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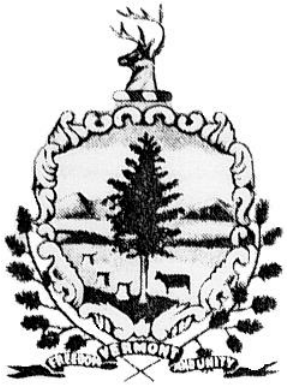

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STATE OF VERMONT

BUILDINGS AND GENERAL SERVICES, MIDDLESEX, VERMONT

DAVID A. GIBSON
SECRETARY OF THE SENATE

STEVEN D. MARSHALL
ASST. SECRETARY OF THE SENATE

VANESSA J. DAVISON
JOURNAL CLERK

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Adjournment

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

TUESDAY, MAY 4, 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. 68

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. 263. An act relating to the Vermont Benefit Corporations Act.

S. 292. An act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees.

And has passed the same in concurrence with proposals 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. 97. An act relating to a Vermont state employees' cost-savings incentive program.

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

Rep. Evans of Essex
Rep. Martin of Wolcott
Rep. McDonald of Berlin

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. 295. An act relating to the creation of an agricultural development director.

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

Rep. Stevens of Shoreham
Rep. Taylor of Barre City
Rep. Malcolm of Pawlet

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

H. 243. An act relating to the creation of a mentored hunting license.

H. 622. An act relating to solicitation by prescreened trigger lead information.

And has severally concurred therein.

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

H. 281. An act relating to the removal of bodily remains.

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

Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence

H. 770.

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 city of Barre.

Reported that the bill ought to pass in concurrence.

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

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

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

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

H. 540.

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

To the Senate and House of Representatives:

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

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

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and by inserting in lieu thereof the following:

Sec. 1. 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~~ MOTOR VEHICLES AND 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 motor vehicle overtaking another motor vehicle proceeding in the same direction may pass to its left at a safe distance, and when so doing shall exercise due care, ~~may~~ shall 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 motor vehicle shall give way to the right in favor of the overtaking motor 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 the vulnerable user safely, and shall cross the center of the highway only as provided in subdivision (a)(1) of this section.

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

§ 1039. FOLLOWING TOO CLOSELY, CROWDING, AND 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~~ an animal upon which a person is riding, or animals being herded, 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 ~~such horse or~~ any animal and to ~~insure~~ ensure the safety and protection of the animal and the person riding ~~or,~~ 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 exercise due care when passing a standing vehicle or one proceeding in the same direction and generally shall 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~~ the bicycle or the bicyclist 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 red reflector on the rear, which 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 either a lamp on the rear of the bicycle or bicyclist which emits a flashing or steady red light visible at least 300 feet to the rear, or with reflective, rear-facing material or reflectors, or both, with a surface area totaling at least 20 square inches on the bicycle or bicyclist and visible at least 300 feet to the rear.

Sec. 8. REPEAL

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

ROBERT M. HARTWELL
M. JANE KITCHEL
PHILIP B. SCOTT

Committee on the part of the Senate

MOLLIE SULLIVAN BURKE
ADAM B. HOWARD
DIANE M. LANPHER

Committee on the part of the House

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

Third Reading Ordered; Rules Suspended; Consideration Postponed

H. 769.

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

An act relating to the licensing and inspection of plant and tree nurseries.

Reported that the bill ought to pass in concurrence.

Senator Giard, for the Committee on Finance, to which the bill was referred, reported recommended that the bill ought to pass in concurrence.

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

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

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

Consideration Postponed

House bill entitled:

H. 528.

An act relating to the illegal cutting, removal, or destruction of forest products.

Was taken up.

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

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

H. 470.

House bill entitled:

An act relating to restructuring of the judiciary.

Was taken up.

Thereupon, pending third reading of the bill, Senators Shumlin, Illuzzi, Mullin and Sears moved that the Senate proposal of amendment be amended in Sec. 17, 4 V.S.A. § 272, by striking out subsection (b) in its entirety, and by re-lettering the remaining subsection to be alphabetically correct.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senators Shumlin, Illuzzi, Mullin and Sears?, on motion of Senator Shumlin consideration of the proposal of amendment was postponed.

Senator Shumlin Assumes the Chair

Thereupon, pending third reading of the bill, Senator Sears moved that the Senate proposal of amendment be amended as follows:

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

Sec. 29a. 4 V.S.A. § 461a is amended to read:

§ 461a. ESSEX COUNTY; POWERS OF ASSISTANT JUDGES AND MAGISTRATES IN FAMILY COURT PROCEEDINGS

(a) Notwithstanding any other provision of law to the contrary, an assistant judge of Essex County who has satisfactorily completed the training provided by the Vermont supreme court pursuant to Sec. 20 of Act No. 221 of the 1990 adjourned session, or a similar course of training that has been approved by the supreme court, shall act as a magistrate and hear and dispose of proceedings for the establishment, modification and enforcement of child support and establishment of parentage in all cases filed or pending in the family division of the superior court in Essex County.

(b) The administrative judge may appoint and may specially assign ~~the~~ a magistrate ~~assigned to Essex County~~ to serve as the presiding ~~family court~~ judge in the family division of the superior court in Essex County. ~~The magistrate assigned shall not hear and dispose of proceedings assigned to the~~

~~assistant judges in subsection (a) of this section, unless authorized by section 463 of this title.~~

(c) No Vermont family court action filed or pending in Essex County, except for temporary abuse prevention ~~orders that are sought as emergency relief pursuant to V.R.F.P. 9(c) after regular court hours~~ proceedings and juvenile proceedings under Title 33, shall be heard at or transferred to ~~any other location, except Guildhall~~ the family division in another unit of the superior court.

