of amendment be amended as recommended by Senator Illuzzi?, was disagreed to.

Thereupon, pending third reading of the bill, Senator Illuzzi moved that the Senate proposal of amendment be amended by adding a new section to be numbered Sec. E. 605.3 to read as follows:

Sec. E.605.3 REPORT

The Vermont student assistance corporation (VSAC) shall file a report with the general assembly by January 15, 2011. The report shall detail VSAC's changing role as a result of the federal Higher Education Act and its plans to reduce spending and adjust staffing levels.

Which was agreed to on a roll call, Yeas 29, Nays 0.

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

Roll Call

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

Those Senators who voted in the negative were: None.

The Senator absent or not voting was: Shumlin (presiding).

Thereupon, pending third reading, Senator Bartlett, on behalf of the Committee on Appropriations, offered its *seventh* proposal of amendment, relating to Sec. E.605, which was agreed to.

Thereupon, pending third reading of the bill, Senator Brock moved to amend the *second* proposal of amendment of Senator Bartlett, on behalf of the Committee on Appropriations, to strike out subsection (d) in its entirety and by inserting in lieu thereof a new subsection (d) to read as follows:

(d) Legislative and Judicial Branches. Web-content filtering software purchased by the executive branch, such as Marshall 86, shall be used to monitor content or block websites by the legislative or judicial branches of government, only if such use is approved by the legislative and judicial branches. Otherwise, the legislative and judicial branches may purchase and install other monitoring and policing software deemed appropriate by them.

Which was agreed to.

Thereupon, the *second* proposal of amendment of Senator Bartlett, on behalf of the Committee on Appropriations, as amended, was agreed to.

Thereupon, pending third reading of the bill, Senator Racine moved that the Senate proposal of amendment be amended by adding a new section to be numbered Sec. B.1104 to read as follows:

Sec. B.1104. TRANSFER FROM STABILIZATION RESERVE TO GENERAL FUND

Notwithstanding any other provisions of law, in fiscal year 2011 there is appropriated from the general fund budget stabilization reserve under 32 V.S.A. § 308, to the general fund, the amount of \$20.0 million.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Racine?, Senator Ashe, moved to substitute a proposal of amendment for the proposal of amendment of Senator Racine, as follows:

By adding a new section to be numbered Sec. B.1104 to read as follows:

Sec. B.1104. TRANSFER FROM STABILIZATION RESERVE TO GENERAL FUND

Notwithstanding any other provisions of law, in fiscal year 2011 there is appropriated from the general fund budget stabilization reserve under 32 V.S.A. § 308, to the general fund, the amount of \$38.0 million less any dollar savings identified in H. 792, the Challenges for Change legislation, at the time the 2009-2010 biennial legislative session adjourns.

Which was disagreed to on a roll call, Yeas 11, Nays 18.

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, Cummings, Flanagan, Hartwell, Illuzzi, Kittell, MacDonald, McCormack, Racine, Starr, White.

Those Senators who voted in the negative were: Ayer, Bartlett, Brock, Campbell, Carris, Choate, Doyle, Flory, Giard, Kitchel, Lyons, Mazza, Miller, Mullin, Nitka, Scott, Sears, Snelling.

The Senator absent or not voting was: Shumlin (presiding).

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senator Racine?, Senator Racine requested and was granted leave to withdraw the proposal of amendment.

Thereupon, pending third reading of the bill, Senators Ashe and Giard moved that the Senate proposal of amendment be amended by adding a new section to be numbered Sec. E.309.19 to read as follows:

Sec. E.309.19. VERMONT NONPROFIT HOSPITAL SERVICE CORP; VERMONT NONPROFIT MEDICAL CORP; BOARD OF DIRECTORS; COMPENSATION

The total combined compensation, if any, of the board of directors of any Vermont nonprofit hospital service corporation or Vermont nonprofit medical service corporation in calendar year 2011 shall be no more than 90 percent of the total combined compensation of the board in calendar year 2010.

Senator Campbell Assumes the Chair

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senators Ashe and Giard?, Senator Brock raised a point of order. Thereupon, pending the ruling of the Chair, Senator Brock withdrew his point of order.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senators Ashe and Giard?, Senator Ashe requested and was granted leave to withdraw the proposal of amendment.

Thereupon, pending third reading of the bill, Senator Lyons moved that the Senate proposal of amendment be amended in Sec. E.100.5 by adding a new subsection (b) to read as follows:

(b) It is legislative intent that Challenges for Change Act and H. 792 shall result in creative opportunities for improved program outcomes and savings in the budget. It is also legislative intent that the Challenges for Change process

shall not result in cuts to employees and that any changes result in the same or improved services. Any appropriations or Challenges for Change conference committees shall work to ensure that these principles are maintained. The joint fiscal committee and general accountability committee shall work with the administration to ensure that these principles are maintained when the legislature is not in session.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Lyons?, Senator Lyons moved to substitute her proposal of amendment as follows:

That the Senate proposal of amendment be amended in Sec. E.100.5 by adding a new subsection (b) to read as follows:

(b) It is legislative intent that Challenges for Change Act and H. 792 shall result in creative opportunities for improved program outcomes and savings in the budget. It is also legislative intent that the Challenges for Change process shall not result in reductions in workforce and that any changes result in the same or improved services. The joint fiscal committee and general accountability committee shall work with the administration to ensure that these principles are maintained when the legislature is not in session.

Which was agreed to.

Thereupon, the question, Shall the Senate proposal of amendment be amended as recommended by Senator Lyons, as substituted?, was disagreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment, on a roll call, Yeas 23, Nays 6.

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: Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, Mazza, Miller, Mullin, Nitka, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: Ashe, Flanagan, Flory, MacDonald, McCormack, Racine.

The Senator absent or not voting was: Shumlin (presiding).

Committees of Conference Appointed

S. 264.

An act relating to stop and hauling charges.

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

Senator Kittell Senator Starr Senator Giard

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

H. 759.

An act relating to executive branch fees.

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

Senator Carris Senator Ayer Senator McCormack

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

H. 790.

An act relating to capital construction and state bonding.

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

Senator Scott Senator Mazza Senator Campbell

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 Mazza, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 264, H. 772, H. 789.

Rules Suspended; Action Messaged

On motion of Senator Mazza, the rules were suspended, and the action on the following bills was ordered messaged to the House forthwith:

H. 759, H. 790.

Rules Suspended; Bill Delivered

On motion of Senator Mazza, the rules were suspended, and the following bill was ordered delivered to the Governor forthwith:

S. 239.

Senate Resolution Adopted

S.R. 17.

Senate resolution of the following title:

Senate resolution relating to problems associated with underage consumption of alcohol.

Was taken up.

Thereupon, the resolution was read the third time and adopted on a roll call, Yeas 14, Nays 13.

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, Ayer, Carris, Choate, Giard, Hartwell, Illuzzi, Kittell, MacDonald, McCormack, Miller, Mullin, Starr, White.

Those Senators who voted in the negative were: Bartlett, Brock, Campbell, Cummings, Doyle, Flory, Kitchel, Lyons, Mazza, Nitka, Racine, Scott, Snelling.

Those Senators absent or not voting were: Flanagan, Sears, Shumlin (presiding).

Senator Campbell Assumes the Chair

Third Reading Ordered

H. 689.

Senator Cummings, for the Committee on Finance, to which was referred House bill entitled:

An act relating to the Uniform Common Interest Ownership Act.

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 H. 767.

Senator Choate, for the Committee on Agriculture, to which was referred House bill entitled:

An act relating to the livestock care standards advisory council.

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. 6 V.S.A. chapter 64 is added to read:

CHAPTER 64. LIVESTOCK CARE STANDARDS ADVISORY COUNCIL

§ 791. DEFINITIONS

As used in this chapter:

- (1) "Agency" means the agency of agriculture, food and markets.
- (2) "Council" means the livestock care standards advisory council.
- (3) "Livestock" means cattle, calves, sheep, swine, horses, mules, goats, fallow deer, American bison, poultry, and any other animal that can or may be used in and for the preparation of meat, fiber, or poultry products.
 - (4) "Secretary" means the secretary of agriculture, food and markets.

§ 792. ESTABLISHMENT OF LIVESTOCK CARE STANDARDS ADVISORY COUNCIL

- (a) There is established a livestock care standards advisory council for the purposes of evaluating the laws of the state and of providing policy recommendations regarding the care, handling, and well-being of livestock in the state. The livestock care standards advisory council shall be composed of the following members, all of whom shall be residents of Vermont:
- (1) The secretary of agriculture, food and markets or his or her designee, who shall serve as the chair of the council.
 - (2) The state veterinarian.
 - (3) The following four members appointed by the governor:
- (A) A person with knowledge of food safety and food safety regulation in the state who is a representative of an agricultural department of a Vermont college or university.
 - (B) A representative of the Vermont slaughter industry.

- (C) A representative of the Vermont livestock dealer, hauler, or auction industry.
- (D) A representative of a local humane society or organization registered with the agency and organized under state law.
- (4) The following two members appointed by the committee on committees:
- (A) A Vermont resident with experience or expertise in equine husbandry practices or equine management.
 - (B) A Vermont licensed livestock or poultry veterinarian.
 - (5) The following two members appointed by the speaker of the house:
- (A) An enforcement officer, as defined in 23 V.S.A. § 4, or an animal control officer elected, appointed, or employed by a municipality, provided that the enforcement officer or animal control officer has experience or expertise in investigations regarding livestock care and well-being and provided that no animal control officer receiving compensation from a national humane society or organization may be appointed under this subdivision.
 - (B) An operator of a Vermont dairy farm.
- (b) Members of the board shall be appointed for staggered terms of three years. Except for the chair and the state veterinarian, no member of the council may serve for more than six consecutive years.
- (c) With the concurrence of the chair, the council may use the services and staff of the agency in the performance of its duties.

§ 793. POWERS AND DUTIES OF LIVESTOCK CARE STANDARDS ADVISORY COUNCIL

- (a) The council shall:
- (1) Review and evaluate the laws and rules of the state applicable to the care and handling of livestock. In conducting the evaluation required by this section, the council shall consider the following:
 - (A) agricultural best management practices;
 - (B) biosecurity and disease prevention;
 - (C) animal morbidity and mortality data;
 - (D) food safety practices;
- (E) the protection of local and affordable food supplies for consumers;

- (F) the overall health and welfare of livestock species; and
- (G) humane transport and slaughter practices.
- (2) Submit policy recommendations to the secretary on any of the subject matter set forth under subdivision (1) of this subsection. A copy of the policy recommendations submitted to the secretary shall be provided to the house and senate committees on agriculture. Recommendations may be in the form of proposed legislation.
- (3) Meet at least annually and at such other times as the chair determines to be necessary.
- (b) The council may engage in education and outreach activities related to the laws and regulations for the care and handling of livestock. The council may accept funds from public or private sources in compliance with 32 V.S.A. § 5.

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, and the proposal of amendment was agreed to, and third reading of the bill was ordered.

Proposals of Amendment; Third Readings Ordered H. 281.

Senator Illuzzi, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to the removal of bodily remains.

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. 18 V.S.A. § 5212b is amended to read:

§ 5212b. UNMARKED BURIAL SITES SPECIAL FUND; REPORTING OF UNMARKED BURIAL SITES

(a) The unmarked burial sites special fund is established in the state treasury for the purpose of protecting, preserving, moving or reinterring human remains discovered in unmarked burial sites.

- (b) The fund shall be comprised of any monies appropriated to the fund by the general assembly or received from any other source, private or public. Interest earned on the fund, and any balance remaining in the fund at the end of a fiscal year, shall be retained in the fund. This fund shall be maintained by the state treasurer, and shall be managed in accordance with subchapter 5 of chapter 7 of Title 32.
- (c) The commissioner of <u>economic</u>, housing and community <u>affairs</u> <u>development</u> may authorize disbursements from the fund for use in any municipality in which human remains are discovered in unmarked burial sites in accordance with a process approved by the commissioner. The commissioner <u>shall may</u> approve any process developed through consensus or agreement of the interested parties, including the municipality, <u>the governor's advisory commission on Native American affairs a Native American group historically based in Vermont with a connection to the remains, and <u>private property</u> owners of <u>private</u> property on which there are known or likely to be unmarked burial sites, <u>and any other appropriate interested parties</u>, provided the commissioner determines that the process is likely to be effective, and includes all the following:</u>
- (1) Methods for determining the presence of unmarked burial sites, including archaeological surveys and assessments and other nonintrusive techniques.
- (2) Methods for handling development and excavation on property on which it is known that there is or is likely to be one or more unmarked burial sites.
- (3) Options for owners of property on which human remains in unmarked burial sites are discovered or determined to be located.
- (4) Procedures for protecting, preserving or moving unmarked burial sites and human remains, subject, where applicable, to the permit requirement and penalties of this chapter.
 - (5) Procedures for resolving disputes.
- (d) If unmarked burial sites and human remains are removed, consistent with the process set forth in this section and any permit required by this chapter, there shall be no criminal liability under 13 V.S.A. § 3761.
- (e) The funds shall be used for the following purposes relating to unmarked burial sites:
 - (1) To monitor excavations.
- (2) To protect, preserve, move, or reinter unmarked burial sites and human remains.

- (3) To perform archaeological assessments and archaeological site or field investigations, including radar scanning and any other nonintrusive technology or technique designed to determine the presence of human remains.
- (4) To provide mediation and other appropriate dispute resolution services.
- (5) To acquire property or development rights, provided the commissioner of <u>economic</u>, housing and community <u>affairs</u> <u>development</u> determines that disbursements for this purpose will not unduly burden the fund, and further provided the commissioner shall expend funds for this purpose only with the concurrence of the secretary of commerce and community development and after consultation with the legislative bodies of any affected municipality or municipalities.
- (6) Any other appropriate purpose determined by the commissioner to be consistent with the purposes of this fund.
- (f) The commissioner may adopt rules to carry out the intent and purpose of this section. When an unmarked burial site is first discovered, the discovery shall be reported immediately to a law enforcement agency. If, after completion of an investigation pursuant to section 5205 of this title, a law enforcement agency determines that the burial site does not constitute evidence of a crime, the law enforcement agency shall immediately notify the state archeologist who may authorize appropriate action regarding the unmarked burial site.

Sec. 2. UNMARKED BURIAL SITE TREATMENT PLAN COMMITTEE

- (a) The unmarked burial site treatment plan committee is created to develop procedures for addressing issues relating to known or discovered unmarked burial sites of human remains, including developing treatment plans to be used when an unmarked burial site is discovered on private property. The committee shall be composed of the following nine members:
- (1) The commissioner of economic, housing and community development or the commissioner's designee.
 - (2) The state archeologist or designee.
 - (3) A representative from the Vermont League of Cities and Towns.
- (4) A representative from a Native American group based in Vermont who has experience in handling unmarked burial sites, appointed by the commissioner of economic, housing and community development.
- (5) A federal archeologist from the Natural Resources Conservation Service of the U.S. Department of Agriculture.

- (6) The U.S. Forest Service, Green Mountain National Forest archeologist.
- (7) The director of the University of Vermont consulting archeology program.
 - (8) A representative from the Vermont Bankers Association Inc.
- (9) A representative from the Home Builders and Remodelers Association of Vermont.

(b) The committee shall:

- (1) Develop procedures for responding to reports of a discovery of an unmarked burial site. For the purposes of this section "an unmarked burial site" means the location of any interment of human remains, evidence of human remains, including the presence of red ochre, associated funerary objects, or a documented concentration of burial sites, but does not include a cemetery, mausoleum, or columbarium or any other site that is clearly marked as a site containing human remains.
- (2) Develop various treatment plans for addressing issues that attend the discovery of an unmarked burial site on private property. A treatment plan is an outline of the process for providing appropriate and respectful treatment of the burial site while considering the rights of the landowner. Each treatment plan shall include one or all of the following:
- (A) Methods for determining the presence of an unmarked burial site, including archeological surveys and assessments and other nonintrusive techniques.
- (B) Methods for handling development and excavation on property on which there is a known burial site or there is likely to be one.
- (C) Options for owners of property on which human remains are discovered or known to be located.
- (D) Procedures for protecting, preserving, or moving the burial site and the human remains.
 - (E) Time frames for implementation of the treatment plan.
 - (F) Procedures for resolving disputes among stakeholders.
- (3) The committee shall issue a written report outlining the procedures and treatment plans to the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs on or before January 15, 2011.

Sec. 3. 18 V.S.A. § 5212 is amended to read:

§ 5212. PERMIT TO REMOVE DEAD BODIES

- (a) A person desirous of disinterring or removing the body of a human being from one cemetery to another cemetery or to another part of the same cemetery or from a tomb or receiving vault elsewhere shall apply to the town clerk of the town where such municipality in which the dead body is interred or entombed for a removal permit.
- (b) An applicant for a removal permit shall publish notice of his or her intent to remove the remains. This notice shall be published for two successive weeks in a newspaper of general circulation in the town municipality in which the body is interred or entombed. The notice shall include a statement that the spouse, child, parent of, sibling, or descendant of the deceased, or that the cemetery commissioner or other municipal authority responsible for cemeteries in the municipality may object to the proposed removal by filing a complaint in the probate court of the district in which the body is located as provided in section 5212a of this title.
- (c) The town <u>municipal</u> clerk shall issue a removal permit 45 days after the date on which notice was last published pursuant to subsection (b) <u>of this section</u> or, if an objection is made pursuant to section 5212a, upon order of the court.
- (d) Notwithstanding the provisions of subsections (b) and (c) of this section, a removal permit shall be issued upon application:
 - (1) when removal is necessary because of temporary entombment; or
- (2) to a federal, state, county, or municipal official acting pursuant to official duties; or
- (3) if the applicant has written permission to remove the remains from all persons entitled to object under section 5212a of this title.
 - (e) This section does not apply to:
- (1) Unmarked burial sites that are subject to the provisions of subchapter 7 of this chapter.
- (2) The removal of "historic remains," which has the same meaning as in subdivision 5217(a)(1) of this title.
- Sec. 4. 18 V.S.A. § 5217 is added to read:

§ 5217. REMOVAL OF MARKED HISTORIC REMAINS

(a) As used in this section:

- (1) "Historic remains" means remains of a human being who has been deceased for 100 years or more, and the remains are marked and located in a publicly known or marked burial ground or cemetery.
- (2) "Public good" means actions that will benefit the municipality and the property where the remains are located.
- (3) "Remains" means cremated human remains that are in a container or the bodily remains of a human being.
- (4) "Removal" means to transport human remains from one location to another premises.
- (b) A person may apply for a removal permit to disinter or remove historic remains by filing an application with the clerk for the municipality in which the historic remains are located. The application shall include all the following:
 - (1) Identification of the specific location and marking of the remains.
- (2) Identification of the specific location in which the remains will be reburied.
- (3) The reasons for removal of the remains, including a statement of the public good that will result from the removal.
- (c) An applicant for a removal permit shall send notice by first-class mail to all the following:
- (1) The cemetery commissioner or other municipal authority responsible for cemeteries in the municipality in which the historic remains are located.
- (2) All historical societies located within the municipality in which the historic remains are located.
- (3) Any decedent known to the applicant. The applicant shall contact the Vermont Historical Society, the Vermont Old Cemetery Association, the Vermont Cemetery Association, and any veterans' organization operating within the county in which the historic remains are located in order to ascertain the whereabouts of any known descendants.
- (d) An objection to the proposed removal of historic remains may be filed by one of the individuals listed in subsection (c) of this section. The objection shall be filed with the probate court for the district in which the historic remains are located and the clerk for the municipality in which the historic remains are located within 30 days after the date the notice was mailed.
- (e) If no objection is received within 30 days after the date the notice was last published as required by subsection (c) of this section, the municipal clerk shall issue a removal permit.

- (f) If the probate court receives an objection within the 30-day period, the court shall notify the clerk for the municipality in which the historic remains are located and schedule a hearing on whether to allow removal as described in the application.
- (g) The probate court, after hearing, shall order the municipal clerk to grant or deny a permit for removal of the historic remains. The court shall consider the impact of the removal on the public good.
- (h) The permit shall require that all remains, markers, and relevant funeral-related materials associated with the burial site be removed. All costs associated with the removal shall be paid by the applicant.
- Sec. 5. 33 V.S.A. § 2301 is amended to read:

§ 2301. BURIAL RESPONSIBILITY

- (a)(1) When a person dies in this state, or a resident of this state dies within the state or elsewhere, and the decedent was a recipient of assistance under Title IV or XVI of the Social Security Act, or nursing home care under Title XIX of the Social Security Act, or assistance under state aid to the aged, blind or disabled, or an honorably discharged veteran of any branch of the U.S. military forces to the extent funds are available and to the extent authorized by department regulations rules, the decedent's burial shall be arranged and paid for by the department if the decedent was without sufficient known assets to pay for burial. The department shall pay burial expenses when arrangements are made other than by the department to the maximum permitted by its regulations for individuals who meet the requirements of this section in an amount not to exceed a maximum established by rule and shall establish by rule a process for reducing the maximum payment amount by the amount of other assets available to pay for the burial. In any case where other contributions are made, these payments shall be deducted from the amount otherwise paid by the department but in no case is the department responsible for any payment when the person arranging the burial selects a funeral the price of which exceeds the department's maximum. The maximum payment by the department does not preclude the next-of-kin's paying for or receiving contributions to pay for additional disposition expenses.
- (2) The department shall notify the directors of all funeral homes within the state and within close proximity to the state's borders of its regulations rules with respect to those services for which it shall make payment pays and the amount of payment authorized for such those services. All payments shall be made directly to the appropriate funeral director. In order to receive payment under this section, the funeral director shall provide the department and the party making the funeral arrangements with an itemized invoice for the specific services that are to be provided at public expense.

- (3) As a condition of payment when arrangements are made other than by the department, funeral directors shall be required to do the following:
- (A) the funeral director shall determine from the person making the arrangements if the decedent was a recipient of assistance or an eligible veteran as specified in subdivision (a)(1) of this section;
- (B) If, and if the decedent was such a recipient, give notice to the party person making the arrangements of the department's regulations rules.
- (4) If the funeral home director does not advise the person making the arrangements of the department's <u>regulations</u> then that person shall not be liable for expenses incurred.

* * *

- (c) When a person other than one described in subsection (a) or (b) of this section dies in the town of domicile without sufficient known assets to pay for burial, the burial shall be arranged and paid for by the town. The department shall reimburse the town up to \$250.00 for expenses incurred.
- (d)(c) In all other cases the department shall arrange for and pay <u>up to the maximum amount established by rule</u> for the burial of <u>eligible</u> persons who die in this state or residents of this state who die within the state or elsewhere when <u>such the</u> persons are without sufficient known assets to pay for their burial.

(e) [Omitted.]

- (f) In all cases where the department is responsible for funeral and/or or burial expenses under this chapter, the department shall provide, by rule, the specific services that are to be provided at public expense, and on an itemized basis the maximum price to be paid by the department for each such service.
- (g)(d) For the purpose of this chapter, "burial" means the act of final disposition of human remains including interring the human dead or cremating a decedent and the ceremonies directly related to that cremation or interment at the gravesite; and "funeral" means the ceremonies prior to burial of the body by interment, cremation, or other method.
- Sec. 6. 20 V.S.A. §§ 1581, 1582, and 1583 are amended to read:
- § 1581. VERMONT VETERANS' MEMORIAL CEMETERY ADVISORY BOARD
- (a) The Vermont veterans' memorial cemetery advisory board is created to advise the adjutant general on determine all matters relating to the establishment and operation of a Vermont veterans' memorial cemetery to be

known as the Vermont Veterans' Memorial Cemetery. The board shall consist of:

- (1) The commissioner of the department of buildings and general services, adjutant general or designee, who shall serve as chair of the board.
- (2) The commissioner of the department of buildings and general services or designee.
- (3) One member of the senate who shall be appointed by the senate committee on committees.
- (3)(4) One member of the house who shall be appointed by the house speaker.
- (4)(5) Four individuals who represent veterans or are members of a veterans' organization, to be appointed by the governor for staggered terms of six years.
- (5)(6) One individual who represents the Vermont granite, Vermont slate, or Vermont marble industry selected by the governor for a six-year term.
- (b) The office of the adjutant general shall provide administrative support to the board.
- (c) For each meeting, legislative members shall be are entitled to receive compensation and reimbursement for expenses as provided under subsection 406(a) of Title 2.—The , and members representing veterans or from veterans' organizations shall be are entitled to per diem as provided in section 1010 of Title 32 and their necessary and actual expenses.

§ 1582. RULES; DAILY OPERATIONS

- (a) At the request of and in consultation with the Vermont veterans' memorial cemetery advisory board may, the department of buildings and general services shall adopt rules under the provisions of chapter 25 of Title 3 relating to acquisition of land, design of the cemetery, its buildings and grave markers, eligibility for burial, and any other matters necessary to establish and maintain the Vermont veterans' memorial cemetery.
 - (b) Daily operations shall be overseen by the adjutant general.

§ 1583. ADJUTANT GENERAL; POWERS AND DUTIES

(a) The adjutant general, subject to available funds and with the advice <u>and consent</u> of the Vermont veterans' memorial cemetery <u>advisory committee board</u>, shall administer the creation, establishment, operation, and maintenance of the Vermont veterans' memorial cemetery.

* * *

Sec. 7. 18 V.S.A. § 5201 is amended to read:

§ 5201. PERMITS; REMOVAL OF BODIES; CREMATION; WAITING PERIOD; INVESTIGATION INTO CIRCUMSTANCES OF DEATH

- (a) <u>Burial transfer permit.</u> A dead body of a person shall not be buried, entombed, or removed from a town, or otherwise disposed of, except as hereinafter provided, without a burial-transit permit issued and signed by the town a municipal clerk, his or her a county clerk, or a deputy clerk for the municipality or unorganized town or gore in which the dead body is located; a funeral director licensed in Vermont; an owner or designated manager of a crematorium licensed in Vermont who is registered to perform removals; or a law enforcement officer.
- (1) The town clerk of the town or city municipality shall provide for registering deaths that occur in the town and for issuing burial-transit permits at a time when town the clerks' offices are closed. The town municipal clerk shall appoint annually, within five days after the clerk's election or appointment, one or more deputy registrars deputies for this purpose, and record the name of the deputy or deputies appointed in the town municipal records and notify the commissioner of health of the names and residences of the deputy or deputies appointed.
- (2) The county clerk of a county wherein is situated in which an unorganized town or gore is located shall perform the same duties and be subject to the same penalties as a town municipal clerk in respect to issuing burial-transit permits and registering deaths that occur in an unorganized town or gore within the county.
- (3) A funeral director licensed in Vermont or an owner or designated manager of a crematory licensed in Vermont who is registered to perform removals may issue a burial-transit permit for any municipality or unorganized town or gore at any time, including during the normal business hours of a municipal clerk.
- (4) After a deputy or law enforcement officer issues a burial-transit permit is issued, the deputy or officer person who issued the permit shall forward the death certificate or preliminary report and the record of the burial-transit permit issued to the clerk of the town or city municipality, or the clerk of the county, in the case of an unorganized town or gore, where death occurred on the first official working day thereafter.
- (5) In cases of death by certain communicable diseases as defined by the board commissioner, the town municipal or county clerk, his or her a deputy registrar, a funeral director, a crematory owner or manager, or a law enforcement officer shall not issue a burial-transit permit except in accordance

with instructions issued by the local health officer or the board, which instructions shall be kept on file by the town clerk. A licensed embalmer, funeral director or a funeral director's designee may transfer the body of a deceased person to another town for preparation for burial or cremation but the remains shall be returned to the town in which death occurred within forty-eight hours after such removal, unless a permit for permanent removal has been secured within such period. Such licensed embalmer, funeral director or designee shall leave, in writing, upon forms supplied by the commissioner, the name, address, license number of the embalmer or funeral director and the date and hour such body was delivered, with the institution from which or the person from whom any such body is received commissioner.

- (6) A body for which a burial-transit permit has been secured, except one for the body of any person whose death occurred as a result of a communicable disease, as defined by the board commissioner, may be taken through or into another town municipality or unorganized town or gore for funeral services without additional permits from the local health officer or board the commissioner.
- (b) No operator of a crematory facility shall cremate or allow the cremation of a dead body until the passage of at least 24 hours following the death of the decedent, as indicated on the death certificate, unless, if the decedent died from a virulent, communicable disease, a department of health rule or order requires the cremation to occur prior to the end of that period. If the attorney general or a state's attorney requests the delay of a cremation based upon a reasonable belief that the cause of death might have been due to other than accidental or natural causes, the cremation of a dead human body shall be delayed, based upon such request, a sufficient time to permit a civil or criminal investigation into the circumstances that caused or contributed to the death.
- (c) The person in charge of the body shall not release for cremation the body of a person who died in Vermont until the person in charge has received a certificate from the chief, regional, or assistant medical examiner that the medical examiner has made personal inquiry into the cause and manner of death and is satisfied that no further examination or judicial inquiry concerning it is necessary. Upon request of a funeral director or crematory operator, the chief medical examiner shall issue a cremation certificate after the medical examiner has completed an autopsy. The certificate shall be retained by the crematory for a period of three years. For the certificate, the medical examiner is entitled to The person requesting cremation shall pay the department a fee of \$25.00 payable by the person requesting cremation.

- (d)(1) For all cremations requested for the body of a person who died outside Vermont, the crematory operator $\frac{1}{2}$ do the following before conducting the cremation:
 - (A) obtain a permit for transit or cremation;
- (B) follow the guidelines of the medical examiner or comparable office for the jurisdiction comply with the laws of the state in which the person died, including, to the extent that such waiting period is longer than that imposed by the provisions of subsection (b) of this section, postponing the cremation until the passage of any waiting period imposed by that state; and
- (C) if the state in which the person died issues a medical examiner's permit, obtain a copy of that permit obtaining a copy of a medical examiner's permit if one is required.
- (2) No additional approval from the Vermont medical examiner's office shall be <u>is</u> required if compliance with the <u>guidelines</u> <u>laws</u> of the state in which the person died is achieved.
- Sec. 8. 18 V.S.A. § 5202 is amended to read:

§ 5202. DEATH CERTIFICATE; DUTIES OF PHYSICIAN <u>AND</u> AUTHORIZED LICENSED HEALTH CARE PROFESSIONAL

- (a) The physician licensed health care professional who is last in attendance upon a deceased person during his last illness shall immediately fill out a certificate of death on a form prescribed by the commissioner. For the purposes of this section, a licensed health care professional means a physician, a physician assistant, or an advance practice registered nurse. If he the licensed health care professional who attended the death is unable to state the cause of death, he or she shall immediately notify the physician, if any, who was in charge of the patient's care, who shall to fill out the certificate. If neither physician is able the physician is unable to state the cause of death, the provisions of section 5205 of this title shall apply. The physician licensed health care professional may, with the consent of the funeral director, delegate to said the funeral director the responsibility of gathering data for and filling out all items except the medical certification of cause of death. All entries, except signatures, on the certificate shall be typed or printed. Such forms and shall contain answers to the following questions:
 - (1) Was the deceased a veteran of any war?
 - (2) If so, of what war?
- (b) When death occurs to an admitted patient in a hospital and it is impossible to obtain a death certificate from an attending physician licensed health care professional before burial or transportation, any physician licensed

health care professional who has access to the facts and can certify that death is not subject to the provisions of section 5205, of this title may complete and sign a preliminary report of death on a form supplied by the commissioner of health. The town municipal or county clerk or his a deputy shall accept this report and issue a burial-transit permit. This preliminary report of death may be destroyed six months after a death certificate has been filed. This does not relieve the attending physician licensed health care professional from the responsibility of completing a death certificate and delivering it to the funeral director within twenty-four hours after death.

(c) If a dead body must be removed immediately and a death certificate or preliminary report cannot be obtained, the town clerk, deputy or law enforcement officer may issue a temporary burial-transit permit which shall expire forty eight hours after issuance. This does not relieve the attending physician from the responsibility of completing a death certificate and delivering it to the funeral director within twenty four hours after death. Upon receipt of the death certificate, the funeral director shall apply for and the issuing authority shall issue a burial-transit permit to replace the temporary permit.

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage, except that Sec. 8 shall take effect on January 1, 2012.

And that the bill title be amended to read as follows:

"An act relating to cremation, the treatment of unmarked burial sites, the treatment of marked historic burial sites, the operation of the Vermont Veterans' Memorial Cemetery, and payment for burial of indigent persons."

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

Senator Shumlin Assumes the Chair

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 the third time?, Senator Illuzzi, on behalf of the Committee on Economic Development, Housing and General Affairs moved to amend the Senate proposal of amendment by striking out the title change and inserting in lieu thereof the following:

After passage, the title of the bill is to be amended to read:

"An act relating to cremation, the treatment of unmarked burial sites, the treatment of marked historic burial sites, the operation of the Vermont Veterans' Memorial Cemetery, death certificates, issuance of burial permits and payment for burial of indigent persons."

Which was agreed to.

Thereupon, third reading of the bill was ordered.

H. 229.

Senator Illuzzi, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to mausoleums and columbaria.

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. 18 V.S.A. § 5577 is amended to read:

§ 5577. MAUSOLEUM BECOMING UNTENABLE

If, in the opinion of the state board commissioner of health, a mausoleum, vault, crypt, or structure containing one or more deceased human bodies becomes a menace to public health hazard, and the owner or owners thereof of the structure fail to remedy or remove the same hazard to the satisfaction of the state board commissioner of health, the commissioner or a court of competent jurisdiction may order the person, firm or corporation owning such owner of the structure to abate the public health hazard or to remove the body or bodies for interment in some suitable cemetery at the expense of the person, firm or corporation owning such owner of the mausoleum, vault, or crypt. When such person, firm or corporation can not the owner cannot be found in the county where such mausoleum, vault or crypt is located, then such person, removal and interment shall be at the expense of the cemetery or cemetery association, city or town where such or the municipality in which the mausoleum, vault, or crypt is situated.

Sec. 2. REPEAL

18 V.S.A. §§ 5073, relating to construction requirements for mausoleums, columbaria, crypts, and niches, and 5074, relating to inspection of mausoleums and columbaria, are repealed.

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, and third reading of the bill was ordered.

H. 622.

Senator Ashe, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to solicitation by prescreened trigger lead information.

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. 8 V.S.A. § 10206 is added to read:

§ 10206. TRIGGER LEAD SOLICITATIONS FOR MORTGAGE LOANS

- (a) In this section:
 - (1) "Consumer" means a natural person residing in this state.
- (2) "Trigger lead" means information about a consumer, including the consumer's name, address, telephone number, and an identification of the amount, terms, or conditions of credit for which the consumer has applied, that is:
- (A) a consumer report obtained pursuant to section 604(c)(1)(B) of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681b, where the issuance of the report is triggered by an inquiry made with a consumer reporting agency in response to an application for a mortgage loan; and
- (B) furnished by the consumer-reporting agency to a third party that is not affiliated with the financial institution or the credit-reporting agency. A trigger lead does not include information about a consumer obtained by a lender that holds or services the existing mortgage indebtedness of the consumer who is the subject of the information.
- (3) "Trigger lead solicitation" means a written or verbal offer or attempt to sell any property, rights, or services to a consumer based on a trigger lead.
- (b) A person conducting a trigger lead solicitation shall disclose to a consumer in the initial phase of the solicitation that:
- (1) the person is not affiliated with the financial institution to which the consumer has submitted an application for credit;
- (2) the financial institution to which the consumer has submitted an application for credit has not supplied the person with any personal or financial information; and

- (3) the name of the person who paid for the trigger lead solicitation.
- (c) A financial institution which has had its name, trade name, or trademark misrepresented in a trigger lead solicitation in violation of this section may, in addition to any other remedy provided by law, bring an action in superior court in the county of its primary place of business, or if its primary place of business is located outside Vermont, in Washington superior court. The court shall award damages for each violation in the amount of actual damages demonstrated by the financial institution or \$5,000.00, whichever is greater. In any successful action for injunctive relief or for damages, the court shall award the financial institution reasonable attorney's fees and costs, including court costs.

Sec. 2. EFFECTIVE DATE

This act shall take July 1, 2010.

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, and third reading of the bill was ordered.

Message from the House No. 63

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 House bill entitled:

H. 647. An act relating to misclassification of employees to lower premiums for workers' compensation and unemployment compensation.

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. Shand of Weathersfield Rep. Marcotte of Coventry Rep. Kitzmiller of Montpelier

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

H. 789. An act making appropriations for the support of government.

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. Heath of Westford

Rep. Larson of Burlington

Rep. Acinapura of Brandon

The House has adopted House concurrent resolutions of the following titles:

- **H.C.R. 333.** House concurrent resolution congratulating Kelsey Howard as the Boys & Girls Club 2010 Vermont State Youth of the Year.
- **H.C.R. 334.** House concurrent resolution honoring Mario Bevacqua on his two decades of exemplary educational leadership in the Weathersfield School District.
- **H.C.R. 335.** House concurrent resolution commemorating the bicentennial of the town of Dover.
- **H.C.R. 336.** House concurrent resolution honoring municipal public works departments' employees and designating May 16–22 as Public Works Week in Vermont.
- **H.C.R. 337.** House concurrent resolution congratulating the Woodford Elementary School on its bicentennial anniversary.
- **H.C.R. 338.** House concurrent resolution congratulating the Association of Africans Living in Vermont, Inc. on its 10th anniversary.
- **H.C.R. 339.** House concurrent resolution congratulating the 2010 winning teams of the Jr. Iron Chef Vermont competition.
- **H.C.R. 340.** House concurrent resolution recognizing the town of Goshen and the Blueberry Management Area in the Moosalamoo National Recreation Area as the Wild Blueberry Capital of Vermont.
- **H.C.R. 341.** House concurrent resolution honoring Molly Ferris for her dedicated peace advocacy, her leadership in theatrical circles, and her outstanding community volunteer work.

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

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

S.C.R. 49. Senate concurrent resolution honoring former Senator Rita Whalen McCaffrey on her career accomplishments at Dismas of Vermont, Inc.

And has adopted the same in concurrence.

Committee of Conference Appointed

H. 789.

An act making appropriations for the support of government.

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

Senator Bartlett Senator Sears Senator Snelling

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

Rules Suspended; Action Messaged

On motion of Senator Mazza, the rules were suspended, and the action on the following bills was ordered messaged to the House forthwith:

H. 789.

Consideration Postponed

Senate bills entitled:

S. 237.

An act relating to operational standards for salvage yards.

S. 287.

An act relating to the licensing and regulation of loan servicers.

House bills entitled:

H. 213.

An act to provide fairness to tenants in cases of contested housing security deposit withholding.

H. 562.

An act relating to the regulation of professions and occupations.

H. 578.

An act relating to requiring all state law enforcement officers to serve under the direction and control of the commissioner of public safety. Joint Senate resolution entitled:

J.R.S. 50.

Joint resolution urging expedited federal initiation of the National Environmental Policy process relating to the proposed federal acquisition of Eagle Point Farm in Derby, Vermont.

Were taken up.

Thereupon, without objection consideration of the bills and resolution were postponed until the next legislative day.

Adjournment

On motion of Senator Mazza, the Senate adjourned until eleven o'clock and thirty minutes in the morning.

WEDNESDAY, APRIL 28, 2010

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 Governor

A message was received from His Excellency, the Governor, by David Coriell, 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 April, 2010, he approved and signed bills originating in the Senate of the following titles:

- **S. 272.** An act relating to human trafficking.
- **S. 293.** An act relating to state standards for boilers and pressure vessels.

Senate Resolution Placed on Calendar

S.R. 24.

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

By Senator Miller,

S.R. 24. Senate resolution supporting continuing implementation of the Inter-Rwandan Dialogue.

Whereas, 20 years ago, Ven Dhyani Ywahoo established the Sunray Peace Village in Lincoln, Vermont, and during the past two decades, she has welcomed many interested visitors and peacemakers, and

Whereas, she imparts to her guests, together with other peacemakers such as Vermont-based international mediator Dr. Louise Diamond, the wise values of compassion, justice, peace and reconciliation that Native American elders have long espoused, and

Whereas, among the peacemakers to the Sunray Peace Village have been two Spanish lawyer-mediators, and

Whereas, since 1990, hundreds of thousands of innocent persons residing in the African nation of Rwanda (Rwandans), and representative of that nation's three primary ethic groups, Hutu, Tutsi and Twa, as well as Congolese from the neighboring Democratic Republic of the Congo, have perished in one of the most deadly interethnic conflicts since World War II, and

Whereas, both the United Nations and the European Parliament have repeatedly declared the existence of important political, economic and strategic interests in Africa's Great Lakes region where Rwanda is located, and

Whereas, the fissures in Rwandan society remain extremely deep, and an extensive restoration of civil harmony is needed in Rwanda and in Africa's entire Great Lakes Region in order for social, cultural, commercial and political life to function with any degree of long-term sustainability, and

Whereas, despite the legal significance of some international judicial proceedings, a true transformation of Rwandan society will require the establishment of new and enduring bonds of acceptance, cooperation and trust among the different Rwandan ethnic, political and social groups, and

Whereas, with this noble goal in mind, the Brussels-based Hutu president of a victims' association and the Rwandan government's Tutsi former plenipotentiary ambassador to the United Nations initiated an interethnic Rwanda dialogue, and

Whereas, in 2004, subsequent to the dialogue's initiation, ten Rwandan men and women, both Tutsi and Hutu, residing outside Rwanda met in Mallorca, Spain, and

Whereas, in 2006, after this first successful meeting and extensive subsequent planning, a second conclave of 20 mixed ethnic Rwandans, both residents of Rwanda and abroad, and now known as the Inter-Rwandan Dialogue, was convened in Barcelona, Spain under the auspices of the 1980 Noble Peace Prize laureate Aldolfo Pérez-Esquivel, and

Whereas, the 2006 Inter-Rwandan Dialogue in Barcelona laid the foundation for the International Network of Truth and Reconciliation in Central Africa, and the resulting protocol of findings led to five additional Dialogue Platforms during 2007 and 2008 that were held in Washington, D.C, (for Rwandans exiled in the United States and Canada); in Amsterdam (for Rwandans exiled in the Netherlands, Belgium and Germany); in Orleans, France (for Rwandans exiled in France and Italy); in Barcelona - The Platform for Rwandan Women (for Rwandan women exiled in seven European countries); and in Kinshasa, Democratic Republic of the Congo, where the plight of Congolese victims, in relation to Rwanda, was the special focus, and

Whereas, in 2009 the Inter-Rwandan Dialogue returned to Mallorca, Spain where the 30 male and female participants included representatives of the seven editions of Dialogue belonging to the Hutu, Tutsi and Twa ethnic groups, and

Whereas, this five-year process has involved former prime ministers, cabinet ministers, ambassadors and political leaders, as well as representatives from civil society, victims' and human rights organizations, and institutions devoted to peace and economic research, and

Whereas, all of these individuals and organizations have focused on the future and continuing this larger Inter-Rwandan Dialogue as the legitimate foundation upon which to build a new Rwanda that all political, ethnic, social, and economic groups in the country, as well as the international community, can widely accept, and

Whereas, the progress that the Inter-Rwandan Dialogue has achieved to date is largely attributable to the enormous leadership of the Spanish mediators who, in their summer of 2009 visit to the Sunray Peace Village, spoke of the centrality of Ven Dhyani Ywahoo's wise values in reducing, and perhaps ultimately transforming, the extreme animosity that the Hutu, Tutsi and Twa, as well as Congolese from the neighboring Democratic Republic of the Congo, have developed toward each other, and

Whereas, the Inter-Rwandan Dialogue is an exemplary and realistic model for the bringing together of opposing ethnic groups involved in major national and international conflicts, and this unusual and praiseworthy international dialogue should be universally applauded and encouraged, and if possible, this dialogue model should be extended to other countries in conflict, now therefore be it

Resolved by the Senate:

That the Senate of the State of Vermont supports the implementation of the Inter-Rwandan Dialogue in its development and continuing implementation of

the Inter-Rwandan Dialogue that is premised on the teachings of Ven Dhyani Ywahoo of Lincoln, Vermont, *and be it further*

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to Ven Dhyani Ywahoo at the Sunray Peace Village in Lincoln, Vermont and to the administrative offices of the Inter-Rwandan Dialogue in Barcelona, Spain.

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

Action Reconsidered; Consideration Postponed

H. 243.

Assuring the Chair that he voted with the majority on a roll call vote by the Senate on the first proposal of amendment recommended by the Committee on Natural Resources and Energy, Senator Campbell moved that the Senate reconsider its vote during its consideration of House bill entitled:

An act relating to the creation of a mentored hunting license.

Thereupon, pending the question, Shall the bill be reconsidered?, on motion of Senator Campbell consideration of the bill was postponed.

Proposal of Amendment; Third Reading Ordered H. 213.

Senator McCormack, for the Committee on Finance, to which was referred House bill entitled:

An act to provide fairness to tenants in cases of contested housing security deposit withholding.

Reported that the bill ought to pass in concurrence.

Senator Campbell, for the Committee on Judiciary, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended by adding a new section to be numbered Sec. 2 to read as follows:

Sec. 2. 9 V.S.A. § 4467 is amended to read:

§ 4467. TERMINATION OF TENANCY; NOTICE

(a) Termination for nonpayment of rent. The landlord may terminate a tenancy for nonpayment of rent by providing actual notice to the tenant of the date on which the tenancy will terminate which shall be at least 14 days after the date of the actual notice. The rental agreement shall not terminate if the tenant pays or tenders rent due through the end of the rental period in which

payment is made or tendered. Acceptance of partial payment of rent shall not constitute a waiver of the landlord's remedies for nonpayment of rent or an accord and satisfaction for nonpayment of rent.

* * *

And that when so amended the bill ought to pass in concurrence with proposal of amendment.

Which was agreed to.

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

House Proposal of Amendment Concurred In

S. 237.

House proposal of amendment to Senate bill entitled:

An act relating to operational standards for salvage yards.

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. 24 V.S.A. §§ 2248 and 2249 are added to read:

§ 2248. SALVAGE YARD OPERATIONAL STANDARDS

- (a) Beginning July 1, 2010, a salvage yard shall meet the following operational standards:
- (1) The salvage yard shall comply with the screening and fencing requirements of section 2257 of this title.
- (2) Motor vehicles shall be drained of all fluids prior to crushing and within 365 days of receipt by the salvage yard, except that a vehicle with visible signs of leaking fluids shall be drained immediately. Fluids shall be drained, collected, and stored according to standards established by the secretary in order to prevent release to the environment. The fluids that shall be drained, collected, and stored under this subdivision include antifreeze, oil, brake fluid, fuel, refrigerants, and transmission fluid.

(3) Vehicles shall be drained and crushed:

(A) on or over a surface that is designed to retain seepage or draining fluids and that is designed to prevent releases to groundwater, discharges to surface waters, or other releases to the environment; or

- (B) by a crusher with an onboard fluid-recovery and storage system that prevents releases to groundwater, discharges to surface waters, or other releases to the environment.
- (4) A salvage yard issued a certificate of registration under section 2242 of this title after July 1, 2010, shall not be sited or operated within 100 feet of a Class I or Class II wetland as those terms are defined in 10 V.S.A. § 902. This subdivision shall not apply to the renewal of a valid certificate of registration under this subchapter.
- (5)(A) A salvage yard issued a certificate of registration under section 2242 of this title after July 1, 2010, shall not be sited or operated within 300 feet of a potable water supply, as that term is defined in 10 V.S.A. § 1972, unless:
 - (i) the water supply provides water to the salvage yard; or
- (ii) the agency of natural resources approves management practices or remedial measures to prevent contamination of the potable water supply.
- (B) This subdivision shall not apply to the renewal of a valid certificate of registration under this subchapter.
- (b) On or before March 31, 2011, the secretary shall adopt by rule requirements for the siting, operation, and closure of salvage yards. The rules shall establish requirements for:
- (1) the siting of salvage yards, including setbacks from surface waters, wetlands, and potable water supplies. Siting requirements under this subdivision may include site-specific conditions for salvage yards operating under a valid certificate of registration under section 2242 of this title, provided that such site-specific conditions are designed to prevent releases to groundwater, discharges to surface waters, or other risks to public health and the environment. A site-specific condition under this subdivision may include the requirement that the owner or operator of a salvage yard obtain an individual certificate of registration under section 2242 of this title instead of operating under a general permit adopted by the secretary under subsection (c) of this section;
- (2) exemptions from the requirement to obtain a certificate of registration under section 2242 of this title;
- (3) when an instrument of financial responsibility may be required by the secretary in amounts necessary to:
- (A) remediate potential or existing environmental contamination caused by the salvage yard; or

- (B) assure proper management of salvage materials upon closure of the salvage yard;
- (4) removal of solid waste or tires from the salvage yard for proper disposal;
- (5) establishment and maintenance of screening or fencing of salvage yards from public view;
 - (6) assuring proper closure of a salvage yard facility;
 - (7) postclosure environmental monitoring of a salvage yard;
- (8) classes or categories of salvage yards, including those handling total loss vehicles from insurance; and
- (9) additional measures that the secretary determines necessary for the protection of public health, safety, and the environment.
- (c)(1) The secretary may issue a general permit for a certificate of registration issued to salvage yards under section 2242 of this title. The general permit may include a provision allowing a holder of a valid certificate of registration issued under this subchapter to self-certify compliance with the applicable standards of this subchapter and rules adopted under this subchapter. A general permit issued under this section shall be adopted by rule and may be incorporated into the rule required under subsection (b) of this section.
- (2) If the secretary adopts a general permit for the regulation of salvage yards under subdivision (1) of this subsection, the secretary may require an owner or operator of a salvage yard that is operating under the general permit or that is applying for coverage under the general permit to obtain an individual certificate of registration under section 2242 of this title if any one of the following applies:
 - (A) the salvage yard does not qualify for the general permit;
- (B) a salvage yard operating under the general permit is in violation of the terms and conditions of the general permit;
- (C) the size, scope, or nature of the activity of the salvage yard exceeds the parameters of the general permit;
- (D) the owner or operator of the salvage yard has a history of noncompliance; or
- (E) the salvage yard presents a potential risk to public health or the environment.

- (d) No person may deliver salvage vehicles to or operate a mobile salvage vehicle crusher at a salvage yard that does not hold a certificate of registration under this subchapter. A salvage yard holding a certificate of registration under this subchapter shall post a copy of its current certificate in a clearly visible location in the proximity of each entrance to the salvage yard.
- (e) The requirement under subdivision (a)(2) of this section or rules adopted under this section to drain a vehicle within 365 days of receipt shall not apply to a salvage yard holding a certificate of registration under this subchapter that, as of January 1, 2010, is conducting business, the primary activity of which is the handling of total loss vehicles from insurance companies.

§ 2249. SALVAGE YARD OPERATOR TRAINING

At least annually, the owner or operator of a salvage yard shall attend a training workshop conducted by or approved by the agency of natural resources regarding the requirements of this subchapter, best management practices, existing and proposed environmental standards, and other applicable federal, state, or municipal requirements.

Sec. 2. 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 19 V.S.A. § 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 a motor vehicle, other than an on-premise utility vehicle, which is allowed to remain

unregistered <u>or uninspected</u> for a period of ninety <u>90</u> days from the date of discovery.

- (7) "Salvage yard" means any place of outdoor storage or deposit for storing, keeping, processing, buying, or selling junk or as a scrap metal processing facility. "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 outdoor area used for operation of an automobile graveyard. 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.
- (14) "Automobile hobbyist" means a person who is not primarily engaged in the business of:
 - (A) selling motor vehicles or motor vehicle parts; or
 - (B) accepting, storing, or dismantling junk motor vehicles.
- (15) "Automobile graveyard" means a yard, field, or other outdoor area on a property owned or controlled by a person and used or maintained for

- storing or depositing four or more junk motor vehicles. "Automobile graveyard" does not include:
- (A) an area used by an automobile hobbyist to store, organize, restore, or display motor vehicles or parts of such vehicles, provided that the hobbyist's activities comply with all applicable federal, state, and municipal law;
- (B) an area used for the storage of motor vehicles exempt from registration under chapter 7 of Title 23;
- (C) an area owned or used by a dealer registered under 23 V.S.A. § 453 for the storage of motor vehicles; or
- (D) an area used or maintained for the parking or storage of operational commercial motor vehicles, as that term is defined in 23 V.S.A. § 4103(4), that are temporarily out of service and unregistered but are expected to be used in the future by the vehicle operator or owner.
- Sec. 3. 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 salvage yard unless he or she:
- (1) Holds a certificate of approval for the location of the salvage yard; and
- (2) Holds a certificate of registration issued by the secretary to operate, establish, or maintain a 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.
- (c) The secretary may require a person to obtain a salvage yard certificate of registration under this section upon a determination, based on available information, that the person has taken action to circumvent the requirements of this subchapter.
- Sec. 3. 24 V.S.A. § 4454(a) is amended to read:
- (a) An action, injunction, or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required municipal land use permit may be instituted under sections section 1974a, 4451, or 4452 of this title against the alleged offender if the action, injunction, or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred and not thereafter, except that the 15-year

limitation for instituting an action, injunction, or enforcement proceeding shall not apply to any action, injunction, or enforcement proceeding instituted for a violation of subchapter 10 of chapter 61 of this title. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

Sec. 4. 27 V.S.A. § 612(a) is amended to read:

(a) Notwithstanding the majority decision in Bianchi v. Lorenz (1997), for land development, as defined in 24 V.S.A. § 4303(3)(10), no encumbrance on record title to real estate or effect on marketability shall be created by the failure to obtain or comply with the terms or conditions of any required municipal land use permit as defined in 24 V.S.A. § 4303(24)(11).

Sec. 5. 24 V.S.A. § 4303(11) is amended to read:

- (11) "Municipal land use permit" means any of the following whenever issued:
- (A) A zoning, subdivision, site plan, or building permit or approval, any of which relate to "land development" as defined in this section, that has received final approval from the applicable board, commission, or officer of the municipality.
- (B) A wastewater system permit issued under any municipal ordinance adopted pursuant to chapter 102 of this title.
- (C) Final official minutes of a meeting that relate to a permit or approval described in subdivision (11)(A) or (B) of this section that serve as the sole evidence of that permit or approval.
- (D) A certificate of occupancy, certificate of compliance, or similar certificate that relates to the permits or approvals described in subdivision (11)(A) or (B) of this section, if the bylaws so require.
- (E) An amendment of any of the documents listed in subdivisions (11)(A) through (D) and (F) of this section.
- (F) A certificate of approved location for a salvage yard issued under subchapter 10 of chapter 61 of this title.

Sec. 6. REPEAL

24 V.S.A. § 2248(a) (statutory operational standards for salvage yards) is repealed March 31, 2011.

Sec. 7. EFFECTIVE DATE

This act shall take effect July 1, 2010.

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

Consideration Postponed

Senate bill entitled:

S. 287.

An act relating to the licensing and regulation of loan servicers.

Was taken up.

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

House Proposal of Amendment Concurred In

J.R.S. 50.

House proposal of amendment to Senate joint resolution entitled:

Joint resolution urging expedited federal initiation of the National Environmental Policy process relating to the proposed federal acquisition of Eagle Point Farm in Derby, Vermont.

Was taken up.

The House proposes to the Senate to amend the joint resolution by striking out the resolution in its entirety and inserting in lieu thereof the following:

J.R.S. 50. Joint resolution urging expedited federal initiation of the National Environmental Policy process relating to the proposed federal acquisition of Eagle Point Farm in Derby, Vermont.

Whereas, the late Michael Dunn, the owner of the 800-acre Eagle Point Farm (approximately one-half of which is located in Derby, Vermont, and the balance in Quebec), conditionally donated through his trust the Vermont portion of this exceptional parcel as a gift to the United States of America for purposes of permanent preservation and public enjoyment, and

Whereas, Eagle Point Farm's Vermont acreage includes diverse freshwater wetland, woodland, and riparian habitats, rich agricultural land, and more than a mile of frontage on 27-mile-long Lake Memphremagog, and

Whereas, this impressive acreage provides land for high quality breeding, migratory, and wintering habitats for priority waterfowl and grassland bird species, and

Whereas, many rare plants and unique natural communities are also located at Eagle Point Farm, and

Whereas, for many decades, through the generosity of the Dunn family, many Vermonters have enjoyed Eagle Point Farm for walking, fishing, hunting, trapping, wildlife observation, and access to Lake Memphremagog, and

Whereas, because Eagle Point Farm is waterfront land, it is valuable monetarily and is at high risk of being developed should the United States not ultimately accept Michael Dunn's generous gift, and

Whereas, not only is this land attractive to developers, but also, in accordance with the terms of Michael Dunn's conditional donation, should the federal government not acquire the Vermont portion of Eagle Point Farm by September 1, 2010, then the trustee must dispose of the property in a manner that would maximize its cash value for the benefit of a secondary institutional beneficiary, and

Whereas, the northeastern office of the United States Fish and Wildlife Service (USFWS), in close collaboration with the state of Vermont, has assessed the conservation value of the Vermont portion of Eagle Point Farm, and

Whereas, there is mutual agreement among federal and state authorities that the optimal disposition of the Vermont portion of Eagle Point Farm is to proceed with a proposal that the Vermont Land Trust has put forward – to wit: that the USFWS should acquire title to the land and that the Vermont Agency of Natural Resources should then administer Eagle Point Farm in Derby as a coordination area for recreational use in accordance with the Wildlife Management Area (WMA) guidelines of the Vermont Department of Fish and Wildlife and a jointly entered memorandum of understanding, and

Whereas, the Province of Quebec is simultaneously working toward accepting a gift of that portion of Michael Dunn's property located in the province, and such an acquisition would provide opportunities for cross-border collaboration, and

Whereas, the Vermont Fish and Wildlife Conservation Group, located in nearby East Charleston, has written to the Vermont congressional delegation, offering its full support for both the federal acquisition and subsequent state management of Eagle Point Farm, and

Whereas, the Memphremagog Watershed Association (MWA) in Derby, whose mission is "the preservation of the environment and natural beauty of the Memphremagog watershed," has written to public officials that it "cannot overstate the importance of and their support for keeping Michael Dunn's property in the public trust and for public use," and

Whereas, the MWA has worked collaboratively with Memphremagog Conservation, Inc. for the preservation of Eagle Point Farm on both sides of the border, and it has reminded public officials that preservation of the property is "consistent with the efforts and goals of the Quebec/Vermont Steering Committee which is charged with the restoration and protection of the international waters of Lake Memphremagog," and

Whereas, the northeastern office of the USFWS has submitted a proposal to its national office in Washington, D.C., to move forward immediately with the scientific assessment and public comment requirements of the National Environmental Policy Act (NEPA) in order that the acquisition process can occur prior to the September 1, 2010, deadline, and

Whereas, the NEPA process will provide the opportunity for the general public to offer its comments on the proposed federal acquisition and state management of Eagle Point Farm in Derby to help determine the best long-term outcome for this special piece of Vermont, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges the United States Fish and Wildlife Service to expedite the National Environmental Policy Act process relating to the proposed federal acquisition of Eagle Point Farm in Derby, Vermont, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the United States Secretary of the Interior, the United States Fish and Wildlife Service Commissioner, the United States Fish and Wildlife Service Northeast Regional Director, the Vermont Congressional Delegation, and the Vermont Secretary of Natural Resources.

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

Bill Passed in Concurrence with Proposal of Amendment

H. 229.

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

An act relating to mausoleums and columbaria.

Consideration Postponed

House bill entitled:

H. 243.

An act relating to the creation of a mentored hunting license.

Was taken up.

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

Proposal of Amendment; Consideration Postponed H. 281.

House bill entitled:

An act relating to the removal of bodily remains.

Was taken up.

Thereupon, pending third reading of the bill, Senator Illuzzi moved to amend the Senate proposal of amendment in Sec. 7, 18 V.S.A. § 5201(c) in the second sentence after the following: "funeral director" by inserting the following: , the person in charge of the body

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Illuzzi?, on motion of Senator Sears consideration of the bill was postponed.

Bill Passed in Concurrence with Proposal of Amendment H. 622.

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

An act relating to solicitation by prescreened trigger lead information.

Bill Passed in Concurrence with Proposals of Amendment H. 689.

House bill entitled:

An act relating to the Uniform Common Interest Ownership Act.

Was taken up.

Thereupon, pending third reading of the bill, Senator Campbell moved that the Senate propose to the House to amend the bill as follows:

<u>First:</u> In Sec. 1, 27A V.S.A., § 1-103 by striking out subsection (7) in its entirety and inserting in lieu thereof a new subsection (7) to read as follows:

(7) "Common interest community" means real estate described in a declaration with respect to which any a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes on; insurance premiums, on; maintenance, of; or improvement of, any or services or other expenses related to common elements, other units, or any other real

estate other than that unit described in the declaration. Ownership The term does not include an arrangement described in section 1-207 of this title. For purposes of this subdivision, ownership of a unit does not include holding a leasehold interest of less than five years in a unit, including renewal options.

<u>Second:</u> In Sec. 48 by striking out the following "<u>2011</u>" and inserting in lieu thereof the following <u>2012</u>

Which was agreed to.

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

Consideration Postponed

H. 767.

House bill entitled:

An act relating to the livestock care standards advisory council.

Was taken up.

Thereupon, pending third reading of the bill, Senators Giard, Campbell and Illuzzi moved to amend the Senate proposal of amendment by adding a new section to be numbered Sec. 2, to read as follows:

Sec. 2. 6 V.S.A. § 3134 is amended to read:

§ 3134. PENALTY

- (a) A person who violates this chapter shall be fined not more than \$100.00 nor less than \$50.00 \$5,000.00 for the first violation, not more than \$10,000.00 for the second violation, and not more than \$25,000.00 for the third violation, or imprisoned not more than 90 days two years, or both. In addition to the penalty provided above, the secretary may seek an injunction against a slaughterer, packer, or stockyard operator who engages in practices which are prohibited by section 3132 of this title, by application to the superior court for the county in which such slaughterer, packer or stockyard operator resides, or where such violations occur. The secretary may also take any action authorized under chapter 1 of this title.
- (b) The secretary shall permanently revoke the commercial operating license of any person who is found to be in violation of this chapter more than three times.
- (c) In addition to the penalties set forth in subsection (a) of this section, the secretary shall require a person who violates this chapter to install video monitoring equipment in all areas in which livestock is handled. The video equipment shall record continuously while live livestock are handled. As an

alternative to video monitoring, a live video stream accessible by the secretary may be provided with prior approval of the secretary. The video tapes or recording files of the video monitoring required by this subsection shall be retained by the facility for 90 days and shall be readily retrievable and available for inspection by the secretary. After the retention period of 90 days has expired, the video tapes or recording files of the live video stream shall be submitted to the secretary by the 15th of the following month, on a monthly basis.

(d) The secretary shall refer a violation of this chapter to the attorney general or the state's attorney for prosecution.

And by renumbering the remaining sections of the bill to be numerically correct.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senators Giard, Campbell and Illuzzi?, Senator Sears moved that the proposal of amendment of Senator Giard, Campbell and Illuzzi be amended in Sec 2. 6 V.S.A. § 3134 subsection (b) by striking out the words "three times" and inserting in lieu thereof the word once

Thereupon, pending the question, Shall the proposal of amendment of Senators Giard, Campbell and Illuzzi be amended as recommended by Senator Sears?, on motion of Senator Campbell consideration was postponed.

Committee of Conference Appointed

H. 647.

An act relating to misclassification of employees to lower premiums for workers' compensation and unemployment compensation.

Was taken up. Pursuant to the request of the Senate, the President *pro tempore* announced the appointment of

Senator Illuzzi Senator Ashe Senator Carris

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 Mazza, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

H. 229, H. 622, H. 689.

Rules Suspended; Action Messaged

On motion of Senator Mazza, the rules were suspended, and the action on the following bill was ordered messaged to the House forthwith:

H. 647.

Rules Suspended; Bill Delivered

On motion of Senator Mazza, the rules were suspended, and the following bill was ordered delivered to the Governor forthwith:

S. 237.

Adjournment

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

Called to Order

At 4:30 P.M. the Senate was called to order by the President *pro tempore*.

Message from the House No. 64

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. 97.** An act relating to a Vermont state employees' cost-savings incentive program.
 - **S. 122.** An act relating to recounts in elections for statewide offices.
- **S. 295.** An act relating to the creation of an agricultural development director.

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 joint resolution originating in the Senate of the following title:

J.R.S. 54. Joint resolution related to the payment of dairy hauling costs.

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 Senate proposals of amendment to the following House bill:

H. 772. An act relating to alcoholic beverage tastings and other liquor licensing issues.

And has severally concurred therein.

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

H. 590. An act relating to mediation in foreclosure proceedings.

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. Koch of Barre Town Rep. Jewett of Ripton Rep. Marek of Newfane

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

J.R.S. 63. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

The Governor has informed the House that on the April 24, 2010, he approved and signed a bill originating in the House of the following title:

H. 773. An act relating to approval of amendments to the charter of the city of Burlington.

Consideration Resumed; Proposal of Amendment; Third Reading Ordered

H. 767.

Consideration was resumed on House bill entitled:

An act relating to the livestock care standards advisory council.

Thereupon, pending the question, Shall the proposal of amendment of Senators Giard, Campbell and Illuzzi be amended as moved by Senator Sears?, Senator Sears requested and was granted leave to withdraw his proposal of amendment.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as moved by Senators Giard, Campbell and Illuzzi?, Senators Giard, Campbell, Illuzzi and Sears moved to substitute a proposal of amendment for the proposal of amendment as follows:

By adding two new sections to be numbered Sec. 2 and Sec. 3 to read as follows:

Sec. 2. 6 V.S.A. § 3134 is amended to read:

§ 3134. PENALTY

- (a) A person who violates this chapter shall be fined not more than \$100.00 nor less than \$50.00 \$5,000.00 for the first violation, not more than \$10,000.00 for the second violation, and not more than \$25,000.00 for the third violation, or imprisoned not more than 90 days two years, or both. In addition to the penalty provided above, the secretary may seek an injunction against a slaughterer, packer, or stockyard operator who engages in practices which are prohibited by section 3132 of this title, by application to the superior court for the county in which such slaughterer, packer or stockyard operator resides, or where such violations occur. The secretary may also take any action authorized under chapter 1 of this title.
- (b) The secretary shall permanently revoke the commercial operating license of any person who is found to be in violation of this chapter more than two times, and the secretary shall not relicense any business which includes as any director or owner of the business any director or owner of a business whose license has been permanently revoked.
- (c) In addition to the penalties set forth in subsection (a) of this section, the secretary shall require a person who violates this chapter to install video monitoring equipment in all areas in which livestock is handled. The video equipment shall record continuously while live livestock are handled. As an alternative to video monitoring, a live video stream accessible by the secretary may be provided with prior approval of the secretary. The video tapes or recording files of the video monitoring required by this subsection shall be retained by the facility for 90 days and shall be readily retrievable and available for inspection by the secretary. After the retention period of 90 days has expired, the video tapes or recording files of the live video stream shall be submitted to the secretary by the 15th of the following month, on a monthly basis.
- (d) The secretary shall refer a violation of this chapter to the attorney general or the state's attorney for prosecution.

Sec. 3. SUNSET

Sec. 1 of this act shall sunset on January 15, 2013, by which date any final recommendations to the general assembly and the secretary of agriculture, food and markets shall be submitted by the advisory council.

And by renumbering the remaining sections of the bill to be numerically correct.

Which was agreed to.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as moved by Senators Giard, Campbell, Illuzzi and Sears, as substituted, Senator Kittell moved to substitute a proposal of amendment of for the proposal of amendment of Senators Giard, Campbell, Illuzzi and Sears?, as follows:

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

Sec. 2. 6 V.S.A. § 3134 is amended to read:

§ 3134. PENALTY

A person who violates this chapter shall be fined not more than \$100.00 nor less than \$50.00 \$5,000.00 for the first violation, not more than \$10,000.00 for the second violation, and not more than \$25,000.00 for the third violation, or imprisoned not more than 90 days two years, or both. In addition to the penalty provided above, the secretary may seek an injunction against a slaughterer, packer, or stockyard operator who engages in practices which are prohibited by section 3132 of this title, by application to the superior court for the county in which such slaughterer, packer or stockyard operator resides, or where such violations occur. The secretary may also take any action authorized under chapter 1 of this title.

Which was disagreed to on a roll call, Yeas 12, Nays 14.

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: Brock, Carris, Doyle, Flory, Kitchel, Kittell, Lyons, Mullin, Racine, Scott, Starr, White.

Those Senators who voted in the negative were: Ashe, Ayer, Campbell, Cummings, Flanagan, Giard, Hartwell, Illuzzi, MacDonald, Mazza, McCormack, Nitka, Sears, Snelling.

Those Senators absent or not voting were: Bartlett, Choate, Miller, Shumlin (presiding).

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as moved by Senators Giard, Campbell, Illuzzi and Sears, as substituted?, was agreed to on a roll call, Yeas 24, Nays 2.

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, Ayer, Brock, Campbell, Carris, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Racine, Scott, Sears, Snelling, Starr.

Those Senators who voted in the negative were: Kittell, White.

Those Senators absent or not voting were: Bartlett, Choate, Miller, Shumlin (presiding).

Thereupon, pending third reading of the bill, Senator Ashe moved that the Senate propose to the House to amend the bill by adding a new section to be numbered Sec. 1a to read as follows:

Sec. 1a. TRAINING OF SLAUGHTERHOUSE EMPLOYEES; APPROPRIATIONS

In addition to any other funds appropriated to the agency of agriculture, food and markets in fiscal year 2011, there is transferred to the agency of agriculture, food and markets up to \$50,000.00 from the funds appropriated to the agency of commerce and community development's Vermont training program for use by the agency of agriculture, food and markets for training employees of Vermont-licensed slaughterhouses regarding the humane treatment of animals that is required under state and federal law.

Which was agreed to.

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

Consideration Resumed; Bill Passed in Concurrence with Proposals of Amendment

H. 243.

House bill of the following title:

An act relating to the creation of a mentored hunting license.

Was taken up.

Thereupon, Senator Campbell moved to withdraw his motion to reconsider. Which was agreed to.

Senator White Assumes the Chair

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment on a roll call, Yeas 24, Nays 1.

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, Ayer, Brock, Campbell, Carris, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr.

The Senator who voted in the negative was: McCormack.

Those Senators absent or not voting were: Bartlett, Choate, Miller, Mullin, White (presiding).

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. 243, H. 767.

Senator Shumlin Assumes the Chair

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 Representatives Lanpher and Clark,

By Senators Ayer and Giard,

H.C.R. 333.

House concurrent resolution congratulating Kelsey Howard as the Boys & Girls Club 2010 Vermont State Youth of the Year.

By Representative Shand and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 334.

House concurrent resolution honoring Mario Bevacqua on his two decades of exemplary educational leadership in the Weathersfield School District.

By Representative Moran,

By Senators Shumlin and White,

H.C.R. 335.

House concurrent resolution commemorating the bicentennial of the town of Dover.

By Representative Koch and others,

H.C.R. 336.

House concurrent resolution honoring municipal public works departments' employees and designating May 16–22 as Public Works Week in Vermont.

By Representative Botzow and others,

By Senators Doyle, Hartwell, Nitka, Sears and Starr,

H.C.R. 337.

House concurrent resolution congratulating the Woodford Elementary School on its bicentennial anniversary.

By Representative Ram and others,

H.C.R. 338.

House concurrent resolution congratulating the Association of Africans Living in Vermont, Inc. on its 10th anniversary.

By Representative Haas and others,

H.C.R. 339.

House concurrent resolution congratulating the 2010 winning teams of the Jr. Iron Chef Vermont competition.

By Representative Jewett,

By Senators Ayer and Giard,

H.C.R. 340.

House concurrent resolution recognizing the town of Goshen and the Blueberry Management Area in the Moosalamoo National Recreation Area as the Wild Blueberry Capital of Vermont.

By Representative Pellett and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 341.

House concurrent resolution honoring Molly Ferris for her dedicated peace advocacy, her leadership in theatrical circles, and her outstanding community volunteer work.

Adjournment

On motion of Senator Mazza, the Senate adjourned until eleven o'clock and thirty minutes in the morning.

THURSDAY, APRIL 29, 2010

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Consideration Resumed; Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment

H. 281.

Consideration was resumed on Senate bill entitled:

An act relating to the removal of bodily remains.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Illuzzi?, was decided in the affirmative.

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

Bill Passed in Concurrence with Proposals of Amendment H. 562.

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

An act relating to the regulation of professions and occupations.

Consideration Resumed; Proposal of Amendment; Bill Passed in Concurrence with Proposals of Amendment

H. 578.

Consideration was resumed on House bill entitled:

An act relating to requiring all state law enforcement officers to serve under the direction and control of the commissioner of public safety.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senator Illuzzi?, Senator Illuzzi moved to substitute a proposal of amendment for his proposal of amendment as follows:

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

Sec. 2b. CERTIFICATION OF LAW ENFORCEMENT OFFICERS

- (a) The general assembly finds that because the Vermont police academy requires candidates for certification as a full-time law enforcement officer to undergo 16 weeks of extensive physical training in addition to meeting academic requirements, older individuals or individuals with minor physical disabilities who are otherwise exceptionally qualified to discharge law enforcement duties are precluded from obtaining full-time certification and thus full-time employment as a law enforcement officer. While other states and jurisdictions have left physical training requirements to the hiring law enforcement agencies, the Vermont criminal justice training council has continued the physical training requirements, extending the cost and length of the basic training program, even though the hiring law enforcement agency already has selected and employed the candidates who seek full-time certification.
- (b) The executive director of the Vermont criminal justice training council, the attorney general or designee, a designee of the department of sheriffs and state's attorneys who does not serve on the Vermont criminal justice training council, the defender general or designee, the executive director of the human rights commission or designee, and a Vermont constable selected by the chair of the trustees of the Vermont league of cities and towns shall make recommendations regarding:

- (1) the advisability of granting full-time certification to law enforcement officers who have been certified as part-time officers for at least the past ten years and who have been employed a total of at least 8,000 hours as an officer discharging law enforcement duties during that period due to the fact that those officers have been unable to obtain full-time certification for failure to meet the physical fitness standards of the Vermont criminal justice training council;
- (2) whether full-time law enforcement officers should be required to fulfill physical fitness standards on a periodic basis.
- (c) The chair of the committee shall be the attorney general or his or her designee. The committee shall report its findings and recommendations to the house and senate committees on government operations and the house and senate judiciary committees no later than January 15, 2011.

Which was agreed to.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as moved by Senator Illuzzi, as substituted?, was agreed to.

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

Consideration Postponed

Senate bill entitled:

S. 88.

An act relating to health care financing and universal access to health care in Vermont.

Was taken up.

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

Consideration Resumed; House Proposal of Amendment Concurred In S. 287.

Consideration was resumed on Senate bill entitled:

An act relating to the licensing and regulation of loan servicers.

The House proposes to the Senate to amend the bill in Sec. 1, 8 V.S.A. chapter 83, by striking out § 2900 in its entirety and by inserting in lieu thereof the following:

§ 2900. DEFINITIONS

As used in this chapter:

- (1) "Commercial loan" means any loan or extension of credit that is described in 9 V.S.A. § 46(1), (2), or (4). The term does not include a loan or extension of credit that is secured by an owner occupied one- to four-unit dwelling.
- (2) "Commissioner" means the commissioner of banking, insurance, securities, and health care administration.
- (3) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities or other interest of any other person.
- (4) "Depository institution" has the same meaning as in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(c), which includes any bank and any savings association as defined in Section 3 of the Federal Deposit Insurance Act. For purposes of this chapter, "depository institution" also includes any credit union organized and regulated as such under the laws of the United States or any state or territory of the United States.
- (5) "Dwelling" has the same meaning as in subsection 103(v) of the Truth in Lending Act, 15 U.S.C. § 1602(v).
 - (6) "Individual" means a natural person.
 - (7) "Loan" means a residential mortgage loan.
- (8) "Nationwide Mortgage Licensing System and Registry" means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or any successor to the Nationwide Mortgage Licensing System and Registry.
- (9) "Person" shall have the meaning set forth in 1 V.S.A. § 128 and includes a natural person, corporation, company, limited liability company, partnership, or association.
- (10) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on either a dwelling or residential real estate, upon which is constructed or intended to be constructed a dwelling.

- (11) "Residential real estate" means any real property located in Vermont, upon which is constructed or intended to be constructed a dwelling.
- (12) "Servicing" means receiving a scheduled periodic payment from a borrower pursuant to the terms of a loan, including amounts for escrow accounts, and making the payments to the owner of the loan or other third party of principal and interest and other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the servicing loan document or servicing contract. In the case of a home equity conversion mortgage or a reverse mortgage, servicing includes making payment to the borrower.
- (13) "Third party loan servicer" means a person who engages in the business of servicing a loan, directly or indirectly, owed or due or asserted to be owed or due another.

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

Consideration Postponed

House bills entitled:

H. 213.

An act to provide fairness to tenants in cases of contested housing security deposit withholding.

H. 769.

An act relating to the licensing and inspection of plant and tree nurseries.

Were taken up.

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

Proposal of Amendment; Third Reading Ordered H. 555.

Senator Flory, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to youth hunting.

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. 10 V.S.A. § 4742a is amended to read:

§ 4742a. YOUTH DEER HUNTING WEEKEND

- (a) The Saturday and Sunday prior to opening day of regular deer season shall be youth deer hunting weekend.
- (b) A person who is age 15 and under on the weekend of the hunt, who has successfully completed a hunter safety course, may take one wild deer during youth deer hunting weekend in accordance with the rules of the board. In order to hunt under this section, a young person shall also hold a valid hunting license under section 4255 of this title, hold a youth deer hunting tag, and be accompanied by an unarmed adult who holds a valid Vermont hunting license and who is over 18 years of age. An adult accompanying a youth under this section shall accompany no more than two young people at one time.
- (c) Each year, the board shall determine whether antlerless deer may be taken under this section in any deer management unit or units. A determination under this subsection shall be made by rule, shall be based on the game management study conducted pursuant to section 4081 of this title and, notwithstanding subsection (g) of that section, may allow taking of antlerless deer.
- (d) No person shall hunt under this section on privately owned land without first obtaining the permission of the owner or occupant.
- (e) Before the first youth deer hunting weekend and after each fall hunting season, the department shall collect information on youth deer hunting weekend during the regional public hearings held pursuant to subsection 4081(f) of this title. Information relative to the public's knowledge and concerns about the deer herd shall be gathered. The board shall administer youth deer hunting weekend, by deer management unit, based on public input and scientific information.
- (f) The scheduled amount of a fine under section 4555 of this title shall be doubled for a violation of this section, and the fine shall be assessed against the licensed adult who is accompanying the youth pursuant to subsection (b) of this section and who has the youth hunter in his or her charge.
- (g) For the purposes of this section, "accompany," "accompanied," or "accompanying" means direct control and supervision, including the ability to see and communicate with the youth hunter without the aid of artificial devices such as radios or binoculars, except for medically necessary devices such as hearing aids or eyeglasses. While hunting, an individual who holds a valid hunting license under subsection 4254(b) of this title shall accompany no more than two youth hunters at a time.

Sec. 2. 10 V.S.A. § 4908 is amended to read:

§ 4908. YOUTH TURKEY HUNTING WEEKEND

- (a) The Saturday and Sunday prior to opening day of spring turkey season shall be youth turkey hunting weekend.
- (b) A person who is age 15 and or under on the weekend of the hunt, who has successfully completed a hunter safety course, may take one wild turkey during youth turkey hunting weekend in accordance with the rules of the board. In order to hunt under this section, a young person shall also hold valid hunting and turkey licenses under section 4255 of this title, hold a youth turkey hunting tag, and be accompanied by an unarmed adult who holds a valid Vermont hunting license and is over 18 years of age. An adult accompanying a youth under this section shall accompany no more than two young people at one time.
- (c) No person shall hunt under this section on privately owned land without first obtaining the permission of the owner or occupant.
- (d) The scheduled amount of a fine under section 4555 of this title shall be doubled for a violation of this section, and the fine shall be assessed against the licensed adult who is accompanying the youth pursuant to subsection (b) of this section and who has the youth hunter in his or her charge.
- (e) For the purposes of this section, "accompany," "accompanied," or "accompanying" means direct control and supervision, including the ability to see and communicate with the youth hunter without the aid of artificial devices such as radios or binoculars, except for medically necessary devices such as hearing aids or eyeglasses. While hunting, an individual who holds a valid hunting license under subsection 4254(b) of this title shall accompany no more than two youth hunters at a time.

Sec. 3. 10 V.S.A. § 4502(b) is amended to read:

- (b) A person violating provisions of this part shall receive points for convictions in accordance with the following schedule (all sections are in Title 10 of Vermont Statutes Annotated):
- (1) Five points shall be assessed for any violation of statutes or rules adopted under this part except those listed in subdivisions (2) and (3) of this subsection.
 - (2) Ten points shall be assessed for:

* * *

(II) Appendix § 37, as it applied applies to annual deer limits and as it applies to youth deer hunting weekend. Points assessed for violation of

Appendix 37 as it relates to youth turkey hunting weekend shall be assessed solely against the adult accompanying the youth hunter

- (JJ) Appendix § 22, as it applies to youth turkey hunting weekend. Points assessed for violation of Appendix 22 as it relates to youth turkey hunting weekend shall be assessed solely against the adult accompanying the youth hunter.
 - (3) Twenty points shall be assessed for:

* * *

(P) Appendix § 22 (excluding § 22E). Turkey season, excluding requirements for youth turkey hunting season.

* * *

- (U) Appendix § 37, excluding violations of annual deer limits, requirements for youth deer hunting weekend, and limitations on feeding of deer.
- Sec. 4. 10 V.S.A. § 4001(14) is amended to read:
- (14) Fur-bearing animals: beaver, otter, marten, mink, raccoon, fisher, fox, skunk, coyote, bobcat, weasel, opossum, lynx, wolf, and muskrat.

Sec. 5. REPEAL

10 V.S.A. § 4865 (muskrat shooting season) is repealed.

Sec. 6. FISH AND WILDLIFE BOARD REPORT ON YOUTH DEER HUNTING LIMITS

On or before January 15, 2011, the fish and wildlife board shall submit to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy a recommendation as to whether a youth who hunts deer under 10 V.S.A. § 4742a should be limited to the taking of one deer prior to the youth turning 16 years of age.

Sec. 7. EFFECTIVE DATE

This act shall take effect July 1, 2010.

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, and third reading of the bill was ordered.

House Proposal of Amendment Concurred In

S. 165.

House proposal of amendment to Senate bill entitled:

An act relating to eliminating the statute of limitations for felonies.

Was taken up.

The House proposes to the Senate to amend the bill by changing the title of the bill to read as follows:

"An act relating to waiver of the statute of limitations in criminal prosecutions."

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

House Proposal of Amendment Concurred In

S. 268.

House proposal of amendment to Senate bill entitled:

An act relating to the building bright futures council.

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. FINDINGS

The general assembly finds that:

- (1) While Vermont has a wide range of high-quality programs for families and young children, a report issued by the Smart Start National Technical Assistance Center states, "Vermont's early childhood system might be best described as many diverse patches, or pieces, ready to be linked and sewn together into a New England patchwork quilt."
- (2) In order to address issues of overlap and fragmentation, program accountability, and equitable access to services across the state, engaged community members, policy-makers, early childhood service providers, and advocates agree that there is a need for a comprehensive and integrated system for all children below the age of six and their families in Vermont who are in need of and desiring such services.
- (3) Research shows that a child's "environment of relationships" has a critical impact on developing brain architecture during the first months and years of life.

- (4) There are approximately 39,000 children under the age of six in Vermont, including over 5,500 in poverty, 11,000 living in single-parent households, 20,489 living in two-parent households with both parents in the labor force, and approximately 1,300 young children with developmental delays.
- (5) An estimated 23,000 children under the age of six are enrolled full- or part-time in over 1,900 registered or licensed child care programs funded by a combination of parent fees and public dollars such as the Child Care Financial Assistance Program and the Education Fund. Programs that receive no public funds generally have little to no formal connection to an overall early childhood system with established goals and policies for addressing the needs of young children.
- (6) In addition to the care by their parents and families, thousands of Vermont children from a range of socioeconomic backgrounds receive services, support, or both from state, federal, and private programs. Many children are served by multiple programs with no mechanism in place to ensure a holistic, family-centered approach to service delivery. Early childhood services are important to the economic well-being of families throughout the state. They have a positive impact on the state's labor supply and influence the overall economic competitiveness of the state.
- (7) Section 642B of the federal Improving Head Start for School Readiness Act of 2007 mandates that the governor "designate or establish a council to serve as the State Advisory Council on Early Childhood Education and Care for children from birth to school entry, and the Governor may designate an existing entity in the State to serve as the State Advisory Council." The governor has designated the building bright futures state council as Vermont's entity.
- (8) In November 2009, the building bright futures state council adopted a conceptual framework based on the work of Dr. Jack Shonkoff, a Harvard University professor and one of the nation's foremost experts on early childhood learning.
- Sec. 2. 33 V.S.A. chapter 46 is added to read:

CHAPTER 46. BUILDING BRIGHT FUTURES COUNCIL

§ 4601. DEFINITIONS

As used in this chapter:

- (1) "Early care, health, and education" means all services provided to families expecting a child and to children up to the age of six, including child care, family support, early education, mental and physical health services, nutrition services, and disability services.
- (2) "Regional council" means a regional entity linked to the state building bright futures council to support the creation of an integrated system of early care, health, and education at the local level.

§ 4602. BUILDING BRIGHT FUTURES COUNCIL

- (a) The building bright futures program shall be governed by a statewide council comprising no more than 23 members. The building bright futures council's membership shall be as follows:
 - (1) the secretary of human services or designee;
 - (2) the secretary of commerce and community development or designee;
 - (3) the commissioner of education;
 - (4) the commissioner for children and families;
 - (5) the commissioner of health;
 - (6) the commissioner of mental health;
- (7) two members of the house of representatives, appointed by the speaker of the house;
- (8) at least one but no more than two members of the senate, appointed by the senate committee on committees;
 - (9) the Head Start collaboration office director; and
- (10) 12 at-large members selected on the basis of their commitment to early childhood well-being and representing a range of perspectives and geographic diversity. One of the at-large members shall be a representative of a local Head Start program and one shall be a member of a school board, to be chosen by the Vermont school boards association.
- (b) In the event of a vacancy in one of the at-large member positions on the council, the remaining members shall endeavor to fill the vacancy with an individual representing a perspective or geographic area not currently represented on the council.
- (c) Technical assistance to the council shall be provided by staff within the departments of health, of education, and for children and families.
- (d) For council meetings held when the general assembly is not in session, the legislative members of the council shall be entitled to per diem

compensation and reimbursement of expenses in accordance with section 406 of Title 2. Members of the council who are not state employees or whose participation is not supported through their employment or association may be entitled to compensation and reimbursement for expenses for attending meetings of the council under section 1010 of Title 32 to the extent funds are available.

- (e) The council shall function as a public-private partnership with the ability to raise and disburse funds.
- (f) The council shall support the establishment of, and maintenance of relationships with, regional councils providing regional capacity to further the council's goals.

§ 4603. POWERS AND DUTIES

The council established by section 4602 of this title shall have the following powers and duties necessary and appropriate to effectuating the purposes of this chapter:

- (1) Advise the administration and general assembly on the status and needs of the early care, health, and education system by conducting a review of the status of young children in Vermont and the care, health, and education services and systems that support them.
- (2) Monitor overall system performance by regularly tracking and reporting system data on the well-being of young children and the performance of the system of care related to the council's commitments to children and selected indicators.
- (3) Develop an early care, health, and education system plan for Vermont to serve as the basis for policy and funding recommendations.
- (4) Review and formulate recommendations for amendments or revisions to policies, rules, or regulations that may impede the ability to address state and local priorities and the ability to ensure system effectiveness.
- (5) Work with the secretaries of human services and of commerce and community development and the commissioner of education to ensure the coordination of existing budgets and policies that affect the care, health, and education of young children.
- (6) Identify and reduce duplication of services and of administrative approval processes and improve coordination across agencies.
- (7) Work with the agencies of human services and of commerce and community development, the department of education, and the regional councils to coordinate and integrate the development of an early childhood

budget that reflects alignment of funding with priorities identified in the system plan.

- (8) Support the regional councils in their efforts to coordinate and implement services in accordance with identified priorities in system and regional plans.
- (9) Contract with state agencies and departments to deliver services as agreed upon.
- (10) Pursue and accept funding from diverse sources outside of state government to sustain, expand, and enhance the early care, health, and education system according to the early care, health, and education system plan.
- (11) Disburse funds raised through fund development activities in accordance with priorities defined in the system plan.
- (12) Convene members of the child care community, medical community, education community, and other organizations, as well as state agencies serving young children, to ensure that families receive quality services in the most efficient and cost-effective manner.
- (13) Select the key indicators to be tracked in early childhood and identify priority strategies to improve outcomes.
- (14) Ensure children from birth to six years of age are included in statistical data systems developed by the department of education and other state agencies and that all such systems are interoperable.
- with No. 68 of the Acts of the 2009 Adj. Sess. (2010) and make recommendations for any necessary adjustments.
- (16) Report to the governor and the legislative committees of jurisdiction during the first month of each legislative biennium on the council's findings and recommendations, progress toward outcomes consistent with No. 68 of the Acts of the 2009 Adj. Sess. (2010), and recommendations for priorities for the biennium.

§ 4604. LIMITATION OF SCOPE

Nothing in this chapter shall be construed to supersede or usurp the statutory powers or authority of any state agency or department or any school district.

Sec. 2. COMPOSITION OF COUNCIL

The members of the building bright futures council serving as of the effective date of this act shall continue to serve on the council after that date and shall adopt bylaws detailing the council's governance and procedures.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

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

Senate Resolution Adopted

S.R. 24.

Senate resolution entitled:

Senate resolution supporting continuing implementation of the Inter-Rwandan Dialogue.

Having been placed on the Calendar for action, was taken up and adopted.

Committee of Conference Appointed

H. 783.

An act relating to miscellaneous tax provisions.

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

Senator Cummings Senator Carris Senator Hartwell

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:

H. 281, H. 562, H. 578.

Rules Suspended; Action Messaged

On motion of Senator Shumlin, the rules were suspended, and the action on the following bill was ordered messaged to the House forthwith:

H. 783.

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. 165, S. 268, S. 287.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eleven o'clock in the morning.

FRIDAY, APRIL 30, 2010

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 65

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. 793.** An act relating to approval of amendments to the charter of the village of Essex Junction.
- **H. 794.** An act relating to approval of the merger of the town of Cabot and the village of Cabot.

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. 138.** An act relating to unfair business practices of credit card companies and fraudulent use of scanning devices and re-encoders.
- **S. 278.** An act relating to the department of banking, insurance, securities, and health care administration.

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 of the following title: **H. 524.** An act relating to interference with or cruelty to a guide dog.

And has 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 April 28, 2010, he approved and signed bills originating in the House of the following titles:

- **H. 408.** An act relating to improving nutrition programs.
- **H. 680.** An act relating to termination of occupancy of farm employee housing.

Rules Suspended; Bill Committed

H. 470.

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

An act relating to restructuring of the judiciary.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Judiciary, Senator Shumlin moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Finance with the report of the Committee on Judiciary *intact*, and with instructions that the Committee on Finance consider only those parts of the bill that relate to the revenues of the state.

Which was agreed to.

Bills Referred to Committee on Finance

House bills of the following titles, appearing on the Calendar for notice, and affecting the revenue of the state under the rule were referred to the Committee on Finance:

- **H. 769.** An act relating to the licensing and inspection of plant and tree nurseries.
 - **H. 781.** An act relating to renewable energy.

Bills Referred

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

H. 793.

An act relating to approval of amendments to the charter of the village of Essex Junction.

To the Committee on Government Operations.

H. 794.

An act relating to approval of the merger of the town of Cabot and the village of Cabot.

To the Committee on Government Operations.

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 the Committee on Agriculture,

J.R.S. 64. Joint resolution relating to the future of the international port of entry at Morses Line and the proposed federal acquisition of land belonging to the Rainville family farm.

Whereas, Clement and Elizabeth Rainville own a dairy farm in the town of Franklin astride the United States—Canadian border at Morses Line, and

Whereas, the Rainville farm consists of 130 acres of cropland and a dairy operation with 75 milkers and approximately the same number of heifers, and

Whereas, every one of those 130 acres is integral to this Vermont farm's economic viability, and

Whereas, the Rainville farm is exactly the type of dairy farm that is all too rapidly vanishing and that the state of Vermont is making every effort to preserve as an ongoing agricultural enterprise, and

Whereas, the state of Vermont, through the Vermont Housing and Conservation Trust Fund, has spent millions of dollars to preserve farmland for future generations, and the current use program was established to encourage the conduct of agricultural activities on Vermont land, and

Whereas, Vermont's farmland attracts tourists who travel to the state to view the state's picturesque open spaces, and

Whereas, according to the Vermont Agency of Agriculture, Food and Markets (VAAFM), the total number of dairy farms in January stood at 11,206 in 1947, 9,512 in 1957, 4,729 in 1967, 3,531 in 1977, 2,771 in 1987, 1,908 in 1997, 1,168 in 2007, and 1,055 in 2010, and

Whereas, the VAAFM has projected that Vermont may lose up to 200 farms in 2010, lowering the number to below 1,000 for the first time since the state of Vermont has conducted a farm count survey, and

Whereas, from an economic perspective, the Sustainable Agriculture Council has estimated that Vermont's agricultural worth has now grown to nearly \$3.7 billion, and

Whereas, the United States Department of Homeland Security (the Department) and United States Customs and Border Protection (CBP), which is under the Department's jurisdiction, have announced their intention to acquire land—by means of eminent domain proceedings if necessary—from the Rainville farm for use in the construction of a new international border port-of-entry facility at Morses Line, and

Whereas, the Department and CBP are justifying this project on grounds of both national security and economic stimulation, and

Whereas, the Rainville family has stated that were it to lose any of its land used for cultivating hay, this small farm's self-sufficiency would be lost, and

Whereas, a loss in the available hay would force the Rainvilles to purchase commercial feed for their herd, adding an expense they do not currently incur, and

Whereas, in the federal Farmland Protection Policy Act of 1981 (Pub. L. 97-89) (the act), Congress found that "the Nation's farmland is a unique natural resource and provides food and fiber necessary for the continued welfare of the people of the United States" and further stated that the law's purpose was "to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses," and

Whereas, this proposed land acquisition is clearly contrary to Congress's express intent as stated in the act, and

Whereas, the Rainville farm is listed on the National Register of Historic Places, which is further evidence of the importance that has been attached to the farm's continuity and integrity, and

Whereas, although the department's proposed new border-crossing facility has been reduced in size, there remains concern that it may be larger than needed for the amount of traffic that crosses at Morses Line, and

Whereas, there have been suggestions that federal funds would be better directed at further improvements to the heavily used port of entry at nearby Highgate, and

Whereas, the Vermont congressional delegation has been closely involved with the issues related to the proposed new facility at the Morses Line port of entry and the impact it will have on the Rainville Farm, and

Whereas, on Tuesday, April 27, 2010, while testifying before the United States Senate Judiciary Committee, Homeland Security Secretary Janet Napolitano, in response to a request of Senator Leahy, committed herself to the convening of a public meeting near Morses Line before proceeding, and

Whereas, this meeting will be extremely timely, as in the past few days, the Rainville family received notice from the federal government that the condemnation process will be commenced in 60 days if the family does not agree to sell the requested land, and

Whereas, reducing the economic viability of a small Vermont dairy farm should not be equated with economic stimulation, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly strongly urges the United States Department of Homeland Security to assess carefully the comments offered at the forthcoming public meeting on the future of the port of entry facility at Morses Line and to re-evaluate the need to condemn any land belonging to the Rainville farm in the town of Franklin, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to Secretary of Homeland Security Janet Napolitano, United States Customs and Border Protection Commissioner Alan Bersin, the Vermont congressional delegation, Vermont Secretary of Agriculture, Food and Markets Roger Allbee, and the Rainville family in Franklin.