Second: By adding a new section to be numbered Sec. 29b, to read as follows:

Sec. 29b. 4 V.S.A. § 461c is amended to read:

§ 461c. POWERS OF ASSISTANT JUDGES IN DIVORCE PROCEEDINGS

(a) Notwithstanding any other provision of law to the contrary, an assistant judge ~~who has served in that office for a minimum of two years~~ may elect to hear and determine a complaint or action which seeks a divorce, legal separation, or civil union dissolution in cases where a final stipulation of the parties has been ~~reached~~ filed with the court.

(b) When an assistant judge elects to hear such cases, the clerk shall set it for hearing before the assistant judge if available. ~~In the event both assistant judges elect to hear such cases, the senior assistant judge shall make case assignments.~~

(c) ~~Assistant judges~~ Prior to hearing an uncontested domestic matter, an assistant judge shall sit with a superior judge on domestic proceedings for a minimum of 100 hours, satisfactorily complete a minimum of 30 hours of training ~~on the subjects of child support and divorce, which shall be provided by the office of child support, and in order to hear and determine complaints under this section upon completion of the training, assistant judges not already conducting hearings under this section as of July 1, 1995, shall~~ on subjects relevant to domestic proceedings and the code of judicial conduct, and conduct a minimum of three uncontested ~~divorce~~ domestic hearings with a ~~family court~~ superior judge who shall, in his or her sole discretion, certify to the ~~supreme court~~ administrative judge that the assistant judge is qualified to preside over matters under this section. Upon application of an assistant judge, some or all of these requirements may be waived by the administrative judge based on equivalent experience. The requirements set forth herein shall only apply to assistant judges who elect to conduct uncontested final hearings in domestic cases after July 1, 2010. An assistant judge already conducting hearings under this section as of July 1, 2010, shall be deemed to have complied with these requirements.

Third: In Sec. 199, 32 V.S.A. § 1142, by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) A probate judge whose salary is less than $45,701.00 shall only be eligible for the least expensive medical benefit plan option available to state employees or may apply the state share of a single-person premium for the least expensive benefit plan option toward the purchase of another state or private health insurance plan. A probate judge whose salary is less than $45,701.00 may participate in other state employee benefit plans.

Fourth: In Sec. 203a, 32 V.S.A. § 1431(c), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

(2) All fees paid to the clerk pursuant to this subsection shall be for the benefit of the county, except that such fees shall be for the benefit of the state in a county where court facilities are provided by the state.

Fifth: By adding a new section to be numbered Sec. 203b, to read as follows:

Sec. 203b. 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 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 a fee of $50.00. The fee for every counterclaim in small claims proceedings shall be $25.00, payable to the clerk, if the counterclaim is for more than $500.00, and $15.00 if the counterclaim is for $500.00 or less.

(2) ~~All fees paid to the clerk pursuant to this subsection shall be for the benefit of the county, except that such fees shall be for the benefit of the state in a county where court facilities are provided by the state.~~

(A) Except as provided in subdivision (B) of this subdivision (2), 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.

* * *

Sixth: In Sec. 237, by adding a new subsection, to be lettered as subsection (i), to read as follows:

(i) The establishment of six new exempt positions for the superior court with position titles to be assigned by the court administrator is authorized in FY 2011.

Seventh: In Sec. 238(a), after the following: "456 (appeals from family court)," by inserting the following: 4 V.S.A. § 461b (powers of assistant judges in Essex and Orleans Counties in parentage proceedings),

Eighth: In Sec. 239(c), after the following: "201," by inserting the following: 203b,

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Illuzzi moved that the Senate proposal of amendment be amended as follows

First: By adding a new section to be numbered Sec. 55b to read as follows:

Sec. 55b. 4 V.S.A. § 1106(d) is amended to read:

(d) ~~With approval of his or her supervisor, a~~ A law enforcement officer may void or amend a complaint issued by that officer by so marking the complaint and returning it to the bureau, regardless of whether the amended complaint is a lesser included violation. At the hearing, a law enforcement officer may void or amend a complaint issued by that officer ~~subject to the approval of the hearing~~ in the discretion of that officer.

Second: By adding a new section to be numbered Sec. 181a to read as follows:

Sec. 181a. 24 V.S.A. § 1940(c) is amended to read:

(c) A specialized investigative unit grants board is created which shall be comprised of the attorney general, the secretary of administration, the executive director of the department of state's attorneys, the commissioner of the department of public safety, a representative of the Vermont sheriffs' association, a representative of the Vermont association of chiefs of police, the executive director of the center for crime victim services, and the executive director of the Vermont League of Cities and Towns~~, Inc~~. Specialized investigative units organized and operating under this section for the investigation of sex crimes, child abuse, elder abuse, domestic violence, or crimes against those with physical or developmental disabilities may apply to the board for a grant or grants covering the costs of salaries and employee benefits to be expended during a given year for the performance of unit duties

as well as unit operating costs for rent, utilities, equipment, training, and supplies. Grants under this section shall be approved by a majority of the entire board and shall not exceed 50 percent of the yearly salary and employee benefit costs of the unit. Preference shall be given to grant applications which include the participation of the department of public safety, the department for children and families, sheriffs' departments, community victims' advocacy organizations, and municipalities within the region. However, a sheriff's department in a county with a population of less than 8,000 residents shall upon application receive a grant of $20,000.00 to support a part-time specialized investigative unit investigator which shall be paid to the department as time is billed on a per hour rate as agreed by contract up to the maximum amount of the grant.

Third: By adding a new section to be numbered Sec. 17a to read as follows:

Sec. 17a. 4 V.S.A. § 278 is added to read:

§ 278. AUTHORIZATION OF ASSISTANT JUDGES

(a) Notwithstanding any provision of law to the contrary, an assistant judge or a candidate for the office of assistant judge may also seek election to the office of probate judge, and if elected to both offices, may serve both as an assistant judge and as probate judge.

(b) In the event a probate matter arises in the superior court over which an assistant judge is also the probate judge that presides, or has presided, over the same or related probate matter in the probate court, the assistant judge shall be disqualified from hearing and deciding the probate matter in the superior court.

(c) In the event a probate matter arises in the probate court over which a probate judge is also an assistant judge that presides, or has presided, over the same or related probate matter in the superior court, the probate judge shall be disqualified from hearing and deciding the probate matter in the probate court.

Fourth: In Sec. 239(d), after the following "Secs." by adding the following: 17a,

President Assumes the Chair

Which was agreed to.

Thereupon, pending third reading of the bill, consideration of the proposal of amendment of Senators Shumlin, Illuzzi, Mullin and Sears was resumed.

Thereupon, the question, Shall the Senate proposal of amendment be amended as recommended by Senators Shumlin, Illuzzi, Mullin and Sears?, was disagreed to on a roll call, Yeas 14, Nays 16.

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: Carris, Choate, Flanagan, Hartwell, Illuzzi, Kittell, Lyons, Mazza, Mullin, Scott, Sears, Shumlin, Starr, White.

Those Senators who voted in the negative were: Ashe, Ayer, Bartlett, Brock, Campbell, Cummings, Doyle, Flory, Giard, Kitchel, MacDonald, McCormack, Miller, Nitka, Racine, Snelling.

Thereupon, pending third reading of the bill, Senators Cummings, on behalf of the Committee on Judiciary moved that the Senate proposal of amendment be amended as follows:

First: In Sec. 199, 32 V.S.A. § 1142, by striking subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) The annual salaries of the ~~judges of~~ probate judges 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~~	
(1) Addison	~~$59,321~~	52,439
(2) Bennington	~~59,321~~	61,235
(3) Caledonia	~~59,321~~	46,956
(4) Chittenden	~~91,402~~	91,395
(5) Essex	~~28,853~~	15,000
~~(6) Fair Haven~~	~~43,594~~	
~~(7)~~(6) Franklin	~~59,321~~	52,439
~~(8)~~(7) Grand Isle	~~28,853~~	15,000
~~(9) Hartford~~	~~59,321~~	
~~(10)~~(8) Lamoille	~~53,594~~	37,816
~~(11) Marlboro~~	~~51,559~~	
~~(12)~~(9) Orange	~~51,559~~	44,214
~~(13)~~(10) Orleans	~~51,559~~	43,300

~~(14)~~(11)	Rutland	~~75,859~~	86,825
~~(15)~~(12)	Washington	~~75,859~~	70,718
~~(16)~~(13)	~~Westminster~~ Windham	~~43,594~~	57,923
~~(17)~~(14)	Windsor	~~51,559~~	75,859

Second: By striking Sec. 205 in its entirety and inserting in lieu thereof a new Sec. 205 to read as follows:

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~~ $30.00, of which ~~$5.00~~ $10.00 shall accrue to the state and ~~$15.00~~ $20.00 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.~~

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 30, 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, 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.

House Proposal of Amendment Concurred In

S. 138.

House proposal of amendment to Senate bill entitled:

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

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

(a) While credit card use offers benefits to consumers and merchants, including safety of financial information, convenience, and guaranteed payment to merchants, courts have found that Visa and MasterCard and their member banks have major market power.

(b) Electronic payment system networks, such as those incorporated by Visa and MasterCard, set the level of credit and debit card interchange fees charged by their member banks, even though those banks are supposed to be competitors.

(c) Credit and debit card interchange fees inflate the prices consumers pay for goods and services. Competitors should set their own prices and compete on that basis.

(d) Consumers are increasingly using credit and debit card electronic payment systems to purchase goods and services.

(e) In order to provide the desired convenience to consumers, most merchants agree to accept credit and debit cards.

(f) Some electronic payment system networks market themselves as currency and promote use of their products as though they were a complete substitution for legal tender.

(g) Due to the market power of the two largest electronic payment system networks, merchants do not have negotiating power with regard to the contract for acceptance of credit and debit cards and the cost of the interchange fees for such acceptance.

(h) Merchants are subject to contracts that allow the electronic payment system networks to change the terms without notice, subject merchants to substantial fines, or reinterpret the rules and hold the merchant responsible.

(i) Merchants have expressed interest in working with customers to give customers the types of pricing options they would like but that are currently blocked by the terms or interpretations of contracts necessary to accept credit and debit cards.

(j) Businesses in Vermont are also consumers. The protections of this bill are intended to apply to all consumers, including businesses, in Vermont.

Sec. 2. 9 V.S.A. chapter 63, subchapter 4 is added to read:

Subchapter 4. Prevention of Credit Card Company Unfair Business Practices

§ 2480o. DEFINITIONS

For purposes of this subchapter:

(1) "Electronic payment system" means an entity that directly or through licensed members, processors or agents provides the proprietary services, infrastructure and software that route information and data to facilitate transaction authorization, clearance and settlement, and that merchants are required to access in order to accept a specific brand of general-purpose credit cards, charge cards, debit cards or stored-value cards as payment for goods and services.

(2) "Merchant" means a person or entity that, in Vermont:

(A)(i) does business; or

(ii) offers goods or services for sale; and

(B) has a physical presence.

§ 2480p. ELECTRONIC PAYMENT SYSTEMS

With respect to transactions involving Vermont merchants, no electronic payment system may directly or through any agent, processor or member of the system:

(1) Impose any requirement, condition, penalty, or fine in a contract with a merchant to inhibit the ability of any merchant to provide a discount or other benefit for payment through the use of a card of another electronic payment system, cash, check, debit card, stored-value card, charge card or credit card rather than another form of payment.

(2) Impose any requirement, condition, penalty or fine in a contract with a merchant to prevent the ability of any merchant to set a minimum dollar value of no more than $10.00 for its acceptance of a form of payment, provided that if a minimum dollar value is set by a merchant, it shall be prominently displayed and printed in not less than 16-point boldface type at the point of sale.