Senate Resolution Placed on Calendar

S.R. 25.

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

By Senator Giard,

S.R. 25. Senate resolution relating to the animal slaughtering and meat packaging operations of Bushway Packing, Inc. and Champlain Valley Meats, Inc.

Whereas, Bushway Packing, Inc. was incorporated in Vermont on February 27, 2008, and operated a slaughterhouse in the town of Grand Isle from early February 2009 until October 30, 2009, and

Whereas, on May 12, 2009, and July 1, 2009, the United States Department of Agriculture (USDA) suspended the previously issued federal grant of inspection for Bushway Packing, Inc. based on the company's noncompliance with the federal Humane Methods of Slaughter Act, with the specific

complaint being that Bushway Packing, Inc. dragged nonambulatory and conscious days-old calves, and

Whereas, the Vermont agency of Agriculture, Food and Markets (VAAFM) food safety specialist commented with respect to the May 12 USDA suspension of the federal grant of inspection that "20 calves died of starvation as a result of what happened on Tuesday. . . .," and

Whereas, separately from the May and July suspensions, on June 24, 2009, the USDA suspended Bushway Packing, Inc.'s federal grant of inspection for the throwing of a conscious calf as if it were a football from an upper compartment of a two-tiered truck, and

Whereas, in August 2009, the Humane Society of the United States (HSUS) sent an undercover worker, who gained employment at Bushway Packing, Inc. as a floor cleaner and who recorded video evidence of plant personnel egregiously abusing days-old calves, including their being repeatedly kicked and electrically shocked in attempts to make them stand; water being poured on calves prior to electric shocking; carelessness in checking sensibility in stunned calves prior to slaughter; rhythmic breathing, vocalizations, eyelid movement, reflex actions—all more evident than should be in properly stunned calves; too many calves in the stun pen at one time, causing congestion; a long stun-to-bleed time which may have caused calves to be processed while still alive; failure to comply with the electric prod usage portion of the American Meat Institute's animal welfare audit; continued abusive use of electric prods; skinning of calves still conscious; and general failure of compliance with humane animal handling, and

Whereas, on October 30, 2009, USDA again suspended the federal grant of inspection and VAAFM suspended Bushway Packing, Inc.'s commercial slaughterhouse and commercial packing license, and

Whereas, the Vermont Attorney General and the United States Attorney are currently conducting a joint criminal investigation into these events, and

Whereas, the repeated actions of Bushway Packing, Inc. added significant risk to the safety of the food produced in the state of Vermont, unacceptably endangered public health, damaged the reputation of Vermont farmers and agricultural businesses, and adversely affected the strength and market value of the Vermont brand, and

Whereas, on January 22, 2010, two of the three incorporators of Bushway Packing, Inc. established a new corporation called Champlain Valley Meats, Inc., now therefore be it

Resolved by the Senate:

That the Senate of the State of Vermont urges the Vermont Agency of Agriculture, Food and Markets not to grant a commercial slaughterhouse or commercial packing license and not to issue a state grant of meat inspection to Champlain Valley Meats, Inc. or to any corporation employing or associating with any of the owners of Bushway Packing Inc., prior to the conclusion of the joint criminal investigation and any resulting litigation, *and be it further*

Resolved: That the Senate of the State of Vermont urges that none of the current suspensions on Bushway Packing, Inc.'s slaughtering and packaging operations be lifted prior to the investigation's conclusion, and be it further

Resolved: That the Senate of the State of Vermont requests that on or before January 15, 2011, the Vermont Agency of Agriculture, Food and Markets submit a report recommending steps that can be taken to avoid similar future violations of the state's food safety and animal slaughtering laws, and be it further

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to the secretary of the Agency of Agriculture, Food and Markets.

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

Message from the Governor Appointments Referred

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

Gish, Jim of Middlebury - Member of the Board of Libraries, - from April 26, 2010, to February 29, 2012.

To the Committee on Education.

Action Reconsidered; Bill Passed in Concurrence with Proposal of Amendment

H. 788.

Assuring the Chair that she voted with the majority whereby the bill was passed in concurrence by the Senate, Senator White moved that the Senate reconsider its action on House bill entitled:

An act relating to approval of amendments to the charter of the town of Berlin.

Which was agreed to.

Thereupon, pending the recurring question, upon reconsideration, Shall the bill pass in concurrence?, Senator White requested and was granted leave to offer a proposal of amendment after third reading.

Thereupon, pending the question Shall the bill pass in concurrence?, Senator White moved that the Senate propose to the House to amend the bill in Sec. 3, 24 App. V.S.A. chapter 105 § 50(a), at the end of the subsection, by adding the following: Appointees shall have the same powers, duties, responsibilities, and liabilities as established by law for listers, except as otherwise provided in this charter.

Which was agreed to.

Thereupon, the question, Shall the bill pass in concurrence with proposal of amendment?, was decided in the affirmative.

Bills Passed in Concurrence with Proposals of Amendment

House bills of the following titles were severally read the third time and passed in concurrence with proposals of amendment:

- **H. 213.** An act to provide fairness to tenants in cases of contested housing security deposit withholding.
 - **H. 555.** An act relating to youth hunting.

Consideration Postponed

Senate bill entitled:

S. 88.

An act relating to health care financing and universal access to health care in Vermont.

Was taken up.

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

Third Reading Ordered

H. 462.

Senator McCormack, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to encroachments on public waters.

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.

Bill Committed

H. 509.

House bill entitled:

An act relating to pollution control measures for Lake Champlain and the other water of the state.

Was taken up.

Thereupon, pending the reading of the report of the Committee on Agriculture, on motion of Senator Lyons, the bill was committed to the Committee on Natural Resources and Energy.

Proposal of Amendment; Third Reading Ordered

H. 763.

Senator Lyons, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to establishment of an agency of natural resources' river corridor management program.

Reported recommending that the Senate propose to the House to amend the bill by striking out Sec. 9 in its entirety and inserting in lieu thereof the following:

Sec. 9. 6 V.S.A. § 4821(a) is amended to read:

(a) Program created. A program is created to provide state financial assistance to Vermont farmers in support of their voluntary construction of on-farm improvements and maintenance of acceptable operating standards designed to abate nonpoint source agricultural waste discharges into the waters of the state of Vermont, consistent with goals of the federal Water Pollution Control Act and with state water quality standards. The program shall be conducted in a manner which makes maximum use of federal financial aid for the same purpose, as provided by this subchapter, and which seeks to use the least costly methods available to accomplish the abatement required. The construction of temporary fencing intended to exclude livestock from entering surface waters of the state shall be an on-farm improvement eligible for assistance under this subchapter when subject to a maintenance agreement entered into with the agency of agriculture, food and markets.

Sec. 10. 6 V.S.A. § 4900 is amended to read:

§ 4900. VERMONT AGRICULTURAL BUFFER PROGRAM

(a) The secretary of agriculture, food and markets is authorized to develop a Vermont agricultural buffer program in addition to the federal conservation reserve enhancement program in order to compensate farmers for establishing and maintaining harvestable perennial vegetative buffers <u>and installing conservation practices in ditch networks</u> on annual cropland <u>agricultural land</u> adjacent to the surface waters of the state.

- (b) The establishment and annual incentive payments from the agency of agriculture, food and markets under the Vermont agricultural buffer program shall not exceed 40 percent of the combined federal and state payment that the relevant eropland agricultural land or conservation practice would be eligible for under the federal conservation reserve enhancement program or another approved conservation program. The incentive payment shall be made annually at the end of the cropping season for a nonrenewable five-year period.
- (c) The secretary of agriculture, food and markets may establish by procedure financial and technical criteria for the implementation and operation of the Vermont agricultural buffer program.
- (d) Land enrolled in the Vermont agricultural buffer program shall be considered to be in "active use" as that term is defined in 32 V.S.A. § 3752(15).
- (e) As used in this section, "surface waters" means all rivers, streams, ditches, creeks, brooks, reservoirs, ponds, lakes, and springs which are contained within, flow through, or border upon the state or any portion of it.

Sec. 11. 6 V.S.A. § 4951 is amended to read:

§ 4951. FARM AGRONOMIC PRACTICES PROGRAM

- (a) The farm agronomic practices assistance program is created in the agency of agriculture, food and markets to provide the farms of Vermont with state financial assistance for the implementation of soil-based practices that improve soil quality and nutrient retention, increase crop production, minimize erosion potential, and reduce agricultural waste discharges. The following practices shall be eligible for assistance to farms under the grant program:
 - (1) conservation crop rotation;
 - (2) cover cropping;
 - (3) strip cropping;
 - (4) cross-slope tillage;
 - (5) zone or no-tillage;
 - (6) pre-sidedress nitrate tests;
- (7) annual maintenance of a nutrient management plan that is no longer receiving funding under a state or federal contract, provided the maximum

assistance provided to a farmer under this subdivision shall be \$1,000.00 per year; and

- (8) educational and instructional activities to inform the farmers and citizens of Vermont of:
 - (A) the impact on Vermont waters of agricultural waste discharges;
- (B) the federal and state requirements for controlling agricultural waste discharges;
 - (9) implementing alternative manure application techniques; and
 - (10) additional soil erosion reduction practices.
- (b) Funding available under section 4827 of this title for nutrient management planning may be used to fund practices under this section.
- Sec. 12. 10 V.S.A. § 321(d) is amended to read:
- (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. In seeking federal farmland protection funds under this subsection, the board shall seek to maximize state participation in the federal wetlands reserve program in order to allow for increased or additional implementation of conservation practices on farmland protected or preserved under this chapter.
- Sec. 13. 10 V.S.A. § 1002 is amended to read:

§ 1002. DEFINITIONS

Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

* * *

- (10) "Watercourse" means any depression two feet or more below the elevation of surrounding land serving to give direction to a current or flow of water having a bed and well defined bank perennial stream. "Watercourse" shall not include ditches or other constructed channels primarily associated with land drainage or water conveyance through or around private or public infrastructure.
- Sec. 14. 10 V.S.A. § 1021(a) is amended to read:
- (a) A person shall not change, alter, or modify the course, current, or cross-section of any watercourse with a drainage area greater than ten square miles at the location of the proposed change, alteration or modification, or of

designated outstanding resource waters, within or along the boundaries of this state either by movement, fill, or by excavation of ten cubic yards or more in any year, unless authorized by the secretary.

Sec. 15. 10 V.S.A. § 7501 is amended to read:

§ 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; and chapter 41 (regulation of stream flow) for stream alteration permits.
- (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.
- (e) The secretary may issue a nonreporting general permit for certain specific stream alteration activities under chapter 41 of this title.
- Sec. 16. ANR REPORT ON GENERAL PERMIT PROGRAM FOR STREAM ALTERATION
- (a) On or before January 15, 2011, the secretary of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy regarding a proposed general permit program for stream alteration under chapter 41 of Title 10.
 - (b) The report required under subsection (a) of this section shall:
- (1) Define the thresholds, classes of activities, or other categories of activities that will be regulated under the general permit program.

- (2) Summarize the requirements or management practices that stream alteration activities will be subject to under a general permit, including whether any activity or class of activities will be subject to a nonreporting general permit.
- (3) Summarize the scientific basis for the thresholds, classes of activities, or categories of activities regulated under the proposed general permit program.

Sec. 17. 19 V.S.A. § 996 is added to read:

§ 996. HIGHWAY CONSTRUCTION, MAINTENANCE, AND REPAIR BEST MANAGEMENT PRACTICES

- (a) The agency of transportation shall work with municipal representatives to revise the agency of transportation's town road and bridge standards in order to incorporate a suite of practical and cost-effective best management practices, as approved by the agency of natural resources, for the construction, maintenance, and repair of all existing and future state and town highways. These best management practices shall address activities which have a potential for causing pollutants to enter the groundwater and waters of the state, including stormwater runoff and direct discharges to state waters. The best management practices shall not supersede any requirements for stormwater management already set forth in 10 V.S.A. §§ 1264 and 1264a that apply to state and town highways. The agency of transportation shall report to the house and senate committees on transportation, the house committee on fish, wildlife and water resources, and the senate committee on natural resources and energy by January 15, 2011, on the best management practices to be incorporated into the agency of transportation's town road and bridge standards.
- (b) Beginning January 15, 2013, and every four years thereafter, the secretary in consultation with municipal representatives and with approval from the agency of natural resources shall review and revise, as appropriate, town road and bridge standards in order to ensure the standards are protective of water quality.

Sec. 18. 19 V.S.A. § 309b is amended to read:

§ 309b. LOCAL MATCH; CERTAIN TOWN HIGHWAY PROGRAMS

(a) Notwithstanding subsection 309a(a) of this title, grants provided to towns under the town highway structures program shall be matched by local funds sufficient to cover 20 percent of the project costs, unless the town has adopted road and bridge standards and, has completed a network inventory, and has submitted an annual certification of compliance for town road and bridge standards to the secretary, in which event the local match shall be

sufficient to cover 10 percent of the project costs. The secretary may adopt rules to implement the town highway structures program. Town highway structures projects receiving funds pursuant to this subsection shall be the responsibility of the applicant municipality.

(b) Notwithstanding subsection 309a(a) of this title, grants provided to towns under the class 2 town highway roadway program shall be matched by local funds sufficient to cover 30 percent of the project costs, unless the town has adopted road and bridge standards and, has completed a network inventory, and has submitted an annual certification of compliance for town road and bridge standards to the secretary, in which event the local match shall be sufficient to cover 20 percent of the project costs. The secretary may adopt rules to implement the class 2 town highway roadway program. Class 2 town highway roadway projects receiving funds pursuant to this subsection shall be the responsibility of the applicant municipality, and a municipality shall not receive a grant in excess of \$175,000.00.

* * *

Sec. 19. REPEAL OF SUNSET OF VERMONT AGRICULTURAL BUFFER PROGRAM

Sec. 56 of No. 147 of the Acts of the 2005 Adj. Sess. (2006) (sunset on Vermont agricultural buffer program) is repealed.

Sec. 20. Sec. 14 of No. 31 of the Acts of 2009 is amended to read:

Sec. 14. EFFECTIVE DATE

- (a) This section and Secs. 1 (findings), 12 (ANR wetlands report), and 13 (Bristol Pond) of this act shall take effect July 1, 2009.
- (b) Secs. 2 (retitling 10 V.S.A. chapter 37), 3 (wetlands definitions), 4 (ANR wetlands authority), 5 (wetlands permitting), 6 (recodification of aquatic nuisance control authority), 7 (water resources panel rulemaking authority), 8 (ANR enforcement authority), 9 (appeals), and 10 (marketability of title), and 11 (transition) of this act shall take effect 45 days after such time as the water resources panel has issued both a rule updating the Vermont significant wetlands inventory maps and a rule updating the Vermont wetland rules.
 - (c) Sec. 11 (transition) of this act shall take effect January 1, 2010.

Sec. 21. EFFECTIVE DATES

(a) This section and Secs. 9 (livestock fencing; best management practices), 10 (Vermont agricultural buffer program), 11 (farm agronomic practices program), 12 (VHCB; agricultural land preservation), 16 (ANR report on

general permit program), 17 (agency of transportation best management practices), 19 (repeal of sunset on Vermont agricultural buffer program), and 20 (effective date of wetlands transition) of this act shall take effect upon passage.

- (b) Secs. 1 (river corridor findings), 2 (navigable waters and shorelands policy), 3 (navigable waters and shorelands definitions), 4 (shoreland protection bylaws), 5 (river corridor buffers), 6 (zoning bylaws), 7 (zoning permissible types of regulations), and 8 (ANR report on river corridor, shoreland, and buffer zoning) shall take effect July 1, 2010, except that 10 V.S.A. § 1427 shall take effect February 1, 2011.
- (c) Secs. 13 (definition of watercourse) and 14 (stream alteration permits) of this act shall take effect March 31, 2011.
- (c) Sec. 15 (ANR general permit authority) of this act shall take effect February 15, 2011.
- (d) Sec. 18 (local match town highway programs) of this act shall take effect July 1, 2011.

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, and third reading of the bill was ordered.

House Proposal of Amendment Not Concurred In; Committee of Conference Requested

S. 97.

House proposal of amendment to Senate bill entitled:

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

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. 3 V.S.A. § 266 is added to read:

§ 266. VERMONT STATE AND JUDICIARY EMPLOYEES' COST-SAVINGS INCENTIVE PROGRAM

(a) For the purposes of this section:

- (1) "State employee" means any classified, nonmanagement, state employee in the executive or judicial branch.
- (2) "Suggestion" means a proposal by a state employee that has been submitted to an agency in which the employee is employed that may result in financial savings for that agency.
- (b) There is established the Vermont state and judiciary employees' cost-savings incentive program. The program shall provide financial incentives to state and judiciary employees who make suggestions that are adopted and result in financial savings for any agency, department, board, bureau, commission, or other administrative unit of the state, or for the judiciary department.
- (c) To be eligible for an award under this program, a state or judiciary employee or group of employees shall submit a suggestion to reduce expenditures on a form created by the department of human resources designated for this purpose. An employee shall have received at least a satisfactory rating in his or her last state performance evaluation to be eligible for any award. An employee who is otherwise eligible for an award under this section shall not receive the award until he or she has satisfied any and all state tax obligations.
- (d) Within 60 days of the receipt of a suggestion, the agency, department, board, bureau, commission, or other administrative unit of the state, or the judiciary department receiving a suggestion shall determine whether:
 - (1) the suggestion is feasible and desirable;
- (2) the suggestion is an idea that is not already under active study or has not been under continual review by the state;
- (3) the suggestion is beyond the reasonable expectations of job performance, as informed by the employee's job specifications; and
- (4) implementation of the suggestion will not negatively impact the quality of services presently provided by the state.
- (e) An employee shall be entitled to an award only if his or her suggestion meets each of the criteria set forth in subsection (d) of this section and the suggestion is implemented.
- (f) Any agency, department, board, bureau, commission, or other administrative unit of the state, or the judiciary department that receives a suggestion shall present its assessment of the criteria set forth in subsection (d) of this section on the form designated for this purpose and shall state whether it intends to implement the suggestion. A copy of this form shall be sent to the employee or employees making the suggestion, the department of human

resources, and the department of finance and management if the employee making the suggestion is an executive branch employee and to the court administrator if the employee making the suggestion is a judiciary department employee.

- (g) If the agency, department, board, bureau, commission, or other administrative unit of the state, or judiciary department that receives a suggestion rejects the suggestion, the employee may submit a copy of the form and the assessment to the secretary of administration, if the employee is an executive branch employee. The secretary may affirm or overrule the decision of the agency, department, board, bureau, commission, or other administrative unit of the state, and his or her decision shall be final. If the employee is a judiciary department employee, the employee shall submit the form and assessment to the court administrator, who may affirm or overrule the decision of the judiciary department. The decision of the court administrator is final.
- (h) If each of the criteria set forth in subsections (d) and (e) of this section is met, the agency, department, board, bureau, commission, or other administrative unit of the state, or the judiciary department shall implement the suggestion. The employee or group of employees making the suggestion shall then be entitled to a total monetary award equal to 25 percent of the savings realized as a direct result of the suggestion in the first year of its implementation, but the maximum total monetary award shall not exceed \$20,000.00 under any circumstances. If the suggestion is simultaneously made by more than one employee, the award shall be divided equally among the employees who submitted the suggestion. The sum awarded shall be reportable as wages and subject to applicable state and federal taxes, as The award shall be computed on the actual savings for a 12-month period, with the period to run from the time that the suggestion is fully implemented. An award made pursuant to this section shall be paid out of funds appropriated to the agency, department, board, bureau, commission, or other administrative unit of the state, or the judiciary department, that realizes the cost savings, and shall be paid to the employee within one year and 30 days of full implementation of the suggestion. An award shall not be included when calculating an employee's average final compensation for determining the employee's retirement allowance.
- (i) If an employee who is eligible for an award under this section terminates state service prior to full implementation of his or her suggestion, the employee shall be entitled to receive an award equal to the savings calculated at the date of termination of service.
- (j) If an employee believes that the agency, department, board, bureau, commission, or other administrative unit of the state, or the judiciary

department has erroneously calculated or underestimated the savings realized by the suggestion, the employee may submit an objection to the amount awarded in writing, within 30 days of the award, to the secretary of administration or the court administrator, as appropriate. The secretary of administration or the court administrator, with the guidance of the commissioner of finance and management, shall review the amount awarded, and may increase the amount of an award or affirm the award. The decision of the secretary of administration or the court administrator shall be final.

- (k) In the event an employee's suggestion is denied on the basis of the criteria set forth in subdivision (d)(1) or (4) of this section, and is subsequently implemented within three years of the date the employee made the suggestion, the employee shall receive a monetary award in accordance with subsection (g) of this section.
- (1) The secretary of administration and the court administrator shall file a report with the governor, the state auditor, and the general assembly for each fiscal year, beginning on January 1, 2012, summarizing the suggestions implemented and the savings realized. The secretary shall also identify the suggestions that were rejected and the rationale for these rejections. A copy of this report shall be provided to the director of the Vermont state employees' association.
- (m) The joint legislative government accountability committee and the state auditor shall review the secretary of administration's and court administrator's reports on the program with the director of the Vermont state employees' association, or his or her designee, at least once during each fiscal year.

Sec. 2. REPEAL

Sec. 1 (3 V.S.A. § 266) of this act shall be repealed on July 1, 2014.

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

House Proposal of Amendment Concurred In

S. 122.

House proposal of amendment to Senate bill entitled:

An act relating to recounts in elections for statewide offices.

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. Secs. 6, 7, and 8 of No. 73 of the Acts of 2009 Adj. Sess. (2010) are amended to read:

Sec. 6. 17 V.S.A. § 2386 is amended to read:

§ 2386. TIME FOR FILING STATEMENTS

- (a) Statements pursuant to this subchapter, except for vacancies created by the death or withdrawal of a candidate after the primary and statements for minor party candidates and independent candidates, shall be filed not earlier than the second Thursday after the first Monday in June before the day of the general election and not later than 5:00 p.m. on the Tuesday following the primary election as set forth in section 2356 of this title.
- (b) In the case of the death or withdrawal of a candidate after the primary election, the party committee shall have seven days from the date of the withdrawal to nominate a candidate. In no event, shall a statement be filed later than 60 days prior to the election.
 - Sec. 7. 17 V.S.A. § 2402(d) is amended to read:
- (d) A statement of nomination and a completed and signed consent form shall be filed not sooner than the second Thursday after the first Monday in June and not later than the third day after the primary election as set forth in section 2356 of this title. No public official receiving nominations shall accept a petition unless a completed and signed consent form is filed at the same time.
 - Sec. 8. 17 V.S.A. § 2413 is amended to read:

§ 2413. NOMINATION OF JUSTICES OF THE PEACE

- (a) The party members in each town, on or before the <u>fourth first</u> Tuesday of August in each even numbered year, upon the call of the town committee, may meet in caucus and nominate candidates for justice of the peace. The committee shall give notice of the caucus as provided in subsection (d) of this section and the chairman and secretary shall file the statements required in <u>sections section</u> 2385 <u>through 2387</u> of this title <u>not later than 5:00 p.m. on the</u> third day following the primary election.
- (b) If it does not hold a caucus as provided in subsection (a) of this section, the town committee shall meet and nominate candidates for justices of the peace as provided in sections 2381 through 2387 2385 of this title.
- (c) In any town in which a political party has not formally organized, any three members of the party who are voters in the town may call a caucus to nominate candidates for justice of the peace by giving notice as required in

subsection (d) of this section. Upon meeting, the caucus shall first elect a chairman and a secretary. Thereafter the caucus shall nominate its candidates for justice of the peace, and cause its chairman and secretary to file the statements required in sections section 2385 through 2387 of this title not later than 5:00 p.m. on the third day following the primary election.

* * *

Sec. 2. 17 V.S.A. § 2601 is amended to read:

§ 2601. RECOUNTS

If In an election for statewide office, county office, or state senator, if the difference between the number of votes cast for a winning candidate and the number of votes cast for a losing candidate is less than two percent of the total votes cast for all the candidates for an office, that losing candidate shall have the right to have the votes for that office recounted. In an election for all other offices, if the difference between the number of votes cast for a winning candidate and the number of votes cast for a losing candidate is less than five percent of the total votes cast for all the candidates for an office, divided by the number of persons to be elected, that losing candidate shall have the right to have the votes for that office recounted.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

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

S. 295.

House proposal of amendment to Senate bill entitled:

An act relating to the creation of an agricultural development director.

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:

* * * Agricultural Development * * *

Sec. 1. FINDINGS

The general assembly finds:

(1) Vermont agriculture is the most visible industry in Vermont. Farmers provide food, and they steward the land, which provides natural

habitat and scenery that is central to Vermont's character and working landscape.

- (2) Forestry is also central to Vermont's character and working landscape, and 75 percent of Vermont is forested.
- (3) Agriculture and forestry are major drivers of the tourism industry and offer many other recreational values and benefits.
- (4) Ninety-five percent of Vermont's visitors purchase locally produced food items while in the state, and two-thirds of these visitors report purchasing Vermont-made products while at home.
- (5) The Vermont brand, which signals quality and value and reminds consumers of the rural beauty of Vermont, presents considerable opportunities for expanding out-of-state markets for value-added Vermont products.
- (6) Vermont agricultural producers should play an important role in supplying the regional food system while enhancing and expanding the development of regional agriculturally related markets.
- (7) Vermont agriculture's impact on the state's economy is significant. The total value of direct, indirect, and value-added Vermont agricultural products sold in 2008 was \$2.3 billion. The farm-gate revenue generated by Vermont agricultural products sold in 2008 was \$673.7 million. Agri-tourism and recreational services related to agriculture had a 2008 market value of \$1.5 million.
- (8) Vermont's tourism industry is highly dependent on the pervasiveness of agriculture and forestry in the state and contributes \$2 billion to the state's economy each year.
- (9) Ninety-seven percent of Vermonters also support the state's agriculture and working landscape, and support for the viability of agriculture, including innovative agriculture, is long recognized.
- (A) Relationship-based food systems such as farm-to-school programs, community supported agriculture (CSA) programs, farmers' markets, and pick-your-own operations are increasingly popular and offer areas of opportunity for farmers.
- (B) The Vermont council on rural development, the Vermont housing and conservation board, the sustainable agriculture council, and others have each issued detailed reports on how to enhance the sustainability of agriculture and forestry in this state.
- (C) The general assembly enacted No. 38 of the Acts of 2007, an act relating to the viability of Vermont agriculture, with specific recommendations

- as to how to "support and develop a more robust and self-sustaining agricultural sector that also promotes agricultural industries."
- (D) The Farm-to-Plate Investment Program, approved at the end of the 2009 Vermont legislative session, directs the Vermont sustainable jobs fund, in consultation with the sustainable agriculture council and other stakeholders, to develop a 10-year strategic plan to strengthen Vermont's farm and food sector.
- (10) Over the years there have been many reports and plans produced by a variety of stakeholders, including the agency of agriculture, food and markets. While some of the resulting recommendations have been adopted, such as the buy local program, the small business development center, and the installation of electronic benefits transfer machines at farmers' markets, the successful implementation of other recommendations could be enhanced through the sustained attention and actions of an entity such as the proposed agricultural development board.
- (11) The agency of agriculture, food and markets has a broad range of expertise and experience that can contribute to the success of the agricultural development board.
- (12) In order to provide continuity for the development and implementation of a comprehensive agricultural economic development policy, and to protect and promote Vermont's agricultural and working landscape, a new body of state leaders and creative thinkers is needed to implement agricultural development strategies, including the Farm-to-Plate Investment Program's strategic plan.
- (13) In order to provide continuity of agricultural development work within the agency of agriculture, food and markets, the leadership role within the agency's agricultural development division should return to a classified position.
- Sec. 2. ELIMINATION OF POSITION OF DEPUTY COMMISSIONER FOR AGRICULTURAL DEVELOPMENT AND CREATION OF POSITION OF AGRICULTURAL DEVELOPMENT DIRECTOR
- (a) The general assembly authorizes and directs the elimination of the position of deputy commissioner for agricultural development within the agency of agriculture, food and markets.
- (b) The general assembly authorizes and directs the creation of a position of agricultural development director within the agency of agriculture, food and markets. The position shall be a classified position. The director's responsibilities shall be those set forth in 6 V.S.A. § 2963(b) and those delegated by the secretary.

Sec. 3. 3 V.S.A. § 253(e) is amended to read:

* * *

(e) The secretary of agriculture, food and markets, with the approval of the governor, shall appoint a deputy commissioner for administration and enforcement, and a deputy commissioner for agricultural development. The secretary of agriculture, food and markets may remove the deputy commissioners commissioner at pleasure, and he or she shall be responsible for their the deputy commissioner's acts. The agency of agriculture, food and markets shall be so organized that, subject to the supervision of the secretary of agriculture, food and markets, the functions and duties that relate to administration and enforcement shall be in the charge of the deputy commissioner of administration and enforcement, and those that relate to agricultural development shall be in the charge of the deputy commissioner of agricultural development.

Sec. 4. 6 V.S.A. § 2966 is added to read:

§ 2966. AGRICULTURAL DEVELOPMENT BOARD; ORGANIZATION; DUTIES AND AUTHORITY

- (a) Purpose. The purpose of this section is to create a permanent Vermont agricultural development board that is authorized and empowered as the state's primary agricultural development entity.
 - (1) The board is charged with:
- (A) optimizing the agricultural use of Vermont lands and other agricultural resources;
- (B) expanding existing markets and identifying and developing new profitable in-state and out-of-state markets for food, fiber, forest products, and value-added agricultural products, including farm-derived renewable energy; and
- (C) identifying opportunities and challenges related to infrastructure, product development, marketing, training, research, and education.

(2) The board shall:

- (A) review existing strategies and plans and develop, implement, and continually update a comprehensive statewide plan to guide and encourage agricultural development and new and expanded markets for agricultural and forest products;
- (B) advise and make recommendations to the secretaries of relevant state agencies, the governor, the director of the state experiment station, the University of Vermont extension service, and the general assembly on the

adoption and amendment of laws, regulations, and governmental policies that affect agricultural development, land use, access to capital, the economic opportunities provided by Vermont agriculture, and the well-being of the people of Vermont;

- (C) monitor and report on Vermont's progress in achieving the agricultural economic development goals identified by the board; and
- (D) balancing the needs of production methods with the opportunities to market products that enhance Vermont agriculture.
- (b) Board created. The Vermont agricultural development board is hereby created. The exercise by the board of the powers conferred upon it in this section constitutes the performance of essential governmental functions.
 - (c) Powers and duties. The board shall have the authority and duty to:
- (1) meet, at least quarterly, to conduct such business and take such action as is necessary to perform the duties set forth in this section;
- (2) design and conduct an ongoing public engagement process, which may include taking testimony and receiving information from any party interested in the board's activities;
- (3) gain information through the use of experts, consultants, and data to perform analysis as needed, and obtain necessary data and information from state economists, state administrative agencies, and programs such as the farm-to-plate initiative; and
- (4) serve as a resource for and make recommendations to the administration and the general assembly on ways to improve Vermont's laws, regulations, and policies in order to attain the goals of the comprehensive agricultural economic development plan.
 - (5) develop an annual operating budget, and
- (A) solicit any grants, gifts, or appropriations necessary to implement the budget,
- (B) expend any monies necessary to carry out the purposes of this section.
 - (d) Comprehensive agricultural economic development plan.
- (1) Using information available from previous and ongoing agricultural development planning efforts, such as the farm-to-plate investment program's strategic plan, and the board's own data and assumptions, the board shall develop and implement a comprehensive agricultural economic development plan for the state of Vermont. The plan shall include, at minimum, the following:

- (A) an assessment of the current status of agriculture in Vermont;
- (B) current and projected workforce composition and needs;
- (C) a profile of emerging business and industry sectors projected to present future agricultural economic development opportunities, and a cost-benefit analysis of strategies and resources necessary to capitalize on these opportunities;
- (D) a profile of current components of physical and social infrastructure affecting agricultural economic development;
- (E) a profile of government-sponsored programs, agricultural economic development resources, and financial incentives designed to promote and support agricultural economic development, and a cost-benefit analysis of continued support, expansion, or abandonment of these programs, resources, and incentives;
 - (F) the use of the Vermont brand to further agricultural development;
- (G) the enhancement and expansion of out-of-state marketing of Vermont products; and
 - (H) any additional issues as the board determines appropriate.
- (2) Based on its research and analysis, the board shall establish in the plan a set of clear strategies with defined and measurable outcomes for agricultural economic development, the purpose of which shall be to guide long-term agricultural economic development policymaking and planning.
- (3) Within one year of its first meeting, the board shall present the plan to the governor and the house committee on agriculture, the senate committee on agriculture, the house committee on commerce and economic development, and the senate committee on economic development, housing and general affairs as the Vermont comprehensive plan for agricultural economic development.
- (4) The board shall conduct a periodic review and revision of the comprehensive agricultural economic development plan as often as is necessary in its discretion, but at minimum every five years, to ensure the plan remains current, relevant, and effective for guiding and evaluating agricultural economic development policy.
- (5) The board shall within one year of adopting the plan develop benchmarking standards to measure progress in meeting the plan's goals and outcomes.
- (e) Annual report. The board shall make available a report, at least annually, to the administration, the house committee on agriculture, the senate

committee on agriculture, the house committee on commerce and economic development, the senate committee on economic development, housing and general affairs, and the people of Vermont on the state's progress toward attaining the goals and outcomes identified in the comprehensive agricultural economic development plan.

(f) Composition of board.

- (1) The board shall be composed of 12 members. In making appointments to the board pursuant to this section, the governor, the speaker of the house, and the president pro tempore of the senate shall coordinate their selections to ensure, to the greatest extent possible, that the board members selected by them reflect the following qualities:
- (A) proven leadership in a broad range of efforts and activities to promote and improve the Vermont agricultural economy and the quality of life of Vermonters;
- (B) demonstrated innovation, creativity, collaboration, pragmatism, and willingness to make long-term commitments of time, energy, and effort;
- (C) geographic, gender, ethnic, social, political, and economic diversity;
- (D) diversity of agricultural enterprise location, size, and sector of the for-profit agricultural business community members; and
- (E) diversity of interest of the nonprofit or nongovernmental organization community members.
 - (2) Members of the board shall include the following:
 - (A) four members appointed by the governor:
 - (i) a person with expertise in rural economic development issues;
- (ii) an employee of a Vermont postsecondary institution experienced in researching issues related to agriculture;
 - (iii) a person familiar with the agricultural tourism industry; and
 - (iv) an agricultural lender.
- (B) four members appointed by the speaker of the house of representatives:
- (i) a person who produces an agricultural commodity other than dairy products;
- (ii) a person who creates a value-added product using ingredients substantially produced on Vermont farms;

- (iii) a person with expertise in sales and marketing; and
- (iv) a person representing the feed, seed, fertilizer, or equipment enterprises.
- (C) four members appointed by the committee on committees of the senate:
- (i) a representative of Vermont's dairy industry who is also a dairy farmer:
- (ii) a person with expertise in land planning and conservation efforts that support Vermont's working landscape;
- (iii) a representative from a Vermont agricultural advocacy organization; and
- (iv) a person with experience in providing youth with educational opportunities enhancing understanding of agriculture.
- (3) The secretary of agriculture, food and markets, or his or her designee, shall serve the board as a member ex officio. The secretary shall attend meetings and provide staff support from the agency of agriculture, food and markets, but shall not have the right to vote.
- (4) The secretary of commerce and community development, or his or her designee, shall serve as a member ex officio. The secretary shall attend meetings, but shall not have the right to vote.

(g) Governance.

- (1) The board shall adopt rules of procedure not inconsistent with this section before conducting any further business.
- (2) Unless a higher threshold is established by the board's rules, seven members of the board shall constitute a quorum, and an action of the board shall be taken by a majority of those members present and voting.
- (3)(A) The board shall be led by a chair who shall be elected by the board from its membership at the first meeting.
- (B) The chair shall serve for the duration of his or her member term, until his or her earlier resignation, or until his or her unanimous removal by the governor, the speaker of the house, and the president pro tempore of the senate.
- (C) A chair may be reappointed, provided that no individual may serve more than two consecutive terms as chair.
 - (4) Each member of the board shall serve a three-year term, except:

- (A) the governor initially shall appoint one member to a one-year term, one member to a two-year term, and two members to a three-year term;
- (B) the speaker of the house initially shall appoint two members to a one-year term, one member to a two-year term, and one member to a three-year term; and
- (C) the committee on committees initially shall appoint one member to a one-year term, two members to a two-year term, and one member to a three-year term.
- (5) Any vacancy occurring among the members shall be filled by the respective appointing authority pursuant to this subsection, and shall be filled for the balance of the unexpired term. A member may be reappointed, provided that no individual may serve more than two consecutive three-year terms.
- (h) Compensation. Members who are not state employees or whose membership is not supported by their employer or association may receive per diem and reimbursement for travel to the extent funding is available.
 - * * * Livestock Care Standards Advisory Council * * *
- Sec. 5. 6 V.S.A. chapter 64 is added to read:

<u>CHAPTER 64. LIVESTOCK CARE STANDARDS</u> ADVISORY COUNCIL

§ 791. DEFINITIONS

As used in this chapter:

- (1) "Agency" means the agency of agriculture, food and markets.
- (2) "Council" means the livestock care standards advisory council.
- (3) "Livestock" means cattle, calves, sheep, swine, horses, mules, goats, fallow deer, American bison, poultry, and any other animal that can or may be used in and for the preparation of meat, fiber, or poultry products.
 - (4) "Secretary means the secretary of agriculture, food and markets.

§ 792. ESTABLISHMENT OF LIVESTOCK CARE STANDARDS ADVISORY COUNCIL

(a) There is established a livestock care standards advisory council for the purposes of evaluating the laws of the state and of providing policy recommendations regarding the care, handling, and well-being of livestock in the state. The livestock care standards advisory council shall be composed of the following members, all of whom shall be residents of Vermont:

- (1) The secretary of agriculture, food and markets, who shall serve as the chair of the council.
 - (2) The state veterinarian.
 - (3) The following seven members appointed by the governor:
- (A) A person with knowledge of food safety and food safety regulation in the state.
 - (B) Two persons from statewide organizations that represent farmers.
 - (C) A Vermont licensed livestock or poultry veterinarian.
- (D) A representative of an agricultural department of a Vermont college or university.
 - (E) A representative of the Vermont slaughter industry.
- (F) A representative of the Vermont livestock dealer, hauler, or auction industry.
- (4) The following two members appointed by the committee on committees:
 - (A) A producer of species other than bovidae.
- (B) An operator of a medium farm or large farm permitted by the agency.
 - (5) The following two members appointed by the speaker of the house:
 - (A) An operator of a small Vermont dairy farm.
- (B) A representative of a local humane society or organization from Vermont registered with the agency and organized under state law.
- (b) Members of the board shall be appointed for staggered terms of three years. Except for the chair, the state veterinarian, and the representative of the agricultural department of a Vermont college or university, no member of the council may serve for more than six consecutive years. Seven members of the council shall constitute a quorum.
- (c) With the concurrence of the chair, the council may use the services and staff of the agency in the performance of its duties.
- (d) Members who are not state employees or whose membership is not supported by their employer or association may receive per diem and reimbursement for travel to the extent funding is available.

§ 793. POWERS AND DUTIES OF LIVESTOCK CARE STANDARDS ADVISORY COUNCIL

- (a) The council shall:
- (1) Review and evaluate the laws and rules of the state applicable to the care and handling of livestock. In conducting the evaluation required by this section, the council shall consider the following:
 - (A) the overall health and welfare of livestock species;
 - (B) agricultural best management practices;
 - (C) biosecurity and disease prevention;
 - (D) animal morbidity and mortality data;
 - (E) food safety practices; and
- (F) the protection of local and affordable food supplies for consumers.
- (2) Submit policy recommendations to the secretary on any of the subject matter set forth under subdivision (1) of this subsection. A copy of the policy recommendations submitted to the secretary shall be provided to the house and senate committees on agriculture. Recommendations may be in the form of proposed legislation.
- (3) Meet at least annually and at such other times as the chair determines to be necessary.
- (4) Submit minutes of the council annually, on or before January 15, to the house and senate committees on agriculture.
- (b) The council may engage in education and outreach activities related to the laws and regulations for the care and handling of livestock. The council may accept funds from public or private sources in compliance with 32 V.S.A. § 5.

Sec. 6. EFFECTIVE DATES

- (a) Secs. 1, 2, 3, and 4 of this act shall take effect on July 1, 2010.
- (b) This Sec. and Sec. 5 shall take effect upon passage.

And that the title of the bill be amended to read:

"An act relating to miscellaneous agriculture."

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

Rules Suspended; Bill Committed

On motion of Senator Kittell, the rules were suspended, and

House bill entitled:

H. 614. An act relating to the regulation of composting.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Natural Resources and Energy, Senator Kittell moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Agriculture with the report of the Committee on Natural Resources and Energy *intact*,

Which was agreed to.

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. 213, H. 555, H. 788.

Rules Suspended; Bill Delivered

On motion of Senator Mazza, the rules were suspended, and the following bill was ordered delivered to the Governor forthwith:

S. 122.

Recess

On motion of Senator Shumlin the Senate recessed until 2:30 P.M.

Called to Order

At 2:30 P.M. the Senate was called to order by the President.

Adjournment

On motion of Senator Shumlin, the Senate adjourned, to reconvene on Monday, May 3, 2010, at eleven o'clock and thirty minutes in the forenoon pursuant to J.R.S. 63.

MONDAY, MAY 3, 2010

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

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

Message from the House No. 66

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. 187. An act relating to municipal financial audits.

And has passed the same in concurrence.

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

- **S. 58.** An act relating to electronic payment of wages.
- **S. 103.** An act relating to the study and recommendation of ignition interlock device legislation.
 - **S. 161.** An act relating to National Crime Prevention and Privacy Compact.
 - **S. 207.** An act relating to handling of milk samples.

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, 2010, he approved and signed a bill originating in the House of the following title:

H. 456. An act relating to fuel assistance.

Message from the House No. 67

A message was received from the House of Representatives by Mr. William M. MaGill, its First 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. 222. An act relating to recognition of Abenaki tribes.

And has passed the same in concurrence with proposals of amendment 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. 760.

An act relating to the repeal or revision of certain boards and commissions.

House Requested to Return Bill to Custody of Senate

H. 213.

On motion of Senator Illuzzi, the Senate requested the House to return to the custody of the Senate, House bill entitled:

An act to provide fairness to tenants in cases of contested housing security deposit withholding.

Consideration Postponed

Senate bill entitled:

S. 88.

An act relating to health care financing and universal access to health care in Vermont.

Was taken up.

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

Bill Passed in Concurrence

H. 462.

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

An act relating to encroachments on public waters.

Bill Passed in Concurrence with Proposals of Amendment H. 763.

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

An act relating to establishment of an agency of natural resources' river corridor management program.

Consideration Postponed

House bill entitled:

H. 770.

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

Was taken up.

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

Proposals of Amendment; Consideration Interrupted by Recess H. 485.

Senator Ayer, for the Committee on Finance, to which was referred House bill entitled:

An act relating to the use value appraisal program.

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. USE VALUE APPRAISAL PROGRAM ASSESSMENT

For property tax bills prepared in 2010 only, there is imposed on each owner of land enrolled in the use value appraisal program pursuant to chapter 124 of Title 32 a one-time assessment of \$128.00. The assessment shall be collected as part of property tax bills prepared for the 2010 tax year and the assessment shall show as a separate amount on all towns' bills. For the purpose of assessment and collection, the one-time assessment shall be a lien upon the real estate in the same manner and to the same effect as taxes are a lien upon real estate under 32 V.S.A. § 5061, and collection of the assessment shall be subject to all other provisions of chapter 133 of Title 32. The director of property valuation and review shall provide all towns with electronic notice of the parcels within each town that shall be subject to the one-time assessment. Using a form provided by the director, towns shall remit to the

state treasurer for deposit in the education and general funds on May 1, 2011, the full amount collected as of that date. Of the amount collected, 75 percent shall be deposited in the education fund and 25 percent in the general fund. At the time of the May 1 payment, towns also will indicate the full amount that should have been collected and any amount that remains delinquent. Payment of any amount outstanding due to delinquencies shall be payable in full to the state treasurer on December 1, 2011.

* * * Method and Calculation of Land Use Change Tax * * *

Sec. 2. 32 V.S.A. § 3757 is amended to read:

§ 3757. LAND USE CHANGE TAX

- (a) Land which has been classified as agricultural land or managed forest land forestland pursuant to this chapter shall be subject to a land use change tax upon the development of that land, as defined in section 3752 of this chapter. Said The tax shall be at the rate of 20 10 percent of the full fair market value of the changed land determined without regard to the use value appraisal; or the tax shall be at the rate of 10 percent if the owner demonstrates to the satisfaction of the director that the parcel has been enrolled continuously more than 10 years. If changed land is a portion of a parcel, the fair market value of the changed land shall be the fair market value of the changed land prorated on the basis of acreage, divided by the common level of appraisal. Such For purposes of the land use change tax, fair market value shall be determined as of the date the land is no longer eligible for use value appraisal developed or at an earlier date, if the owner petitions for the determination pursuant to subsection (c) of this section and pays the tax within 30 days of notification from the local assessing officials. This tax shall be in addition to the annual property tax imposed upon such property. Nothing in this section shall be construed to require payment of an additional land use change tax upon the subsequent development of the same land, nor shall it be construed to require payment of a land use change tax merely because previously eligible land becomes ineligible, provided no development of the land has occurred.
- (b) Any owner of eligible land who wishes to withdraw land from use value appraisal shall petition the director for a determination of the fair market value of the land at the time of the withdrawal. Thereafter land which has been withdrawn shall be appraised and listed at its full fair market value in accordance with the provisions of chapter 121 of this title. Said determination of the fair market value shall be used in calculating the amount of the land use change tax that shall be due when and if the development of the land occurs.
- (c) The determination of the fair market value of the land as of the date the land is no longer eligible for a use value appraisal, or as of the time of the withdrawal of the land from use value appraisal, shall be made by the director

local assessing officials in accordance with the land schedule and the appraisal model used to list property of similar size to the withdrawn parcel in their municipality divided by the municipality's most recent common level of appraisal as determined by the director; provided, however, that if the land use change tax becomes payable as a result of a transfer of title pursuant to a bona fide arms' length transaction, the purchase price shall be deemed the fair market value of the property for the purpose of calculating the land use change tax. The determination shall be made within 30 days after the date that the owner or assessing officials petition petitions for the determination and shall be effective on the date of dispatch the notice is sent to the owner. The director may initiate a determination on his or her own initiative following written notice to the owner and a period of not less than 30 days for the owner to respond. The director shall also send a copy of the notice to the local assessing officials, the secretary of the agency of agriculture, food and markets if the land is agricultural land, and the commissioner of forests, parks and recreation if the land is managed forestland.

- (d) The land use change tax shall be due and payable by the owner 30 days after the tax notice is mailed to the taxpayer. The tax shall be paid to the commissioner for deposit into the general fund municipality in which the land is located. The commissioner local assessing officials shall issue a form to the assessing officials commissioner which shall provide for a description of the land developed for which the tax is due, the amount of tax payable, and the fair market value of the land at the time of development or withdrawal from use value appraisal used to calculate the tax. The owner shall fill out the form and shall sign it under the penalty of perjury. After receipt of payment, the commissioner local assessing officials shall furnish the owner with one copy, shall retain one copy and shall, forward one copy to the local assessing officials and commissioner along with one-half of the tax collected, forward one copy to the register of deeds of the municipality in which the land is located, forward one copy to the secretary of the agency of agriculture, food and markets if the land is agricultural land, and forward one copy to the commissioner of forests, parks and recreation if the land is managed forestland. Thereafter, the land which has been withdrawn or developed shall be appraised and listed at its full fair market value in accordance with the provisions of chapter 121 of this title.
- (e) The owner of any classified land receiving use value appraisal under this subchapter shall immediately notify the director, <u>local assessing officials</u>, the secretary of the agency of agriculture, food and markets if the land is agricultural land, and the commissioner of forests, parks and recreation if the land is managed forestland of:

* * *

Sec. 3. 32 V.S.A. § 3758(a) is amended to read:

- (a) Whenever the director denies in whole or in part any application for classification as agricultural land or managed forest land forestland or farm buildings, or grants a different classification than that applied for, or the director or assessing officials fix a use value appraisal, or determine that previously classified property is no longer eligible or that the property has undergone a change in use, the aggrieved owner may appeal the decision of the director to the director within 30 days of the decision. The aggrieved owner may appeal the director's final decision to the commissioner within 30 days, and from there to the superior court in the same manner and under the same procedures as an appeal from a decision of a board of civil authority, as set forth in subchapter 2 of chapter 131 of this title; and may appeal the decision of the assessing officials in the same manner as an appeal of a grand list valuation.
- * * * Remove Preferential Property Transfer Tax Rate for Enrolled Land * * *

Sec. 4. REPEAL

- 32 V.S.A. § 9602(2) (providing preferential property transfer tax for land enrolled in the use value appraisal program) is repealed effective April 1, 2010.
 - * * * Electronic Administration of Use Value Appraisal Program * * *

Sec. 5. APPROPRIATION

- (a) For fiscal year 2011, there is appropriated \$300,000.00 from the general fund to the use value appraisal program special fund created pursuant to 32 V.S.A. § 3756(e) for the purpose of converting the administration of the program to an electronic format.
- (b) It is the intent of the general assembly to appropriate \$300,000.00 from the general fund to the use value appraisal program special fund to continue conversion of the administration of the program to an electronic format in each of fiscal years 2012 and 2013.

Sec. 6. NOTICE

- (a) The director of property valuation and review shall timely provide written notice to each owner of land enrolled in the use value appraisal program of the changes provided for in this act and the options the owner has with respect to any enrolled land.
- (b) The director shall timely provide written notice to all applicants to the use value appraisal program who applied to enroll land for the September 1, 2009, deadline of the changes provided for in this act and the

options the applicant has with respect to the enrollment of land. Each applicant shall have the opportunity to do one of the following:

- (1) Enroll all of the land as provided for in the original application; or
- (2) Withdraw the application in its entirety by filing a notice of withdrawal with the director on or before June 1, 2010.
- (c) Any applicant who does not provide notice to the director by June 1, 2010, pursuant to subsection (b) of this section shall be deemed to have elected to enroll all of the land as provided for in the original application pursuant to subdivision (b)(1) of this section. The director shall refund the application fee of any applicant who elects to withdraw the application in its entirety pursuant to subdivision (b)(2) of this section.

Sec. 7. WAIVER OF ERRORS AND OMISSIONS

For April 1, 2010, grand list only, the provisions of 32 V.S.A. § 4261, requiring selectboard approval before listers may correct errors on the grand list, are waived with respect to making changes to the grand list that are the result of withdrawal of applications for enrollment pursuant to subdivisions (b)(1) and (2) of Sec. 6 of this act.

Sec. 8. THE FUTURE OF THE USE VALUE APPRAISAL PROGRAM

- (a) Given the critical importance of Vermont's use value appraisal program to the state's agricultural and forest industries as well as to the state's rural character and quality of life and in response to continuing fiscal challenges, the general assembly should consider multiple strategies to strengthen the effectiveness, efficiency, and fairness of the use value appraisal program and seek ways to find additional revenue generation or cost savings consistent with the program's policy objectives.
- (b) There is created a current use committee to study issues relating to the use value appraisal program and to report to the house committees on agriculture, on natural resources and energy, on fish, wildlife and water resources, and on ways and means and to the senate committees on agriculture, on natural resources and energy, and on finance on or before January 15, 2011. The members of the study committee shall be:
- (1) The director of property valuation and review, who shall serve as the chair of the committee and shall call the first meeting of the committee on or before July 1, 2010;
- (2) The secretary of the agency of agriculture, food and markets or designee;
 - (3) The commissioner of forests, parks and recreation or designee:

- (4) A representative of the Vermont League of Cities and Towns, appointed by its board of directors;
- (5) A representative of the Vermont Assessors and Listers Association, appointed by its board of directors;
 - (6) A member of the public appointed by the speaker of the house;
 - (7) A member of the public appointed by the committee on committees;
 - (8) A member of the public appointed by the governor;
 - (c) The committee report shall address the following issues in detail:
- (1) The state's formula for municipal reimbursement payments ("hold harmless payments").
 - (2) The extent and degree of over-assessment of enrolled land;
- (3) Whether there is a need to create incentives for landowners who keep enrolled land open for public recreation, and if so, what incentives.
- (4) The feasibility of allowing enrollees to omit on an initial application or withdraw from the program an undesignated two-acre housesite that would be assessed at the highest value.
- (d) Members of the committee who are not state employees shall be entitled to compensation as provided under 32 V.S.A. § 1010.

Sec. 9. EFFECTIVE DATES AND TRANSITION RULES

- (a) Any withdrawal of an application for use value appraisal pursuant to subdivision (b)(2) of Sec. 6 of this act after the date of passage of this act and before June 1, 2010 shall be deemed to affect the enrollment status of the withdrawn property for the grand list of April 1, 2010.
- (b) Property withdrawn from the use value appraisal program before the effective date of Secs. 2 and 3 of this act, but not developed before that date, shall be subject to the land use change tax under the provisions of 32 V.S.A. § 3757 that were in effect at the time of withdrawal; and revenues from land use change tax paid on any such property shall be paid to the commissioner for deposit into the general fund.
- (c) This section and Secs. 1, 5, 6, 7, and 8 of this act shall take effect upon passage.
 - (d) Secs. 2 and 3 of this act shall take effect on November 1, 2010.
- (e) Sec. 4 of this act shall apply to all property transfers on or after July 1, 2010.

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

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Finance with the following amendments thereto:

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

Sec. 1. USE VALUE APPRAISAL PROGRAM ASSESSMENT

For property tax bills prepared in 2010 only, there is imposed on each owner of land enrolled in the use value appraisal program pursuant to chapter 124 of Title 32 a one-time assessment of \$128.00. The assessment shall be collected as part of property tax bills prepared for the 2010 tax year, and the assessment shall show as a separate amount on all towns' bills. For the purpose of assessment and collection, the one-time assessment shall be a lien upon the real estate in the same manner and to the same effect as taxes are a lien upon real estate under 32 V.S.A. § 5061, and collection of the assessment shall be subject to all other provisions of chapter 133 of Title 32. The director of property valuation and review shall provide all towns with electronic notice of the parcels within each town that shall be subject to the one-time assessment. Using a form provided by the director, towns shall remit to the state treasurer for deposit in the general fund on May 1, 2011, the full amount collected as of that date. At the time of the May 1 payment, towns also will indicate the full amount that should have been collected and any amount that remains delinquent. Payment of any amount outstanding due to delinquencies shall be payable in full to the state treasurer on December 1, 2011.

<u>Second</u>: In Sec. 4, by striking out the following: "<u>April 1, 2010</u>" and inserting in lieu thereof the following: <u>July 1, 2010</u>

<u>Third</u>: By striking out Sec. 5 in its entirety and inserting in lieu thereof a new Sec. 5 to read as follows:

Sec. 5. APPROPRIATION

- (a) For fiscal year 2011, there is appropriated \$300,000.00 from the general fund to the use value appraisal program special fund created pursuant to 32 V.S.A. § 3756(e) for the purpose of administering the program electronically.
- (b) It is the intent of the general assembly to appropriate \$300,000.00 from the general fund to the use value appraisal program special fund to continue administering the program electronically in each of fiscal years 2012 and 2013.

<u>Fourth</u>: In Sec. 6, by striking out each instance of the following: "<u>June 1, 2010</u>" and inserting in lieu thereof the following: <u>July 1, 2010</u>

<u>Fifth</u>: In Sec. 9(a) by striking out the date "<u>June 1, 2010</u>" and inserting in lieu thereof the date <u>July 1, 2010</u>

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

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

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the committee on Finance, as amended?, Senator Starr, on behalf of the Committee on Agriculture, moved to amend the proposal of amendment of the Committee on Finance, as amended, as follows:

<u>First</u>: By striking out Secs. 2, 3, 6, and 7 in their entirety and by renumbering the remaining sections to be numerically correct.

<u>Second</u>: In Sec. 9, by striking out subsections (a), (b), and (d) in their entirety and, in subsection (c), by striking out the following: "<u>6</u>, <u>7</u>," and by redesignating the remaining subsections of the section to be alphabetically correct.

And by making all cross-references internally consistent.

Thereupon, pending the question, Shall the proposal of amendment of the Committee on Finance, as amended, be amended as moved by Senator Starr, on behalf of the Committee on Agriculture?, on motion of Senator Shumlin the Senate recessed until 1:30 P.M.

Called to Order

At 1:30 P.M. 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. 485.

Consideration was resumed on House bill entitled:

An act relating to the use value appraisal program.

Thereupon, the pending question, Shall the proposal of amendment of the Committee on Finance, as amended, be amended as moved by Senator Starr on

behalf of the Committee on Agriculture?, was disagreed to on a roll call, Yeas 10, Nays 19.

Senator Starr 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, Flory, Giard, Illuzzi, Kittell, Mullin, Scott, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Bartlett, Campbell, Carris, Cummings, Flanagan, Hartwell, Kitchel, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Racine, Shumlin, Snelling, White.

The Senator absent and not voting was: Sears.

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?, Senator Starr, on behalf of the Committee on Agriculture?, moved to amend the proposal of amendment of the Committee on Finance, as amended, as follows:

<u>First</u>: In Sec. 8, by striking out subsection (b) up to the colon and inserting in lieu thereof the following:

(b) There is created a current use committee to study issues relating to the use value appraisal program and to report to the house committees on agriculture, on natural resources and energy, on fish, wildlife and water resources, and on ways and means and to the senate committees on agriculture, on natural resources and energy, and on finance. The committee shall provide an interim report no later than January 15, 2011, and a final report no later than January 15, 2012. The members of the study committee shall be

And by inserting a subdivision (9) to read as follows:

(9) A member of the current use advisory board established pursuant to 32 V.S.A. § 3753, appointed by the chair.

Second: In Sec. 8, by inserting two new subdivisions to be (c)(5) and (6) to read:

- (5) Deferral of the land use change tax payment for development of on-farm housing.

Which was agreed to.

Thereupon, the pending question, Shall the Senate propose to the House that the bill be amended a recommended by the Committee on Finance, as amended?, was agreed to.

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 forthwith.

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

Committees of Conference Appointed

S. 97.

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

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

Senator Doyle Senator Brock Senator Ayer

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

S 295

An act relating to the creation of an agricultural development director.

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

Senator Kittell Senator Starr Senator Choate

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

H. 590.

An act relating to mediation in foreclosure proceedings.

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

Senator Campbell Senator Illuzzi Senator Cummings

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. 97, S. 295, H. 462, H. 485, H. 763.

Rules Suspended; Action Messaged

On motion of Senator Shumlin, the rules were suspended, and the action on the following bill was ordered messaged to the House forthwith:

H. 590.

Adjournment

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

Called to Order

The Senate was called to order by the President.

Rules Suspended; Bill Committed

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

H. 66. An act relating to including secondary students with disabilities in senior year activities and ceremonies.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Education, Senator Shumlin moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Finance with the report of the Committee on Education *intact*,

Which was agreed to.

Rules Suspended; Proposal of Amendment; Third Reading Ordered H. 470.

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

An act relating to restructuring of the judiciary.

Was taken up for immediate consideration.

Senator Sears, 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. 4 V.S.A. § 1 is amended to read:

§ 1. SUPREME COURT UNIFIED COURT SYSTEM ESTABLISHED

There shall be a supreme court for the state, which shall be held at the times and places appointed by law. The judiciary shall be a unified court system under the administrative control of the supreme court. It shall consist of an appellate division, which shall be the supreme court, and a trial division, which shall consist of a trial court of general jurisdiction to be known as the superior court, and a judicial bureau.

Sec. 2. 4 V.S.A. § 2 is amended to read:

§ 2. SUPREME COURT ESTABLISHED; JURISDICTION

(a) The supreme court shall have exclusive jurisdiction of appeals from judgments, rulings, and orders of the superior court, the district court and all other courts, administrative agencies, boards, commissions, and officers unless otherwise provided by law.

* * *

Sec. 3. 4 V.S.A. § 21a is amended to read:

§ 21a. DUTIES OF THE ADMINISTRATIVE JUDGE

(a) The administrative judge shall assign and specially assign superior and district judges, including himself or herself, and environmental judges to the superior, environmental, district, and family courts court. If the administrative judge determines that additional judicial time is needed to address cases filed in environmental court, the judge may assign or specially assign up to four judges on a part time basis to the environmental court. When assigning or specially assigning judges to the environmental court, the administrative judge shall give consideration to experience and expertise in environmental and zoning law, and shall assign or specially assign judges in a manner to provide appropriate attention to all geographic areas of the state. All superior judges except environmental judges shall be subject to the requirements of rotation as ordered by the supreme court. Assignments made pursuant to the rotation schedule shall be subject to the approval of the supreme court.

- (b) In making any assignment under this section, the administrative judge shall give consideration to the experience, temperament, and training of a judge and the needs of the court. In making an assignment to the environmental court division, the administrative judge shall give consideration to experience and expertise in environmental and land use law and shall assign or specially assign judges in a manner to provide appropriate attention to all geographic areas of the state.
- (c) In making any assignments to the environmental court division under this section, the administrative judge shall regularly assign both environmental judges through August 2008 and a minimum of two judges thereafter, at least one of whom shall be an environmental judge. An environmental judge may be assigned to another other divisions in the superior court only with the judge's consent and for a period of time not exceeding two years. When assigned to other divisions in the superior court, the environmental judge shall have all the powers and responsibilities of a superior judge.

Sec. 4. 4 V.S.A. § 22(a) and (b) are amended to read:

- (a) The chief justice may appoint and assign a retired justice or judge with his or her consent or a superior judge or district judge to a special assignment on the supreme court. The chief justice may appoint, and the administrative judge shall assign, an active or retired justice or a retired judge, with his or her consent, to any special assignment in the district, family, environmental or superior courts court or the judicial bureau. The administrative judge shall assign a judge to any special assignment in the district, family, environmental or superior court. Preference shall be given to superior judges to sit in superior courts. Preference shall be given to district judges to sit in district courts.
- (b) The administrative judge may appoint and assign a member of the Vermont bar residing within the state of Vermont to serve temporarily as:
 - (1) an acting judge in a district, family, environmental, or superior court;
 - (2) an acting magistrate; or
 - (3) an acting hearing officer to hear cases in the judicial bureau.

Sec. 5. 4 V.S.A. § 25(c) is amended to read:

(c) The supreme court may allow supreme court justices, superior court judges, district court judges, environmental court judges, magistrates, hearing officers, probate court judges, superior court clerks, or any state compensated state-compensated employees of the judicial branch not covered by a collective bargaining agreement to take an administrative leave of absence without pay, or with pay if the person is called to active duty in support of an extended national or state military operation. These judicial officers and state

employees shall be entitled to be compensated in the same manner as judicial branch employees covered by a collective bargaining agreement called to active duty. The court administrator, at the direction of the supreme court, shall include provisions in the personnel rules of the judiciary to administer these leaves of absence.

Sec. 6. 4 V.S.A. § 26 is amended to read:

§ 26. HALF-TIME JUDGES

Of the superior and district judge positions authorized by this title, up to two may be shared, each by two half-time judges. Of the magistrate positions authorized by this title, one may be shared by two half-time magistrates. Of the hearing officer positions authorized by this title, one may be shared by two half-time hearing officers. Half-time superior and district judges, magistrates, and hearing officers shall be paid proportionally and shall receive the same benefits as state employees who share a job. Half-time superior judges, magistrates, and hearing officers shall not engage in the active practice of law for remuneration.

Sec. 7. 4 V.S.A. § 30 is added to read:

§ 30. SUPERIOR COURT

- (a)(1) A superior court having statewide jurisdiction is created. The superior court shall have the following divisions:
- (A) A civil division, which shall be a court of record and have jurisdiction over the matters described in section 31 of this title. The Vermont Rules of Civil Procedure shall apply in the civil division.
- (B) A criminal division, which shall be a court of record and have jurisdiction over the matters described in section 32 of this title. The Vermont Rules of Criminal Procedure shall apply to criminal matters in the criminal division, and the Vermont Rules of Civil Procedure shall apply to civil matters in the criminal division.
- (C) A family division, which shall be a court of record and have jurisdiction over the matters described in section 33 of this title. The Vermont Rules of Family Procedure shall apply in the family division.
- (D) An environmental division, which shall be a court of record and have jurisdiction over the matters described in section 34 of this title. The Vermont Rules for Environmental Proceedings shall apply in the environmental division.

- (2) The supreme court shall promulgate rules, subject to review by the legislative committee on judicial rules under chapter 1 of Title 12, which establish criteria for the transfer of cases between divisions.
- (b) The supreme court shall by rule divide the superior court into 14 geographical units which shall follow county lines, except that, subject to the venue requirements of subsection 1001(e) of this title, the environmental division shall be a court of statewide jurisdiction and shall not be otherwise divided into geographical units. The superior court shall be held in each unit of the state.
- (c) Terms of the superior court shall be stated by administrative orders of the supreme court. The court administrator shall provide appropriate security services for each court in the state.

* * * Delayed Effective Date * * *

Sec. 7a. 4 V.S.A. § 30 is amended to read:

§ 30. SUPERIOR COURT

(a)(1) A superior court having statewide jurisdiction is created. The superior court shall have the following divisions:

* * *

(E) A probate division, which shall have jurisdiction over the matters described in section 35 of this title. The Vermont Rules of Probate Procedure shall apply in the probate division.

* * *

Sec. 7b. 4 V.S.A. § 31 is added to read:

§ 31. JURISDICTION; CIVIL DIVISION

The civil division shall have:

- (1) original and exclusive jurisdiction of all original civil actions, except as otherwise provided in sections 2, 32, 33, 34, 35, and 1102 of this title;
- (2) appellate jurisdiction of causes, civil and criminal, appealable to the court; and
- (3) original jurisdiction, concurrent with the supreme court, of proceedings in certiorari, mandamus, prohibition, and quo warranto;
- (4) exclusive jurisdiction to hear and dispose of any requests to modify or enforce orders in civil cases previously issued by the superior or district court other than orders relating to those actions listed in sections 437 and 454 of this title; and

- (5) any other matter brought before the court pursuant to law that is not subject to the jurisdiction of another division.
- Sec. 7c. 4 V.S.A. § 32 is added to read:

§ 32. JURISDICTION; CRIMINAL DIVISION

- (a) The criminal division shall have jurisdiction to try, render judgment, and pass sentence in prosecutions for felonies and misdemeanors.
- (b) The criminal division shall have jurisdiction to try and finally determine prosecutions for violations of bylaws or ordinances of a village, town, or city, except as otherwise provided.
- (c) The criminal division shall have jurisdiction of the following civil actions:
 - (1) Appeals of final decisions of the judicial bureau.
- (2) DUI license suspension hearings filed pursuant to chapter 24 of Title 23.
 - (3) Extradition proceedings filed pursuant to chapter 159 of Title 13.
- (4) Drug forfeiture proceedings under subchapter 2 of chapter 84 of Title 18.
- (5) Fish and wildlife forfeiture proceedings under chapter 109 of Title 10.
 - (6) Liquor forfeiture proceedings under chapter 19 of Title 7.
- (7) Hearings relating to refusal to provide a DNA sample pursuant to 20 V.S.A. § 1935.
- (8) Automobile forfeiture and immobilization proceedings under chapters 9 and 13 of Title 23.
- (9) Sex offender proceedings pursuant to 13 V.S.A. §§ 5411(e) and 5411d(f).
- (10) Restitution modification proceedings pursuant to 13 V.S.A. § 7043(h).
- (11) Municipal parking violation proceedings pursuant to 24 V.S.A. § 1974a(e), if the municipality has established an administrative procedure enabling a person to contest the violation, and the person has exhausted the administrative procedure.
- (12) Proceedings to enforce chapter 74 of Title 9, relating to energy efficiency standards for appliances and equipment.

(13) Proceedings to enforce 21 V.S.A. § 268, relating to commercial building energy standards.

Sec. 7d. 4 V.S.A. § 33 is added to read:

§ 33. JURISDICTION; FAMILY DIVISION

Notwithstanding any other provision of law to the contrary, the family division shall have exclusive jurisdiction to hear and dispose of the following proceedings filed or pending on or after October 1, 1990:

- (1) All desertion and support proceedings and all parentage actions filed pursuant to chapter 5 of Title 15.
- (2) All rights of married women proceedings filed pursuant to chapter 3 of Title 15.
 - (3) All enforcement of support proceedings filed pursuant to Title 15B.
- (4) All annulment and divorce proceedings filed pursuant to chapter 11 of Title 15.
- (5) All parent and child proceedings filed pursuant to chapter 15 of Title 15.
- (6) Grandparents' visitation proceedings filed pursuant to chapter 18 of Title 15.
- (7) All uniform child custody proceedings filed pursuant to chapter 19 of Title 15.
- (8) All juvenile proceedings filed pursuant to chapters 51, 52, and 53 of Title 33, including proceedings involving "youthful offenders" pursuant to 33 V.S.A. § 5281 whether the matter originated in the criminal or family division of the superior court.
- (9) All enforcement of support proceedings filed pursuant to chapter 39 of Title 33.
- (10) All protective services for developmentally disabled persons proceedings filed pursuant to chapter 215 of Title 18.
- (11) All mental health proceedings filed pursuant to chapters 179, 181, and 185 of Title 18.
- (12) All involuntary sterilization proceedings filed pursuant to chapter 204 of Title 18.
- (13) All care for mentally retarded persons proceedings filed pursuant to chapter 206 of Title 18.

- (14) All abuse prevention proceedings filed pursuant to chapter 21 of Title 15. Any superior judge may issue orders for emergency relief pursuant to 15 V.S.A. § 1104.
- (15) All abuse and exploitation proceedings filed pursuant to subchapter 2 of chapter 69 of Title 33.
 - (16) All proceedings relating to the dissolution of a civil union.
- (17) All requests to modify or enforce orders previously issued by the district or superior court relating to any of the proceedings identified in subdivisions (1)–(16) of this section.

Sec. 7e. 4 V.S.A. § 34 is added to read:

§ 34. JURISDICTION; ENVIRONMENTAL DIVISION

The environmental division shall have:

- (1) jurisdiction of matters arising under chapters 201 and 220 of Title 10;
- (2) jurisdiction of matters arising under chapter 117 and subchapter 12 of chapter 61 of Title 24; and
- (3) original jurisdiction to revoke permits under chapter 151 of Title 10.

Sec. 7f. 4 V.S.A. § 35 is added to read:

§ 35. JURISDICTION; PROBATE DIVISION

The probate division shall have jurisdiction of:

- (1) the probate of wills;
- (2) the settlement of estates;
- (3) the administration of trusts pursuant to Title 14A;
- (4) trusts of absent persons' estates;
- (5) charitable, cemetery, and philanthropic trusts;
- (6) the appointment of guardians, and of the powers, duties, and rights of guardians and wards;
 - (7) proceedings concerning chapter 231 of Title 18;
- (8) accountings of attorneys-in-fact where no guardian has been appointed and the agent has reason to believe the principal is incompetent;
 - (9) adoptions and relinquishment for adoption;
 - (10) uniform gifts to minors;

- (11) changes of name;
- (12) issuance of new birth certificates and amendment of birth certificates;
- (13) correction or amendment of civil marriage certificates and death certificates;
 - (14) emergency waiver of premarital medical certificates;
 - (15) proceedings relating to cemetery lots;
 - (16) trusts relating to community mausoleums or columbaria;
- (17) civil actions brought under subchapter 3 of chapter 107 of Title 18, relating to disposition of remains;
- (18) proceedings relating to the conveyance of a homestead interest of a spouse under a legal disability;
 - (19) the issuance of declaratory judgments;
- (20) issuance of certificates of public good authorizing the civil marriage of persons under 16 years of age;
- (21) appointment of administrators to discharge mortgages held by deceased mortgagees;
- (22) appointment of trustees for persons confined under sentences of imprisonment;
- (23) fixation of compensation and expenses of boards of arbitrators of death taxes of Vermont domiciliaries;
- (24) emancipation of minors proceedings filed pursuant to chapter 217 of Title 12;
- (25) grandparent visitation proceedings under chapter 18 of Title 15; and
 - (26) other matters as provided by law.
- Sec. 8. 4 V.S.A. § 36 is added to read:

§ 36. COMPOSITION OF THE COURT

- (a) Unless otherwise specified by law, when in session, a superior court shall consist of:
- (1) For cases in the civil or family division, one presiding superior judge and two assistant judges, if available.

- (2)(A) For cases in the family division, except as provided in subdivision (B) of this subdivision, one presiding superior judge and two assistant judges, if available.
- (B) The family court shall consist of one presiding superior judge sitting alone in the following proceedings:
- (i) All juvenile proceedings filed pursuant to chapters 51, 52, and 53 of Title 33, including proceedings involving "youthful offenders" pursuant to 33 V.S.A. § 5281 whether the matter originated in the criminal or family division of the superior court.
- (ii) All protective services for developmentally disabled persons proceedings filed pursuant to chapter 215 of Title 18.
- (iii) All mental health proceedings filed pursuant to chapters 179, 181, and 185 of Title 18.
- (iv) All involuntary sterilization proceedings filed pursuant to chapter 204 of Title 18.
- (v) All care for mentally retarded persons proceedings filed pursuant to chapter 206 of Title 18.
- (vi) All proceedings specifically within the jurisdiction of the office of magistrate.
 - (3) For cases in the criminal division, one superior judge sitting alone.
 - (4) For cases in the probate division, one probate judge sitting alone.
- (5) For cases in the environmental division, one environmental judge sitting alone.
- (b) Questions of law and fact. In all proceedings, questions of law shall be decided by the presiding judge. In cases not tried before a jury, questions of fact shall be decided by the court. Mixed questions of law and fact shall be deemed to be questions of law. The presiding judge alone shall decide which are questions of law, questions of fact, and mixed questions of law and fact. Written or oral stipulations of fact submitted by the parties shall establish the facts related therein, except that the presiding judge, in his or her discretion, may order a hearing on any such stipulated fact. Neither the decision of the presiding judge under this subsection nor participation by an assistant judge in a ruling of law shall be grounds for reversal unless a party makes a timely objection and raises the issue on appeal.
- (c) Availability of assistant judges. If two assistant judges are not available, the court shall consist of one presiding judge and one assistant judge. In the event that court is being held by the presiding judge and one assistant

judge and they do not agree on a decision, a mistrial shall be declared. If neither assistant judge is available, the court shall consist of the presiding judge alone, and the unavailability of an assistant judge shall not constitute reversible error.

- (d) Method of determining availability. Before commencing a hearing in any matter in which the court by law may consist of the presiding judge and assistant judges, the assistant judges physically present in the courthouse shall determine whether they are available for the case. If two or more cases are being heard at one time and assistant judges may by law participate in either, each assistant judge may determine in which case he or she will participate.
- (e) Duty to complete hearing or trial. After an assistant judge has decided to participate in a hearing or trial, he or she shall not withdraw therefrom except for cause. However, if the assistant judge is not available for a scheduled hearing or trial or becomes unavailable during trial, the matter may continue without his of her participation, and he or she may not return to participate.
- (f) Emergency relief. A presiding judge may hear a petition for emergency relief when the court is not sitting and may issue temporary orders as necessary.
- (g) Jury trial. In order to preserve the right to trial by jury, when issues sounding in law and in equity are presented in the same action, the supreme court shall provide by rule for trial by jury, when demanded, of issues sounding in law.
- Sec. 9. 4 V.S.A. § 37 is added to read:

§ 37. VENUE

- (a) The venue for all actions filed in the superior court, whether heard in the civil, criminal, family, environmental, or probate division, shall be as provided in law.
- (b) Notwithstanding any other provision of law, the supreme court may promulgate venue rules, subject to review by the legislative committee on judicial rules under chapter 1 of Title 12, which are consistent with the following policies:
- (1) Proceedings involving a case shall be heard in the unit in which the case was brought, subject to the following exceptions:
 - (A) when the parties have agreed otherwise;
- (B) status conferences, minor hearings, or other nonevidentiary proceedings; or

- (C) when a change in venue is necessary to ensure access to justice for the parties or required for the fair and efficient administration of justice.
- (2) The electronic filing of cases on a statewide basis should be facilitated, and the court is authorized to promulgate rules establishing an electronic case-filing system.
- (3) The use of technology to ease travel burdens on citizens and the courts should be promoted. For example, venue requirements should be deemed satisfied for some court proceedings when a person, including a judge, makes an appearance via video technology, even if the judge is not physically present in the same location as the person making the appearance.
- Sec. 10. 4 V.S.A. § 71(a) and (e) are amended to read:
- (a) There shall be 15 32 superior judges, whose terms of office shall, except in the case of an appointment to fill a vacancy or unexpired term, begin on April 1 in the year of their appointment or retention, and continue for six years.
- (e) The supreme court shall designate one of the superior or district judges to serve as administrative judge. The administrative judge shall serve at the pleasure of the supreme court.

Sec. 11. 4 V.S.A. § 73 is amended to read:

§ 73. ASSIGNMENT

The supreme court may establish no more than three geographic divisions for the assignment of superior judges. In accordance with the direction of the supreme court, the administrative judge shall assign the superior judges among the geographic units and divisions and shall establish a rotation schedule, both within and outside the division to which the judges are regularly assigned. The rotation schedule shall be on file in the office of the elerk of each superior court, and copies shall be furnished upon request of the superior court. The administrative judge shall assign a presiding judge to each unit and may assign a judge to preside in more than one unit. Only in In a case where a superior judge is disqualified or unable to attend any term of court or part thereof to which he or she has been assigned may, the administrative judge may assign another superior judge to act as presiding judge at that term or part thereof and only for that period during which the assigned judge is disqualified or unable to attend. If during a term of the superior court the court in a unit is unable to complete all or part of the work before it in a reasonable time, the administrative judge, with the approval of the supreme court, may modify judge assignments to reduce delays in that unit. The court shall publish the judicial rotation schedule in electronic format and distribute it electronically to attorneys licensed in Vermont.

- (b) Pursuant to section 21a of this title, the administrative judge shall specially assign superior judges to hear and determine family court matters. The administrative judge shall insure that such hearings are held promptly. Any contested divorce case which has been pending for more than one year shall be advanced for prompt hearing upon the request of any party.
- (c) Notwithstanding subsection (b) of this section, the administrative judge may, pursuant to section 21a of this title, specially assign a district court judge to family court to hear matters specified in subsection (b). As necessary to ensure the efficient operation of the superior court, the presiding judge of the unit may specially assign a superior judge assigned to a division in the unit, including the presiding judge, to preside over one or more cases in a different division. As the administrative judge determines necessary for the operation of the superior court throughout the state, and with the approval of the supreme court, the administrative judge may additionally assign for a specified period of time a superior judge to preside over a particular type of case, or over a particular type of motion or other judicial proceeding, in all or part of the units in the state.

Sec. 12. 4 V.S.A. § 75 is amended to read:

§ 75. POWERS OF JUSTICE, <u>OR</u> SUPERIOR JUDGE OR DISTRICT JUDGE AFTER EXPIRATION OF TERM OR VACATION OF OFFICE

Whenever the term of office of a justice, superior judge or district judge, environmental judge, magistrate, or hearing officer expires or he or she otherwise vacates the office, he the justice, judge, magistrate, or hearing officer shall have the same authority to conclude causes he or she has partly or fully heard before him that he or she would have had if he had remained remaining in that office. He The justice, judge, magistrate, or hearing officer may make and sign findings and orders for judgments or decrees in causes pending before him and or her, may make interlocutory orders and decrees. He, and shall be paid compensation commensurate with that paid specially assigned judicial officers as provided by section 23 of this title.

Sec. 13. 4 V.S.A. § 111 is amended to read:

§ 111. SUPERIOR COURT SESSIONS

- (a) A superior court shall be held in each county at the times and places appointed by law.
- (b) When the business of a superior court cannot otherwise be disposed of with reasonable dispatch, by direction of the administrative judge, there may be held additional sessions of that superior court simultaneously with the regular session consisting of a presiding judge and one or more assistant judges, if available.

- (e)(b) A superior court may be temporarily recessed or adjourned from the place designated for holding a regular term or session to another place in the county having adequate facilities, when the regular facilities at the county designated courthouse are not adequate.
- (d) A superior court may be temporarily recessed or adjourned from the place designated for holding a regular term or session to another place outside the county having adequate facilities, when the regular facilities at the county courthouse are not adequate and when the court and all litigants in the case agree to said transfer.
- (e)(c) The administrative judge may assign assistant judges, with their consent, to a special assignment in a court where they have jurisdiction in another county when assistant judges of that county are unavailable or the business of the courts so require.

Sec. 14. 4 V.S.A. § 112 is amended to read:

§ 112. [Repealed.]

Sec. 15. 4 V.S.A. § 115 is amended to read:

§ 115. STATED TERMS OF SUPERIOR COURT

Terms of the superior court shall be stated by the administrative orders of the supreme court. The superior court shall operate continuously irrespective of the term in which events occur. Terms are designated for purposes of determining the rotation schedule of superior judges and the responsibility of a superior judge once a term has expired. When at the expiration of a term a superior judge is no longer assigned to a specified unit, the judge shall complete any matters that have been heard or taken under advisement for that unit. The administrative judge, pursuant to rules of the supreme court, may specially assign a superior judge to continue to preside over one or more cases even though the judge is no longer assigned to the unit of origin of the case or cases. In the absence of such a direction or of an assignment made pursuant to subsection 73(c) of this title, a judge who at the end of a term is no longer assigned to a unit shall have no further responsibility for cases in that unit.

Sec. 16. 4 V.S.A. § 219 is amended to read:

§ 219. POWERS OF CHANCELLOR

The powers and jurisdiction of the courts that were heretofore vested in the courts of chancery are vested in the superior court. District Superior, environmental, and probate judges have the powers of a chancellor in passing upon all civil matters which may come before them.

Sec. 17. 4 V.S.A. § 272 is added to read:

§ 272. PROBATE DISTRICTS; PROBATE JUDGES

- (a) There shall be one probate district in each county, which shall be designated by the name of the county. Each probate district shall elect one probate judge.
- (b) To hold the position of probate judge, a person shall be admitted by the supreme court to practice law. This subsection shall not apply to any person who holds the office of probate judge on July 1, 2010.
- (c) The administrative judge may specially assign a probate judge to hear a case in a geographical district other than the district for which the probate judge was elected.

Sec. 18. DELETED

Sec. 18a. 4 V.S.A. § 311a is amended to read:

§ 311a. VENUE GENERALLY

For proceedings authorized to <u>the</u> probate <u>courts</u> <u>division of superior court</u>, venue shall lie as provided in Title 14A for the administration of trusts, and otherwise in a <u>probate</u> district of the court as follows:

* * *

- (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 <u>division</u> of the superior 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 civil marriage of persons under 16 years of age: in the district or county unit where either applicant resides, if either is a resident of the state; otherwise in the district or county unit in which the civil marriage is sought to be consummated.
- (28) Appointment of a trustee for a person confined under a sentence of imprisonment: in the district or eounty unit in which the person resided at the time of sentence, or in the district or county unit in which the sentence was imposed.

* * *

Sec. 19. DELETED

Sec. 20. 4 V.S.A. § 355 is amended to read:

§ 355. DISQUALIFICATION OR DISABILITY OF JUDGE

When a probate judge is incapacitated for the duties of his office by absence, removal from the district, resignation, sickness, death, or otherwise or if he, his wife the judge or the judge's spouse or child is heir or legatee under a will filed in his the judge's district, or if he the judge is executor or administrator of the estate of a deceased person in his or her district, or is interested as a creditor or otherwise in a question to be decided by the court, he or she shall not act as judge. His The judge's duties shall be performed by the register, if not disqualified, or a judge of another district or an assistant judge of the superior court of the county in which such district is situated. The register or judge shall have jurisdiction to act while such disqualification, incapacity or vacancy exists a superior judge assigned by the presiding judge of the unit.

Sec. 21. 4 V.S.A. § 356 is amended to read:

§ 356. AUTHORITY OF JUDGE AFTER END OF TERM

- (a) A probate judge whose term of office has expired, or who has vacated such office, shall have authority to act in the capacity of probate judge to conclude causes and proceedings partly or fully heard before him the judge as probate judge as fully and effectively as he or she could had if he or she remained in such office. He or she may make, sign, and enter findings, decisions, orders, and decrees in causes or proceedings so pending before him or her as probate judge, and all such acts so performed by him the judge shall have as full force and effect as they would have had if he or she had remained in office.
- (b) The jurisdiction conferred by subsection (a) of this section shall not be exercised unless the successor to the retiring judge shall file and cause to be recorded in such cause or proceeding within 30 days from the time of assuming office a certificate stating that such cause or proceeding was partly or fully heard before such retiring judge and that jurisdiction thereof shall be retained by such retiring judge if the presiding judge of the unit determines that the successor to the probate judge will assume jurisdiction for all or part of the cases.

- (c) A probate judge who exercises the jurisdiction conferred by subsection (a) of this section shall receive compensation at a rate fixed by the successor judge, and the compensation and necessary expenses allowed by the successor judge shall be paid by the state court administrator.
- Sec. 22. 4 V.S.A. § 357 is amended to read:
- § 357. REGISTERS OF PROBATE; APPOINTMENT AND REMOVAL; COMPENSATION: CLERKS
- (a) The probate judge shall appoint and remove registers of probate and elerical assistants for the probate courts, who shall be paid by the state and shall be state employees and shall be entitled to all fringe benefits and compensation accorded classified state employees who are similarly situated, as determined by the court administrator subject to any applicable statutory limits, unless otherwise covered by the provisions of a collective bargaining agreement setting forth the terms and conditions of employment, negotiated pursuant to chapter 28 of Title 3, in consultation with the court administrator, shall appoint a register of probate for each district. The probate judge may request that the court administrator designate one or more staff persons as additional registers.
- (b) Subject to the approval of the court administrator, more than one register of probate may be appointed in any probate district as the business of the court requires.
- Sec. 23. 4 V.S.A. § 362 is amended to read:

§ 362. OATHS

A <u>probate</u> judge or register may administer oaths necessary in the transaction of business before the probate court and oaths required to be administered to persons executing trusts under the appointment of such court.

Sec. 23a. 4 V.S.A. § 363 is amended to read:

§ 363. POWERS

- (a) A <u>The</u> probate <u>division of the superior</u> court may issue warrants, subpoenas, and processes in conformity with the law necessary to compel the attendance of witnesses or to produce books, papers, documents, or tangible things, or to carry into effect the orders, sentences, or decrees of the probate <u>eourt division</u> or the powers granted it by law.
- (b) A The probate division of the superior court may appoint not more than three masters to report on a particular issue or to do or perform particular acts or to receive and report evidence.

Sec. 24. 4 V.S.A. § 364 is amended to read:

§ 364. COMMITMENT TO ENFORCE ORDERS

If a person does not comply with an order, sentence, or decree of the probate division of the superior court in a proceeding formerly within the jurisdiction of the probate court, the court may issue a warrant committing the person to the custody of the commissioner of corrections until compliance is given.

Sec. 25. 4 V.S.A. § 369 is amended to read:

§ 369. NONRESIDENT'S ESTATE; NOTICE TO COMMISSIONER OF TAXES; INFORMATION TO BANKS

- (a) When an executor or administrator is appointed to administer within this state an estate of a deceased person who resided in another state or country at the time of his <u>or her</u> death, the judge <u>of probate so appointing</u> who <u>issued the appointment</u> shall <u>forthwith</u> notify <u>in writing forthwith</u> the commissioner of taxes <u>in writing</u> of <u>such the</u> appointment, giving the name and residence of <u>such the</u> deceased person at the time of his <u>or her</u> death, the name and residence of the executor or administrator, the date of his <u>or her</u> appointment, and <u>identifying</u> the <u>probate</u> court making <u>such the</u> appointment.
- (b) The commissioner shall keep a full record in each case and upon inquiry made of him <u>or her</u> by any savings bank or savings institution in the state shall at once notify <u>such</u> the bank or institution whether, as shown by his <u>or her</u> record, an executor or administrator has been appointed by any probate court in the state to administer the estate of the deceased person named in <u>such</u> the inquiry. If there has been such an appointment, the commissioner shall furnish the above information to <u>such</u> the bank or institution forthwith.

Sec. 26. DELETED

Sec. 27. 4 V.S.A. § 436a is amended to read:

§ 436a. —SPECIAL CIRCUIT AT WATERBURY

There is hereby established a special unit of the district family division of the superior court to hold sessions in the town of Waterbury for the sole purpose of exercising jurisdiction over applications for treatment of mentally ill individuals under Title 18. That unit shall have exclusive jurisdiction of any application for involuntary hospitalization arising under the provisions of 18 V.S.A. §§ 7801, 7803, and 8001 where the proposed patient is confined to the Vermont State Hospital at Waterbury. The special unit shall not exercise any other civil or criminal jurisdiction otherwise exercised by the district court created under section 436 of this title superior court. A district superior judge shall be assigned by the administrative judge to the special unit, who need not

be a resident of the town of Waterbury or of the territorial unit in which the town of Waterbury is otherwise located. The district judge assigned to the special unit may be assigned by the administrative judge to serve temporarily in another unit where he may exercise the same jurisdiction as any district judge. If another district judge is assigned to the special unit temporarily, he shall exercise only the jurisdiction conferred on that unit.

Sec. 28. DELETED

Sec. 28a. 4 V.S.A. § 455 is amended to read:

§ 455. TRANSFER OF PROBATE PROCEEDINGS

- (a) Any guardianship action filed in <u>the</u> probate <u>division of the superior</u> court pursuant to chapter 111, subchapter 2, article 1 of Title 14 and any adoption action filed in <u>the</u> probate <u>eourt division</u> pursuant to <u>Title 15A</u> may be transferred to the family <u>division of the superior</u> court as provided in this section.
- (b) The family <u>eourt division</u> shall order the transfer of the proceeding on motion of a party or on its own motion if it finds that the identity of the parties, issues, and evidence are so similar in nature to the parties, issues, and evidence in a proceeding pending in <u>the family court division</u> that transfer of the probate action to <u>the family court division</u> would expedite resolution of the issues or would best serve the interests of justice.

Sec. 29. 4 V.S.A. § 461 is amended to read:

§ 461. OFFICE OF MAGISTRATE; JURISDICTION; SELECTION; TERM

- (a) The office of magistrate is created within the family <u>division of the superior</u> court. Except as provided in section 463 of this title, the office of magistrate shall have <u>nonexclusive</u> jurisdiction concurrent with the family court to hear and dispose of the following cases <u>and proceedings</u>:
- (1) Proceedings for the establishment, modification, and enforcement of child support.
 - (2) Cases arising under the Uniform Interstate Family Support Act.
- (3) Child support in parentage cases after parentage has been determined.
- (4) Cases arising under section 5533 of Title 33 33 V.S.A. § 5116, when delegated by the family a presiding judge of the superior court.
- (5) Proceedings to establish, modify, or enforce temporary orders for spousal maintenance in accordance with sections 15 V.S.A. §§ 594a and 752 of Title 15.

- (6) Proceedings to modify or enforce temporary or final parent-child contact orders issued pursuant to this title.
 - (7) Proceedings to establish parentage.
- (8) Proceedings to establish temporary parental rights and responsibilities and parent-child contact.
- (b) A magistrate shall be an attorney admitted to practice in Vermont with at least four years of general law practice. Magistrates shall be nominated, appointed, and confirmed in the manner of superior judges.
- (c) The term of office of a magistrate shall be six years. Any appointment to fill a vacancy shall be for the unexpired portion of the term vacated. A magistrate may be reappointed by the governor under this section without review by the judicial nominating board, but a reappointment shall require the consent of the senate.
- (d) Magistrates shall be exempt employees of the judicial branch, subject to the Code of Judicial Conduct, and, except as provided in section 26 of this title, shall devote full time to their duties. The supreme court shall prescribe training requirements for magistrates.
- (e) A magistrate shall have received training on the subject of parent-child contact before being assigned to hear and determine motions filed pursuant to subdivision (a)(6) of this section.
 - (f) [Repealed.]