(3) Impose any requirement, condition, penalty or fine in a contract with a merchant to inhibit the ability of any merchant to decide to accept an electronic payment system at one or more of its locations but not at others.

§ 2480q. PENALTIES

(a) The following penalties shall apply to violations of this subchapter:

(1) Any electronic payment system found to have violated section 2480p of this subchapter shall reimburse all affected merchants for all fines related to the prohibitions described in section 2480p which were collected from affected merchants directly or through any agent, processor or member of the system during the period of time in which the electronic payment system was in violation and shall be liable for a civil penalty of $10,000.00 per fine levied in violation of section 2480p of this subchapter.

(2) Any merchant whose rights under this subchapter have been violated may maintain a civil action for damages or equitable relief as provided for in this section, including attorney's fees, if any.

(3) A violation of section 2480p of this subchapter shall be deemed a violation of chapter 63 of this title, the Consumer Fraud Act. The attorney general has the same authority to conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under subchapter 1 of chapter 63 of this title.

(b) These penalties shall not apply to entities acting exclusively as agents, processors or members that are not electronic payment systems.

§ 2480r. SEVERABILITY

If any provision of this subchapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and, to this end, the provisions of this subchapter are severable.

Sec. 3. 13 V.S.A. § 1816 is added to read:

§ 1816. POSSESSION OR USE OF CREDIT CARD SKIMMING DEVICES AND RE-ENCODERS

(a) A person who knowingly, wittingly and with the intent to defraud possesses a scanning device, or who knowingly, wittingly and with intent to defraud uses a scanning device to access, read, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip or magnetic strip of a payment card without the permission of the authorized user of the payment card shall be imprisoned not more than 10 years and fined not more than $10,000.00, or both.

(b) A person who knowingly, wittingly and with the intent to defraud possesses a re-encoder, or who knowingly, wittingly and with the intent to

defraud uses a re-encoder to place encoded information on the computer chip or magnetic strip or stripe of a payment card or any electronic medium that allows an authorized transaction to occur without the permission of the authorized user of the payment card from which the information is being re-encoded shall be imprisoned not more than 10 years or fined not more than $10,000.00, or both.

(c) Any scanning device or re-encoder described in subsection (e) of this section allegedly possessed or used in violation of subsection (a) or (b) of this section shall be seized and upon conviction shall be forfeited. Upon forfeiture, any information on the scanning device or re-encoder shall be removed permanently.

(d) Any computer, computer system, computer network, or any software or data owned by the defendant which are used during the commission of any public offense described in this section or any computer owned by the defendant which is used as a repository for the storage of software or data illegally obtained in violation of this section shall be subject to forfeiture.

(e) For purposes of this section:

(1) "Payment card" means a credit card, debit card or any other card that is issued to an authorized user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value.

(2) "Re-encoder" means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card or any electronic medium that allows an authorized transaction to occur.

(3) "Scanning device" means a scanner, reader or any other electronic device that is used to access, read, scan, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card.

(f) Nothing in this section shall preclude prosecution under any other provision of law.

Sec. 4. STUDY; REPORT

On or before December 15, 2011, the department of banking, insurance, securities, and health care administration shall:

(1) collect, examine, organize and categorize by author entity, such as government or private, the available studies that have been performed on credit card interchange fees; and

(2) report to the senate committees on judiciary and on finance and the house committees on commerce and economic development and on judiciary its findings, recommendations and legislative proposals, if any, relating to its findings.

Sec. 5. EFFECTIVE DATES

(a) Secs. 1, 2 and 4 of this act shall take effect January 1, 2011.

(b) This section and Sec. 3 of 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 Concurred In

S. 161.

House proposal of amendment to Senate bill entitled:

An act relating to National Crime Prevention and Privacy Compact.

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:

*** * * Providing Complete Out-of-State Conviction Records for School Employees * * ***

Sec. 2. 16 V.S.A. § 252(1) is amended to read:

(1) "Criminal record" means the record of:

(A) convictions in Vermont, including whether any of the convictions is an offense listed in 13 V.S.A. § 5401(10) (sex offender definition for registration purposes); and

(B) convictions in other jurisdictions recorded in other state repositories or by the Federal Bureau of Investigation (FBI) ~~for the following crimes or for crimes of an equivalent nature:~~

~~(i) Crimes listed in subdivision 5301(7) of Title 13.~~

~~(ii) Contributing to juvenile delinquency under section 1301 of Title 13.~~

~~(iii) Cruelty to children under section 1304 of Title 13.~~

~~(iv) Cruelty by person having custody under section 1305 of Title 13.~~

~~(v) Prohibited acts under sections 2632 and 2635 of Title 13.~~

~~(vi) Displaying obscene materials to minors under section 2804b of Title 13.~~

~~(vii) Sexual exploitation of children under chapter 64 of Title 13.~~

~~(viii) Drug sales, including selling or dispensing under sections 4230(b), 4231(b), 4232(b), 4233(b), 4234(b), 4235(c), 4235a(b), and 4237 of Title 18.~~

~~(ix) Sexual activity by a caregiver, under subsection 6913(d) of Title 33~~.

Sec. 3. 16 V.S.A. § 255 is amended to read:

§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES; CONTRACTORS

* * *

(d)(1) Upon completion of a criminal record check, the Vermont criminal information center shall send to the superintendent ~~or headmaster~~ a notice that no record exists or, if a record exists~~:~~,

~~(1)~~ a copy of any criminal record ~~for Vermont convictions; and~~

(2) ~~if the requester is a superintendent, a notice of any criminal record which is located in either another state repository or FBI records, but not a record of the specific convictions except those relating to crimes of a sexual nature involving children~~.

~~(3) if the requester is a headmaster, a~~

Upon completion of a criminal record check, the Vermont criminal information center shall send to the headmaster a notice that no record exists or, if a record exists:

(A) A copy of Vermont criminal convictions.