Sec. 30. 4 V.S.A. § 462 is amended to read:

§ 462. FINDINGS; ORDERS; STIPULATIONS

- (a) The magistrate shall make findings of fact, conclusions, and a decision and shall issue an order. An order issued by a magistrate may be enforced by the family <u>division of the superior</u> court in the county unit in which the magistrate hearing was held. A motion for contempt of a magistrate's order shall be heard as expeditiously as possible by the family court judge upon motion of either party or upon motion of the family court judge or magistrate.
- (b) A magistrate may issue an order based on a stipulation regarding any preliminary matter necessary to issue a child support order.
- (c) If the stipulation of the parties regarding child support includes matters other than preliminary matters necessary to issue a child support order, the stipulation may be accepted and approved by the magistrate in respect to those preliminary matters and signed by the magistrate as an order of the family division of the superior court.

(d) A magistrate shall issue an order for child support based upon the actual physical living arrangements of the children during the prior three months if the parties have not stipulated concerning parental rights and responsibilities. If parental rights and responsibilities are contested, the family division of the superior court shall make an order allocating parental rights and responsibilities.

Sec. 31. 4 V.S.A. § 463 is amended to read:

§ 463. JURISDICTION OF FAMILY <u>DIVISION OF SUPERIOR</u> COURT OVER CHILD SUPPORT

Upon motion of either party, upon motion of the magistrate, or upon the family court's own motion, a judge of the family division of the superior court may hear and determine the issue of child support, provided there is a prior existing support order in effect or an interim or temporary order and the court finds one of the following:

* * *

(4) Such good and substantial cause as the family court may find, consistent with the principle that support cases shall be heard in a timely manner.

Sec. 32. 4 V.S.A. § 601 is amended to read:

§ 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION

(a) A judicial nominating board is created for the nomination of supreme court justices, and superior and district judges, magistrates, the chair of the public service board, and members of the public service board.

* * *

(d) The judicial nominating board shall adopt rules under chapter 25 of Title 3 which shall establish criteria and standards for the nomination of qualified candidates for judicial appointment including justices of the supreme court, superior judges, magistrates, the chair of the public service board, and members of the public service board. The criteria and standards shall include, but not be limited to, such factors as integrity, legal knowledge and ability, judicial temperament, impartiality, health, experience, diligence, administrative and communicative skills, social consciousness, and public service.

* * *

Sec. 33. 4 V.S.A. § 602 is amended to read:

§ 602. —DUTIES

- (a) Prior to submission of names of <u>qualified</u> candidates for justices of the supreme court, superior judges <u>and district judges</u>, <u>magistrates</u>, the chair of the <u>public service board</u>, and <u>members of the public service board</u> to the governor or general assembly as set forth in subsection (b) of this section, the board shall submit to the court administrator of the supreme court a list of all candidates, and <u>he the administrator</u> shall disclose to the board information solely about professional disciplinary action taken or pending concerning any candidate. From the list of candidates presented, the judicial nominating board shall select by majority vote, provided that a quorum is present, qualified candidates as set forth in subsection (b) for the position to be filled.
- (b) Whenever a vacancy occurs in the office of a supreme court justice, or a superior or district judge, or when an incumbent does not declare that he or she will be a candidate to succeed himself or herself, the judicial nominating board shall submit to the governor the names of as many persons as it deems qualified to be appointed to the office. There shall be included in the qualifications for appointment that the person shall be an attorney at law who has been engaged in the practice of law or a judge in the state of Vermont for a period of at least five out of the ten years preceding his appointment, and with respect to a candidate for superior or district judge particular consideration shall be given to the nature and extent of his the candidate's trial practice.

* * *

Sec. 34. 4 V.S.A. § 603 is amended to read:

§ 603. JUDGES; APPOINTMENT <u>OF JUSTICES</u>, <u>JUDGES</u>, MAGISTRATES, PUBLIC SERVICE BOARD CHAIRS, AND MEMBERS

Whenever the governor appoints a supreme court justice of, a superior of district judge, a magistrate, a chair of the public service board, or a member of the public service board, he shall do so or she shall select from the list of names of qualified persons submitted to him by the judicial nominating board pursuant to law. The names of candidates submitted and not selected shall remain confidential.

Sec. 35. 4 V.S.A. § 605 is amended to read:

§ 605. POLITICAL ACTIVITY BY JUDGES PROHIBITED

Superior and district judges shall not make any contribution to or hold any office in a political party or organization or take part in any political campaign.

Sec. 36. 4 V.S.A. § 608 is amended to read:

§ 608. FUNCTIONS

- (a) Declarations submitted to the general assembly by a supreme court justice under subsection 4(c) of this title, or by a superior court judge under subsection 71(b) of this title or by a district court judge under subsection 604(a) of this title shall be referred immediately to the joint committee on judicial retention. The declarations shall be accompanied by a supporting statement by the judge or justice seeking retention. In the case of a district or superior court judge, the declaration shall also be accompanied by information on the next succeeding rotation schedule for the judge seeking retention.
- (b) The joint committee responsible for the recommendation of retention shall review the candidacies of those justices, and superior judges and district judges desiring to succeed themselves. In conducting its review, the committee shall evaluate judicial performance, including but not limited to such factors as integrity, judicial temperament, impartiality, health, diligence, legal knowledge and ability, and administrative and communicative skills.

* * *

(d) A judge or justice seeking retention has the right to present oral or written testimony to the committee relative to his or her retention, may be represented by counsel, and may present witnesses to testify in his or her behalf. Copies of written comments received by the committee shall be forwarded to the judge or justice. A judge or justice seeking retention has the right to a reasonable time period to prepare and present to the committee a response to any testimony or written complaint adverse to his or her retention and has the right to be present during any public hearing conducted by the committee.

* * *

(g) The votes on retention under subsections 4(c), and 71(b) and 604(a) of this title shall be conducted in one joint assembly of the general assembly, except that in the event that the joint committee reports to the general assembly that it is not able to make its recommendation on a particular justice or judge under subsection (b) of this section on or before the date set for such joint assembly, the vote on such individual or individuals shall be deferred to a subsequent joint assembly, and separate ballots shall be used despite any other statutory provisions relating to the votes on retention.

Sec. 37. 4 V.S.A. § 651 is amended to read:

§ 651. COUNTY CLERK AS CLERK CLERKS OF COURTS

Each county clerk shall be clerk of the superior court for the county. The court administrator shall act as clerk of the supreme court as provided in section 8 of this title. The court administrator shall appoint a superior court clerk for each unit. The court administrator may appoint the same person to be clerk in more than one unit. With approval of the court administrator, the clerk shall hire office staff. The clerk shall have the powers and responsibilities formerly held by the clerk of the district court or the family court and may delegate specific powers and responsibilities to assigned staff. Unless so designated by the assistant judges of a specific county, with the approval of the court administrator, a superior court clerk shall not also serve as a county clerk.

Sec. 38. 4 V.S.A. § 652 is amended to read:

§ 652. RECORDS OF JUDGMENTS AND OTHER PROCEEDINGS; DOCKETS; CERTIFIED COPIES

The clerk shall:

* * *

(4) Except as provided in section 22 V.S.A. § 454 of Title 22, he shall keep on file and preserve all process, pleadings, and papers relating to causes in superior court which together with the records of the court, he or she shall give to any person, on demand and tender of the legal fees, certified copies of any of the records, proceedings or minutes in his or her office, and all proper certificates, under the seal of the court. However, the clerk shall not disclose the filing of an action or release any records, proceedings, or minutes pertaining to it until service of process has been completed; nor shall he the clerk disclose any materials or information required by law to be kept confidential. Original court records shall be maintained for two years after final court action and thereafter may be maintained on microfilm or electronic media.

Sec. 39. 4 V.S.A. § 657 is amended to read:

§ 657. TRANSCRIBING DAMAGED RECORDS

When records in the court clerk's office become faded, defaced, torn, or otherwise injured, so as to endanger the permanent legibility or proper preservation of the same, by an order in writing recorded in the court clerk's office, the court administrator shall direct the court clerk to provide suitable books and transcribe such records therein. At the end of a transcript of record so made, he the clerk shall certify under his official signature and the seal of the court that the same is a true transcript of the original record. Such

transcript or a duly certified copy thereof shall be entitled to the same faith and credit and have the same force as the original record. The expense of making such transcript shall be paid by the county state.

Sec. 40. 4 V.S.A. § 658 is amended to read:

§ 658. SUPREME COURT RECORDS

Whenever the records of the supreme court are transcribed by the county superior court clerk, he the clerk shall forthwith transmit the original of such record to the court administrator for safekeeping, together with a certified copy thereof. The county superior court clerk shall keep on file an additional certified copy of such transcription in place of the original so transmitted. A copy of such original record certified by the court administrator from the original or a copy certified by the county superior court clerk from the transcript retained on file by him shall be entitled to the same faith and credit and have the same force as the original record. The expense of making such transcript and of transmittal of the original record shall be paid by the state.

Sec. 41. 4 V.S.A. § 659 is amended to read:

§ 659. MICROFILMING PRESERVATION OF COURT RECORDS

- (a) The supreme court by administrative order may provide for permanent preservation of all court records by microfilming, or by any other photographic or electronic process which will provide compact records in reduced size, in accordance with standards established by the department of buildings and general services of the Vermont agency of administration secretary of state which take into account the quality and security of the microphotographed records, and ready access to the micrographic record of any cause so recorded.
- (b) After microfilming preservation in accordance with subsection (a) of this section, the supreme court by administrative order may provide for the disposition of original court records by destruction or in cases where the original court record may have historical or intrinsic value by transfer to an appropriate institutional facility such as the archives of the secretary of state, the department of buildings and general services of the agency of administration, the Vermont historical society, or the university University of Vermont.

Sec. 42. 4 V.S.A. § 691 is amended to read:

§ 691. CLERKS AND ASSISTANTS; APPOINTMENT; COMPENSATION

(a) The <u>superior court clerk</u>, with the <u>approval of the</u> court administrator, with the <u>advice of the district judge concerned</u>, may <u>appoint hire</u> and remove <u>clerks and assistant clerks staff</u> for the <u>district superior</u> court subject to the terms of any applicable collective bargaining agreement. The clerks and

assistant clerks staff shall be state employees and shall be entitled to all fringe benefits and compensation accorded classified state employees who are similarly situated, subject to any applicable statutory limits, unless covered by a collective bargaining agreement that sets forth the terms and conditions of employment negotiated pursuant to the provisions of chapter 28 of Title 3.

(b) A staff person for the superior court may also serve as the county clerk if the court administrator approves of such service with the concurrence of the assistant judges. If a superior court staff person serves as county clerk pursuant to this subsection, the court administrator and the assistant judges shall enter into a memorandum of understanding with respect to the duties, work schedule, and compensation of the person serving.

Sec. 42a. 3 V.S.A. § 1011 is amended to read:

§ 1011. DEFINITIONS

For the purposes of this chapter:

* * *

(8) "Employee," means any individual employed and compensated on a permanent or limited status basis by the judiciary department, including permanent part-time employees and any individual whose employment has ceased as a consequence of, or in connection with, any current labor dispute or because of an unfair labor practice. "Employee" does not include any of the following:

* * *

(J) A An employee paid by the state who is appointed part-time as county clerk who is compensated pursuant to 32 V.S.A. § 1181 4 V.S.A. § 651 or 691.

* * *

Sec. 43. 4 V.S.A. § 740 is amended to read:

§ 740. COURT RECORDS; DOCKETS; CERTIFIED COPIES

The supreme court by administrative order shall provide for the preparation, maintenance, recording, indexing, docketing, preservation, and storage of all family court records and the provision, subject to confidentiality requirements of chapter 55 of Title 33 law or court rules, of certified copies of those records to persons requesting them.

Sec. 44. 4 V.S.A. § 798 is amended to read:

§ 798. PROBATIVE FORCE OF TRANSCRIPTS

All transcripts of evidence or proceedings in a cause or hearing tried in superior court, probate court or district court or before an auditor, referee, or commissioner, ordered to be reported by the presiding judge, a probate or district superior judge, and made by or under the direction of the reporter and duly certified by him or her to be a verbatim transcript of his the verbatim stenographic notes of such evidence or proceedings, shall be received as evidence in any action, civil or criminal, if relevant thereto.

Sec. 44a. 4 V.S.A. § 799 is amended to read:

§ 799. PROBATE COURT REPORTERS

The court administrator, upon <u>Upon</u> request of a probate judge, <u>the superior court clerk</u> shall appoint and assign a <u>stenographic reporter staff member</u> to make a verbatim report of the proceeding in a probate court.

Sec. 45. 4 V.S.A. § 803(a) and (b) are amended to read:

- (a) Subject to any rules prescribed by the supreme court pursuant to law, electronic sound <u>or sound and video</u> recording equipment may be used for the recording of any <u>eivil</u>, <u>criminal</u>, <u>or probate proceedings superior court or judicial bureau proceeding</u>, testimony, objections, rulings, exceptions, arraignments, pleas, sentences, statements, and remarks made by any attorney or judge, oral instructions given by the judge, and any other judicial proceedings to the same extent as any recording by a stenographer or reporter permitted or required under existing statutes.
- (b) For the purpose of operating the sound recording equipment, the judge may appoint or designate the official reporter of that court, a special reporter, the clerk of the court, any assistant clerks staff of the court, the court officer, or any other designated court personnel. The person operating the sound recording equipment shall subscribe to an oath that the operator will well and truly operate it to record all matters and proceedings.

Sec. 46. 4 V.S.A. § 952(a) is amended to read:

(a) The court administrator, subject to the approval of the supreme court, shall make rules regarding the qualifications, lists, and selection of all jurors and prepare questionnaires for prospective jurors. Each jury commission superior court clerk shall, in conformity with said the rules, prepare a list of jurors from residents of its county unit. The rules shall be designed to assure that the list of jurors prepared by the jury commission shall be representative of the citizens of its county unit in terms of age, sex, occupation, economic status, and geographical distribution.

Sec. 47. 4 V.S.A. § 953(a), (b), and (e) are amended to read:

- (a) The jury commission <u>clerk</u>, in order to ascertain names of persons eligible as jurors, may consult the latest census enumeration, the latest published city, town, or village telephone or other directory, the listers' records, the elections records, and any other general source of names.
- (b) Notwithstanding any law to the contrary, the court administrator may obtain the names, addresses, and dates of birth of persons which are contained in the records of the department of motor vehicles, the department of labor, the department of taxes, the department of health, and the department for children and families. The court administrator may also obtain the names of voters from the secretary of state. After the names have been obtained, the court administrator shall compile them and provide the names, addresses, and dates of birth to the jury commission clerk in a form that will not reveal the source of the names. The jury commission clerk shall include the names provided by the court administrator in the list of potential jurors.
- (e) All public officers shall, on request, furnish the <u>jury commission clerk</u> or the court administrator without charge, any information it may require to enable it to select eligible persons, ascertain their qualifications, or determine the number needed.

Sec. 48. 4 V.S.A. § 954 is amended to read:

§ 954. DEPOSIT OF LIST

Prior to the first day of July in each biennial year, the jury commission clerk shall prepare and file a current master list of jurors in the office of the county elerk and certify its completion and filing to the court administrator. The current master lists shall contain the number of names necessary adequately to serve the needs of the courts involved for a two-year period beginning July 1.

Sec. 49. 4 V.S.A. § 955 is amended to read:

§ 955. QUESTIONNAIRE

The jury commission clerk shall send a jury questionnaire prepared by the court administrator to each person selected. When returned, it shall be retained in the county superior court clerk's office, except that those questionnaires submitted by prospective jurors for service in the district court of Vermont shall be deposited with the clerk of the district court concerned. The questionnaire shall at all times during business hours be open to inspection by the court and attorneys of record of the state of Vermont.

Sec. 50. 4 V.S.A. § 957 is amended to read:

§ 957. DRAWING AND SUMMONING JURORS

The manner of drawing and summoning jurors from the lists provided shall be in accordance with the rules of the court in which they are called to serve and all applicable statutes, including section 952 of this title, requiring that the panel shall be representative of the citizens of the county unit in terms of age, sex, occupation, economic status, and geographical distribution.

Sec. 51. 4 V.S.A. § 959 is amended to read:

§ 959. GRAND JURORS; VENIRE

The jury commission clerk, as directed by the judges of each superior court, shall summon 18 judicious persons within the county unit to appear at any stated or special term of that court to serve as grand jurors of the county unit. The clerk of the court shall issue a venire accordingly.

Sec. 52. 4 V.S.A. § 961(a) is amended to read:

(a) Any person who fails to return a completed questionnaire within ten days of its receipt may be summoned by the county superior court clerk forthwith to appear forthwith before the clerk to fill out a jury questionnaire. Any person so summoned who fails to appear as directed shall be ordered forthwith by the presiding judge to appear and show cause for his or her failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance may be found in contempt of court and shall be subject to the penalties for contempt.

Sec. 53. 4 V.S.A. § 1001 is amended to read:

§ 1001. ENVIRONMENTAL COURT DIVISION

- (a) An environmental court having statewide jurisdiction is created as a court of record subject to the authority granted to the supreme court. The environmental court division shall consist of two judges, each sitting alone.
- (b) Two environmental judges shall be appointed within the judicial branch who shall to hear matters arising under 10 V.S.A. chapters 201 and 220 and matters arising under 24 V.S.A. chapter 117 and chapter 61, subchapter 12. In addition, the judges shall have original jurisdiction to revoke permits under 10 V.S.A. chapter 151 in the environmental division and to hear other matters in the superior court when so assigned by the administrative judge pursuant to subsection 21a(c) of this title.

- (c) An environmental judge shall be an attorney admitted to practice before the Vermont supreme court. An environmental judge shall be nominated, appointed, confirmed, paid, and retained, and shall receive all benefits in the manner of a superior court judge.
- (d) An environmental judge shall be appointed on April 1, for a term of six years or the unexpired portion thereof.
- (e) Evidentiary proceedings in the environmental eourt division shall be held in the county in which all or a portion of the land which is the subject of the appeal is located or where the violation is alleged to have occurred, unless the parties agree to another location; provided, however, that the environmental judge shall offer expeditious evidentiary hearings so that no such proceedings are moved to another county to obtain an earlier hearing. Unless otherwise ordered by the court, all nonevidentiary hearings may be conducted by telephone or video conferencing using an audio or video record. If a party objects to a telephone hearing, the court may require a personal appearance for good cause.
- (f) The environmental court shall be provided with a dedicated minimum of one court manager, two law clerks, one case manager, and two docket clerk-courtroom operators. These positions shall not be subject to any rotation with other courts. The environmental court shall receive the same funding and provisions for security as provided to county courthouses. [Repealed.]
- (g) The supreme court may enact rules and develop procedures consistent with this chapter to govern the operation of the environmental <u>court</u> <u>division</u> and proceedings in <u>the court</u> <u>it</u>. In adopting these rules, the supreme court shall ensure that the rules provide for:
- (1) expeditious proceedings that give due consideration to the needs of pro se litigants;
 - (2) the ability of the judge to hold pretrial conferences by telephone;
- (3) the use of scheduling orders under the Vermont Rules of Civil Procedure in order to limit discovery to that which is necessary for a full and fair determination of the proceeding; and
- (4) the appropriate use of site visits by the presiding judge to assist the court in rendering a decision.

Sec. 53a. 4 V.S.A. § 1002 is amended to read:

§ 1002. CONDUCT OF HEARINGS

Hearings before the environmental <u>court</u> <u>division</u> shall be conducted in an impartial manner subject to rules of the supreme court providing for a summary, expedited proceeding.

Sec. 53b. 4 V.S.A. § 1004 is amended to read:

§ 1004. ACCESS TO INFORMATION

- (a) In connection with any proceedings under chapter 201 of Title 10, each party shall provide all other parties with all written statements and information in the possession, custody, or control of the party relative to the violation, including any technical studies, tests and reports, maps, architectural and engineering plans and specifications, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained, the names and addresses of the party's witnesses, and any other information which the environmental <u>court division</u> deems necessary, in its sole discretion, to a fair and full determination of the proceeding.
- (b) No other discovery or depositions, written interrogatories or requests to admit shall be permitted except that which is necessary for a full and fair determination of the proceeding.

Sec. 53c. 10 V.S.A. § 8002 is amended to read:

§ 8002. DEFINITIONS

As used in this chapter:

* * *

(12) "Environmental court" means the environmental division of the superior court established by 4 V.S.A. § 30.

Sec. 53d. 10 V.S.A. § 8221 is amended to read:

§ 8221. CIVIL ENFORCEMENT

(a) The secretary, or the land use panel of the natural resources board with respect to matters relating to land use permits under chapter 151 of this title only, may bring an action in the civil division of the superior court to enforce the provisions of law specified in subsection 8003(a) of this title, to ensure compliance, and to obtain penalties in the amounts described in subsection (b) of this section. The action shall be brought by the attorney general in the name of the state.

* * *

Sec. 53e. 10 V.S.A. § 8502 is amended to read:

§ 8502. DEFINITIONS

As used in this chapter:

* * *

(3) "Environmental court" means the environmental court established under 4 V.S.A. chapter 27 division of the superior court established by 4 V.S.A. § 30.

* * *

Sec. 54. 4 V.S.A. § 1103 is amended to read:

§ 1103. VENUE

Venue for violation hearings in the judicial bureau shall be in the unit of the district superior court where the violation is alleged to have occurred.

Sec. 55. 4 V.S.A. § 1104 is amended to read:

§ 1104. APPOINTMENT OF HEARING OFFICERS

The administrative judge shall appoint members of the Vermont bar to serve as hearing officers to hear cases. Hearing officers shall be subject to the Code of Judicial Conduct. At least one hearing officer shall reside in each territorial unit of the district court.

Sec. 55a. 4 V.S.A. § 1108 is amended to read:

§ 1108. CIVIL ORDINANCE AND TRAFFIC JUDICIAL BUREAU VIOLATIONS: JURISDICTION OF ASSISTANT JUDGES

- (a) Subject to the limits of this section and notwithstanding any provision of law to the contrary, an assistant judge sitting alone shall have the same jurisdiction, powers, and duties to hear and decide civil ordinance and traffic judicial bureau violations as a hearing officer has under the provisions of this chapter.
- (b)(1) An assistant judge who elects to hear and decide civil ordinance and traffie <u>judicial bureau</u> violations shall:
- (A) have served in that office for a minimum of two years; [Repealed.]
- (B) have successfully completed at least 40 hours of training which shall be provided by the bureau; and
- (C) <u>annually</u> complete eight hours of continuing education every year relating to jurisdiction exercised under this section.

- (2) Training shall be paid for by the county, which expenditure is hereby authorized. Law clerk assistance shall be available to the assistant judges.
- (c) The administrative judge may assign or direct assignment of an assistant judge with his or her consent to hear a civil ordinance or traffic judicial bureau violation case within the county in which the assistant judge presides or in a county other than the county in which the assistant judge presides if the assistant judge has elected to hear and decide civil ordinance and traffic judicial bureau violations under this section.

Sec. 56. 5 V.S.A. § 43 is amended to read:

§ 43. REVIEW BY SUPERIOR COURT

A party to a cause who feels aggrieved by the final order, judgment, or decree of the board may appeal to a superior court under Rule 74 of the Vermont Rules of Civil Procedure. However, the board, before final judgment, may permit an appeal to be taken by any party to a superior court for determination of questions of law in the same manner as the supreme court may by rule provide for appeals before final judgment from a superior court or a district court. Notwithstanding the provisions of the Vermont Rules of Civil Procedure or the Vermont Rules of Appellate Procedure, neither the time for filing a notice of appeal nor the filing of a notice of appeal, as provided in this section, shall operate as a stay of enforcement of an order of the board unless the board or a superior court grants a stay under the provisions of section 44 of this title.

Sec. 57. 5 V.S.A. § 3535 is amended to read:

§ 3535. RIGHT OF ACTION ON NONPAYMENT OF DAMAGES

When a railroad corporation has entered upon and used land and real estate for the construction and accommodation of its railroad, and has, by its engineers, agents, or servants, entered upon land contiguous to the railroad or the works connected therewith, and taken materials to use in the construction of its road, and has not paid the owner therefor, nor, within two years from such entry, had the damages appraised by commissioners, and an award made and delivered, a person claiming damages, within six years after such entry, may bring an action therefor before a district superior court, if the claim is not over \$200.00, otherwise in the superior court. An answer justifying the entry under the act incorporating the company shall not bar the action, but the plaintiff shall recover only his or her actual damages.

Sec. 58. 6 V.S.A. § 484(b) is amended to read:

(b) The secretary or his <u>or her</u> inspector may enter upon the premises of a licensed dealer or processor, at reasonable times, for purposes of inspecting the

premises, records, equipment, and inventory in a reasonable manner to determine whether the provisions of this chapter and the rules adopted hereunder are being observed. If entry is refused, the secretary may apply to a superior or district court judge for an administrative search warrant.

Sec. 59. 6 V.S.A. § 3316(b) is amended to read:

(b) Washington County superior court, or any other <u>The</u> superior court, has legal and equitable jurisdiction to enforce, prevent, and restrain violations of this chapter and has legal and equitable jurisdiction in all other cases arising under this chapter. The superior and district courts are granted jurisdiction to handle criminal matters arising under this chapter and rules.

Sec. 60. 9 V.S.A. § 2154 is amended to read:

§ 2154. ASSIGNEE'S BOND

The assignee shall execute to the superior court for the county unit in which the assignor resides a bond with sureties to the satisfaction of such court and conditioned for the faithful performance of such trust. The assignee shall execute such bond at the time of making such assignment, and the same may be prosecuted by parties aggrieved as provided in chapter 101 of Title 14, relative to bonds taken to the probate court governed by that chapter.

Sec. 61. 10 V.S.A. § 497 is amended to read:

§ 497. REMOVAL OF SIGNS

The owner of a sign which is not licensed under this chapter and which is not a legal on-premise or exempt sign meeting the requirements set forth in this chapter, other than a sign which was lawfully erected and maintained prior to March 23, 1968, shall be in violation of this chapter until it is removed. The travel information council, or the secretary of transportation or his designee pursuant to authority delegated by the council, may, upon failure of the owner to remove such sign, order its removal by the agency of transportation, and the agency of transportation shall thereupon remove the sign without notice or further proceeding, at the expense of the owner. The expense may be recovered by the state in an action on this statute, which shall be instituted in the superior court or Vermont district court having jurisdiction in the unit for the area in which the sign is located. A copy of the notice of removal shall be sent by certified mail to the owner at the last known address. If an illegal sign is re-erected after the initial removal notice is executed, the agency of transportation shall have the authority to remove that illegal sign without additional prior notice to the owner. The agency of transportation or the legislative body of a municipality shall have the authority to remove or relocate, or both, without prior notice, any sign, device, or display which is temporary in nature and not affixed to a substantive structure which is erected

within 24.75 feet of the actual centerline of any highway under its jurisdiction and within the public highway right-of-way.

Sec. 62. 10 V.S.A. § 6205(c) is amended to read:

(c) A leaseholder may bring an action against the park owner for a violation of sections 6236–6243 of this title. The action shall be filed in district superior court for the district unit in which the alleged violation occurred. If the leaseholder's claim against the owner exceeds the jurisdictional limit of the district court, an action may be brought in superior court in the county in which the alleged violation occurred. No action may be commenced by the leaseholder unless the leaseholder has first notified the park owner of the violation by certified mail at least 30 days prior to bringing the action. During the pendency of an action brought by a leaseholder, the leaseholder shall pay rent in an amount designated in the lease, or as provided by law, which rental amount shall be deposited in an escrow account as directed by the court.

Sec. 63. 10 V.S.A. § 8014(a) and (b) are amended to read:

- (a) The secretary may seek enforcement of a final administrative order or a landfill extension order in the <u>civil</u>, <u>criminal</u>, <u>or environmental division of the</u> superior or district court or before the environmental court.
- (b) If a penalty is assessed and the respondent fails to pay the assessed penalty within the time prescribed, the secretary may bring a collection action in any civil or criminal division of the superior or district court. In addition, when a respondent, except for a municipality, fails to pay an assessed penalty or fails to pay a contribution under subdivision 8007(b)(2) of this title within the prescribed time period, the secretary or the land use panel shall stay the effective date or the processing of any pending permit application or renewal application in which the respondent is involved until payment in full of all outstanding penalties has been received. When a municipality fails to pay an assessed penalty or fails to pay a contribution under subdivision 8007(b)(2) of this title within the prescribed time period, the secretary or the land use panel may stay the effective date or the processing of any pending permit application or renewal application in which the municipality is involved until payment in full of all outstanding penalties has been received. For purposes of this subsection, "municipality" shall mean a city, town, or village. The secretary or the land use panel may collect interest on an assessed penalty that a respondent fails to pay within the prescribed time. The secretary or the land use panel shall collect interest on a contribution under subdivision 8007(b)(2) of this title that a respondent fails to pay within the prescribed time.

Sec. 64. 11 V.S.A. § 441 is amended to read:

§ 441. CORPORATION TO PRODUCE BOOKS ON NOTICE

- (a) A corporation doing business within this state, whether organized under the laws of this or any other state or country, when notice therefor is served upon it according to the provisions of section 442 of this title, shall produce before any court, magistrate, grand jury, tribunal, or commission, acting under the authority of this state, all books, documents, correspondence, memoranda, papers, and data which may contain any information concerning any suit, proceedings, action, charge, or subject of inquiry pending before or to be determined by the court, magistrate, grand jury, tribunal, or commission, except a civil action in a superior court or the district court, and which have been made or kept at any time within this state, and are in the custody or control of the corporation in this state or elsewhere at the time of service of the notice upon it.
- (b) When notice therefor is served upon it according to the provisions of section 442 of this title, the corporation shall produce before any court, magistrate, grand jury, tribunal, or commission acting under the authority of this state, all books, documents, correspondence, memoranda, papers, and data which may contain any information concerning any suit, proceedings, action, charge, or subject of inquiry pending before or to be determined by the court, magistrate, grand jury, tribunal, or commission, except a civil action in a superior court or the district court, and which in any way relate to or contain entries, data, or memoranda concerning any transaction within this state or with any party residing or having a place of business within this state, and which are in the custody or control of the corporation in this state or elsewhere at the time of service of notice upon it.

Sec. 65. 12 V.S.A. § 5 is amended to read:

§ 5. DISSEMINATION OF ELECTRONIC CASE RECORDS

- (a) The court shall not permit public access via the Internet to criminal <u>or family</u> case records or <u>family court case records</u>. The court may permit criminal justice agencies, as defined in 20 V.S.A. § 2056a, Internet access to criminal case records for criminal justice purposes, as defined in section 2056a.
- (b) This section shall not be construed to prohibit the court from providing electronic access to:
- (1) court schedules of the <u>district or family superior</u> court, or opinions of the <u>district criminal division of the superior</u> court; or

(2) state agencies in accordance with data dissemination contracts entered into under Rule 6 of the Vermont Rules of Electronic Access to Court Records.

Sec. 66. 12 V.S.A. § 122 is amended to read:

§ 122. SUPERIOR JUDGE, <u>OR</u> SUPERIOR COURT AND DISTRICT COURT

When a party violates an order made against him <u>or her</u> in a cause brought to or pending before a superior judge or a superior court or the district court after service of the order upon that party, contempt proceedings may be instituted against him <u>or her</u> before the court or any superior judge. When, in a cause no longer on the docket of the court, the proceedings are brought before a superior judge, that judge <u>forthwith</u> shall order forthwith the cause to be brought forward on the docket of the court and may issue concurrently with the order a summons or capias against the party. The issuing of the summons or capias and any further proceedings thereon shall be minuted on the docket.

Sec. 67. 12 V.S.A. § 402 is amended to read:

§ 402. SUPERIOR COURT ACTIONS, <u>VENUE</u> GENERALLY; RAILROADS

- (a) An action before a superior court shall be brought in the county unit in which one of the parties resides, if either resides in the state; otherwise, on motion, the complaint shall be dismissed. If neither party resides in the state, the action may be brought in any county unit. Actions concerning real estate shall be brought in the county unit in which the lands, or some part thereof, lie.
- (b) An action brought by a domestic railroad corporation to the superior court may be brought either in the county unit in which the corporation has its principal office for the transaction of business, or in the county unit in which a defendant resides. An action or suit brought to the superior court, in which the corporation is defendant, may be brought in any county unit in which a road owned or operated by the corporation is located.

Sec. 67a. 12 V.S.A. § 403 is amended to read:

§ 403. PATENT RIGHTS

An action to recover a debt or demand, arising from the sale of or license to use a patent right, whether such demand is in the form of a promissory note or otherwise, shall be brought and tried in the county unit where the defendant resides or where such patent right was sold when such note or obligation purports to be given for a patent right, unless otherwise provided by law.

Sec. 68. 12 V.S.A. § 404 is amended to read:

§ 404. REMOVAL TO ANOTHER COUNTY UNIT

- (a) When it appears to a presiding judge of a superior court that there is reason to believe that a civil action pending in such court cannot be impartially tried in the county unit where it is pending, on petition of either party, such judge shall order the cause removed to the superior court in another county unit for trial.
- (b) Such petition shall be verified by affidavit and served upon the adverse party like a writ of summons, at least twelve days before the time of hearing. If the adverse party resides without the state, it may be served upon his attorney of record in the cause.
- (c) When an order is made to remove a cause from one superior court to another and such order is filed with the clerk of the court in which the cause is pending, he shall forthwith transmit to the clerk of the court to which such cause is removed, the original papers with a certified copy of the docket entries therein and of the order of removal. He shall thereupon enter the same upon the docket and further proceedings shall be had as if the cause had been originally brought to and entered in such court.
- (d) Attachments, recognizances, bonds, and orders in such cause, made before such removal, shall have the same validity as if the cause had continued in the court to which it was originally brought.
- Sec. 69. 12 V.S.A. § 654(b) is amended to read:
- (b) The signing of original writs is a ministerial act and may be done in advance of issuance. The signature of an attorney, except when he <u>or she</u> is the plaintiff, to a writ, pleading, notice of appeal, or other form, constitutes and shall be deemed security, by way of recognizance, for the issuance of such writ or the filing of such pleading, notice of appeal, or other form, and such attorney shall be liable to each defendant in the sum of \$10.00 for writs returnable before the district court and in the sum of \$50.00 for writs returnable to a superior court.

Sec. 70. 12 V.S.A. § 1644 is amended to read:

§ 1644. WITNESSES MAY BE EXAMINED SEPARATELY

On the trial of a civil cause, in its discretion, upon the application of either party, the superior court or district court may order the witnesses of the adverse party examined separately and apart from each other.

Sec. 71. 12 V.S.A. § 1691(a) is amended to read:

(a) In the trial of actions at law, and on motion and due notice thereof given, supreme, and superior and district courts may require the parties to produce any books or writings in their possession or power, which contain evidence pertinent to the issue or relative to the action, and if the party fails to comply with the order, the court may render judgment against such party by nonsuit or default.

Sec. 71a. 12 V.S.A. § 1950 is added to read:

§ 1950. NUMBER OF JURORS REQUIRED FOR A VERDICT IN A CIVIL ACTION

- (a) In a civil action, unless the parties stipulate otherwise, the verdict or finding of the jury shall be unanimous or with not more than one juror dissenting.
- (b) This section shall not affect the ability of the parties to stipulate that the jury may consist of any number less than 12 or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury as provided by Rule 48 of the Vermont Rules of Civil Procedure.

Sec. 71b. REPORT FROM COURT ADMINISTRATOR

On or before January 15, 2014, the office of the court administrator shall report to the senate and house committees on judiciary on the implementation and the identifiable effects of Sec. 71a of this act. The report shall address whether there are any discernible impacts on the frequency and duration of medical malpractice litigation, whether there are any positive or negative impacts on the court system itself, and any appropriate recommendations, including whether this act should be repealed as provided in Sec. 71c of this act.

Sec. 71c. SUNSET

On January 15, 2015, Sec. 71a of this act (nonunanimous jury verdicts in civil actions) is repealed.

Sec. 72. 12 V.S.A. § 2136 is amended to read:

§ 2136. COSTS IN SUPREME, COUNTY, AND DISTRICT <u>SUPERIOR</u> COURTS WHEN NOMINAL DAMAGES ARE RECOVERED

When the plaintiff in an action in district, superior or supreme court recovers judgment for a nominal sum for debt or damages, in its discretion, the court may make such order in respect to plaintiff's costs as is equitable, but not to exceed his or her taxable costs.

Sec. 73. 12 V.S.A. § 2357 is amended to read:

§ 2357. APPEALS FROM PROBATE COURT <u>IN PROBATE</u> PROCEEDINGS–FRAUD, ACCIDENT, OR MISTAKE

When the petitioner has been prevented from taking or entering an appeal <u>in</u> <u>a probate proceeding</u> by fraud, accident, or mistake, on petition and proof thereof, the supreme or superior court in its discretion may grant leave to file a notice of appeal from an order, sentence, decree, or denial of <u>a the</u> probate <u>division of the superior</u> court or from a determination of commissioners on the estate of a deceased person in those cases which are by law appealable.

Sec. 74. 12 V.S.A. § 2386 is amended to read:

§ 2386. PASSING CAUSES BEFORE FINAL JUDGMENT

- (a) Before final judgment in civil actions or proceedings in the superior courts, or the probate courts, or the district court, an appeal to the supreme court for the determination of questions of law may be taken in such manner and under such conditions as the supreme court may by rule provide.
- (b) In its discretion and before final judgment, a superior court or the district court may permit an appeal to be taken by the respondent or the state in a criminal cause to the supreme court for determination of questions of law. The supreme court shall hear and determine the questions and render final judgment thereon or remand the proceedings as justice and the state of the cause may require.

Sec. 74a. 12 V.S.A. § 2386 is amended to read:

§ 2386. PASSING CAUSES BEFORE FINAL JUDGMENT

(a) Before final judgment in civil actions or proceedings in the superior courts or the probate courts, an appeal to the supreme court for the determination of questions of law may be taken in such manner and under such conditions as the supreme court may by rule provide.

* * *

Sec. 75. 12 V.S.A. § 2551 is amended to read:

§ 2551. SUPREME COURT JURISDICTION OF PROBATE PROCEEDINGS IN SUPERIOR AND PROBATE COURTS

The supreme court shall have jurisdiction of questions of law arising in the course of the proceedings of the superior and probate courts in probate matters, as in other causes.

Sec. 76. 12 V.S.A. § 2556(a) is amended to read:

(a) In the two following cases, an executor, administrator, or creditor may appeal to the superior court from the decision and report of the commissioners, if notice of appeal is filed with the clerk of the <u>superior</u> court appealed to and the register of the probate court within thirty <u>30</u> days after the return of the commissioner's report:

* * *

Sec. 77. 12 V.S.A. § 3011 is amended to read:

§ 3011. ACTIONS

Trustee process may be used in any civil action commenced in a superior court or the district court except in actions for malicious prosecution, libel, slander, or alienation of affections.

Sec. 78. 12 V.S.A. § 3087 is amended to read:

§ 3087. —RECOGNIZANCE FOR TRUSTEE'S COSTS

The plaintiff in a trustee process shall give security for costs to the trustee by way of recognizance by some person other than the plaintiff. The security shall be in the sum of \$10.00 for a summons returnable before the district court and in the sum of \$50.00 for a summons returnable to a superior court. If trustee process issues without a minute of the recognizance, with the name of the surety and the sum in which he <u>or she</u> is bound, signed by the clerk, thereon, the trustee shall be discharged.

Sec. 79. 12 V.S.A. § 3151 is amended to read:

§ 3151. —TRUSTEE MAY FILE BOND AND SELL PROPERTY

When such action is pending in the supreme, <u>or</u> superior, <u>or district</u> court, the trustee may sell the property, and the purchaser shall hold the same released from the mortgage and attachment, if such trustee files with the clerk of <u>such the</u> court <u>or with the judge of such district court</u>:

* * *

Sec. 80. 12 V.S.A. § 4251 is amended to read:

§ 4251. ACTIONS FOR ACCOUNTING—JURY

The superior courts court 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:

* * *

Sec. 81. 12 V.S.A. § 4711 is amended to read:

§ 4711. DECLARATORY JUDGMENT; SCOPE

Superior courts and probate courts within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. An action or proceeding shall not be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

Sec. 82. 12 V.S.A. § 5136(c) is amended to read:

(c) The office of the court administrator shall ensure that the superior court and the district court have <u>has</u> procedures in place so that the contents of orders and pendency of other proceedings can be known to <u>both all</u> courts for cases in which an order against stalking or sexual assault proceeding is related to a criminal proceeding.

Sec. 83. 12 V.S.A. § 5531(c) is amended to read:

(c) In small claims actions where the plaintiff makes a claim for relief greater than \$3,500.00, the defendant shall have the right to request a special assignment of a judicial officer. Upon making this request, a superior judge, a district judge, or a member of the Vermont bar appointed pursuant to 4 V.S.A. § 22(b) shall be assigned to hear the action.

Sec. 84. 12 V.S.A. § 5538 is amended to read:

§ 5538. APPEALS

Any party may appeal from a small claims judgment to superior court. The administrative judge shall assign the appeal to a district or superior judge who shall not have participated in any way in the decision being appealed. The appeal shall be heard and decided, based on the record made in the small claims court procedure. No appeal as of right exists to the supreme court. On motion made to the supreme court by a party to the action, the supreme court may allow an appeal from the superior court.

Sec. 84a. 12 V.S.A. § 5540a is amended to read:

§ 5540a. JURISDICTION OVER SMALL CLAIMS; ASSISTANT JUDGES

(a)(1) Subject to the limitations in this section and notwithstanding any provision of law to the contrary, assistant judges of Essex, Caledonia, Rutland, and Bennington counties Counties sitting alone shall hear and decide small claims actions filed under this chapter with the Essex, Caledonia, Rutland, and Bennington superior courts.

- (2) Subject to the limitations in this section and notwithstanding any provision of law to the contrary, assistant judges of Addison, Chittenden, Franklin, Grand Isle, Lamoille, Orange, Orleans, Washington, Windham, and Windsor counties Counties sitting alone shall hear and decide small claims actions filed under this chapter with the appropriate superior court if the assistant judges first elect to successfully complete the training required in subsection (b) of this section.
- (b) With the exception of assistant judges authorized to preside in small claims matters prior to the effective date of this act who have successfully completed the testing requirements established herein, an assistant judge hearing cases under this section shall have completed at least 100 hours of relevant training and testing, and observed 20 hours of small claims hearings in accordance with the protocol for said training and observation which shall be established by a majority of the assistant judges of the state, which shall include attendance at colleges or classes available in various locations in and outside the state to lay judges. An assistant judge who hears cases under this section shall complete 16 hours of continuing education every year relating to jurisdiction exercised under this section and shall file a certificate to such effect with the court administrator. Training shall be paid for on a per capita basis of those judges electing to take the training by the county, which expenditure is hereby authorized. Law clerk assistance available to superior eourt judges shall be available to the assistant judges.

* * *

(e) Subdivision (a)(2) of this section shall be repealed effective on July 1, 2012. [Repealed.]

Sec. 84b. INTENT; REPORT

- (a) The general assembly intends that the association of assistant judges encourage all of its members to undergo the required education for and to hear cases in all the types of matters in which assistant judges are permitted by law to sit.
- (b) On or before January 15, 2011, the association of assistant judges shall report to the senate and house committees on judiciary:
- (1) participation rates describing the number and percentage of assistant judges who have elected to hear cases in the matters in which they are permitted by law to do so;
- (2) recommendations for legislation regarding education requirements for assistant judges; and

(3) changes in county budgets directly attributable to the restructuring of the judiciary under this act.

Sec. 85. 12 V.S.A. § 5541 is amended to read:

§ 5541. COMPOSITION OF SMALL CLAIMS COURT IN SMALL CLAIMS CASES

For the purposes of this chapter, the superior court <u>in small claims cases</u> shall consist of the presiding judge sitting alone, an assistant judge sitting alone pursuant to section 5540 of this chapter, or an acting judge assigned pursuant to section 22(b) of Title 4 V.S.A. § 22(b).

Sec. 86. 12 V.S.A. § 5702 is amended to read:

§ 5702. JURISDICTION AND VENUE

The Vermont district superior court shall have exclusive jurisdiction over proceedings under this chapter, any provision of any statute, municipal charter, or ordinance to the contrary notwithstanding, except as provided in chapter 24 of Title 23. Venue for adjudicating offenses prosecuted by use of the uniform snowmobile/boating complaint shall be in the unit of the district superior court having jurisdiction over the geographical area where the offense is alleged to have occurred.

Sec. 87. 12 V.S.A. § 5705(b) and (d) are amended to read:

- (b) Three district superior court judges appointed by the court administrator shall establish schedules, within the limits prescribed by law, of the amounts of fines to be imposed. The court administrator shall appoint three persons who shall meet with the district superior judges and recommend a fine schedule. One person appointed shall be a member of the department of public safety, one shall be a delegate from the Vermont association of snow travelers, and one shall be a member of the general public who has an interest in boating and boating safety.
- (d) If a defendant fails to answer or appear as directed on a uniform snowmobile/boating complaint or by the <u>district superior</u> court judge, or fails to pay the fine imposed after judgment, the court may proceed under section 5704 of this title.

Sec. 88. 12 V.S.A. § 5852 is amended to read:

§ 5852. OATHS OF OFFICE; BY WHOM ADMINISTERED

When other provision is not made by law, oaths of office may be administered by any justice of the supreme court, superior judge, assistant judge, justice of the peace, judge of the district court, notary public, or the

presiding officer, secretary, or clerk of either house of the general assembly, or by the governor.

Sec. 89. 12 V.S.A. § 7105 is amended to read:

§ 7105. RULES OF PROCEDURE

Windsor county County court diversion, in conjunction with the Windsor County youth court advisory board established pursuant to section 7109 of this title, and after consultation with the youth court officers, the Windsor county County state's attorney, the office of the public defender for Windsor county County, and the presiding judges in Windsor family and district courts the unit of the superior court that includes Windsor County, shall adopt rules of procedure for the youth court prior to its first hearing.

Sec. 90. 12 V.S.A. § 7109(a) is amended to read:

(a) The Windsor county County youth court advisory board is created. The board shall consist of the presiding family court superior judge in for the unit that includes Windsor county County or designee, the Windsor county County state's attorney or designee, the superintendents of the Hartford, Springfield, and Windsor southeast supervisory union school districts or their designees, three youth court officers, three persons to be appointed by the Vermont supreme court, and the chair of the Windsor county County court diversion or designee. All members of the board shall be appointed or designated by August 15, 1995, for terms expiring on June 30, 1999. The supreme court appointees shall each be licensed to practice law in this state, and at least one of the supreme court appointees shall have at least three years' experience in representing delinquent children. The members of the board shall serve on a voluntary basis without compensation.

Sec. 91. 12 V.S.A. § 7152 is amended to read:

§ 7152. JURISDICTION

The probate <u>division of the superior</u> court shall have exclusive jurisdiction over all proceedings concerning the emancipation of minors.

Sec. 92. 12 V.S.A. § 7153(a) is amended to read:

- (a) A minor may petition the probate <u>division of the superior</u> court in the probate district in which the minor resides at the time of the filing for an order of emancipation. The petition shall state:
 - (1) The minor's name and date of birth.
 - (2) The minor's address.
 - (3) The names and addresses, if known, of the minor's parents.

- (4) The names and addresses of any guardians or custodians, including the commissioner of social and rehabilitation services for children and families, appointed for the minor, if appropriate.
- (5) Specific facts in support of the emancipation criteria in section 7151(b) of this chapter.
 - (6) Specific facts as to the reasons why emancipation is sought.

Sec. 93. 12 V.S.A. § 7155(d) is amended to read:

(d) Any order of guardianship or custody shall be vacated before the court may issue an order of emancipation. Other orders of <u>any division of</u> the <u>family or probate superior</u> court may be vacated, modified, or continued in this proceeding if such action is necessary to effectuate the order of emancipation. Child support orders relating to the support of the minor shall be vacated, except for the duty to make past-due payments for child support, which, under all circumstances, shall remain enforceable.

Sec. 94. 13 V.S.A. § 4 is amended to read:

§ 4. ACCESSORY BEFORE THE FACT

A person who is accessory before the fact by counseling, hiring, or otherwise procuring an offense to be committed may be informed against or indicted, tried, convicted, and punished as if he or she were a principal offender in the <u>criminal division of the</u> superior court in the <u>county or in the</u> <u>district court in the territorial</u> unit where the principal might be prosecuted.

Sec. 95. 13 V.S.A. § 6 is amended to read:

§ 6. —PROSECUTION AND VENUE

Such An accessory after the fact may be prosecuted, convicted, and punished whether the principal has or has not been previously convicted, or is or is not amenable to justice, in the <u>criminal division of the</u> superior court in the <u>county or in the district court in the territorial</u> unit where such person became an accessory or where the principal offense is committed.

Sec. 96. 13 V.S.A. § 901 is amended to read:

§ 901. DUTIES OF OFFICERS

A district superior judge, sheriff, deputy sheriff, or constable having notice or knowledge of the unlawful, tumultuous, or riotous assemblage of three or more persons within his or her jurisdiction, among or as near as he or she can safely come to such rioters, shall command them in the name of the state of Vermont immediately and peaceably to disperse. If after such command such the rioters do not disperse, such officer or magistrate and such any other person

as he or she commands to assist him or her shall apprehend and forthwith take them before a district criminal division of a superior court.

Sec. 97. 13 V.S.A. § 2502 is amended to read:

§ 2502. PETIT LARCENY

Superior and district courts shall have concurrent jurisdiction of the <u>For</u> offenses mentioned in section 2501 of this title where the money or other property stolen does not exceed \$900.00 in value, and the court may sentence the person convicted to imprisonment for not more than one year or to pay a fine of not more than \$1,000.00, or both.

Sec. 98. 13 V.S.A. § 2561(c) is amended to read:

(c) A buyer, receiver, seller, possessor, or concealer under subsection (a) or (b) of this section may be prosecuted and punished in the <u>criminal division</u> of the <u>superior</u> court in the county or in the district court in the territorial unit where the person stealing the property might be prosecuted, although such property is bought, received, or concealed in another county or territorial unit.

Sec. 99. 13 V.S.A. § 3011 is amended to read:

§ 3011. OFFICERS IN CHARGE OF JURY

An officer, sworn to take charge of a jury impaneled by the superior or district court for the trial of a cause, who, after they have been charged by the court, suffers a person to speak to them upon matters submitted to their charge, or speaks to them himself or herself about the same, except to ask if they are agreed upon a verdict, before they deliver their verdict in court, or are discharged, shall be fined not more than \$500.00. The constable or other person having charge of a jury impaneled by a justice, who in like manner offends, shall be fined not more than \$200.00.

Sec. 100. 13 V.S.A. § 3256(a) is amended to read:

(a) The victim of an offense involving a sexual act may obtain an order from the district criminal or family division of the superior court in which the offender was convicted of the offense, or was adjudicated delinquent, requiring that the offender be tested for the presence of the etiologic agent for acquired immune deficiency syndrome (AIDS) and other sexually-transmitted diseases, including gonorrhea, herpes, chlamydia, and syphilis. If requested by the victim, the state's attorney shall petition the court on behalf of the victim for an order under this section. For the purposes of this section, "offender" includes a juvenile adjudicated a delinquent.

Sec. 101. 13 V.S.A. § 4601 is amended to read:

§ 4601. GENERAL RULE

When not otherwise provided, criminal causes shall be tried in the <u>criminal division of the</u> superior court in the county, or in the district court in the territorial unit, where an offense within the jurisdiction of such court is committed.

Sec. 101a. 13 V.S.A. § 4602 is amended to read:

§ 4602. WHEN ACT IN ONE COUNTY OR TERRITORIAL UNIT CAUSES DEATH IN ANOTHER

A person feloniously wounding or poisoning a person in one county or territorial unit of the district <u>superior</u> court, whose death results therefrom in another county or territorial unit, may be tried in the <u>criminal division of the</u> superior court in either county or in the district court in either territorial unit, if the offense is within the jurisdiction of such court.

Sec. 101b. 13 V.S.A. § 4603 is amended to read:

§ 4603. OFFENSE ON BOUNDARY

If an offense is committed on the boundary of two or more counties or territorial units of the district superior court, or within 100 rods of such boundary, such offense may be alleged in the information or indictment to have been committed and may be prosecuted in the criminal division of the superior court in any of such counties or in the district criminal division of the superior court in any of such territorial units, if the offense is within the jurisdiction of such court.

Sec. 102. 13 V.S.A. § 4631 is amended to read:

§ 4631. AUTHORITY

The supreme court may by rule provide for change of venue in criminal prosecutions in the superior and district courts upon motion, for the prevention of prejudice to the defendant or for the convenience of parties and witnesses and in the interests of justice. The court to which a prosecution is transferred shall thereby have jurisdiction of the cause, and the same proceedings shall be had therein as though such court were in the county or territorial unit in which the offense was committed the venue had not been changed.

Sec. 103. 13 V.S.A. § 4635 is amended to read:

§ 4635. ORDER FOR REMOVAL OF DEFENDANT

When a motion for change of venue has been granted and the defendant is in custody, the judge granting the motion shall issue an order in writing to the officer having the defendant in custody, commanding him or her to deliver the defendant to the keeper of the jail serving the county or territorial unit of the district court in which the trial is further proceedings are ordered to be had.

Sec. 104. 13 V.S.A. § 4638 is amended to read:

§ 4638. WHICH STATE'S ATTORNEY TO PROSECUTE

The state's attorney of the county in which the respondent is informed or complained against or indicted shall appear in behalf of the state at the trial of the respondent in the court to which the trial case is removed, and in proceedings relating thereto he or she shall have the same powers and be subject to the same duties and liabilities as though the trial were had in the county for which he or she is such the attorney.

Sec. 105. 13 V.S.A. § 4903 is amended to read:

§ 4903. TRANSPORTING PRISONER THROUGH STATE

Whenever an offender is apprehended in a neighboring state, and it may be necessary to transport him or her through this state to the place where the offense was committed, the superior court, a presiding judge thereof, a superior judge or a judge of a district court, upon application and proof that lawful process has issued against such the offender, shall issue a warrant under his or her hand and seal, directed to a sheriff or his or her deputy, or to a person by name who shall be sworn to the faithful performance of his or her duty, authorizing such conveyance.

Sec. 106. 13 V.S.A. § 4953 is amended to read:

§ 4953. ARREST PRIOR TO REQUISITION

Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state, and, except in cases arising under section 4946 of this title, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation, or parole, or whenever complaint shall have been before a superior judge, assistant judge of the superior court, or judge of a district court within this state, setting forth on the affidavit of a credible person in another state that a crime has been committed in such other state and that the accused has been charged in such that state with the commission of a crime, and, except in cases arising under section 4946, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation, or parole and is believed to have been found in this state, such judge shall issue a warrant directed to any sheriff or constable directing him or

her to apprehend the person charged, wherever he or she may be found in this state, and bring him or her before the same or any other superior judge, assistant judge of the superior court or judge of a district court who may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit; and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

Sec. 107. 13 V.S.A. § 4954 is amended to read:

§ 4954. ARREST WITHOUT A WARRANT

The arrest of a person may be lawfully made by an officer or a private citizen without a warrant upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year. When so arrested, the accused shall be taken before a superior judge, assistant judge of the superior court, or judge of a district court as soon as may be, and complaint shall be made against him or her under oath, setting forth the ground for the arrest as in section 4953 of this title; and thereafter his or her answer shall be heard as if he or she had been arrested on a warrant.

Sec. 108. 13 V.S.A. § 5043 is amended to read:

§ 5043. HEARING, COMMITMENT, DISCHARGE

If an arrest is made in this state by an officer of another state in accordance with the provisions of section 5042 of this title, he or she shall without unnecessary delay take the person arrested before a superior judge, assistant judge of the superior court, or a judge of a district court of the county unit in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If such the judge determines that the arrest was lawful, he or she shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state or admit such person to bail pending the issuance of such warrant. If such the judge determines that the arrest was unlawful, he or she shall discharge the person arrested.

Sec. 109. 13 V.S.A. § 5131 is amended to read:

§ 5131. APPLICATION FOR INQUEST

Upon the written application of the state's attorney, a judge of the superior court, or of a district court, may institute and conduct an inquest upon any criminal matter under investigation by the state's attorney.

Sec. 109a. 13 V.S.A. § 5317 is amended to read:

§ 5317. GENERAL REQUIREMENTS FOR INFORMATION

- (a) The information required to be furnished to victims under this chapter shall be provided upon request of the victim and, unless otherwise specifically provided, may be furnished either orally or in writing.
- (b) A person responsible for furnishing information may rely upon the most recent name, address, and telephone number furnished by the victim.
- (c) The court, state's attorneys, public defenders, law enforcement agencies, and the departments of corrections and of public safety shall develop and implement an automated notification system to deliver the information required to be furnished to victims under this chapter.

Sec. 109b. REPORT

Prior to implementing the automated victim notification system required by Sec. 109a of this act, the court, state's attorneys, public defenders, law enforcement agencies, and the departments of corrections and of public safety shall report on the costs of the system to the senate and house committees on appropriations and on judiciary.

Sec. 110. 13 V.S.A. § 6642 is amended to read:

§ 6642. SUMMONING WITNESSES IN THIS STATE TO TESTIFY IN ANOTHER STATE

If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in an action in this state, certifies under the seal of such court that there is such an action pending in such that court, that a person being within this state is a material witness in such the action, and that his or her presence will be required for a specified number of days, upon presentation of such the certificate to any superior judge or a judge of a district court in the county unit in which such the person is, such the judge shall fix a time and place for a hearing in such county the unit and shall notify the witness thereof by an order stating the purpose of the hearing and directing him or her to appear therefor at a time and place certain.

Sec. 111. 13 V.S.A. § 6646 is amended to read:

§ 6646. WITNESS FROM ANOTHER STATE SUMMONED TO TESTIFY IN THIS STATE

If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in an action in this state, is a material witness in such an action pending in a court of record in this

state, a superior judge or a judge of a district court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Such The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his or her attendance in this state. Such The certificate shall be presented to a judge of a court of record of the state in which the witness is found.

Sec. 112. 13 V.S.A. § 7004 is amended to read:

§ 7004. RECORD OF CONVICTIONS; REPORT TO COMMISSIONER OF PUBLIC SAFETY

In all cases of felony or misdemeanor in which a conviction or plea of guilty is had in their respective courts, clerks of the superior and district courts court shall forthwith forward to the commissioner of public safety, on quadruplicate forms to be furnished by him or her, for file in the identification and records division of the department of public safety, a certified report of such the conviction, together with the sentence and such any other facts as which may be required by the commissioner. A fee of 50 cents \$0.50 for such certified report shall be allowed by the commissioner of finance and management in settlement of the accounts of such courts.

Sec. 113. 13 V.S.A. § 7034 is amended to read:

§ 7034. WHEN APPEALS FROM SEVERAL JUSTICE'S JUDGMENTS ARE NOT ENTERED

If such person appeals to the county or district court from two or more judgments by the same justice at different times, and fails to enter his or her appeals within the time required, the justice may issue a single mittimus to earry his or her judgments into effect, as provided in section 7033 of this title, and the 24 hours shall commence from the time of signing the mittimus, and such time shall be indersed thereon. [Repealed.]

Sec. 114. 13 V.S.A. § 7043(i) is amended to read:

(i) The restitution unit may bring an action, including a small claims procedure, to enforce a restitution order against an offender in the civil division of the superior or small claims court of the county unit where the offender resides or in the county unit where the order was issued. In an action under this subsection, a restitution order issued by the district criminal division of the superior court shall be enforceable in the civil division of the superior court or in a small claims court procedure in the same manner as a civil judgment. Superior and small claims court filing fees shall be waived for an action under this subsection, and for an action to renew a restitution judgment.

Sec. 115. 13 V.S.A. § 7178 is amended to read:

§ 7178. SUSPENSION OF FINES

A superior or district court judge, in his or her discretion, may suspend all or any part of the fine assessed against a respondent.

Sec. 116. 13 V.S.A. § 7401 is amended to read:

§ 7401. APPEAL

In criminal actions or proceedings in the superior courts or the district court, the defendant may appeal to the supreme court as of right all questions of law involved in any judgment of conviction and in any other order or judgment as to which the state has appealed, provided that if the state fails to perfect or prosecute such appeal, the appeal of the defendant shall not be heard.

Sec. 117. 13 V.S.A. § 7403 is amended to read:

§ 7403. APPEAL BY THE STATE

- (a) In a prosecution for a misdemeanor, questions of law decided against the state by a superior or district court shall be allowed and placed upon the record before final judgment. The court may pass the same to the supreme court before final judgment. The supreme court shall hear and determine the questions and render final judgment thereon, or remand the cause to such superior or district court for further trial or other proceedings, as justice and the state of the cause may require.
- (b) In a prosecution for a felony, the state shall be allowed to appeal to the supreme court any decision, judgment, or order of a district or superior court dismissing an indictment or information as to one or more counts.
- (c) In a prosecution for a felony, the state shall be allowed to appeal to the supreme court from a decision or order of a district or superior court:

* * *

Sec. 118. 13 V.S.A. § 7554(d) and (f) are amended to read:

(d)(1) A person for whom conditions of release are imposed and who is detained as a result of his or her inability to meet the conditions of release or who is ordered released on a condition that he or she return to custody after specified hours shall, within 48 hours of application, be entitled to have the conditions reviewed by a judge in the court having original jurisdiction over the offense charged. A person applying for review shall be given the opportunity for a hearing. Unless the conditions of release are amended as requested, the judge shall set forth in writing or orally on the record a reasonable basis for continuing the conditions imposed. In the event that a

judge in the court having original jurisdiction over the offense charged is not available, any district or superior judge may review such conditions.

- (2) A person for whom conditions of release are imposed shall, within five working days of application, be entitled to have the conditions reviewed by a judge in the court having original jurisdiction over the offense charged. A person applying for review shall be given the opportunity for a hearing. Unless the conditions of release are amended as requested, the judge shall set forth in writing or orally on the record a reasonable basis for continuing the conditions imposed. In the event that a judge in the court having original jurisdiction over the offense charged is not available, any district or superior judge may review such conditions.
- (f) The term "judicial officer" as used in this section and section 7556 of this title shall mean a clerk of a superior or district court or a superior or district court judge.
- Sec. 119. 13 V.S.A. § 7560a(a) is amended to read:
- (a) If a person who has been released on a secured or unsecured appearance bond or a surety bond fails to appear in court as required:
 - (1) The court may:
 - (A) issue a warrant for the arrest of the person; and
- (B) upon hearing and notice thereof to the bailor or surety, forfeit any bail posted on the person.
- (2)(A) The state's attorney may file a motion to forfeit the amount of the bond against the surety in the <u>civil or criminal division of the</u> superior or district court where the bond was executed.
 - (B) A motion filed under this subdivision shall:
 - (i) include a copy of the bond;
 - (ii) state the facts upon which the motion is based; and
 - (iii) be served upon the surety.

Sec. 120. 14 V.S.A. § 101 is amended to read:

§ 101. WILL NOT EFFECTIVE UNTIL ALLOWED

A will shall not pass either real or personal estate unless it is proved and allowed in the probate <u>division of the superior</u> court, or by appeal in the superior or supreme court.

Sec. 121. 14 V.S.A. § 203 is amended to read:

§ 203. <u>PROBATE</u> PROCEEDINGS WITHIN THE EXCLUSIVE JURISDICTION OF PROBATE COURT; SERVICE; JURISDICTION OVER PERSONS

In proceedings within the exclusive jurisdiction of the probate <u>division of the superior</u> court where notice is required, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this state by notice in conformity with law or the rules of probate procedure. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

Sec. 122. 14 V.S.A. § 1728 is amended to read:

§ 1728. COURT TO DETERMINE QUESTIONS OF ADVANCEMENT

Questions as to an advancement made, or alleged to have been made by the deceased to an heir, may be heard and determined by the probate <u>division of the superior</u> court and shall be specified in the decree assigning the estate. The final decree of the probate <u>court division</u>, or of the <u>superior or</u> supreme court on appeal, shall be binding on the persons interested in the estate.

Sec. 123. 14 V.S.A. § 2664 is amended to read:

§ 2664. CREATION OF PERMANENT GUARDIANSHIP

(a) The family <u>division of the superior</u> court may establish a permanent guardianship at a permanency planning hearing or at any other hearing in which a permanent legal disposition of the child can be made, including a child protection proceeding pursuant to 33 V.S.A. § 5528, or a delinquency proceeding pursuant to 33 V.S.A. § 5529. The court shall also issue an order permitting or denying visitation, contact, or information with the parent at the same time the order of permanent guardianship is issued. Before issuing an order for permanent guardianship, the court shall find by clear and convincing evidence all of the following:

* * *

(c) After the family <u>division of the superior</u> court issues a final order establishing permanent guardianship, the case shall be transferred to the appropriate probate court in the district in which the permanent guardian resides. Jurisdiction shall continue to lie in the probate court. Appeal of any decision by the probate court shall be de novo to the family court.

Sec. 123a. 14 V.S.A. § 2664 is amended to read:

§ 2664. CREATION OF PERMANENT GUARDIANSHIP

(c) After the family division of the superior court issues a final order establishing permanent guardianship, the case shall be transferred to the appropriate probate <u>division of the superior</u> court in the district in which the permanent guardian resides. Jurisdiction shall continue to lie in the probate <u>court division</u>. Appeal of any decision by the probate <u>division of the superior</u> court shall be de novo to the family <u>court</u> division.

Sec. 124. 14 V.S.A. § 2927 is amended to read:

§ 2927. REMEDY, AFTER GUARDIAN'S DISCHARGE, REEXAMINATION OF ACCOUNTS

After the trust of a guardian is terminated, if the ward or the ward's legal representatives are dissatisfied with the account as allowed by the probate division of the superior court during the continuance of the trust, within two years, and if the ward or the legal representatives do not at the time of the termination of the trust reside in this state, within four years thereafter, they may file a motion to reopen the estate for a reexamination of the account. After notice as provided by the rules of probate procedure, the court shall reexamine accounts previously allowed. A party may appeal from the decision of the probate court division to the civil division of the superior court. The final allowance of accounts in these proceedings shall be conclusive between the parties.

Sec. 125. 14 V.S.A. § 3062 is amended to read;

§ 3062. JURISDICTION; REVIEW OF GUARDIAN'S ACTIONS

- (a) The probate <u>division of the superior</u> court shall have exclusive original jurisdiction over all proceedings brought under the authority of this chapter or pursuant to <u>section 18 V.S.A. § 9718 of Title 18</u>.
- (b) The probate <u>division of the superior</u> court shall have supervisory authority over guardians. Any interested person may seek review of a guardian's proposed or past actions by filing a motion with the court.

Sec. 126. 15 V.S.A. § 658(d) and (e) are amended to read:

(d) The family superior court judge or magistrate may order a parent who is in default of a child support order, to participate in employment, educational, or training related activities if the court finds that participation in such activities would assist in addressing the causes of the default. The court may also order the parent to participate in substance abuse or other counseling if the court finds that such counseling may assist the parent to achieve stable employment. Activities ordered under this section shall not be inconsistent with any requirements of a state or federal program in which the parent is

participating. For the purpose of this subsection, "employment, educational, or training related activities" shall mean:

* * *

(e) A consent to the adoption of a child or the relinquishment of a child, for the purpose of adoption, covered by a child support order shall terminate an obligor's duty to provide future support for the adopted child without further order of the family court. Unpaid support installments accrued prior to adoption are not discharged and are subject to the jurisdiction of the family court. In a case involving a child covered by a Vermont child support order, the probate division of the superior court shall file the consent or relinquishment with the family division of the superior court that issued in the case in which the support order was issued and shall notify the office of child support of any order terminating parental rights and of the final adoption decree. Upon receipt of the consent or relinquishment, the office of child support shall terminate the obligor's duty to provide further support.

Sec. 126a. 15 V.S.A. § 658(e) is amended to read:

(e) A consent to the adoption of a child or the relinquishment of a child, for the purpose of adoption, covered by a child support order shall terminate an obligor's duty to provide future support for the adopted child without further order of the court. Unpaid support installments accrued prior to adoption are not discharged and are subject to the jurisdiction of the court. In a case involving a child covered by a Vermont child support order, the probate division of the superior court shall also file the consent or relinquishment with the family division of the superior court in the case in which the support order was issued and shall notify the office of child support of any order terminating parental rights and of the final adoption decree. Upon receipt of the consent or relinquishment, the office of child support shall terminate the obligor's duty to provide further support.

Sec. 127. 15 V.S.A. § 1011(a) is amended to read:

(a) A superior, juvenile or probate court which has considered or is considering the custody or visitation of a minor child may award visitation rights to a grandparent of the child, upon written request of the grandparent filed with the court, if the court finds that to do so would be in the best interest of the child.

Sec. 128. 15 V.S.A. § 1101 is amended to read:

§ 1101. DEFINITIONS

The following words as used in this chapter shall have the following meanings:

* * *

(3) A "foreign abuse prevention order" means any protection order issued by the court of any other state that contains provisions similar to relief provisions authorized under this chapter, the Vermont Family Court Rules for Family Proceedings, chapter 69 of Title 33, or chapter 178 of Title 12.

* * *

Sec. 129. 15 V.S.A. § 1102 is amended to read:

§ 1102. JURISDICTION AND VENUE

- (a) The family <u>division of the superior</u> court shall have jurisdiction over proceedings under this chapter.
- (b) Emergency orders under section 1104 of this title may be issued by a judge of the district, criminal, civil, or family division of the superior or family court.

* * *

Sec. 130. 15 V.S.A. § 1106 is amended to read:

§ 1106. PROCEDURE

- (a) Except as otherwise specified in this chapter, proceedings commenced under this chapter shall be in accordance with the <u>family court rules Vermont Rules for Family Proceedings</u> and shall be in addition to any other available civil or criminal remedies.
- (b) The court administrator shall establish procedures to insure access to relief after regular court hours, or on weekends and holidays. The court administrator is authorized to contract with public or private agencies to assist plaintiffs to seek relief and to gain access to district, superior and family courts. Law enforcement agencies shall assist in carrying out the intent of this section.
- (c) The office of the court administrator shall ensure that the family court and the district superior court have has procedures in place so that the contents of orders and pendency of other proceedings can be known to both all courts for cases in which an abuse prevention proceeding is related to a criminal proceeding.

Sec. 131. 15A V.S.A. § 6-102(c) is amended to read:

(c) Within 30 days after a decree of adoption becomes final, the register clerk of the probate superior court or the clerk of the family court shall send to the registry a copy of any document signed pursuant to section 2-105 of this title.

Sec. 132. DELETED

Sec. 133. DELETED

Sec. 134. DELETED

Sec. 135. DELETED

Sec. 136. DELETED

Sec. 137. DELETED

Sec. 138. DELETED

Sec. 139. DELETED

Sec. 140. 17 V.S.A. § 2602(b) is amended to read:

(b) In the case of recounts other than specified in subsection (a) of this section, the following procedure shall apply. A petition for a recount shall be filed within 10 days after the election. The petition shall be filed with the <u>civil division of</u> the superior court, Washington County, in the case of candidates for state or congressional office, or for a presidential election; the petition shall be filed with the superior court in any county in which votes were cast for the office to be recounted, in the case of any other office. The petition shall be supported, if possible, by a certified copy of the certificate of election prepared by the canvassing committee, verifying the total number of votes cast and the number of votes cast for each candidate.

Sec. 141. 17 V.S.A. § 2603(c) is amended to read:

(c) The complaint shall be filed within 15 days after the election in question, or if there is a recount, within 10 days after the court issues its judgment on the recount. In the case of candidates for state or congressional office, for a presidential election, or for a statewide public question, the complaint shall be filed with the <u>civil division of the</u> superior court, Washington <u>county County</u>. In the case of any other candidate or public question, the complaint shall be filed with the superior court in any county in which votes were cast for the office or question being challenged.

Sec. 142. DELETED

Sec. 143. DELETED

Sec. 144. 18 V.S.A. § 1055 is amended to read:

§ 1055. TUBERCULOSIS-COMPULSORY EXAMINATIONS

When the commissioner of health has reasonable cause to believe that any person has tuberculosis in an active stage or in a communicable form, he the commissioner may request the person to undergo an examination at a clinic or

hospital approved by the secretary of the agency of human services for that purpose at the expense of the state by a physician qualified in chest diseases. If the person refuses the examination, the commissioner may petition the district superior court for the district unit where the person resides for an order requiring the person to submit to examination. When the court finds that there is reasonable cause to believe that the person has tuberculosis in an active stage or in a communicable form, it may order the person to be examined.

Sec. 145. 18 V.S.A. § 4053(b) is amended to read:

(b) In addition to the other remedies provided in this chapter, the board is hereby authorized through the attorney general or state's attorneys to apply to the civil or criminal division of any superior or district court to apply for, and the court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of this chapter, irrespective of whether or not there exists an adequate remedy at law.

Sec. 146. 18 V.S.A. § 4055 is amended to read:

§ 4055. MARKING; NOTICE

- (a) Whenever a duly authorized agent of the board finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter, he <u>or she</u> shall affix to such article a tag or other appropriate marking, giving notice that the article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed article by sale or otherwise without that permission.
- (b) When an article detained or embargoed under subsection (a) has been found by the agent to be adulterated, or misbranded, he <u>or she</u> shall petition the <u>presiding judge civil or criminal division</u> of the superior court or district court in whose jurisdiction the unit where the article is detained or embargoed, for a libel for condemnation of the article. When the agent has found that an article so detained or embargoed is not adulterated or misbranded, he <u>or she</u> shall remove the tag or other marking.
- (c) If the court finds that a detained or embargoed article is adulterated or misbranded, the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of the agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of the article or his or her agent; provided, that when the

adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article shall be so labeled or processed, has been executed, may by order direct that the article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the board. The expense of the supervision shall be paid by the claimant. The bond shall be returned to the claimant of the article on representation to the court by the board that the article is no longer in violation of this chapter and that the expenses of supervision have been paid.

* * *

Sec. 147. 18 V.S.A. § 5144(a) is amended to read:

(a) Marriages may be solemnized by a supreme court justice, a superior court judge, a district judge, a judge of probate, an assistant judge, a justice of the peace, an individual who has registered as an officiant with the Vermont secretary of state pursuant to section 5144a of this title, a member of the clergy residing in this state and ordained or licensed, or otherwise regularly authorized thereunto by the published laws or discipline of the general conference, convention, or other authority of his or her faith or denomination, or by such a clergy person residing in an adjoining state or country, whose parish, church, temple, mosque, or other religious organization lies wholly or in part in this state, or by a member of the clergy residing in some other state of the United States or in the Dominion of Canada, provided he or she has first secured from the probate court of the district division of the superior court in the unit within which the marriage is to be solemnized a special authorization, authorizing him or her to certify the marriage if such the probate judge determines that the circumstances make the special authorization desirable. Marriage among the Friends or Quakers, the Christadelphian Ecclesia, and the Baha'i Faith may be solemnized in the manner heretofore used in such societies.

Sec. 148. 18 V.S.A. § 5231(a) and (f) are amended to read:

(a) Any individual who is a near relative of the decedent or the custodian of the decedent's remains may file an action in the probate division of the superior court requesting the court to appoint an individual to make decisions regarding the disposition of the decedent's remains or to resolve a dispute regarding the appropriate disposition of remains, including any decisions regarding funeral goods and services. The court or the individual filing the action may move to join any necessary person under the jurisdiction of the court as a party. The agency of human services may also be joined as a party if

it is suggested on the record that there will be insufficient financial resources to pay for funeral goods and services.

(f) Any appeal from the probate court shall be on the record to the <u>civil</u> <u>division of the</u> superior court. There shall be no appeal as a matter of right to the supreme court.

Sec. 149. 18 V.S.A. § 5531(c) is amended to read:

(c) The probate <u>division of the superior</u> court shall have jurisdiction to determine all questions arising under the provisions of this section.

Sec. 150. 18 V.S.A. § 7106 is amended to read:

§ 7106. NOTICE OF HOSPITALIZATION AND DISCHARGE

Whenever a patient has been admitted to a hospital or training school other than upon his or her own application, the head of the hospital or school shall immediately notify the patient's legal guardian, spouse, parent or parents, or nearest known relative or interested party, if known. If the involuntary hospitalization or admission was without court order, notice shall also be given to the district superior court judge for the district family division of the superior court in the unit wherein the hospital is located. If the hospitalization or admission was by order of any court, the head of the hospital or training school admitting or discharging an individual shall forthwith make a report thereof to the commissioner and to the court which entered the order for hospitalization or admission.

Sec. 150a. 18 V.S.A. § 7112 is amended to read:

§ 7112. APPEALS

A patient or student may appeal any decision of the board. The appeal shall be to the <u>family division of the</u> superior court of the county wherein the hospital or school is located. The appeal shall be taken in such manner as the supreme court may by rule provide, except that there shall not be any stay of execution of the decision appealed from.

Sec. 150b. 18 V.S.A. § 7903 is amended to read:

§ 7903. TRANSFERS TO FEDERAL FACILITIES

Upon receipt of a certificate from an agency of the United States that accommodations are available for the care of any individual hospitalized under this part of this title, and that the individual is eligible for care or treatment in a hospital or institution of that agency, the commissioner may cause his transfer to that agency for hospitalization. The district judge who ordered the individual to be hospitalized, and the attorney, guardian, if any, spouse, and parent or parents, or if none be known, an interested party, in that order, shall

be notified immediately of the transfer by the commissioner. No person may be transferred to an agency of the United States if he <u>or she</u> is confined pursuant to conviction of any felony or misdemeanor, or if he <u>or she</u> has been acquitted of a criminal charge solely on the ground of mental illness, unless prior to transfer the district judge who originally ordered hospitalization of such person enters an order for the transfer after appropriate motion and hearing. Any person so transferred shall be deemed to be hospitalized by that agency pursuant to the original order of hospitalization.

Sec. 150c. 18 V.S.A. § 8009 is amended to read:

§ 8009. ADMINISTRATIVE DISCHARGE

* * *

- (b) The head of the hospital shall discharge a judicially hospitalized patient when the patient is no longer a patient in need of further treatment. When a judicially hospitalized patient is discharged, the head of the hospital shall notify the applicant, the certifying physician and, the family division of the superior court, and anyone who was notified at the time the patient was hospitalized.
- (c) A person responsible for providing treatment other than hospitalization to an individual ordered to undergo a program of alternative treatment, under sections section 7618 or 7621 of this title, may terminate the alternative treatment to the individual if the provider of this alternative treatment considers him clinically suitable for termination of treatment. Upon termination of alternative treatment, the <u>family division of the superior</u> court shall be so notified by the provider of the alternative treatment.
- Sec. 151. 18 V.S.A. § 8010(b) is amended to read:
- (b) In that event and if the head of the hospital determines that the patient is a patient in need of further treatment, the head of the hospital may detain the patient for a period not to exceed four days from receipt of the notice to leave. Before expiration of the four-day period the head of the hospital shall either release the patient or apply to the district family division of the superior court in the district unit in which the hospital is located for the involuntary admission of the patient. The patient shall remain in the hospital pending the court's determination of the case.
- Sec. 152. 18 V.S.A. § 8845(a) and (b) are amended to read:
- (a) A person committed under this subchapter may be discharged from custody by a <u>district superior</u> judge after judicial review as provided herein or by administrative order of the commissioner.

(b) Procedures for judicial review of persons committed under this subchapter shall be as provided in section 8834 of this title except that proceedings shall be brought in the <u>district criminal division of the superior</u> court in <u>the unit in</u> which the person resides or, if the person resides out of state, in the unit which issued the original commitment order.

Sec. 153. 18 V.S.A. § 9052 is amended to read:

§ 9052. TRANSFER OF PATIENTS

The compact administrator shall consult with the immediate family of any person whom he <u>or she</u> proposes to transfer from a state institution to an institution in another state which is a party to this compact and shall take final action as to the transfer of such person only with the approval of the <u>district superior</u> court of the <u>district unit</u> of original commitment.

Sec. 154. 18 V.S.A. § 9303 is amended to read:

§ 9303. JURISDICTION AND VENUE

(a) The family <u>division of the superior</u> court shall have exclusive jurisdiction over all proceedings brought under the authority of this chapter. Proceedings under this chapter shall be commenced in the family <u>division of the superior</u> court for the county in which the person with developmental disabilities is residing.

* * *

Sec. 154a. 18 V.S.A. § 9303 is amended to read:

§ 9303. JURISDICTION AND VENUE

- (a) The family division of the superior court shall have exclusive jurisdiction over all proceedings brought under the authority of this chapter. Proceedings under this chapter shall be commenced in the family division of the superior court for the county unit in which the person with developmental disabilities is residing.
- (b)(1) The probate <u>division of the superior</u> court shall have concurrent jurisdiction to appoint the commissioner to serve as a temporary guardian for a person in need of guardianship when:
- (A) a petition has been filed pursuant to section 14 V.S.A. § 3063 of Title 14;
- (B) the probate <u>division of the superior</u> court finds that the respondent is a person in need of guardianship as defined in subdivision 9302(5) of this title; and
 - (C) no suitable private guardian can be located.

(2) Within 60 days after appointment as a temporary guardian, the commissioner shall file a petition in <u>the</u> family <u>division of the superior</u> court for appointment under this chapter and for modification or termination of the probate <u>court division</u> order.

Sec. 155. 18 V.S.A. § 9316(a) and (b) are amended to read:

- (a) The commissioner shall provide guardianship services in accordance with the order of the probate or family <u>division of the superior</u> court until termination or modification thereof by the court.
- (b) The commissioner, the person with developmental disabilities, or any interested person may petition the appointing court, if it exists, or the family superior court for the district unit where the person resides to modify or terminate the judgment pursuant to which the commissioner is providing guardianship. The petitioner, or the commissioner as petitioner, and the respondent shall be the parties to a petition to modify or terminate guardianship.

Sec. 155a. 18 V.S.A. § 9316(a) is amended to read:

(a) The commissioner shall provide guardianship services in accordance with the order of the probate <u>division</u> or family division of the superior court until termination or modification thereof by the court.

Sec. 156. 20 V.S.A. § 26 is amended to read:

§ 26. CHANGE OF VENUE BECAUSE OF ENEMY ATTACK

In the event that the place where a civil action or a criminal prosecution is required by law to be brought, has become and remains unsafe because of an attack upon the United States or Canada, such action or prosecution may be brought in or, if already pending, may be transferred to the superior or district court as appropriate in an unaffected county or territorial unit and there tried in the place provided by law for such court.

Sec. 157. 20 V.S.A. § 1882 is amended to read:

§ 1882. SUBPOENAS

In connection with any investigation into the internal affairs of the department, the commissioner may request subpoenas for the testimony of witnesses or the production of evidence. The fees for travel and attendance of witnesses shall be the same as for witnesses and officers before a district superior court. The fees in connection with subpoenas issued on behalf of the commissioner or the department shall be paid by the state, upon presentation of proper bills of costs to the commissioner. Notwithstanding 3 V.S.A. §§ 809a and 809b, subpoenas requested by the commissioner shall be issued and

enforced by the <u>district superior</u> court of the <u>district unit</u> in which the person subpoenaed resides in accordance with the Vermont <u>District Court Civil</u> Rules of Civil Procedure.

Sec. 158. 20 V.S.A. § 1935 is amended to read:

§ 1935. PROCEDURE IF PERSON REFUSES TO GIVE SAMPLE

(a) If a person who is required to provide a DNA sample under this subchapter refuses to provide the sample, the commissioner of the department of corrections or public safety shall file a motion in the <u>district superior</u> court for an order requiring the person to provide the sample.

* * *

- (f) Venue for proceedings under this section shall be in the territorial unit of the district superior court where the conviction occurred. Hearings under this section shall be conducted by the district superior court without a jury and shall be subject to the District Court Civil Rules Vermont Rules of Civil Procedure as consistent with this section. The state has the burden of proof by a preponderance of the evidence. Affidavits of witnesses shall be admissible evidence which may be rebutted by witnesses called by either party. The affidavits shall be delivered to the other party at least five days prior to the hearing.
- (g) A decision of the <u>district superior</u> court under this section may be appealed as a matter of right to the supreme court. The court's order shall not be stayed pending appeal unless the respondent is reasonably likely to prevail on appeal.

Sec. 159. 20 V.S.A. § 2056 is amended to read:

§ 2056. CERTIFIED RECORDS

Upon the request of a superior or district court judge, the attorney general, or a state's attorney, the center shall prepare the record of arrests, convictions, or sentences of a person. The record, when duly certified by the commissioner of public safety or the director of the center, shall be competent evidence in the courts of this state. Such other information as is contained in the center may be made public only with the express approval of the commissioner of public safety.

Sec. 160. 23 V.S.A. § 1205 is amended to read:

§ 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

* * *

(d) Form of notice. The notice of intention to suspend and of suspension shall be in a form prescribed by the supreme court. The notice shall include an

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explanation of rights, a form to be used to request a hearing, and, if a hearing is requested, the date, time, and location of the <u>district criminal division of the superior</u> court where the person must appear for a preliminary hearing. The notice shall also contain, in boldface print, the following:

* * *

(3) If you wish to request a hearing before the <u>district superior</u> court, you must mail or deliver your request for a hearing within seven (7) days after (date of notice).

* * *

(f) Review by <u>district</u> <u>superior</u> court. Within seven days following receipt of a notice of intention to suspend and of suspension, a person may make a request for a hearing before the <u>district</u> <u>superior</u> court by mailing or delivering the form provided with the notice. The request shall be mailed or delivered to the commissioner of motor vehicles, who shall then notify the <u>district</u> <u>criminal</u> <u>division of the superior</u> court that a hearing has been requested and who shall then provide the state's attorney with a copy of the notice of intention to suspend and of suspension and the officer's affidavit.

* * *

(h) Final hearing.

* * *

(2) No less than seven days before the final hearing, and subject to the requirements of District Court Civil Rule Vermont Rule of Civil Procedure 11, the defendant shall provide to the state and file with the court a list of the issues (limited to the issues set forth in this subsection) that the defendant intends to raise. Only evidence that is relevant to an issue listed by the defendant may be raised by the defendant at the final hearing. The defendant shall not be permitted to raise any other evidence at the final hearing, and all other evidence shall be inadmissible.

* * *

(j) Venue and conduct of hearings. Venue for proceedings under this section shall be in the territorial unit of the <u>district superior</u> court where the offense is alleged to have occurred. Hearings under this section shall be summary proceedings conducted by the <u>district criminal division of the superior</u> court without a jury and shall be subject to the <u>District Court Civil Rules Vermont Rules of Civil Procedure</u> only as consistent with this section. The state has the burden of proof by a preponderance of the evidence. Affidavits of law enforcement officers, chemists of either party, or expert witnesses of either party shall be admissible evidence which may be rebutted

by witnesses called by either party. The affidavits shall be delivered to the other party at least five days prior to the hearing.

(k) Appeal. A decision of the district criminal division of the superior court under this section may be appealed as a matter of right to the supreme court. The suspension shall not be stayed pending appeal unless the defendant is reasonably likely to prevail on appeal.

* * *

Sec. 161. 23 V.S.A. § 1213c(c) is amended to read:

(c) Service of notice. The notice of hearing shall be served as provided for in the District Court Civil Rules Vermont Rules of Civil Procedure on the registered owner or owners and any lienholders as shown on the certificate of title for the vehicle as shown in the records of the department of motor vehicles in the state in which the vehicle is registered or titled.

Sec. 162. 23 V.S.A. § 3021(b) and (d) are amended to read:

(b) In addition to the powers specifically granted to the commissioner in this chapter, he or she may:

* * *

- (5) compel the attendance of witnesses and order the production of any relevant books, records, papers, vouchers, accounts, or other documents of any person the commissioner has reason to believe is liable for the payment of a tax or of any person believed to have information pertinent to any matter under investigation by the commissioner at any hearing held under this chapter. The fees for travel and attendance of witnesses summoned or used by the commissioner and fees for officers shall be the same as for witnesses and officers before a district the criminal division of the superior court and shall be paid by the state upon presentation of proper bills of cost to the commissioner of finance and management, but no fees or expenses shall be payable to a witness charged with a use tax liability.
- (d) Any superior or district judge upon application of the commissioner may compel the attendance of witnesses, the giving of testimony, and the production of any books, records, papers, vouchers, accounts, or documents before the commissioner in the same manner, to the same extent, and subject to the same penalties as if before a superior or district court.

Sec. 163. 24 V.S.A. § 71a is amended to read:

§ 71a. COURTHOUSES

(a) Except as provided herein, each county shall provide and own a suitable courthouse, pay all utility and custodial services, and keep such courthouse

suitably furnished and equipped for use by the superior court and probate court, together with suitable offices for the county clerk, assistant judges, and probate judges. Office space for the probate court may be provided elsewhere by the county. Each county shall provide fireproof safes or vaults for the safekeeping of the official files and records required to be kept by county officials, including the files and records of a justice of the peace who has vacated his or her office. Use of the county courthouse by the supreme court, district court, family court or the judicial bureau may be permitted by the assistant judges when such use does not conflict with the use of the building by the superior court, provided that the office of court administrator shall pay the cost of any such use should the assistant judges choose not to pay the cost by use of county funds. The county shall provide at least the facilities for judicial operations, including staff, that it provided on July 1, 2009.

- (b) If the state provides a building in which the superior court is held <u>all</u> judicial operations in a county are contained in one court building owned by the state, the county clerk <u>and assistant judges</u> may also be located in the same building. The <u>assistant judges</u>, the court administrator and the commissioner of buildings and general services shall be the superintendents of the building. They shall make decisions regarding building construction, space allocations, and use of the facility after consulting with the <u>district court and the</u> superior court presiding <u>judges</u> judge and the <u>probate judge if housed in the building assistant judges</u>. The county shall no longer be required to maintain a courthouse.
- (c) The court administrator, in consultation with the presiding judge of the superior court, shall determine what judicial operations will occur in the county courthouse.

Sec. 163a. 24 V.S.A. § 71a is amended to read:

§ 71a. COURTHOUSES

(a) Except as provided herein, each county shall provide and own a suitable courthouse, pay all utility and custodial services, and keep such courthouse suitably furnished and equipped for use by the superior court and probate court, together with suitable offices for the county clerk, assistant judges, and probate judges. Office space for the probate division of the superior court may be provided elsewhere by the county. The county shall provide at least the facilities for judicial operations, including staff, that it provided on July 1, 2009.

* * *

Sec. 164. 24 V.S.A. § 72 is amended to read:

§ 72. —EXPENSES OF THE SUPERIOR COURT

- (a) The expenses connected with the superior court, unless otherwise provided, shall be paid by the state.
- (b) All filing fees in small claims actions, including postjudgment fees, shall be held by the county in which they are filed.

Sec. 165. 24 V.S.A. § 75 is amended to read:

§ 75. TELEPHONE

Each county shall provide adequate telephone service for the county courthouse, the offices of the county clerk, probate judge or register thereof, and the sheriff.

Sec. 165a. 24 V.S.A. § 76 is amended to read:

§ 76. COUNTY LAW LIBRARY

Each county shall <u>may</u> maintain a complete set of Vermont Reports including the digest thereof in the county clerk's office and in each probate office. The county may maintain in the courthouse or elsewhere such additional law books as in the opinion of the assistant judges are needful for the judges and officials having offices in the county.

Sec. 166. 24 V.S.A. § 77 is amended to read:

§ 77. COUNTY LANDS; PURCHASE; CONDEMNATION

- (a) Each county may acquire and own such lands and rights in lands as in the opinion of the assistant judges are needful for county purposes.
- (b) A county may condemn land in situations similar to those in which a municipality may condemn under section 2805 of this title by complying with the procedures established in sections 2805 through 2812 of this title, with the assistant judges performing the duties assigned by those sections to the selectmen.
- (c) In any proceeding brought by a county under subsection (b) of this section, the assistant judges shall be disqualified, and the proceeding shall be heard by the presiding judge, sitting alone.

Sec. 167. 24 V.S.A. § 131 is amended to read:

§ 131. POWERS AND DUTIES

The assistant judges of the superior court shall have the care and superintendence of county property, may take deeds and leases of real estate to the county, rent or sell and convey unused lands belonging to the county, keep

the courthouse, jail, and other county buildings insured, and make needed repairs and improvements in and around the same.

Sec. 168. 24 V.S.A. § 137 is amended to read:

§ 137. JURISDICTION

District and superior Superior courts, within their respective jurisdictions, may take cognizance of actions in favor of or against the county.

Sec. 169. 24 V.S.A. § 171 is amended to read:

§ 171. APPOINTMENT

The assistant judges of the superior court, with the concurrence of the presiding judge of such court, shall appoint a county clerk who shall be sworn and hold his <u>or her</u> office during the pleasure of such judges and until his <u>or her</u> successor is appointed and has qualified.

Sec. 170. 24 V.S.A. § 175 is amended to read:

§ 175. BOND TO COUNTY

Before entering upon the duties of his <u>or her</u> office, a county clerk shall become bound to the county in the sum of \$3,000.00, with sufficient sureties, by way of recognizance, before two of the judges of the superior court the <u>assistant judges</u>, or give a bond to the county executed by principal and sureties in like sum to be approved by two of the judges of the superior court the <u>assistant judges</u>, conditioned for the faithful performance of his <u>or her</u> duties. Such bonds of county clerks shall be taken biennially in the month of February and recorded in the office of the county clerk.

Sec. 171. 24 V.S.A. § 176 is amended to read:

§ 176. DEPUTY CLERK

A county clerk may, subject to the approval of the assistant judges, appoint one or more deputies who may perform the duties of clerk for whose acts he or she shall be responsible and whose deputations he or she may revoke at pleasure. A record of the appointments shall be made in the office of the clerk. In case of the death of the clerk or his or her inability to act, the deputy or deputies in order of appointment shall perform the duties of the office until a clerk is appointed. In case of the suspension of the clerk's duties as a condition of release pending trial for violating 13 V.S.A. § 2537, the assistant judges of the county shall appoint a person to perform the duties of the office until the charge of violating 13 V.S.A. § 2537 is resolved. If the assistant judges cannot agree upon appointing a person, the judge of the superior court of the county shall make the appointment. The compensation for the clerk and deputy clerk shall be fixed by the assistant judges and paid for by the county.

Such compensation may include such employment benefits as are presently provided to state employees, including, but not limited to, health insurance, life insurance, and pension plan, the expense for which shall be borne by the county and the employees.