(B) A notice of any criminal record which is located in either another state repository or FBI records, but not a record of the specific convictions. However, if there is a record relating to any crimes of a sexual nature involving children, the Vermont criminal information center shall send this record to the commissioner who shall notify the headmaster in writing, with a copy to the person about whom the request-was made, that the record includes one or more convictions for a crime of a sexual nature involving children.

(f) Information sent to a person by the commissioner, a headmaster, a superintendent or a contractor under ~~subsections (d)(3) and~~ subsection (e) of this section shall be accompanied by a written notice of the person's rights under subsection (g) of this section, a description of the policy regarding

maintenance and destruction of records, and the person's right to request that the notice of no record or record be maintained for purposes of using it to comply with future criminal record check requests pursuant to section 256 of this title.

(g)(1) Following notice that a headmaster was notified that a criminal record which is located in either another state repository or FBI records exists, a person may:

~~(1)~~(A) Sign a form authorizing the Vermont criminal information center to release a detailed copy of the criminal record ~~to a superintendent or~~ to the person.

(B) Decline or resign employment.

(2) ~~Challenge~~ Any person subject to a criminal record check pursuant to this section may challenge the accuracy of the record by appealing to the Vermont criminal information center pursuant to rules adopted by the commissioner of public safety.

~~(3) Decline or resign employment.~~

Sec. 4. Sec. 5 of No. 1 of the Acts of 2009 is amended to read:

Sec. 5. 16 V.S.A. § 255 is amended to read:

§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES; CONTRACTORS

* * *

(d)(1) Upon completion of a criminal record check, the Vermont criminal information center shall send to the superintendent a notice that no record exists or, if a record exists, a copy of any criminal record

(2) Upon completion of a criminal record check, the Vermont criminal information center shall send to the headmaster a notice that no record exists or, if a record exists:

(A) A copy of Vermont criminal convictions.

(B) A notice of any criminal record which is located in either another state repository or FBI records, but not a record of the specific convictions. However, if there is a record relating to any crimes of a sexual nature involving children, the Vermont criminal information center shall send this record to the commissioner who shall notify the headmaster in writing, with a copy to the person about whom the request-was made, that the record includes one or more convictions for a crime of a sexual nature involving children.

*** * ***

*** * * Commercial Driver License Disqualifiers * * ***

Sec. 5. 23 V.S.A. § 4108 is amended to read:

§ 4108. COMMERCIAL DRIVER LICENSE QUALIFICATION STANDARDS

(a) Before issuing a commercial driver license, the commissioner shall request the applicant's complete operating record from any state in which the applicant was previously licensed to operate any type of motor vehicle in the past 10 years and conduct a check of the applicant's operating record by querying the national driver register established under 49 U.S.C. § 30302 and the commercial driver's license information system established under 49 U.S.C. § 31309 to determine if:

(1) the applicant has already been issued a commercial driver license;

(2) the applicant's commercial driver license has been suspended, revoked, or canceled; or

(3) the applicant has been convicted of any offense listed in Section 205(a)(3) of the National Driver Register Act of 1982 (49 U.S.C. § 30304(a)(3)).

(b) ~~Except as otherwise provided, the~~ The commissioner shall not issue a commercial driver license ~~and~~ or commercial driver instruction permit to any person:

(1) under the age of 21 years except as otherwise provided.

~~(b)~~(2) who, within three years of the license application and for initial applicants only, has been convicted of an offense listed in subsection 4116(a) of this title (or a comparable offense in any jurisdiction), or convicted of an offense listed in 49 U.S.C. § 30304(a)(3) in any jurisdiction.

(3) ~~No person may be issued a commercial driver license~~ unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulation enumerated in 49 C.F.R. part 383, subparts G and H and has satisfied all other requirements of ~~Title XII of Public Law 99-570~~ the Commercial Motor Vehicle Safety Act of 1986, as amended, in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed and conducted by the commissioner.

* * *

Sec. 6. 23 V.S.A. § 4110(a) is amended to read:

(a) The application for a commercial driver license or commercial driver instruction permit shall include the following:

* * *

(6) Certifications that:

* * *

(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~~ the law of any jurisdiction; ~~and~~

(D) the applicant does not have a driver's license from more than one state or jurisdiction; and

(E) for initial applicants only, the applicant has not been convicted of an offense listed in subsection 4116(a) of this title (or a comparable offense in any jurisdiction) or an offense listed in 49 U.S.C. § 30304(a)(3) in any jurisdiction within three years of the license application.

Sec. 7. 23 V.S.A. § 4111(c) is amended to read:

(c) ~~Before issuing a commercial driver license, the commissioner shall request the applicant's complete operating record from any state in which the applicant was previously licensed to operate any type of motor vehicle in the past 10 years, conduct a check of the applicant's operating record by querying the national driver register, established under 49 U.S.C. § 30302 and the commercial driver's license information system, established under 49 U.S.C. § 31309, to determine if:~~

~~(1) the applicant has already been issued a commercial driver license; and the applicant's commercial driver license has been suspended, revoked, or canceled;~~

~~(2) the applicant had been convicted of any offenses contained in Section 205(a)(3) of the National Driver Register Act of 1982 (23 U.S.C. § 401 note).~~ [Repealed.]

*** * * Conditioning Motor Vehicle Registration on Proof of Financial Responsibility * * ***

Sec.8. PROOF OF FINANCIAL RESPONSIBILITY AS A CONDITION OF MOTOR VEHICLE REGISTRATION; IMPLEMENTATION; REPORTING

The commissioner of motor vehicles shall examine the administrative tasks that would be needed to implement legislation requiring issuance of an initial or renewal motor vehicle registration to be conditional on the commissioner's receipt of proof of liability insurance or financial responsibility required under 23 V.S.A. § 800(a). The commissioner also shall examine the costs associated with and earliest feasible time frame for implementing such legislation so that the general assembly may advance the goal of bringing more operators of

motor vehicles into compliance with their legal obligation to maintain financial responsibility. The commissioner shall report his or her findings to the senate and house committees on judiciary and on transportation by January 15, 2011.