Sec. 172. 24 V.S.A. § 178 is amended to read:

§ 178. RECORD OF SHERIFF'S COMMISSION; COPIES; EVIDENCE

Such The county clerk shall record, in a book kept for that purpose, sheriffs' commissions with the oath of office indorsed thereon, and recognizances taken by the judges of the superior court, out of court, for the appearance of eriminals confined in jail. In case of loss or destruction of an original commission or recognizance, a certified copy of the record may be used in court as evidence of the facts therein contained.

Sec. 173. 24 V.S.A. § 183 is amended to read:

§ 183. CERTIFICATE OF APPOINTMENT OF NOTARY PUBLIC OR MASTER

Immediately after the appointment of a notary public or master, the county clerk shall send to the secretary of state a certificate of such appointment, on blanks furnished by such the secretary, containing the name, signature, and legal residence of the appointee, and the term of office of each notary public. Such The secretary shall cause such certificates to be bound in suitable volumes and to be indexed. Upon request, such the secretary may certify the appointment, qualification, and signature of such a notary public or master on tender of his or her legal fees.

Sec. 174. 24 V.S.A. § 211 is amended to read:

§ 211. APPOINTMENT; VACANCY

Biennially, on February 1, the assistant judges of the superior court shall appoint a treasurer for the county who shall hold office for two years and until his or her successor is appointed and qualified. If such the treasurer dies or in the opinion of the assistant judges becomes disqualified, they may appoint a treasurer for the unexpired term. If the treasurer has his or her duties suspended as a condition of release pending trial for violating 13 V.S.A. § 2537, the assistant judges of the county shall appoint a person to perform the duties of the treasurer until the charge of violating 13 V.S.A. § 2537 is resolved. If the assistant judges cannot agree upon whom to appoint, the auditor of accounts shall make the appointment.

Sec. 175. 24 V.S.A. § 212 is amended to read:

§ 212. BOND

Before entering upon the duties of his <u>or her</u> office, a county treasurer shall become bound to the county in the sum of \$5,000.00, with sufficient sureties, by way of recognizance, before two of the judges of the superior court the <u>assistant judges</u>, or give a bond to the county executed by principal and sureties in like sum to be approved by two of the judges of the superior court the <u>assistant judges</u>, conditioned for the faithful performance of his <u>or her</u> duties. <u>Such The</u> recognizance or bond shall be lodged with and recorded by the county clerk. <u>Such bond shall be and</u> renewed annually in the month of February.

Sec. 176. 24 V.S.A. § 291 is amended to read:

§ 291. BOND; OATH

Before entering upon the duties of his <u>or her</u> office, a sheriff shall become bound to the treasurer of the county in the sum of \$100,000.00, with two or more sufficient sureties by way of recognizance, before a justice of the supreme court or the two assistant judges of the superior court in such county, or give a bond to the treasurer executed by such sheriff with sufficient sureties in like sum to be approved by a justice of the supreme court or by the two assistant judges of the superior court, conditioned for the faithful performance of his <u>or her</u> duties and shall take the oath of office before one of such the judges, who shall certify the same on the sheriff's commission. Such recognizance or bond and the commission shall be forthwith recorded in the office of the county clerk.

Sec. 177. 24 V.S.A. § 294 is amended to read:

§ 294. SHERIFF IMPRISONED

If a sheriff is confined in prison by legal process, his <u>or her</u> functions as sheriff shall be suspended. When <u>he the sheriff</u> is released from imprisonment during his <u>or her</u> term of office, he <u>or she</u> shall file a certificate of his <u>or her</u> discharge signed by one of the judges of the superior court, in the office of the county clerk, and deliver a like certificate to the high bailiff. Thereupon he <u>or she</u> shall resume the powers and execute the duties of sheriff.

Sec. 178. 24 V.S.A. § 361(a) is amended to read:

(a) A state's attorney shall prosecute for offenses committed within his <u>or</u> <u>her</u> county, and all matters and causes cognizable by the supreme, <u>and</u> superior and district courts in behalf of the state; file informations and prepare bills of indictment, deliver executions in favor of the state to an officer for collection immediately after final judgment, taking duplicate receipts therefor, one of

which shall be sent to the commissioner of finance and management, and take measures to collect fines and other demands or sums of money due to the state or county.

Sec. 179. 24 V.S.A. § 441 is amended to read:

§ 441. APPOINTMENT; JURISDICTION; EX OFFICIO NOTARIES; APPLICATION

- (a) The <u>assistant</u> judges of the superior court may appoint as many notaries public for the county as the public good requires, to hold. <u>Notaries public so appointed shall hold</u> office until ten days after the expiration of the term of office of such judges, whose <u>and their</u> jurisdiction shall extend throughout the state.
- (b) The clerk of the supreme court, county clerks, district superior court clerks, family deputy superior court clerks, justices of the peace, and town clerks and their assistants shall be ex officio notaries public.
- (c) Every applicant for appointment and commission as a notary public shall complete an application to be filed with the <u>county</u> clerk of the superior court stating that the applicant is a resident of the county and has reached the age of majority, giving his <u>or her</u> business or home address and providing a handwritten specimen of the applicant's official signature.
- (d) An ex officio notary public shall cease to be a notary public when he <u>or</u> she vacates the office on which his or her status as a notary public depends.

Sec. 180. 24 V.S.A. § 441a is amended to read:

§ 441a. NONRESIDENT NOTARY PUBLIC

A nonresident may be appointed as a notary public, provided the individual resides in a state adjoining this state and maintains, or is regularly employed in, a place of business in this state. Before a nonresident may be appointed as a notary public, the individual shall file with the <u>assistant</u> judges of the superior court in the county where the individual's place of employment is located an application setting forth the individual's residence and the place of employment in this state. A nonresident notary public shall notify the <u>assistant</u> judges of the superior court, in writing, of any change of residence or of place of employment in this state.

Sec. 181. 24 V.S.A. § 442 is amended to read:

§ 442. OATH; CERTIFICATE OF APPOINTMENT RECORDED; FORM

(a) A person appointed as notary public shall cause the certificate of his <u>or</u> <u>her</u> appointment to be filed and recorded in the office of the county clerk where issued. Before entering upon the duties of <u>his</u> office, he <u>or she</u>, as well

as an ex officio notary, shall take the oath prescribed by the constitution, and shall duly subscribe the same with his <u>or her</u> correct signature, which oath thus subscribed shall be kept on file by the county clerk as a part of the records of such county.

(b) The certificate of appointment shall be substantially in the following form:

STATE OF VERMON	NT, ss.
	_ County
the day	A.B. of in such county, was, on y of, 20, appointed by the uperior court for such county a notary public for the 10, 20
	Assistant Judges of the superior court.
,	in such county, on this day of 20 personally appeared A.B. ad took oath of office prescribed in the constitution.
Before me	¢,
C. D.	·
	(Designation of the officer administering the oath).

Sec. 182. 24 V.S.A. § 1974(c) is amended to read:

(c) Prosecutions of criminal ordinances shall be brought before the district superior court pursuant to section 4 V.S.A. § 441 of Title 4.

Sec. 183. 24 V.S.A. § 3117 is amended to read:

§ 3117. APPEAL FROM ORDER

An owner or person interested who is aggrieved by such order may appeal as provided in the case of a person aggrieved by an order of a building inspector. However, the provisions of this section shall not prevent such the municipality from recovering the forfeiture provided in section 3116 of this title from the date of the service of the original notice, unless such the order is annulled by the board of arbitration, district court or a superior judge, as the case may be.

Sec. 184. 24 V.S.A. § 3808 is amended to read:

§ 3808. LIABILITY OF PERSON BOUND TO BUILD FENCE

When a person bound to support a portion of the division fence does not make or maintain his or her portion, he or she shall be liable for damages done to or suffered by the opposite party in consequence of such neglect. An owner or occupant of adjoining lands, after 10 days from the time notice is given to the opposite party, may make or put in repair the fence and recover from the opposite party damages arising from the neglect, with the expense of building or repairing the fence. Actions under this section may be brought before a district court when the amount claimed does not exceed \$200.00.

Sec. 185. 28 V.S.A. § 103 is amended to read:

§ 103. INQUIRIES AND INVESTIGATIONS INTO THE ADMINISTRATION OF THE DEPARTMENT

* * *

- (c) In any inquiry or investigation conducted by the commissioner, he or she shall have the same powers as are possessed by district court or superior judges in chambers, and which shall include the power to:
 - (1) Administer oaths;
 - (2) Compel the attendance of witnesses;
 - (3) Compel the production of documentary evidence.
- (d) If any person disobeys any lawful order or subpoena issued by the commissioner pursuant to this section or refuses to testify to any matter regarding which he or she may be questioned lawfully, any district court or superior judge, upon application by the commissioner, shall order the obedience of the person in the same manner as if the person had disobeyed an order or subpoena of the district court or superior judge.
- (e) The fees and traveling expenses of witnesses shall be the same as are allowed witnesses in the district or superior courts of the state and shall be reimbursed by the commissioner out of any appropriation or funds at the disposal of the department.

Sec. 186. 28 V.S.A. § 1531 is amended to read:

§ 1531. APPROPRIATE COURT

The phrase "appropriate court" as used in the agreement on detainers, with reference to the courts of this state, means the superior court where the Vermont charge is pending or the district court.

Sec. 187. 29 V.S.A. § 1158 is amended to read:

§ 1158. —ACTS AND RESOLVES; VERMONT STATUTES ANNOTATED; DISTRIBUTION

- (a) The state librarian shall deliver the acts and resolves as follows: to the secretary of state, six copies; to the clerk of the United States supreme court for the use of the court, one copy; to the governor's office and to the governor and lieutenant governor, one copy each; to the library Library of Congress, four copies; to each county clerk, three copies; one to each of the following officers and institutions: each department of the United States government and upon request to federal libraries, elective and appointive state officers, the clerk of each state board or commission, superintendent of each state institution, the library of the university University of Vermont, the libraries of Castleton, Johnson, and Lyndon state colleges State Colleges, Vermont technical college Technical College, Middlebury college College, Norwich university University, St. Michael's college, senators and representatives of this state in Congress, members of the general assembly during the session at which such laws were adopted, the secretary and assistant secretary of the senate, clerk and assistant clerks of the house of representatives, the judges, attorney, marshall, and clerk of the United States district court in this state, the judge of the second circuit United States court of appeals from Vermont, justices and ex-justices of the supreme court, superior judges, district court judges, the reporter of decisions, judges and registers of probate, sheriffs, state's attorneys, town clerks; one each, upon request and as the available supply permits, to assistant judges of the superior court, justices of the peace, chairman of the legislative body of each municipality and town treasurers; one within the state, to the Vermont historical society, to each county or regional bar law library, and one copy to each state or territorial library or supreme court library, and foreign library which makes available to Vermont its comparable publication, provided that if any of these officials hold more than one of the offices named, that official shall be entitled to only one copy.
- (b) The state librarian shall distribute the copies of Vermont Statutes Annotated and cumulative pocket part supplements thereto, when issued, as follows: one each to the governor, lieutenant governor, speaker of the house of representatives, the state treasurer, secretary of state, auditor of accounts, adjutant general, commissioner of buildings and general services, commissioner of taxes, sergeant at arms, and the head of each administrative department; four copies to the attorney general; one to each town clerk, three to each county clerk; one to each probate judge and two to the clerk of the supreme court; one to each ex-justice and justice of the supreme court, each superior judge, district judge, and state's attorney; two to the judge of the second circuit United States court of appeals from Vermont and four to the

United States district judges for the district of Vermont. One copy shall be given to each state institution, each county or regional bar law library, each university, college, and public library, as requested, and as many sets as are needed to effect exchange with state libraries and state law libraries. Current copies of the Vermont Statutes Annotated and supplements shall be kept for use in the offices of the officers and institutions mentioned. One copy shall be given to each member of the commission established by chapter 3 of Title 1 and counsel therefor, unless they are authorized to receive one in another capacity, and one to each of the fifteen 15 members of the joint special committee on revision of the laws authorized by No. 86 of the Acts of 1959. Additional copies may be sold to parties identified in this subsection at a price to be fixed by the state librarian.

Sec. 188. 30 V.S.A. § 12 is amended to read:

§ 12. REVIEW BY SUPREME COURT

A party to a cause who feels himself or herself aggrieved by the final order, judgment, or decree of the board may appeal to the supreme court. However, the board, in its discretion and before final judgment, may permit an appeal to be taken by any party to the supreme court for determination of questions of law in such manner as the supreme court may by rule provide for appeals before final judgment from a superior court or the district court. Notwithstanding the provisions of the Vermont rules of civil procedure Rules of Civil Procedure or the Vermont rules of appellate procedure Rules of Appellate Procedure, neither the time for filing a notice of appeal nor the filing of a notice of appeal, as provided herein, shall operate as a stay of enforcement of an order of the board unless the board or the supreme court grants a stay under the provisions of section 14 of this title.

Sec. 189. 32 V.S.A. § 467 is amended to read:

§ 467. ACCOUNTS WITH COUNTY SUPERIOR COURT CLERKS

The commissioner of finance and management shall issue his or her a warrant in favor of each county superior court clerk when such the clerk requires money for election or court expenses, and the state treasurer shall charge the same to the clerk. The clerk shall be credited for moneys properly disbursed by him or her, and the balance shall be paid by the clerk into the treasury.

Sec. 190. 32 V.S.A. § 469 is amended to read:

§ 469. REQUISITION FOR COURT EXPENSES

With the approval of the court administrator, the supreme court, the environmental court, the judicial bureau, the probate court, and the superior

court, the district court and the family court may requisition money from the state to pay fees and expenses related to grand and petit jurors, fees and expenses of witnesses approved by the judge, expenses of guardians ad litem, expenses of elections, and other expenses of court operations. The cash advances shall be administered under the provisions of section 466 of this title.

Sec. 191. 32 V.S.A. § 503 is amended to read:

§ 503. PAYMENT OF MONEYS INTO TREASURY

Quarterly and oftener if the commissioner of finance and management so directs, county superior court clerks and other collectors and receivers of public money, except justices, shall pay all such money collected or held by them into the state treasury.

Sec. 192. 32 V.S.A. § 504 is amended to read:

§ 504. FINES PAID COUNTY SUPERIOR COURT CLERK

Damages and costs received in actions to which the state is a party, <u>and</u> fines and the amount of bonds and recognizances to the state taken in any county, shall be paid to the <u>eounty superior</u> clerk. His or her receipt shall be the only valid discharge thereof and he or she shall pay the same into the state treasury.

Sec. 193. 32 V.S.A. § 506 is amended to read:

§ 506. FAILURE OF COUNTY <u>SUPERIOR COURT</u> CLERK TO PAY OVER

If a <u>eounty</u> <u>superior court</u> clerk neglects to make a return or pay into the state treasury any money as provided in this chapter, the commissioner of finance and management shall forthwith notify the state's attorney, who shall immediately prosecute the clerk and the sureties on his or her official bond.

Sec. 194. 32 V.S.A. § 508 is amended to read:

§ 508. RECEIPTS GIVEN BY STATE OFFICERS

State officers, except <u>eounty</u> <u>superior court</u> clerks and <u>district superior</u> judges, and every person in the employ of the state under salary or per diem established by statute, receiving money belonging to or for the use of the state, shall give the person paying such money a receipt therefor in such form as shall be prescribed by the state treasurer.

Sec. 195. 32 V.S.A. § 541 is amended to read:

§ 541. COLLECTION OF FINES AND COSTS

All fines, costs, including costs taxed as state's attorneys' and court fees, bail, and unclaimed fees collected by judges of district courts shall be paid into the proper treasury.

Sec. 196. 32 V.S.A. § 581 is amended to read:

§ 581. UNCLAIMED COSTS TO REVERT TO STATE

Fees allowed in a bill of costs to a justice or judge which are not demanded by the party to whom such fees are due within six months after such bill is allowed, shall revert to the use of the state and, in the case of a justice, shall be paid by the justice to the county clerk within 30 days from the expiration of such period of six months; and such justice or the judge, after the expiration of six months, shall be relieved from all liability to parties to whom such the fees were due.

Sec. 197. 32 V.S.A. § 809 is amended to read:

§ 809. <u>AUDITING OF COURT CLERK</u> ACCOUNTS <u>AND</u> OF PROBATE JUDGES

The auditor shall examine the accounts of the judges of probate <u>and superior court clerks</u> and ascertain whether their fees are properly and uniformly charged and rendered, and if he or she the auditor finds they are not, he or she shall direct the proper corrections to be made. He or she The auditor shall endeavor to obtain a uniform practice in the <u>probate superior</u> courts in that respect.

Sec. 198. 32 V.S.A. § 1141 is amended to read:

§ 1141. ASSISTANT JUDGES OF SUPERIOR COURTS

- (a)(1) The compensation of each assistant judge of the superior court, which shall be paid by the state, shall be \$136.28 a day as of July 9, 2006 and \$142.04 a day as of July 8, 2007 for time spent in the performance of official duties and necessary expenses as allowed to classified state employees. Compensation under this section shall be based on a half day two-hour minimum and hourly thereafter.
- (2)(A) The compensation paid to an assistant judge pursuant to this section shall be paid by the state except as provided in subdivision (B) of this subdivision.

- (B) The compensation paid to an assistant judge pursuant to this section shall be paid by the county at the state rate established in subdivision (a)(1) of this section when an assistant judge is sitting with a presiding superior judge in the civil or family division of the superior court.
- (b) Assistant judges of the superior court shall receive pay for such days as they attend court when it is in actual session, or during a court recess when engaged in the special performance of official duties.

Sec. 199. 32 V.S.A. § 1142 is amended to read:

§ 1142. JUDGES OF PROBATE JUDGES

(a) The annual salaries of the <u>judges of probate judges</u> in the several probate districts, which shall be paid by the state in lieu of all fees or other compensation, shall be as follows:

	Annual Salary		
	as of	_	
	July 8, 2007	L	
(1) Addison	\$59,321	<u>48,439</u>	
(2) Bennington	59,321	61,235	
(3) Caledonia	59,321	42,956	
(4) Chittenden	91,402	91,395	
(5) Essex	28,853	<u>15,000</u>	
(6) Fair Haven	43,594		
(7) (6) Franklin	59,321	<u>48,439</u>	
(8)(7) Grand Isle	28,853	<u>15,000</u>	
(9) Hartford	59,321		
(10)(8) Lamoille	53,594	<u>33,816</u>	
(11) Marlboro	51,559		
(12)(9) Orange	51,559	<u>40,214</u>	
(13)(10) Orleans	51,559	<u>39,300</u>	
(14)(11) Rutland	75,859	86,825	
(15)(12) Washington	75,859	<u>66,718</u>	
(16)(13) Westminster Windham	<u>1</u> 43,594	<u>53,923</u>	
(17)(14) Windsor	51,559	<u>73,116</u>	

- (b) Judges of probate <u>Probate judges</u> shall be paid by the state their actual and necessary expenses under the rules and regulations pertaining to classified state employees. <u>The compensation for the probate judge of the Chittenden district shall be for full-time service.</u>
- (c)(1) Except as provided in subdivision (2) of this subsection, a probate judge whose salary is set in subsection (a) of this section at less than 50 percent of the salary set for the Chittenden probate judge shall be considered a less than half-time employee for purposes of eligibility for participation in the state health insurance plan.
- (2) Notwithstanding any statute, rule, or state health plan provision to the contrary, a probate judge whose salary is set in subsection (a) of this section at less than 50 percentof the salary set for the Chittenden probate judge shall be eligible to enroll in the state of Vermont's safety net health insurance plan or may apply the state share of the premium cost for that plan toward the purchase of another state or private health insurance plan.

Sec. 200. 32 V.S.A. § 1143 is amended to read:

§ 1143. –COMPENSATION OF APPOINTEES

Persons acting under the authority of the probate <u>division of the superior</u> court shall be paid as follows:

- (1) For each day's attendance by executor, administrator, trustee, agent, or guardian, on the business of their appointment, \$4.00;
- (2) For each day's attendance of commissioners, appraisers, or committee, \$4.00; and
- (3) The probate <u>division of the superior</u> court may allow in cases of unusual difficulty or responsibility, such further sum as it judges reasonable.

Sec. 201. 32 V.S.A. § 1144 is amended to read:

§ 1144. COMPENSATION OF APPRAISERS

An appraiser appointed in accordance with the provisions of chapters 181 and 183 of this title shall receive \$4.00 a day and his or her necessary expenses shall be paid by the state on the certificate of the judge of probate. But in cases requiring the appointment of an expert, the judge of probate may allow such further sum as he or she deems reasonable. [Repealed.]

Sec. 202. DELETED

Sec. 203. 32 V.S.A. § 1431 is amended to read:

§ 1431. FEES IN SUPREME, <u>AND</u> SUPERIOR, DISTRICT, FAMILY, AND ENVIRONMENTAL COURTS

- (a) Prior to the entry of any cause in the supreme court, there shall be paid to the clerk of the court for the benefit of the state a fee of \$250.00 in lieu of all other fees not otherwise set forth in this section.
- (b)(1) Prior Except as provided in subdivisions (2)–(5) of this subsection, prior to the entry of any cause in the superior court or environmental court, there shall be paid to the clerk of the court for the benefit of the state a fee of \$250.00 in lieu of all other fees not otherwise set forth in this section.
- (2) Prior to the entry of any divorce or annulment proceeding in the family superior court, there shall be paid to the clerk of the court for the benefit of the state a fee of \$250.00 in lieu of all other fees not otherwise set forth in this section; however, if the divorce or annulment complaint is filed with a stipulation for a final order acceptable to the court, the fee shall be \$75.00.
- (3) Prior to the entry of any parentage or desertion and support proceeding brought under chapter 5 of Title 15 in the family superior court, there shall be paid to the clerk of the court for the benefit of the state a fee of \$100.00 in lieu of all other fees not otherwise set forth in this section; however, if the parentage or desertion and support complaint is filed with a stipulation for a final order acceptable to the court, the fee shall be \$25.00.
- (4) Prior to the entry of any motion or petition to enforce an order for parental rights and responsibilities, parent-child contact, or maintenance in the family superior court, there shall be paid to the clerk of the court for the benefit of the state a fee of \$75.00 in lieu of all other fees not otherwise set forth in this section. Prior to the entry of any motion or petition to vacate or modify an order for parental rights and responsibilities, parent-child contact, or maintenance in the family superior court, there shall be paid to the clerk of the court for the benefit of the state a fee of \$100.00 in lieu of all other fees not otherwise set forth in this section. However, if the motion or petition is filed with a stipulation for an order acceptable to the court, the fee shall be \$25.00. All motions or petitions filed by one party at one time shall be assessed one fee.
- (5) Prior to the entry of any motion or petition to vacate or modify an order for child support in the family superior court, there shall be paid to the clerk of the court for the benefit of the state a fee of \$35.00 in lieu of all other fees not otherwise set forth in this section; however, if the motion or petition is filed with a stipulation for an order acceptable to the court, there shall be no fee. A motion or petition to enforce an order for child support shall require no

fee. All motions or petitions filed by one party at one time shall be assessed one fee; if a simultaneous motion is filed by a party under subdivision (4) of this subsection, the subdivision (4) fee under subdivision (4) shall be the only fee assessed.

* * *

- (d) Prior to the entry of any subsequent pleading which sets forth a claim for relief in the supreme court or the superior, environmental, or district court, there shall be paid to the clerk of the court for the benefit of the state a fee of \$100.00 for every appeal, cross-claim, or third-party claim and a fee of \$75.00 for every counterclaim in the superior or environmental court in lieu of all other fees not otherwise set forth in this section. The fee for an appeal of a magistrate's decision in the family superior court shall be \$100.00. The filing fee for civil suspension proceedings filed pursuant to 23 V.S.A § 1205 shall be \$75.00, which shall be taxed in the bill of costs in accordance with sections 1433 and 1471 of this title.
- (e) Prior to the filing of any postjudgment motion in the superior, environmental, or district court, including motions to reopen civil suspensions, there shall be paid to the clerk of the court for the benefit of the state a fee of \$75.00 except for small claims actions.
- (f) The filing fee for all actions filed in the judicial bureau shall be \$50.00; the state or municipality shall not be required to pay the fee; however, if the respondent denies the allegations on the ticket, the fee shall be taxed in the bill of costs in accordance with sections 1433 and 1471 of this title and shall be paid to the clerk of the bureau for the benefit of the state.
- (g) Prior to the filing of any postjudgment motion in the judicial bureau there shall be paid to the clerk of the bureau, for the benefit of the state, a fee of \$35.00. Prior to the filing of any appeal from the judicial bureau to the district superior court, there shall be paid to the clerk of the court, for the benefit of the state, a fee of \$100.00.
- (h) Pursuant to Vermont Rules of Civil Procedure 3.1, or Vermont Rules of Appellate Procedure 24(a), or District Court Civil Rules 3.1, part or all of the filing fee may be waived if the court finds that the applicant is unable to pay it. The clerk of the court or the clerk's designee shall establish the in forma pauperis fee in accordance with procedures and guidelines established by administrative order of the supreme court.

Sec. 203a. 32 V.S.A. § 1431 is amended to read:

§ 1431. FEES IN SUPREME AND SUPERIOR COURTS

- (c)(1) Prior to the entry of a small claims action, there shall be paid to the clerk for the benefit of the county in lieu of all other fees not otherwise set forth in this section, a fee of \$75.00 if the claim is for more than \$1,000.00 and \$50.00 if the claim is for \$1,000.00 or less. Prior to the entry of any postjudgment motion in a small claims action, there shall be paid to the clerk for the benefit of the county a fee of \$50.00. The fee for every counterclaim in small claims proceedings shall be \$25.00, payable to the county clerk, if the counterclaim is for more than \$500.00, and \$15.00 if the counterclaim is for \$500.00 or less.
- (2)(A) Except as provided in subdivision (B) of this subdivision, fees paid to the clerk pursuant to this subsection shall be divided as follows: 50 percent of the fee shall be for the benefit of the county and 50 percent of the fee shall be for the benefit of the state.
- (B) In a county where court facilities are provided by the state, all fees paid to the clerk pursuant to this subsection shall be for the benefit of the state.

* * *

Sec. 204. 32 V.S.A. § 1434 is amended to read:

§ 1434. PROBATE COURTS CASES

(a) The following entry fees shall be paid to the probate <u>division of the superior</u> 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:

* * *

(14) Guardianships for minors	\$35.00 <u>\$85.00</u>		
(15) Guardianships for adults	\$50.00 <u>\$100.00</u>		
(16) Petitions for change of name	\$75.00 <u>\$125.00</u>		
* * *			
(23) Petitions for partial decree	<u>\$100.00</u>		
(24) Petitions for license to sell real estate	<u>\$50.00</u>		

* * *

(b) For economic cause, the probate judge may waive this fee. No fee shall be charged for necessary documents pertaining to the opening of estates, trusts, and guardianships, including the issuance of two certificates of appointment and respective letters. No fee shall be charged for the issuance of two certified

copies of adoption decree and two certified copies of instrument changing name.

(c) A fee of \$5.00 shall be paid for each additional certification of appointment of a fiduciary.

Sec. 205. 32 V.S.A. § 1436 is amended to read:

§ 1436. FEE FOR CERTIFICATION OF APPOINTMENT AS NOTARY PUBLIC

- (a) For the issuance of a certificate of appointment as a notary public, the county clerk shall collect a fee of \$20.00, of which \$5.00 shall accrue to the state and \$15.00 shall accrue to the county.
- (b) Notwithstanding any statute to the contrary, fees collected as a result of this section shall be in lieu of any payments by the state to the county for the use of the county courthouse by the supreme, district, family, and environmental courts or by the judicial bureau.

Sec. 206. 32 V.S.A. § 1471 is amended to read:

§ 1471. TAXATION OF COSTS

- (a) There shall be taxed in the bill of costs to the recovering party in the supreme, <u>and</u> superior, <u>family</u>, <u>district</u>, <u>or environmental</u> courts or the judicial bureau a fee equal to the entry fees, the cost of service fees incurred, and the total amount of the certificate of witness fees paid.
- (b) Any costs taxed to the respondent in any action filed by the office of child support shall be paid to the clerk of the court for deposit in the general fund.

Sec. 207. 32 V.S.A. § 1511 is amended to read:

§ 1511. GRAND AND PETIT JURORS IN SUPERIOR AND DISTRICT COURT

There shall be allowed to grand and petit jurors in the superior and district court the following fees and expenses:

- (1) For attendance, \$30.00 a day, on request, unless the jurors were otherwise compensated by their employer;
- (2) For each talesman, \$30.00 a day, on request, unless the talesmen were otherwise compensated by their employer;
- (3) Upon request and upon a showing of hardship, reimbursement for expenses necessarily incurred for travel from home to court, and return, at the rate of reimbursement allowed state employees for travel under the terms of the prevailing collective bargaining agreement.

Sec. 208. 32V.S.A. § 1514 is amended to read:

§ 1514. BOARD AND LODGING OF JURORS

When in a grand jury investigation or in the trial of a criminal or civil cause jurors are kept together by order of the court, their board and lodging and that of the officers having such jurors in charge shall be paid by the state. This provision shall apply only to grand jurors and petit jurors in superior courts and petit jurors in district courts.

Sec. 209. 32 V.S.A. § 1518 is amended to read:

§ 1518. TOWN GRAND JURORS

In criminal causes before a district court, the grand juror or other prosecuting officer shall be paid:

- (1) If the cause is disposed without trial, \$1.50;
- (2) For trial by court, \$2.00;
- (3) For trial by jury, \$2.50;
- (4) For each subsequent day, \$2.00 additional;
- (5) Ten cents a mile travel one way for one trip for each cause, provided a separate trip for such cause has been made; but if a separate trip has not been made, then at \$0.05 a mile one way for each cause;
- (6) No grand juror shall receive in fees more than \$400.00 in any one year.

Sec. 210. 32 V.S.A. § 1551 is amended to read:

§ 1551. ATTENDANCE FEES

There shall be allowed to witnesses the following fees:

- (1) For attendance before a district or superior court or court of jail delivery, or to give a deposition before a notary public, \$30.00 a day;
- (2) For attendance before an appraiser appointed by the commissioner of taxes, \$30.00 a day; such fees to be apportioned as the appraiser may direct;
 - (3) For attendance on other courts or tribunals, \$30.00 a day;
- (4) For travel in the state, all witnesses shall receive mileage at the rate of reimbursement allowed state employees for travel under the terms of the prevailing collective bargaining agreement.

Sec. 211. 32 V.S.A. § 1596 is amended to read:

§ 1596. FEES FORBIDDEN

Fees shall not be allowed to an officer for the service of a capias, bench warrant, or other writ for the arrest of a person who is under a recognizance taken before a district court judge or other an officer authorized by law to take such recognizance, requiring the appearance of such person before the superior court.

Sec. 212. 32 V.S.A. § 1631 is amended to read:

§ 1631. TRUSTEES' FEES

The person summoned as trustee shall be allowed \$0.06 a mile for his or her travel, and \$1.50 for each day's attendance before the superior court, the same for travel and \$0.75 for each day's attendance before a commissioner or district court.

Sec. 213. 32 V.S.A. § 1751 is amended to read:

§ 1751. FEES WHEN NOT OTHERWISE PROVIDED

- (a)(1) Officers and persons whose duty it is to record deeds, proceedings, depositions, or make copies of records, proceedings, docket entries, or minutes in their offices, when no other provision is made, shall be allowed:
 - (1)(A) The sum of \$0.60 a folio therefor with a minimum fee of \$1.00;
 - (2)(B) The sum of \$2.00 for each official certificate;
 - (3)(C) For the authentication of documents, \$2.00;
- (4)(D) For other services such sum as is in proportion to the fees established by law.
- (2) Provided, however, that no fees shall be charged to honorably discharged veterans of the armed forces of the United States, or to their dependents or beneficiaries, for copies of records required in the prosecution of any claim for benefits from the United States government, or any state agency, and fees for copies of records so furnished at the rates provided by law shall be paid such officers by the town or city wherein such record is maintained.
- (b)(1) Whenever probate, district, environmental, family, or superior court officers and employees or officers and employees of the judicial bureau furnish copies or certified copies of records, the following fees shall be collected for the benefit of the state:
- (1)(A) The sum of \$0.60 a folio with a minimum fee of \$1.00 when a copy is reproduced by typewriter or hand;

- (2)(B) The sum of \$0.25 a page with a minimum fee of \$1.00 when a copy is reproduced photographically;
- (3)(C) For each official certificate, \$5.00; however, one conformed copy of any document issued by a court shall be furnished without charge to a party of record to the action;
 - (4)(D) For the authentication of documents, \$5.00;
- (5)(E) For a response to a request for a record of criminal history of a person based upon name and date of birth, \$30.00.
- (6)(F) For appointment as an acting judge pursuant to 4 V.S.A § 22(b) for the purpose of performing a civil marriage, \$100.00.
- (2) However, the fees provided for in this subsection shall not be assessed by these officers and employees in furnishing copies or certified copies of records to any agency of any municipality, state, or federal government or to veterans honorably discharged from the armed forces of the United States, their dependents or beneficiaries, in the prosecution of any claim for benefits from the United States government, or any state agency.

Sec. 214. 32 V.S.A. § 1753 is amended to read:

§ 1753. INQUESTS

The fees and expenses of inquests on the dead, and buildings burned shall be the same as in criminal causes before a district court.

Sec. 215. 32 V.S.A. § 1760 is amended to read:

§ 1760. FEES OF COUNTY CLERKS FOR INDEX OF DEEDS AND INDEX OF RECORDS

The county clerks shall receive from the county, for making the general index of existing land records under section 27 V.S.A. § 401 of Title 27, \$1.00 for each 100 entries upon such index; and for making an index as provided in section 4 V.S.A. § 656 of Title 4, such sum as the assistant judges of the superior court certify to be reasonable, to be allowed by the commissioner of finance and management in the accounts of the clerks.

Sec. 216. 32 V.S.A. § 5932 is amended to read:

§ 5932. DEFINITIONS

As used in this chapter:

* * *

(8) "Court" means a superior court, a district court, or the judicial bureau.

* * *

Sec. 217. 32 V.S.A. § 5936(b) is amended to read:

(b) The final determination of any claimant agency regarding the validity and amount of any debt may be appealed within 30 days to the <u>civil division of the superior</u> court of the eounty <u>unit</u> in which the taxpayer resides, except that if the claimant agency is the office of child support the appeal shall be to the family <u>division of the superior</u> court. Upon appeal, the provisions of the Vermont Rules of Civil Procedure or the Vermont Rules for Family Proceedings, as appropriate, shall apply, and the court shall proceed de novo to determine the debt owed.

Sec. 218. DELETED

Sec. 219. 32 V.S.A. § 8171 is amended to read:

§ 8171. RECOVERY OF TAXES AND PENALTIES

Taxes imposed by this chapter may be recovered in the name of the state in a civil action, on the statute imposing them, returnable to any superior or district court. The penalties so imposed may be so recovered in a civil action on the statute imposing them. The amount of taxes assessed or penalties accrued up to the time of trial may be recovered in such suit; but a court wherein an action is pending to recover a forfeiture, in its discretion, may remit such part thereof as it shall deem just and equitable in the circumstances. The state shall not be required in any proceeding under this chapter to furnish recognizance or bond for costs, nor injunction bonds. Upon final judgment, the court may make such order relating to the payment of costs, by the state or the defendant, as it shall deem just and equitable.

Sec. 220. 32 V.S.A. § 10102(a) is amended to read:

(a) In addition to any other powers granted to the commissioner and the secretary in this chapter, they may:

* * *

(5) require the attendance of, the giving of testimony by, and the production of any books and records of any person believed to be liable for the payment of tax or to have information pertinent to any matter under investigation by the commissioner or the secretary. The fees of witnesses required to attend any hearing shall be the same as those allowed witnesses appearing in the superior court, but no fees shall be payable to a person charged with a tax liability under this chapter. Any superior or district judge may, upon application of the commissioner or the secretary, compel the attendance of witnesses, the giving of testimony, and the production of books and records before the commissioner or the secretary in the same manner, to

the same extent, and subject to the same penalties as if before a superior or district court.

Sec. 221. 33 V.S.A. § 4916a(c)(2) is amended to read:

(2) The administrative review may be stayed upon request of the person alleged to have committed abuse or neglect if there is a related eriminal or family court case pending in the criminal or family division of the superior court which arose out of the same incident of abuse or neglect for which the person was substantiated. During the period the review is stayed, the person's name shall be placed on the registry. Upon resolution of the superior court criminal or family court case, the person may exercise his or her right to review under this section.

Sec. 222. 33 V.S.A. § 4916b(c) is amended to read:

(c) A hearing may be stayed upon request of the petitioner if there is a related eriminal or family court case pending in the criminal or family division of the superior court which arose out of the same incident of abuse or neglect for which the person was substantiated.

Sec. 223. 33 V.S.A. § 5102 is amended to read:

§ 5102. DEFINITIONS AND PROVISIONS OF GENERAL APPLICATION

As used in the juvenile judicial proceedings chapters, unless the context otherwise requires:

* * *

(8) "Custodian" means a person other than a parent or legal guardian to whom legal custody of the child has been given by order of a Vermont family or probate superior court or a similar court in another jurisdiction.

* * *

(12) "Guardian" means a person who, at the time of the commencement of the juvenile judicial proceeding, has legally established rights to a child pursuant to an order of a Vermont probate court or a similar court in another jurisdiction.

Sec. 224. 33 V.S.A. § 5103(a) and (b) are amended to read:

(a) The family <u>division of the superior</u> court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

- (b) Orders issued under the authority of the juvenile judicial proceedings chapters shall take precedence over orders in other family eourt division proceedings and any order of another court of this state, to the extent they are inconsistent. This section shall not apply to child support orders in a divorce, parentage, or relief from abuse proceedings until a child support order has been issued in the juvenile proceeding.
- Sec. 225. 33 V.S.A. § 5104(a) is amended to read:
- (a) The family <u>division of the superior</u> court may retain jurisdiction over a youthful offender up to the age of 22.
- Sec. 226. 33 V.S.A. § 5203(e) is amended to read:
- (e) Motions to transfer a case to <u>the</u> family <u>division of the superior</u> court for youthful offender treatment shall be made under section 5281 of this title.
- Sec. 227. 33 V.S.A. § 5281 is amended to read:

§ 5281. MOTION IN DISTRICT <u>CRIMINAL DIVISION OF SUPERIOR</u> COURT

- (a) A motion may be filed in the district criminal division of the superior court requesting that a defendant under 18 years of age in a criminal proceeding who had attained the age of 10 but not the age of 18 at the time the offense is alleged to have been committed be treated as a youthful offender. The motion may be filed by the state's attorney, the defendant, or the court on its own motion.
- (b) Upon the filing of a motion under this section and the entering of a conditional plea of guilty by the youth, the district court criminal division shall enter an order deferring the sentence and transferring the case to the family court division for a hearing on the motion. Copies of all records relating to the case shall be forwarded to the family court division. Conditions of release and any department of corrections supervision or custody shall remain in effect until the family court division approves the motion for treatment as a youthful offender and orders conditions of juvenile probation pursuant to section 5284 of this title.
- (c) A plea of guilty entered by the youth pursuant to subsection (b) of this section shall be conditional upon the family <u>court division</u> granting the motion for youthful offender status.
- (d)(1) If the family <u>court division</u> denies the motion for youthful offender treatment pursuant to subsection 5284 of this title, the case shall be returned to the <u>district court criminal division</u>, and the youth shall be permitted to withdraw the plea. The conditions of release imposed by the <u>district court</u>

<u>criminal division</u> shall remain in effect, and the case shall proceed as though the motion for youthful offender treatment had not been made.

(2) Subject to Rule 11 of the Vermont Rules of Criminal Procedure and Rule 410 of the Vermont Rules of Evidence, the family court's division's denial of the motion for youthful offender treatment and any information related to the youthful offender proceeding shall be inadmissible against the youth for any purpose in the subsequent criminal division proceeding in district court.

Sec. 228. 33 V.S.A. § 5282 is amended to read:

§ 5282. REPORT FROM THE DEPARTMENT

- (a) Within 30 days after the case is transferred to <u>the</u> family <u>court division</u>, unless the court extends the period for good cause shown, the department shall file a report with the family <u>division of the superior</u> court.
- (b) A report filed pursuant to this section shall include the following elements:
- (1) A recommendation as to whether youthful offender status is appropriate for the youth.
- (2) A disposition case plan including proposed services and proposed conditions of juvenile probation in the event youthful offender status is approved.
- (3) A description of the services that may be available for the youth when he or she reaches 18 years of age.
- (c) A report filed pursuant to this section is privileged and shall not be disclosed to any person other than the department, the court, the state's attorney, the youth, the youth's attorney, the youth's guardian ad litem, the department of corrections, or any other person when the court determines that the best interests of the youth would make such a disclosure desirable or helpful.

Sec. 229. 33 V.S.A. § 5283 is amended to read:

§ 5283. HEARING IN FAMILY COURT DIVISION

- (a) Timeline. A hearing on the motion for youthful offender status shall be held no later than 35 days after the transfer of the case from district court the criminal division.
- (b) Notice. Notice of the hearing shall be provided to the state's attorney; the youth; the youth's parent, guardian, or custodian; the department; and the department of corrections.

- (c) Hearing procedure.
- (1) If the motion is contested, all parties shall have the right to present evidence and examine witnesses. Hearsay may be admitted and may be relied on to the extent of its probative value. If reports are admitted, the parties shall be afforded an opportunity to examine those persons making the reports, but sources of confidential information need not be disclosed.
- (2) Hearings under subsection 5284(a) of this title shall be open to the public. All other youthful offender proceedings shall be confidential.
- (d) The burden of proof shall be on the moving party to prove by a preponderance of the evidence that a child should be granted youthful offender status. If the court makes the motion, the burden shall be on the youth.
- (e) Further hearing. On its own motion or the motion of a party, the court may schedule a further hearing to obtain reports or other information necessary for the appropriate disposition of the case.
- Sec. 230. 33 V.S.A. § 5285 is amended to read:

§ 5285. MODIFICATION OR REVOCATION OF DISPOSITION

- (a) If it appears that the youth has violated the terms of juvenile probation ordered by the court pursuant to subdivision 5284(c)(1) of this title, a motion for modification or revocation of youthful offender status may be filed in the family division of the superior court. The court shall set the motion for hearing as soon as practicable. The hearing may be joined with a hearing on a violation of conditions of probation under section 5265 of this title. A supervising juvenile or adult probation officer may detain in an adult facility a youthful offender who has attained the age of 18 for violating conditions of probation.
- (b) A hearing under this section shall be held in accordance with section 5268 of this title.
- (c) If the court finds after the hearing that the youth has violated the terms of his or her probation, the court may:
- (1) maintain the youth's status as a youthful offender, with modified conditions of juvenile probation if the court deems it appropriate;
- (2) revoke the youth's status as a youthful offender status and return the case to the district court criminal division for sentencing; or
 - (3) transfer supervision of the youth to the department of corrections.
- (d) If a youth's status as a youthful offender is revoked and the case is returned to the <u>district court criminal division</u> under subdivision (c)(2) of this section, the <u>district</u> court shall hold a sentencing hearing and impose sentence.

When determining an appropriate sentence, the district court may take into consideration the youth's degree of progress toward rehabilitation while on youthful offender status. The district court criminal division shall have access to all family court division records of the proceeding.

Sec. 231. 33 V.S.A. § 5286(a) and (c) are amended to read:

- (a) The family eourt division shall review the youth's case before he or she reaches the age of 18 and set a hearing to determine whether the court's jurisdiction over the youth should be continued past the age of 18. The hearing may be joined with a motion to terminate youthful offender status under section 5285 of this title. The court shall provide notice and an opportunity to be heard at the hearing to the state's attorney, the youth, the department, and the department of corrections.
 - (c) The following reports shall be filed with the court prior to the hearing:
- (1) The department shall report its recommendations, with supporting justifications, as to whether the family <u>court division</u> should continue jurisdiction over the youth past the age of 18 and, if continued jurisdiction is recommended, whether the department or the department of corrections should be responsible for supervision of the youth.

* * *

Sec. 232. 33 V.S.A. § 5287(a) and (c) are amended to read:

- (a) A motion may be filed at any time in the family eourt division requesting that the court terminate the youth's status as a youthful offender and discharge him or her from probation. The motion may be filed by the state's attorney, the youth, the department, or the court on its own motion. The court shall set the motion for hearing and provide notice and an opportunity to be heard at the hearing to the state's attorney, the youth, and the department.
- (c) If the court finds that the youth has successfully completed the terms of the probation order, it shall terminate youthful offender status, discharge the youth from probation, and file a written order dismissing the family court division case. The family court division shall provide notice of the dismissal to the district court criminal division, which shall dismiss the district court criminal case.

Sec. 233. 33 V.S.A. § 6932(a) and (b) are amended to read:

(a) The family <u>division of the superior</u> court shall have jurisdiction over proceedings under this subchapter.

(b) Emergency orders under section 6936 of this title may be issued by a judge of the district, criminal, civil, or family division of the superior or family court.

Sec. 234. 33 V.S.A. § 6938(a) and (c) are amended to read:

- (a) Except as otherwise provided in this subchapter, proceedings commenced under this subchapter shall be in accordance with the <u>Rules for Family Court Rules Proceedings</u> and shall be in addition to any other available civil or criminal remedies.
- (c) The court administrator shall establish procedures to insure access to relief after regular court hours, or on weekends and holidays. The court administrator is authorized to contract with public or private agencies to assist persons to seek relief and to gain access to district, superior and family court judges. Law enforcement agencies shall assist in carrying out the intent of this section.

Sec. 235. Sec. 121(a) of No. 4 of the Acts of 2009 is amended to read:

The probate courts of the probate districts of Bennington and Manchester are consolidated as of the effective date of this act to form the probate court of the probate district of Bennington, which is deemed to be a continuation of the probate courts of the probate districts of Bennington and Manchester. The current probate judge for the probate court of the probate district of Manchester shall become the probate judge for the probate court of the probate district of Bennington. The current probate registers of the probate districts of Bennington and Manchester shall become the registers for the probate district of Bennington and shall be allowed to maintain their employment status that was in effect on January 31, 2009 until January 31, 2011, at which time the probate judge taking office February 1, 2011 shall appoint a single probate register for the district. The records of the probate courts of the probate districts of Bennington and Manchester shall become the records of the probate court of the probate district of Bennington. The newly consolidated probate court of the probate district of Bennington shall have jurisdiction over all proceedings, records, orders, decrees, judgments and other acts of the probate courts of the probate districts of Bennington and Manchester, including all pending matters and appeals. The probate court of the probate district of Bennington shall have full authority to do all acts concerning all such proceedings and other matters as if they had originated in that court. The assistant judges of Bennington County shall maintain offices for the newly formed district in the former districts which may be used by the probate court full or part time to provide access to probate services. The judge of the newly formed district with the approval of the court administrator shall establish the hours of operation and staffing for each office.

Sec. 235a. AMERICANS WITH DISABILITIES ACT; COURT FACILITIES; REPORT

The commissioner of the department of buildings and general services and the court administrator shall study the county courthouses to evaluate whether the courthouses comply with ADA accessibility standards and shall report the results of the study to the general assembly, along with any recommendations and estimates of the costs of bringing courthouses into compliance, on or before December 15, 2010. Where it is necessary that expenses be incurred in order to bring a courthouse into compliance with the ADA, the judiciary shall submit a capital budget request to the commissioner of buildings and general services for consideration in the capital budget request process.

Sec. 235b. WEIGHTED CASELOAD STUDY

The court administrator shall conduct a weighted caseload study and analysis or equivalent study within the superior court and judicial bureau every three years. The results of the study shall be reported to the senate and house committees on judiciary and government operations. The study may be used to review and consider adjustments to the compensation of probate judges.

Sec. 236. LEGISLATIVE COUNCIL STATUTORY REVISION AUTHORITY

The staff of the legislative council, in its statutory revision capacity, is authorized and directed to make such amendments to the Vermont Statutes Annotated as are necessary to effect the purpose of this act, including, where applicable, substituting the words "superior court," "civil division," "criminal division," "family division," environmental division," or "probate division," as appropriate, for the words "district court," "family court," "probate court," and environmental court." These amendments shall be made when new legislation is proposed or where there is a republication of a volume of the Vermont Statutes Annotated.

Sec. 237. TRANSITIONAL PROVISIONS

(a) The judicial office of district judge is eliminated. On the effective date of Sec. 9 of this act, each district judge shall become a superior judge and have all of the powers and duties of a superior judge. The term of each superior judge who reached the office by virtue of this subsection shall be the same as if the person had remained a district judge.

(b) On July 1, 2010:

(1) the superior court as it formerly existed shall be redesignated as the civil division of the superior court, and all cases and files of the former superior court shall be transferred to the civil division of the superior court;

- (2) the family court as it formerly existed shall be redesignated as the family division of the superior court, and all cases and files of the former family court shall be transferred to the family division of the superior court;
- (3) the district court as it formerly existed shall be redesignated as the criminal division of the superior court, and all cases and files of the former district court shall be transferred to the criminal division of the superior court; and
- (4) the environmental court as it formerly existed shall be redesignated as the environmental division of the superior court, and all cases and files of the former environmental court shall be transferred to the environmental division of the superior court.
- (c) On February 1, 2011, the probate court shall be redesignated as the probate division of the superior court, and all cases and files of the former probate court shall be transferred to the probate division of the superior court.
- (d) Until February 1, 2011, each county clerk shall provide each superior clerk with deputies to work in the superior court. The number of deputies provided shall be equal to the number of deputies working in the superior court on July 1, 2009.
- (e)(1) The court administrator shall assign, from the positions currently authorized for the judicial branch, the positions that will provide staff support to the divisions of the superior court. The court administrator shall establish the organizational structure of the positions assigned to the units of the court. In the transition from the existing courts to the superior court, hiring preference shall be given to current state and county judiciary employees. Any county employee hired in connection with the transition shall be credited, for purposes of determining eligible judicial branch service, with all continuous past service to a superior court as if that service had been provided while the person was a state judiciary employee, shall accrue future leave based on that seniority, and shall be able to transfer accrued sick leave and annual leave up to the state cap for that seniority, provided that this subsection shall not be construed to create any state liability for any act or omission that occurred while the person was a county employee. Where the position of an incumbent permanent state judiciary employee is reassigned to the superior court, the employee may choose to continue in the position or exercise reduction in force rights.
- (2) Upon passage of this act and until February 1, 2011, the salaries of county employees working as chief deputy clerks, deputy clerks, assistant clerks, office clerks, docket clerks, office assistants, assistant deputy clerks, senior deputy clerks, senior accounting clerks, or court recorders for the superior court shall be frozen at the employee's current level, unless a collective bargaining agreement in effect on the date of passage of this act

- requires otherwise. Also upon passage, no change may be made to leave policies covering the county positions described in this subdivision except if a collective bargaining agreement in effect on that date requires otherwise.
- (3) Upon passage of this act and until February 1, 2011, vacancies that occur in positions listed in subdivision (2) of this subsection may not be filled without the authorization of the court administrator.
- (4) By December 31, 2010, the county shall report to the court administrator the current employees of the county who serve the superior court, each employee's hire date with the county, hourly rate, and leave balances, and a description of the employee's benefits.
- (5) Any county employee who becomes a state employee pursuant to this act shall be immediately eligible to enroll in the state health plan.
- (f) Sec. 17 of this act shall establish probate districts for the November 2, 2010 probate judge election, and for all probate judge elections thereafter. Probate judges in office upon passage of this act shall continue to serve, and probate districts in effect upon passage of this act shall continue to exist, until February 1, 2011.
- (g) On the effective date of this subsection, the newly consolidated probate court district within each county is deemed to be a continuation of the prior probate court districts within the county. The newly consolidated court shall have jurisdiction over all proceedings, records, orders, decrees, judgments and other acts of the probate courts of the prior probate districts within the county, including all pending matters and appeals. The records of the prior probate court districts shall become the records of the probate court of the newly consolidated probate district. The newly consolidated probate court district shall have full authority to do all acts concerning all such proceedings and other matters as if they had originated in that court. The current probate registers of the prior probate districts shall be allowed to maintain their employment status that was in effect on January 31, 2011 for six months, at which time the probate judge, in consultation with the court administrator, shall appoint a single probate register for the district. The assistant judges of these counties shall maintain offices for the newly formed district in the former districts which may be used by the probate court full- or part-time to provide access to probate services. The judge of the newly formed district with the approval of the court administrator shall establish the hours of operation and staffing for each office.
- (h) Notwithstanding any law to the contrary, a probate judge who, on January 31, 2011, is in office, has completed 12 years of service as a probate judge, and is a member of group D of the Vermont state employees' retirement system shall receive a group D retirement benefit based upon the judge's salary

at retirement or upon the highest salary earned in a fiscal year during the judge's employment as a probate judge, whichever provides the greater benefit.

Sec. 238. REPEALS AND REPLACEMENTS

- (a) The following sections are hereby repealed:
- (1) 4 V.S.A. §§ 24 (designation and special assignment of district or superior judge to hear child support enforcement actions), 111a (designation and jurisdiction of superior court), 113 (jurisdiction of superior court), 114 (criminal jurisdiction of superior court), 116 (special sessions of superior court), 117 (special hearings of superior court), 119 (completion of cases commenced in superior court), 151 (opening and adjournment of court by judge or sheriff), 152 (adjournment of court to another day), 153 (change in time of holding sessions), 154 (designation of time of commencement of term), 436 (district court created), 437 (civil jurisdiction of district court), 439 (jurisdiction of district court in felony cases), 440 (jurisdiction of district court in misdemeanor cases), 441 (jurisdiction of district court with respect to violations of bylaws or ordinances), 442 (powers of the district court), 443 (appeals from district court), 444 (number, appointment, and assignment of district judges), 446 (court officer in district court), 451 (family court created), 452 (composition of family court), 453 (powers of family court), 454 (jurisdiction of family court), 456 (appeals from family court), 604 (district judge declaration of intent to continue office), 651a (county clerk to be superior court clerk), 693 (district court docket and records), 694 (filing of process with judge or clerk in district court), and 951 (office of jury commission established).
- (2) 12 V.S.A. §§ 1949 (district court jury), 5805 (contents of juror's oath for civil cases in district court), and 5809 (contents of jury officer's oath in district court);
- (3) 24 V.S.A. §§ 174 (superior court seal may be used as county seal), 182 (county clerk's return of fees to commissioner of finance and management), 401 (superior court judges to appoint commissioners of jail delivery), 402 (vacancy in office of commissioner of jail delivery), 403 (quorum for transaction of business by commission of jail delivery), and 404 (procedure when commissioners of jail delivery disqualified); and
- (4) 32 V.S.A. §§ 526 (fees disallowed when justice has not filed return with county clerk), 527 (bill of costs disallowed when justice has not filed returns with county clerk), 528 (penalty when justice fails to make returns), 1146 (expenses and fees for district judges), 1181 (salaries of county clerks), and 1474 (costs and fees allowed in district courts); and

- (5) the following sections of No. 4 of the Acts of 2009: Secs. 122 (single probate districts in each county); 123 (salaries of probate judges); 124 (repeal of multiple probate district counties); 125 (transitional provisions); and 130(c) (February 1, 2011 effective date of Secs. 122–125).
- (b) In the following sections, the phrase "district court," wherever it appears, is replaced with "criminal division of the superior court":
 - (1) 3 V.S.A. §§ 965 and 1030;
 - (2) 4 V.S.A. §§ 23, 1107, 1109, and 1110;
 - (3) 7 V.S.A. §§ 563, 572, and 657;
 - (4) 9 V.S.A. § 2575;
 - (5) 10 V.S.A. §§ 2671, 2674, 4552, and 4555;
 - (6) 12 V.S.A. §§ 5717 and 5854;
- (7) 13 V.S.A. §§ 353, 354, 1460, 4822, 4823, 5132, 5411, 5411d, 6504, 6606, 7002, and 7573;
 - (8) 17 V.S.A. § 2616;
- (9) 18 V.S.A. §§ 1060, 7312, 7510, 7612, 7615, 7801, 7802, 8403, and 8840;
 - (10) 19 V.S.A. §§ 5, 7a, and 726;
 - (11) 20 V.S.A. §§ 2056c and 2864;
 - (12) 21 V.S.A. §§ 1352, 1622, and 1727;
 - (13) 23 V.S.A. §§ 105, 304a, 1209a, 1215, 2202, 2205, and 3318;
 - (14) 24 V.S.A. §§ 299, 1311, 1932, 1936a, 1981, 1983, and 3109;
 - (15) 28 V.S.A. §§ 373, 374, 504, and 705;
 - (16) 32 V.S.A. §§ 542, 543, 544, and 7781; and
 - (17) 33 V.S.A. §§ 5203, 5204, and 5293.
- (c) In the following sections, the phrase "family court," wherever it appears, is replaced with "family division of the superior court":
 - (1) 3 V.S.A. § 476a;
 - (2) 4 V.S.A. §§ 458, 465, and 466;
 - (3) 14 V.S.A. §§ 2663 and 2667;
- (4) 15 V.S.A. §§ 293, 303, 606, 653, 668a, 782, 787, 798, 799, 1108, and 1206;

- (5) 15A V.S.A. §§ 1-112, 2-407, 3-101, and 3-207;
- (6) 15B V.S.A. § 102;
- (7) 16 V.S.A. § 1946b;
- (8) 18 V.S.A. §§ 5004, 7624, 9305, 9306, 9309, 9314, and 9315;
- (9) 24 V.S.A. § 5066a; and
- (10) 33 V.S.A. §§ 3901, 4102, 4103, 4105, 4108, 4916, 5102, 5117, 5118, 5252, 5301, and 6940.

Sec. 238a. REPEALS AND REPLACEMENTS

- (a) The following sections are hereby repealed:
- (1) 4 V.S.A. §§ 271 (probate districts), 275 (Fair Haven and Rutland probate districts), 276 (Marlboro and Westminster probate districts), 277 (Hartford and Windsor probate districts), § 311 (probate court jurisdiction), 314 (probate court retention of jurisdiction over estate once taken), 315 (contest of probate court jurisdiction), 351 (record and seal of probate court), 352 (impression of probate court seal to be kept by governor), 353 (probate court always open), 358 (duties of probate court register), 359 (judge may perform probate court register's duties), 360 (card index required in probate court), 361 (maintenance of ledger in probate court), 363 (powers of probate court), 366 (costs taxed to witnesses in probate court), and 367 (security for costs taxed to witnesses in probate court);
- (2) 12 V.S.A. §§ 2553 (appellate jurisdiction of superior court in probate matters) and 2555 (standing to appeal probate matter to superior court);
- (3) 14 V.S.A. § 905 (appeal to superior court of probate court order appointing administrator);
- (4) 24 V.S.A. § 71b (assistant judge and sheriff responsible for county courthouse security); and
 - (5) 32 V.S.A. § 1558 (costs for witnesses in probate court).
- (b) In the following sections, the phrase "probate court," wherever it appears, is replaced with "probate division of the superior court":
 - (1) 3 V.S.A. §§ 465 and 468;
 - (2) 8 V.S.A. §§ 2201, 2407, 12602, 14205, and 14405;
 - (3) 9 V.S.A. §§ 2480n and 4359;
 - (4) 12 V.S.A. §§ 2358, 5136(c), 7154, and 7159;

- (5) 14 V.S.A. §§ 2, 103, 104, 105, 106, 107, 113, 114, 116, 202, 312, 313, 314, 315, 681, 684, 902, 903, 904, 906, 907, 909, 917, 917a, 919, 921, 922, 923, 924, 928, 929, 931, 961, 962, 963, 964, 965, 1051, 1054, 1056, 1059, 1065, 1066, 1068, 1201, 1204, 1206, 1210, 1410, 1416, 1455, 1492, 1551, 1554, 1557, 1558, 1559, 1611, 1612, 1613, 1614, 1615, 1651, 1652, 1653, 1655, 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1665, 1721, 1729, 1730, 1731, 1736, 1737, 1739, 1741, 1742, 1743, 1801, 1804, 1952, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2201, 2202, 2203, 2303, 2305, 2306, 2307, 2318, 2327, 2402, 2403, 2501, 2502, 2602, 2603, 2645, 2650, 2653, 2654, 2656, 2658, 2665, 2666, 2667, 2671, 2684, 2687, 2711, 2712, 2751, 2752, 2753, 2754, 2791, 2792, 2794, 2795, 2800, 2802, 2803, 2804, 2841, 2843, 2846, 2881, 2882, 2886, 2887, 2890, 2921, 2923, 2924, 2925, 2928, 2961, 2963, 2964, 3001, 3004, 3011, 3063, 3064, 3069, 3075, 3076, 3076, 3081, 3091, 3093, 3094, 3095, 3101, 3201, and 3509;
 - (6) 15 V.S.A. §§ 811, 812, 813, and 816;
- (7) 15A V.S.A. §§ 1-101, 1-105, 1-110, 1-113, 2-105, 2-206, 3-101, 3-102, 5-104, 6-102, 6-103, and 6-105;
 - (8) 16 V.S.A. §§ 1940 and 1941;
- (9) 18 V.S.A. §§ 5075, 5076, 5077, 5150, 5151, 5168, 5169, 5202a, 5212, 5212a, 5219, 5227, 5228, 5230, 5232, 5308, 5438, 5534, 5537, 5576, 7401, 9701, 9703, 9707, 9711, 9714, and 9718;
 - (10) 24 V.S.A. §§ 5059 and 5061;
 - (11) 27 V.S.A. §§ 105, 106, 143, 145, 184, 185, 465, 466, and 1270;
 - (12) 28 V.S.A. § 814;
 - (13) 32 V.S.A. §§ 7109, 7303, 7304, 7450, 7451, and 745; and
 - (14) 33 V.S.A. §§ 102, 123, 302, and 4921.
- Sec. 238b. LEGISLATIVE INTENT; FORENSIC LABORATORY OVERSIGHT

The general assembly finds that at this time, there is not sufficient need for a forensic laboratory oversight commission, provided the Vermont crime laboratory continues to be properly accredited.

Sec. 238c. PRESERVATION OF EVIDENCE

(a)(1) The general assembly finds that it is in the interest of justice that Vermont establish a system for the preservation of any item of physical evidence containing biological material that is secured in connection with a criminal case or investigation by the government entity having custody of the evidence for the period of time that:

- (A) the statute of limitations has not expired for a crime that remains unsolved; and
- (B) a person remains incarcerated, on probation or parole, or subject to registration as a sex offender in connection with a criminal case.
- (2) For purposes of this section, criminal case or investigation shall include only the following offenses:
 - (A) arson causing death as defined in 13 V.S.A. § 501;
- (B) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (C) assault and robbery causing bodily injury as defined in 13 V.S.A. 608(c);
 - (D) aggravated assault as defined in 13 V.S.A. § 1024;
- (E) aggravated murder as defined in 13 V.S.A. § 2311 and murder as defined in 13 V.S.A. § 2301;
 - (F) manslaughter as defined in 13 V.S.A. § 2304;
 - (G) kidnapping as defined in 13 V.S.A. § 2405;
 - (H) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
 - (I) maining as defined in 13 V.S.A. § 2701;
 - (J) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
 - (K) aggravated sexual assault as defined in 13 V.S.A. § 3253.
- (L) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c); and
- (M) lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602.
 - (3) For purposes of this section, "biological evidence" means:
 - (A) a sexual assault forensic examination kit; or
- (B) semen, blood, saliva, hair, skin tissue, or other identified biological material.
- (b) The Vermont law enforcement advisory board shall develop a proposal for implementation of this section and present it to the senate and house committees on judiciary no later than January 15, 2011.
- (c) The department of public safety, the department of buildings and general services, the police chiefs' association, and the sheriffs' association shall develop a proposal for establishing one or more facilities for retention of

items of physical evidence containing biological material that is secured in connection with a criminal case or investigation. Such facilities would be available for use by all Vermont law enforcement agencies. The proposal shall be presented to the senate and house committees on judiciary, the house committee on corrections and institutions, and the senate committee on institutions no later than January 15, 2011.

Sec. 238d. RECORDING CUSTODIAL INTERROGATIONS; ADMISSIBILITY OF DEFENDANT'S STATEMENT

- (a) It is the intent of the general assembly that on and after July 1, 2012, a law enforcement agency shall make an audio or an audio and visual recording of any custodial interrogation of a person when it is conducted in a place of detention after the person is arrested in relation to the investigation or prosecution of a felony.
- (b) The Vermont law enforcement advisory board shall develop a proposal for implementation of this section and present it to the senate and house committees on judiciary, the house committee on corrections and institutions, and the senate committee on institutions no later than January 15, 2011. The proposal shall address the costs associated with purchasing, installing, and maintaining audio and visual recording as required by this section.
- (c) In the first year of the 2011–2012 biennium, the senate and house committees on judiciary shall consider the proposal required by subsection (b) of this section for the purpose of enacting statutes by the date of adjournment in 2012 to implement a plan for audio and visual recording of any custodial interrogation of a person when it is conducted in a place of detention after the person is arrested in relation to the investigation or prosecution of a felony.

Sec. 238e. EYEWITNESS IDENTIFICATION BEST PRACTICES

- (a) The general assembly finds that eyewitness misidentification remains the single largest contributing factor to wrongful conviction. According to the Innocence Project, there are currently 249 DNA exonerations across the nation, and in nearly 80 percent of them, there was at least one misidentification.
- (b) A statewide study committee created by No. 60 of the Acts of 2007 reported that the Vermont police academy currently teaches best practices regarding eyewitness identification.
- (c) To ensure that law enforcement agencies statewide are employing best practices with regard to eyewitness identification, the Vermont law enforcement advisory board shall develop a proposal to establish best practices that are well suited for Vermont and its many small rural law enforcement agencies, including consideration of conditions for the use and administration of show-ups, use of blind administrators for lineups, proper filler selection in

live or photo lineups, instructions for eyewitnesses prior to a live or photo lineup, and confidence statements from eyewitnesses. The Vermont law enforcement advisory board shall present its proposal to the senate and house committees on judiciary, the house committee on corrections and institutions, and the senate committee on institutions no later than January 15, 2011. The proposal shall address the costs associated with purchasing, installing, and maintaining audio and visual recording as required by this section.

Sec. 238f. 13 V.S.A. § 4010 is amended to read:

§ 4010. GUN SILENCERS

A person who manufactures, sells or uses, or possesses with intent to sell or use, an appliance known as or used for a gun silencer shall be fined \$25.00 for each offense. The provisions of this section shall not prevent the use or possession of gun silencers for military purposes when so used or possessed under proper military authority and restriction by:

- (1) a certified, full-time law enforcement officer or department of fish and wildlife employee in connection with his or her duties and responsibilities and in accordance with the policies and procedures of that officer's or employee's agency or department; or
- (2) the Vermont National Guard in connection with its duties and responsibilities.

Sec. 239. EFFECTIVE DATES

- (a) Except as provided in subsection (b), (c), or (d) of this section, this act shall take effect on July 1, 2010.
- (b) Sec. 42 of this act shall take effect on July 1, 2010, except that the power to hire and remove staff, which is currently performed by county employees, as set forth in 4 V.S.A. § 491 as amended by Sec. 42 of this act, shall take effect on February 1, 2011.
- (c) The following sections of this act shall take effect on February 1, 2011: Secs. 7a, 7f, 18, 18a, 19, 20, 21, 23, 23a, 24, 25, 28a, 44a, 73, 74a, 75, 76, 81, 91, 92, 120, 121, 122, 124, 125, 126a, 148, 149, 154a, 155a, 163a, 165, 197, 199, 200, 201, 204, and 238a.
- (d) Secs. 237(f), 238b, 238c, 238d, 238e, and 238f of this act and this subsection shall take effect on passage.

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

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; Recommendations of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed; Bill Messaged

S. 290.

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

An act relating to restoring solvency to the unemployment trust fund.

Was taken up for immediate consideration.

Senator Cummings, for the Committee on Finance, to which the bill was referred, reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 1309 is amended to read:

§ 1309. –REPORTS; SOLVENCY OF TRUST FUND

Before the first day of July On or before January 31 of each year, the commissioner shall submit to the governor and the chairs of the senate committee on economic development, housing and general affairs and on finance and the house committees on commerce and economic development and on ways and means a report covering the administration and operation of this chapter during the preceding calendar year. The report shall include a balance sheet of the moneys in the fund and data as to probable reserve requirements based upon accepted actuarial principles, with respect to business activity, and other relevant factors for the longest available period. The report shall also include such recommendations for amendments of this chapter as the Whenever the commissioner believes that the board considers proper. solvency of the fund is in danger, he or she the commissioner shall promptly so inform the governor and the chairs of the senate committees on economic development, housing and general affairs and on finance, and the house committees on commerce and economic development and on ways and means, and make recommendations with respect thereto for preserving an adequate level in the trust fund.

Sec. 2. 21 V.S.A. § 1321 is amended to read:

§ 1321. CONTRIBUTIONS; TAXABLE WAGE BASE CHANGES

* * *

(b) Base of Contributions. Subsequent to December 31, 1982, the term "wages" shall not include that part of remuneration which, after remuneration equal to \$8,000.00 has been paid in a calendar year to an individual by an employer with respect to employment during a calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the period January 1, 2010, through December 31, 2010, the term "wages" shall not include that part of remuneration which, after remuneration equal to \$10,000.00 has been paid in a calendar year to an individual by an employer with respect to employment during a calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. The term "wages" shall not include that part of remuneration which, after remuneration equal to \$13,000.00 on January 1, 2011, and \$16,000.00 on January 1, 2012, has been paid in a calendar year to an individual by an employer with respect to employment during a calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. After January 1, 2012, whenever the unemployment compensation fund has a positive balance on June 1, the base of contribution amount shall be adjusted on January 1 of the following year by the same percentage as any increase in the state annual average wage as calculated by subsection 1338(g) of this title. When the unemployment contribution rate schedule established by subsection 1326(e) of this title is reduced to schedule III, the base of contribution amount shall be reduced by \$2,000.00 and shall be adjusted on January 1 of the following year by the same percentage as any increase in the state annual average wage as calculated by subsection 1338(g) of this title. When the unemployment contribution rate schedule established by subsection 1326(e) of this title is reduced to schedule I, the base of contribution amount shall be reduced by \$2,000.00 and shall be adjusted on January 1 of the following year by the same percentage as any increase in the state annual average wage as calculated by subsection 1338(g) of this title. For the purposes of this subsection:

- (1) Any employer who acquired the entire or a distinct and severable portion of the organization, trade, or business of an employer shall be treated as a single unit with its predecessor for the calendar year in which such acquisition occurs; and
- (2) The term employment shall include service constituting employment under any unemployment compensation law of another state.

* * *

Sec. 3. 21 V.S.A. § 1338 is amended to read:

§ 1338. WEEKLY BENEFITS

* * *

- (e) For benefit years beginning on January 3, 1988 and subsequent thereto, an individual's weekly benefit amount shall be determined by dividing the individual's two high quarter total subject wages required under subdivision (d)(1) of this section by 45; provided that the weekly benefit amount so determined shall not exceed the maximum weekly benefit amount computed as provided in this section. The base period wages shall not include any wages paid by an employing unit based on a separation for gross misconduct under subdivision 1344(a)(2)(B) of this title.
- (f) The maximum weekly benefit amount shall be \$425.00 for the period July 1, 2009, through June 30, 2010. Thereafter,. When the state unemployment compensation fund has a positive balance as of December 31 of the last completed calendar year, on the first day of the first calendar week of July, the maximum weekly benefit amount shall be adjusted by a percentage equal to the percentage change during the preceding calendar year in the state average weekly wage as determined by subsection (g) of this section, provided the maximum weekly benefit amount shall not increase in any year that advances made to the State Unemployment Compensation Fund pursuant to Title XII of the Social Security Act, as amended, remain unpaid. When the unemployment contribution rate schedule established by subsection 1326(e) of this title is at schedule III, the maximum weekly benefit amount shall be adjusted on the first day of the first calendar week in July to an amount equal to 57 percent of the state annual average weekly wage as determined by subsection (g) of this section. The maximum weekly benefit amount shall not increase in any year that advances made to the state unemployment compensation fund pursuant to Title XII of the Social Security Act, as amended, remain unpaid.

* * *

(i) Income tax withholding.

(1) An individual filing a new claim for unemployment compensation shall, at the time of filing of such claim, be advised that:

* * *

(D) the individual who elects to have federal income tax deducted and withheld shall have state income tax withheld in accordance with the rates shown at section 5822 of Title 32 at 24 percent of the federal rate; and

* * *

Sec. 4. 21 V.S.A. § 1338a is amended to read:

§ 1338a. DISREGARDED EARNINGS

- (a) An individual shall be deemed "partially unemployed" in any week of less than full-time work if the wages earned by the individual with respect to such week are less than the weekly benefit amount the individual would be entitled to receive if totally unemployed and eligible. As used in this section "wages" in any one week includes only that amount of remuneration to the nearest dollar which is in excess of 30 percent of the individual's weekly benefit wage, or \$40.00, whichever amount is greater.
- (b) Notwithstanding subsection (a) of this section, an individual shall not be deemed to be "partially unemployed" if the individual performed less than full-time work only because there was a holiday in that week for which the individual was entitled to holiday pay.
- Sec. 5. 21 V.S.A. § 1340 is amended to read:

§ 1340. COMPUTATION OF BENEFITS

- (a) Except as provided in subchapter 2 subchapters 2 and 4 of this chapter, the maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed the lesser of 26 times his or her weekly benefit amount or 46 percent of the total wages paid to the individual during his or her base period.
- (b) An individual who is discharged by his or her last employing unit for misconduct connected with his or her work under section 1344(a)(1)(A) is limited to a maximum amount during the benefit year which is the lesser of the maximum amount determined under subsection (a) of this section or 23 times his or her weekly benefit amount.

Sec. 6. 21 V.S.A. § 1343 is amended to read:

§ 1343. CONDITIONS

- (a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the commissioner finds that all of the following requirements are met and the individual:
- (1) Has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as prescribed by the board may prescribe.
- (2) Has made a claim for benefits in accordance with the provisions of section 1346 of this title.
- (3) Is able to work, and is available for work; provided, that in determining the availability of any individual during any week, the commissioner may require, in addition to registration at any employment office, that the individual participate in reemployment services, or at any time make such other efforts to secure suitable work as the commissioner may reasonably direct under the circumstances and to supply proper evidence thereof; and shall, if the individual fails without good cause to do so, be ineligible for each week such failure continues; provided further that no claimant shall be considered ineligible in any week of unemployment for failure to comply with the provisions of this subdivision if such failure is due to an illness or disability which occurs after the claimant has registered for work, filed a claim for benefits and during a week for which the individual was entitled to waiting period credit or benefit payments, and no work which would have been considered suitable but for the illness or disability has been offered after the beginning of such illness or disability.
- (4) Prior to any week for which an individual claims benefits, the individual has been totally or partially unemployed for a waiting period of one week during the individual's benefit year and any extended eligibility period. No week shall be counted as a week of total or partial unemployment:
 - (A) If benefits have been paid with respect to that week.
- (B) Unless the individual is eligible for benefits with respect to that week in all respects except for the requirements of subdivision (2) of this subsection or of section 1344(a)(5)(C) of this title.
- (C) Unless it occurs after benefits first become payable to any individual under this chapter.

* * *

Sec. 7. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

- (a) An individual shall be disqualified for benefits:
- (1) For not more than $\frac{12}{15}$ weeks nor less than six weeks immediately following the filing of a claim for benefits (in addition to the waiting period) as may be determined by the commissioner according to the circumstances in each case, if the commissioner finds that:
- (A) He or she has been discharged by his or her last employing unit for misconduct connected with his or her work; or
- (B) He or she was separated from his or her last employing unit because he or she became unable to perform all or an essential part of his or her normal duties in such employment without good cause attributable to such employing unit because of the consequences which flow from his or her conviction of a felony or misdemeanor or from an action or order of a judge or court in any criminal or civil matter. In the event a conviction or the action or order of any judge or court in any criminal or civil matter is rescinded or expunged, the individual may be eligible for benefits from the time the individual would have otherwise been eligible for benefits.
- (2) For any week benefits are claimed, except as provided in subdivision (a)(3) of this section, until he or she has presented evidence to the satisfaction of the commissioner that he or she has performed services in employment for a bona fide employer and has had earnings in excess of six times his or her weekly benefit amount if the commissioner finds that such individual is unemployed because:
- (A) He or she has left the employ of his or her last employing unit voluntarily without good cause attributable to such employing unit. An individual shall not suffer more than one disqualification by reason of such separation.
- (B) He or she has been discharged by his or her last employing unit for gross misconduct connected with his or her work. For purposes of this section, "gross misconduct" means conduct directly related to the employee's work performance that demonstrates a flagrant, wanton, and intentional disregard of the employer's business interest, and that has direct and significant impact upon the employer's business interest, including but not limited to theft, fraud, intoxication, intentional serious damage to property, intentional infliction of personal injury, any conduct that constitutes a felony, or repeated incidents after written warning of either unprovoked insubordination or public use of profanity. An individual shall not suffer more than one disqualification by reason of such separation.

* * *

- (5) For any week with respect to which he or she the individual is receiving or has received remuneration in the form of:
 - (A) Wages in lieu of notice; or
 - (B) Vacation pay or holiday pay; or.
- (i) Vacation pay due at time of separation in accordance with a work agreement (whether a formal contract or established custom) shall be allocated to the period immediately following separation, or if due subsequent to separation, it shall be allocated to the week in which due or the next following week, and that number of weeks immediately following as required to equal the total of the weeks of pay due. Any mutual agreement between the employer and employee(s) (whether or not payment is made), allocating such remuneration to any period during which work is performed, within four weeks prior to the date of separation, shall not be valid for the purpose of determining unemployment compensation entitlement or waiting period credit purposes and such payment shall be allocated to the period immediately following separation.
 - (ii) There shall be no disqualification amount for any holiday.
 - (C) Back pay award or settlement; or Severance pay;
- (i) Back back pay awards, and back pay settlements. These payments, awards, and settlements shall be allocated to the week(s) and in the manner as specified in the order or agreement, or, in the absence of such specificity, to the week(s) and in the manner which, in the judgment of the commissioner, would be reasonable.

* * *

(F) A cash severance payment, unless and to the extent the paying employer elects to treat it as nondisqualifying or unless it is paid in accordance with a work agreement (whether a formal contract or established custom).

* * *

Sec. 8. 21 V.S.A. § 1314 is amended to read:

§ 1314. –REPORTS AND RECORDS; <u>SEPARATION INFORMATION</u>; <u>DETERMINATION OF ELIGIBILITY</u>

* * *

(c) If an employing unit fails to comply with the provisions of subsection (b) of this section, and/or after October 1, 1986, and section 1314a of this title, the commissioner shall determine the benefit rights of a claimant upon such

information as is available. Prompt notice in writing of the determination shall be given to the employing unit. The determination shall be final with respect to a noncomplying employer as to any charges against its experience-rating record for benefits paid to the claimant and its experience rating record shall not be relieved of those charges unless, within 30 days after notice thereof, the employer files an appeal from the determination and the determination is ultimately reversed, or before the week following the receipt of the employing unit's reply. The employing unit's experience rating record shall not be relieved of these charges, notwithstanding any other provision of this chapter, unless the amount of benefits is recovered from the claimant, or unless the commissioner determines that failure to comply was due to unavoidable accident or mistake.

* * *

Sec. 9. 21 V.S.A. § 1340 is amended to read:

§ 1340. COMPUTATION DURATION OF BENEFITS

Except as provided in subchapter 2 subchapters 2 and 4 of this chapter, the maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed 26 times his or her weekly benefit amount.

Sec. 10. 21 V.S.A. chapter 17, subchapter 4 is added to read:

Subchapter 4. Benefits for Approved Job Training Program

§ 1471. TRAINING BENEFIT PROGRAM

- (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 and any other available federally funded extension, is entitled to a maximum of 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 either a state-approved training program or a job training program authorized under the federal Workforce Investment Act of 1998.
- (b) To be eligible for training benefits under this section, an individual shall be in compliance with both the following:
- (1) The individual has been separated from a declining occupation or has been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment.
- (2) The individual is enrolled in a program designed to train the individual for entry into a high demand occupation.

Sec. 11. 21 V.S.A. § 1101 is amended to read:

§ 1101. APPRENTICESHIP DIVISION AND COUNCIL

The apprenticeship division and state apprenticeship council, hereinafter referred to as the "council," shall be located within the department of labor. The commissioner of labor shall supervise the work of the division. The council shall consist of 11 10 members, five four ex officio members and six members who shall be appointed by the governor. Of the ex officio members, one shall be the commissioner of labor, one shall be the director of workforce development, one shall be the chief of licensing within the department of commissioner of public safety or designee, one shall be the director of career and lifelong learning within the department commissioner of education or designee, and one shall be the state director of the apprenticeship division who shall act as secretary of the council without vote. Of the appointive members, three shall be individuals who on account of previous vocation, employment, occupation, or affiliation can be classed as employers, and three shall be individuals who on account of previous vocation, employment, occupation, or affiliation can be classed as employees. Appointment of the employer and the employee members shall be made for the term of three years except the employer and employee members first appointed shall be appointed for the term of one, two, and three years respectively. The governor shall annually designate one member of the council as chair. Each member of the council who is not a salaried official or employee of the state shall be entitled to compensation and expenses as provided in 32 V.S.A. § 1010.

Sec. 11a. 21 V.S.A. § 1458 is amended to read:

§ 1458. SHORT-TIME COMPENSATION BENEFITS

* * *

(e) Provisions of this subchapter and Vermont employment security board rules applicable to unemployment compensation claimants shall apply to STC claimants to the extent that they are not inconsistent with this subchapter. An individual who files a new initial claim for STC benefits shall be provided, if eligible therefor, a monetary determination of entitlement to STC benefits and shall serve a waiting week as required under § 1343(a)(4) of this title.

* * *

Sec. 12. DEPARTMENT OF LABOR; JOINT FISCAL OFFICE; UNEMPLOYMENT INSURANCE FUND MODELING

The department of labor and the joint fiscal office shall work cooperatively in order to develop the joint fiscal office's ability to model changes to the unemployment insurance fund within the joint fiscal office.

Sec. 13. STUDY

- (a) A committee is created to study the feasibility of enacting a self-employment assistance program.
 - (b) The committee shall be composed of the following members:
 - (1) the commissioner of the department of labor or designee;
 - (2) two members appointed by the governor;
- (3) two members appointed by the speaker of the house of representatives;
 - (4) two members appointed by the president pro tempore of the senate.
- (c) The committee shall meet as needed. Legislative council shall provide administrative support. The committee shall issue written recommendations to the house committees on commerce and economic development and on ways and means, and the senate committees on economic development, housing and general affairs and on finance on or before January 15, 2011. The committee shall be dissolved on January 15, 2011.

Sec. 14. REPORT; ONE-WEEK WAITING PERIOD

The commissioner of the department of labor shall report to the house committees on commerce and economic development and on ways and means and the senate committees on economic development, housing and general affairs and on finance on the implementation of the one-week waiting period. The report shall include an analysis of the relationship between the one-week waiting period and the rate at which claimants return to work. The report shall be made no later than January 15, 2015.

Sec. 15. REEMPLOYMENT SERVICES

The department of labor shall implement reemployment services in its district offices. The department shall implement a policy that prioritizes claimants for services in the regional offices.

Sec. 16. EFFECTIVE DATES

This section and Secs. 9, 10, 11, and Sec. 17(b) of this act shall take effect upon passage. Sec. 3 shall take effect on July 1, 2011 except that subsection (i) (relating to income tax withholding) shall be effective on passage. Sec. 5 shall take effect on July 1, 2011. Sec. 7 shall take effect July 1, 2011 except that subsection (a)(1) (relating to period of disqualification from benefits) and subsection (2)(B) (relating to the definition of "gross misconduct") shall take effect on passage. Section 12 of this act shall take effect July 1, 2011. Secs. 4 and 11a of this act shall take effect July 1, 2012. Sec. 6 of this act shall take

effect July 1, 2012 except that subsection (a)(3) (relating to participation in reemployment services) shall take effect on passage.

Sec. 17. REPEALS

- (a) 21 V.S.A. § 1343(a)(4) (one-week waiting period to be eligible for unemployment compensation benefits) shall be repealed effective July 1, 2017, or when the balance of the unemployment compensation fund is positive, whichever is later.
- (b) 21 V.S.A. § 1423b, relating to extended benefits; approved training programs, is repealed.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Illuzzi, moved to amend the bill in Sec. 13, subsection (c), in the second sentence, by striking out the following: "<u>Legislative council</u>" and inserting in lieu thereof the following: The department of labor

Which was agreed to

Thereupon, pending the question, Shall the bill be read a third time?, Senators Ashe, Illuzzi and Scott, moved to amend the bill by adding a new section to be numbered Sec. 15a to read as follows:

Sec. 15a. CONTACT OF EMPLOYERS BY CLAIMANTS; COMMISSIONER'S UPDATE OF SYSTEM

The commissioner of labor shall modify all systems by which unemployment insurance recipients update their employment or eligibility status by telephone, internet, or, where applicable, personal interview so the claimant, when required to show proof that he or she is seeking to re-enter the workforce, must provide the name and phone number of the employers who the unemployment insurance recipient contacted.

Thereupon, pending the question, Shall the bill be amended as recommended by Senators Ashe, Illuzzi and Scott?, Senators Nitka and Campbell moved to amend the recommendation of amendment by striking out the following: "telephone, internet," and inserting in lieu thereof the following: internet

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senators Racine and Mazza moved that the bill be amended in Sec. 13(b)(4) by striking out the words "president pro tempore" and inserting in lieu thereof the words committee on committees

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Cummings moved to amend the bill as follows:

<u>First</u>: By striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. 21 V.S.A. § 1321 is amended to read:

§ 1321. CONTRIBUTIONS; TAXABLE WAGE BASE CHANGES

* * *

(b) Base of Contributions. Subsequent to December 31, 1982, the term "wages" shall not include that part of remuneration which, after remuneration equal to \$8,000.00 has been paid in a calendar year to an individual by an employer with respect to employment during a calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the period January 1, 2010, through December 31, 2010, the term "wages" shall not include that part of remuneration which, after remuneration equal to \$10,000.00 has been paid in a calendar year to an individual by an employer with respect to employment during a calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. The term "wages" shall not include that part of remuneration which, after remuneration equal to \$13,000.00 on January 1, 2011, and \$16,000.00 on January 1, 2012, has been paid in a calendar year to an individual by an employer with respect to employment during a calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. After January 1, 2012, whenever the unemployment compensation fund has a positive balance and all advances made to the state unemployment compensation fund pursuant to Title XII of the Social Security Act have been repaid as of June 1, the base of contribution amount shall be adjusted on January 1 of the following year by the same percentage as any increase in the state annual average wage as calculated by subsection 1338(g) of this title. When the unemployment contribution rate schedule established by subsection 1326(e) of this title is reduced to schedule III, the base of contribution amount shall be reduced by \$2,000.00 on January 1 of the following year and shall be adjusted annually thereafter on January 1 of the following year by the same percentage as any increase in the state annual average wage as calculated by subsection 1338(g) of this title. When the unemployment contribution rate schedule established by subsection 1326(e) of this title is reduced to schedule I, the base of contribution amount shall be reduced by \$2,000.00 on January 1 of the following year and shall be adjusted annually thereafter on January 1 of the following year by the same percentage as any increase in the state annual average wage as calculated by subsection 1338(g) of this title. For the purposes of this subsection:

- (1) Any employer who acquired the entire or a distinct and severable portion of the organization, trade, or business of an employer shall be treated as a single unit with its predecessor for the calendar year in which such acquisition occurs; and
- (2) The term employment shall include service constituting employment under any unemployment compensation law of another state.

* * *

<u>Second</u>: By striking out Sec. 3 in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

Sec. 3. 21 V.S.A. § 1338 is amended to read:

§ 1338. WEEKLY BENEFITS

* * *

- (e) For benefit years beginning on January 3, 1988 and subsequent thereto, an individual's weekly benefit amount shall be determined by dividing the individual's two high quarter total subject wages required under subdivision (d)(1) of this section by 45; provided that the weekly benefit amount so determined shall not exceed the maximum weekly benefit amount computed as provided in this section. The base period wages shall not include any wages paid by an employing unit based on a separation for gross misconduct under subdivision 1344(a)(2)(B) of this title.
- (f) The maximum weekly benefit amount shall be \$425.00 for the period July 1, 2009, through June 30, 2010. Thereafter, When the state unemployment compensation fund has a positive balance and all advances made to the state unemployment compensation fund pursuant to Title XII of the Social Security Act have been repaid as of December 31 of the last completed calendar year, on the first day of the first calendar week of July, the maximum weekly benefit amount shall be adjusted by a percentage equal to the percentage change during the preceding calendar year in the state average

weekly wage as determined by subsection (g) of this section, provided the maximum weekly benefit amount shall not increase in any year that advances made to the State Unemployment Compensation Fund pursuant to Title XII of the Social Security Act, as amended, remain unpaid. When the unemployment contribution rate schedule established by subsection 1326(e) of this title is at schedule III, the maximum weekly benefit amount shall be adjusted on the first day of the first calendar week in July to an amount equal to 57 percent of the state annual average weekly wage as determined by subsection (g) of this section. The maximum weekly benefit amount shall not increase in any year that advances made to the state unemployment compensation fund pursuant to Title XII of the Social Security Act, as amended, remain unpaid.

* * *

- (i) Income tax withholding.
- (1) An individual filing a new claim for unemployment compensation shall, at the time of filing of such claim, be advised that:

* * *

(D) the individual who elects to have federal income tax deducted and withheld shall have state income tax withheld in accordance with the rates shown at section 5822 of Title 32 at 24 percent of the federal rate; and

* * *

<u>Third</u>: By striking out Sec. 5 in its entirety and inserting in lieu thereof a new Sec. 5 to read as follows:

Sec. 5. 21 V.S.A. § 1340 is amended to read:

§ 1340. COMPUTATION OF BENEFITS

- (a) Except as provided in subchapter 2 of this chapter, the maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed the lesser of 26 times his or her weekly benefit amount or 46 percent of the total wages paid to the individual during his or her base period.
- (b) An individual who is discharged by his or her last employing unit for misconduct connected with his or her work under section 1344(a)(1)(A) of this title is limited to a maximum amount during the benefit year which is the lesser of the maximum amount determined under subsection (a) of this section or 23 times his or her weekly benefit amount, provided that the individual has not already received more than 23 weeks in his or her benefit year.

<u>Fourth</u>: By striking out Secs. 9, 10, and 11 in their entirety.

<u>Fifth</u>: By striking out Sec. 16 in its entirety and inserting in lieu thereof a new Sec. 16 to read as follows:

Sec. 16. EFFECTIVE DATES

This section shall take effect upon passage. Sec. 3 shall take effect on July 1, 2011 except that subsection (i) (relating to income tax withholding) shall be effective on passage. Sec. 5 shall take effect on July 1, 2011. Sec. 7 shall take effect July 1, 2011 except that subsection (a)(1) (relating to period of disqualification from benefits) and subsection (a)(2)(B) (relating to the definition of "gross misconduct") shall take effect on passage. Section 10 of this act shall take effect July 1, 2011. Secs. 4 and 9 of this act shall take effect July 1, 2012 except that subsection (a)(3) (relating to participation in reemployment services) shall take effect on passage.

<u>Sixth</u>: By striking out Sec. 17 in its entirety and inserting in lieu thereof a new Sec. 17 to read as follows:

Sec. 17. REPEALS

21 V.S.A. § 1343(a)(4) (one-week waiting period to be eligible for unemployment compensation benefits) shall be repealed effective July 1, 2017, or when the balance of the unemployment compensation fund has a positive balance, whichever is later.

And by renumbering the remaining sections to be numerically correct.

Which was agreed to.

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 forthwith.

Thereupon, the bill was read the third time and passed on a roll call, Yeas 26, 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: Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, Miller, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr, White.

Those Senators who voted in the negative were: None.

Those Senators absent and not voting were: Ashe, Doyle, McCormack, Mullin.

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

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 Doyle, Brock, Ayer, Campbell, Carris, Choate, Cummings, Flory, Giard, Lyons, Mazza, McCormack, Miller, Mullin, Nitka, Scott, Shumlin, Starr and White,

By Representative Head and others,

S.C.R. 50.

Senate concurrent resolution recognizing the efforts of the Vermont Fallen Families in building Vermont's Global War on Terror Memorial at the Vermont Veterans Memorial Cemetery in Randolph Center, Vermont.

By Senators Flory, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Giard, Kitchel, Kittell, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Shumlin, Snelling, Starr and White,

By Representative McNeil and others,

S.C.R. 51.

Senate concurrent resolution congratulating Central Vermont Public Service Corporation on its designation as one of Forbes' 100 Most Trustworthy Companies.

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 O'Brien and others,

H.C.R. 342.

House concurrent resolution congratulating the Vermont Youth Conservation Corps on its 25th anniversary.

By Representative Morrissey and others,

By Senators Hartwell and Sears,

H.C.R. 343.

House concurrent resolution honoring Sally and Don Goodrich on the occasion of The Goodrich Dragonfly Celebration.

By Representative Morrissey and others,

By Senators Hartwell and Sears,

H.C.R. 344.

House concurrent resolution congratulating the Mount Anthony Union High School Interact Club on winning a 2010 Governor's Award for Outstanding Community Service.

By Representative Klein,

By Senators Cummings, Doyle and Scott,

H.C.R. 345.

House concurrent resolution honoring Tom Howard of East Montpelier for his career accomplishments in youth services.

By Representative Donovan and others,

By Senators Ashe, Doyle, Flanagan, Illuzzi, Lyons, Mazza, Miller, Racine and Snelling,

H.C.R. 346.

House concurrent resolution in memory of University of Vermont history professor emeritus and former senator Robert V. Daniels of Burlington.

By Representative Obuchowski and others,

H.C.R. 347.

House concurrent resolution in memory of the American military personnel who have died in the service of their nation in Iraq or Afghanistan from January 1, 2010 to April 10, 2010.

By Representative Corcoran and others,

By Senators Hartwell and Sears,

H.C.R. 348.

House concurrent resolution honoring retiring Bennington Police Chief Richard B. Gauthier.