*** * * Municipality Exemption to Records Law * * ***

Sec. 9. 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.

*** * * Consider Expanding Out-of-state Criminal Record Checks * * ***

Sec. 10. VERMONT CRIMINAL INFORMATION CENTER

No later than December 1, 2010, the Vermont criminal information center and the defender general shall report to the house and senate committees on judiciary on the legal, policy, and procedural issues involved with broadening access to fingerprint-supported national record checks.

*** * * Constable Training * * ***

Sec. 11. Sec. 13 of No. 195 of the 2007 Adj. Sess. (2008) is amended to read:

Sec. 13. EFFECTIVE DATE

Secs. 8 and 9 of this act shall take effect ~~July 1, 2010~~ July 1, 2012.

*** * * Interstate Compact for Juveniles * * ***

Sec. 12. 33 V.S.A. chapter 57 is amended by repealing sections 5701–5715 and adding sections 5721–5733 to read:

§ 5721. PURPOSE

(a) The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have

absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in so doing have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to:

(1) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(2) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

(3) return juveniles who have run away, absconded, or escaped from supervision or control or have been accused of an offense to the state requesting their return;

(4) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(5) provide for the effective tracking and supervision of juveniles;

(6) equitably allocate the costs, benefits, and obligations of the compacting states;

(7) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders;

(8) ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(9) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact;

(10) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact

activities to heads of state, executive, judicial, and legislative branches, and juvenile and criminal justice administrators;

(11) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(12) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and

(13) coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision, and other compacts affecting juveniles, particularly in those cases where concurrent or overlapping supervision issues arise.

(c) It is the policy of the compacting states that the activities conducted by the Interstate Commission created in this chapter are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

§ 5722. DEFINITIONS

As used in this chapter, unless the context clearly requires a different construction:

(1) "Bylaws" means those bylaws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

(2) "Commissioner" means the voting representative of each compacting state appointed pursuant to section 5723 of this title.

(3) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission, and policies adopted by the state council under this compact.

(4) "Compacting state" means any state which has enacted the enabling legislation for this compact.

(5) "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

(6) "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

(7) "Interstate commission" means the Interstate Commission for juveniles created by section 5723 of this title.

(8) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(A) an accused delinquent (a person charged with an offense that, if committed by an adult, would be a criminal offense);

(B) an adjudicated delinquent (a person found to have committed an offense that, if committed by an adult, would be a criminal offense);

(C) an accused status offender (a person charged with an offense that would not be a criminal offense if committed by an adult);

(D) an adjudicated status offender (a person found to have committed an offense that would not be a criminal offense if committed by an adult); and

(E) a nonoffender (a person in need of supervision who has not been accused or adjudicated a status offender or delinquent).

(9) "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

(10) "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(11) "Rule" means a written statement by the Interstate Commission promulgated pursuant to section 5726 of this title that is of general applicability; implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission; and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

(12) "State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

§ 5723. INTERSTATE COMMISSION FOR JUVENILES

(a) The compacting states hereby create the Interstate Commission for Juveniles. The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers,

and duties set forth in this chapter, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the state council for interstate juvenile supervision created in this chapter. The commissioner shall be the compact administrator, deputy compact administrator, or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

(c) In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. The noncommissioner members shall include a member of the National Organizations of Governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the Interstate Commission shall be ex-officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional ex-officio members, including members of other national organizations, in such numbers as shall be determined by the commission.

(d) Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(e) The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings, and meetings shall be open to the public.

(f) The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking or amending the compact. The executive committee shall: oversee the day-to-day activities of the administration of the compact, managed by an executive director and Interstate Commission staff; administer enforcement and compliance with the provisions

of the compact, its bylaws, and rules; and perform such other duties as directed by the Interstate Commission or set forth in the bylaws.

(g) Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(h) The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(i) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) relate solely to the Interstate Commission's internal personnel practices and procedures;

(2) disclose matters specifically exempted from disclosure by statute;

(3) disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) involve accusing any person of a crime, or formally censuring any person;

(5) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) disclose investigative records compiled for law enforcement purposes;

(7) disclose information contained in or related to examination, operating, or condition reports prepared by or on behalf of or for the use of the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

(8) disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

(9) specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

(j) For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(k) The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. Such methods of data collection, exchange, and reporting shall, insofar as is reasonably possible, conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

§ 5724. POWERS AND DUTIES

(a) The commission shall have the following powers and duties:

(1) To provide for dispute resolution among compacting states.

(2) To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(3) To oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission.

(4) To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including the use of judicial process.

(5) To establish and maintain offices which shall be located within one or more of the compacting states.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, hire, or contract for services of personnel.

(8) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions, including an executive committee as required by section 5723 of this title which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(13) To establish a budget and make expenditures and levy dues as provided in section 5728 of this title.

(14) To sue and be sued.

(15) To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(18) To coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

(19) To establish uniform standards of the reporting, collecting, and exchanging of data.

(b) The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

§ 5725. ORGANIZATION AND OPERATION

(a) Bylaws. The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including:

(1) establishing the fiscal year of the Interstate Commission;

(2) establishing an executive committee and such other committees as may be necessary;

(3) providing for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

(4) providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

(5) establishing the titles and responsibilities of the officers of the Interstate Commission;

(6) providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations.

(7) providing start-up rules for initial administration of the compact; and

(8) establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) Officers and staff.

(1) The Interstate Commission shall, by a majority of its members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission, provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

(2) The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the Interstate Commission may deem

appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

(c) Qualified immunity, defense, and indemnification.

(1) The commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(3) The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(4) The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or

responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

§ 5726. RULEMAKING

(a) The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(b) Rulemaking shall occur pursuant to the criteria set forth in this section and the bylaws and rules adopted under it. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act as the Interstate Commission deems appropriate, consistent with due process requirements under the United States and Vermont Constitutions. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Commission.

(c) When promulgating a rule, the Interstate Commission shall, at a minimum:

(1) publish the proposed rule's entire text, stating the reason for the proposed rule;

(2) allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record and made publicly available;

(3) provide an opportunity for an informal hearing if petitioned by 10 or more persons; and

(4) promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

(d) The Interstate Commission shall allow any interested person to file a petition for judicial review of a rule not later than 60 days after the rule is promulgated. The petition shall be filed in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

(e) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner

used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

(f) The existing rules governing the operation of the Interstate Compact on Juveniles superseded by this chapter shall be null and void 12 months after the second meeting of the Interstate Commission created by section 5723 of this title.

(g) Upon determination by the Interstate Commission that a state-of-emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures of this section shall be retroactively applied to said rule as soon as reasonably possible, but no later than 90 days after the effective date of the emergency rule.

§ 5727. OVERSIGHT; ENFORCEMENT; DISPUTE RESOLUTION

(a) Oversight.

(1) The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

(b) Dispute resolution.

(1) The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

(2) The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between

compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(3) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in section 5731 of this title.

§ 5728. FINANCE

(a) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state, and the Interstate Commission shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet them. The Interstate Commission shall not pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws, provided that all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

§ 5729. STATE COUNCIL

Each member state shall create a state council for Interstate Juvenile Supervision. Each state may determine the membership of its own state council, provided that its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator, or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council shall advise and may exercise oversight and advocacy

concerning that state's participation in Interstate Commission activities and other duties as may be determined by that state, including development of policy concerning operations and procedures of the compact within that state.

§ 5730. COMPACTING STATES; EFFECTIVE DATE; AMENDMENT

(a) Any state as defined in subdivision 5722(12) of this title is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the 35th jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

§ 5731. WITHDRAWAL; DEFAULT; TERMINATION; JUDICIAL ENFORCEMENT

(a) Withdrawal.

(1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state, provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission

(b) Technical assistance, fines, suspension, termination, and default.

(1) If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

(A) remedial training and technical assistance as directed by the Interstate Commission;

(B) alternative dispute resolution;

(C) fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; or

(D) suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the Interstate Commission has determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly promulgated rules, and any other grounds designated in commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(2) Within 60 days of the effective date of termination of a defaulting state, the commission shall notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any

obligations the performance of which extends beyond the effective date of termination.

(4) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(5) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(c) Judicial enforcement. The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact its duly promulgated rules and bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

(d) Dissolution of compact.

(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

§ 5732. SEVERABILITY; CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

§ 5733. BINDING EFFECT; OTHER LAWS

(a) Other laws.

(1) Nothing in this chapter prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

(b) Binding effect of compact.

(1) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

(2) All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective, and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Sec. 13. EFFECTIVE DATE

Secs. 5 – 7 shall take effect July 1, 2011, and the remainder of the 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.

House Proposal of Amendment Not Concurred In; Committee of Conference Requested

S. 103.

House proposal of amendment to Senate bill entitled:

An act relating to the study and recommendation of ignition interlock device legislation.

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. 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. 2. 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 pre-set 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 has 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. 3. 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 commissioners deem 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) authorize operation during a suspension period, and, if so, the period of "hard" suspension that must be served prior to such authorization for different classes of DUI offenders;

(C) authorize or require that some or all DUI offenders, at their request, be allowed 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 and the costs associated with them; which agency or agencies are best suited to perform these tasks; and what additional authority or resources this agency or these agencies will need to perform these tasks.

(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 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 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 knowingly provide vehicles not equipped with such devices for DUI offenders required to operate vehicles equipped with such devices, and 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.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

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

"An act relating to the study and recommendation of ignition interlock device legislation."

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.

House Proposal of Amendment Not Concurred In; Committee of Conference Requested

S. 207.

House proposal of amendment to Senate bill entitled:

An act relating to handling of milk samples.

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. MEETING CONCERNING PRELIMINARY INCUBATION COUNTS

(a) The secretary of agriculture, food and markets or the secretary's designee shall convene a meeting of persons with knowledge of Vermont's dairy industry by July 1, 2010 for the purpose of developing consensus findings and recommendations regarding the use of the preliminary incubation (PI) count of raw milk as a quality indicator.

(b) Participants invited shall include organic and conventional dairy producers and handlers, representatives from farm organizations, laboratory researchers, dairy haulers, employees of the agency of agriculture, food and markets, and representatives from Vermont colleges and universities.

(c) Participants shall discuss, at a minimum, proper milk sample handling protocol, buyer and producer responsibilities in addressing PI count problems, and the availability to producers of technical assistance, information, procedures, and access to laboratory results.

Sec. 2. EFFECTIVE DATE

This act shall take effect upon passage.

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.

House Proposals of Amendment to Senate Proposals of Amendment Concurred In

H. 524.

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

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

Were taken up.

The House proposes to the Senate to amend the Senate proposal of amendment as follows:

First: In Sec. 1, 13 V.S.A. § 355, in subdivision (a)(2), by striking out the following: "with visible identification of its status" and inserting in lieu thereof the following: whose status is reasonably identifiable

Second: In Sec. 1, 13 V.S.A. § 355, in subdivision (a)(3), by striking out the subparagraph (B) in its entirety and inserting in lieu thereof a new subparagraph (B) to read as follows:

(B) a written or oral confirmation submitted to a law enforcement officer, 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 to stop the behavior was given and shall include the complainant's telephone number.

Third: In Sec. 3, 20 V.S.A. § 3621, after the following: "waive the license fee" by inserting the following: for a dog or wolf-hybrid impounded pursuant to subsection (a) of this section

Fifth: In Sec. 4, in 13 V.S.A. § 351(4), by striking out the following: "animal control officer elected or appointed by the legislative body of a municipality," and after the following: "employee or agent," by inserting the following: elected animal control officer, animal control officer appointed by the legislative body of a municipality,

Sixth: By striking out Secs. 5 and 6 in their entirety.

And by renumbering the remaining sections to be numerically correct.

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

Committees of Conference Appointed

S. 103.

An act relating to the study and recommendation of ignition interlock device legislation.

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

Senator Kitchel
Senator Scott
Senator Sears

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

S. 207.

An act relating to handling of milk samples.

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

Senator Choate
Senator Kittell
Senator Starr

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. 103, S. 207, H. 470, H. 524, H. 540, H. 770.

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. 138, S. 161.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until five o'clock in the afternoon.

Evening

The Senate was called to order by the President.

Message from the House No. 69

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. 782. An act relating to a voluntary school district merger incentive program, supervisory union duties, and other education issues.

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. 247. An act relating to bisphenol A.

And has passed the same in concurrence.

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

H. 555. An act relating to youth hunting.

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.

H. 788. An act relating to approval of amendments to the charter of the town of Berlin.

And has severally concurred therein.

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

H.C.R. 342. House concurrent resolution congratulating the Vermont Youth Conservation Corps on its 25th anniversary.

H.C.R. 343. House concurrent resolution honoring Sally and Don Goodrich on the occasion of The Goodrich Dragonfly Celebration.

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.

H.C.R. 345. House concurrent resolution honoring Tom Howard of East Montpelier for his career accomplishments in youth services.

H.C.R. 346. House concurrent resolution in memory of University of Vermont history professor emeritus and former senator Robert V. Daniels of Burlington.

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.

H.C.R. 348. House concurrent resolution honoring retiring Bennington Police Chief Richard B. Gauthier.

H.C.R. 349. House concurrent resolution in memory of Junior Harwood of Shaftsbury.

H.C.R. 350. House concurrent resolution honoring the outstanding educators who are retiring from the Southwest Vermont Supervisory Union.

H.C.R. 351. House concurrent resolution in memory of Stevenson H. Waltien, Jr., of Shelburne.

H.C.R. 352. House concurrent resolution congratulating Gabriella Pacht of Thetford and Katie Ann Dutcher of Bennington on earning the Girl Scout Gold Award.

H.C.R. 353. House concurrent resolution congratulating GW Plastics on being named *Plastic News* magazine's 2010 Plastics Processor of the Year.

H.C.R. 354. House concurrent resolution congratulating the Rutland Regional Medical Center on its receipt of the American Nurses Credentialing Center's Magnet designation and the Vermont Council on Quality's 2009 Governor's Award for Performance Excellence.

H.C.R. 355. House concurrent resolution honoring the municipal public service of St. Johnsbury town manager Michael A. Welch.

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

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

S.C.R. 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.

S.C.R. 51. Senate concurrent resolution congratulating Central Vermont Public Service Corporation on its designation as one of Forbes' 100 Most Trustworthy Companies.

And has adopted the same in concurrence.

Message from the House No. 70

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. 64. An act relating to growth center designations and appeals of such designations.

S. 205. An act relating to the Revised Uniform Anatomical Gift Act.

And has passed the same in concurrence with proposals 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. 103. An act relating to the study and recommendation of ignition interlock device legislation.

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

Rep. Grad of Moretown
Rep. French of Shrewsbury
Rep. Marek of Newfane

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. 207. An act relating to handling of milk samples.

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

Rep. Ainsworth of Royalton
Rep. Toll of Danville
Rep. McNeil of Rutland Town

Bill Referred

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

H. 782.

An act relating to a voluntary school district merger incentive program, supervisory union duties, and other education issues.

To the Committee on Rules.

Rules Suspended; Bill Committed

H. 778.

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

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

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Government Operations, Senator Campbell 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.

House Proposal of Amendment Concurred In with Amendment

S. 222.

House proposal of amendment to Senate bill entitled:

An act relating to recognition of Abenaki tribes.

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. 1 V.S.A. § 851 is amended to read:

§ 851. FINDINGS

The general assembly finds that:

(1) At least 1,700 Vermonters claim to be direct descendants of the several indigenous Native American peoples, now known as Western Abenaki tribes, who originally inhabited all of Vermont and New Hampshire, parts of western Maine, parts of southern Quebec, and parts of upstate New York for hundreds of years, beginning long before the arrival of Europeans.

(2) There is ample archaeological evidence that demonstrates that the Missisquoi Abenaki were indigenous to and farmed the river floodplains of Vermont at least as far back as the 1100s A.D.

(3) The Western Abenaki, including the Missisquoi, have a very definite and carefully maintained oral tradition that consistently references the Champlain valley in western Vermont.

(4) State recognition confers official acknowledgment of the long-standing existence in Vermont of Native American Indians who predated European settlement and enhances dignity and pride in their heritage and community.

~~(4)~~(5) Many contemporary Abenaki families continue to produce traditional crafts and intend to continue to pass on these indigenous traditions to the younger generations. In order to create and sell Abenaki crafts that may be labeled as Indian- or Native American-produced, the Abenaki must be recognized by the state of Vermont.

~~(5) Federal programs may be available to assist with educational and cultural opportunities for Vermont Abenaki and other Native Americans who reside in Vermont~~

(6) In May 2006, the general assembly passed S.117, Act No. 125, which created the Vermont Commission on Native American Affairs and recognized the Abenaki and all other Native American people living in Vermont as a minority population. According to Indian case law, recognition as a racial minority population prevents the group from being recognized as a tribal political entity, a designation that would provide the group with access to federal resources.

(7) According to a public affairs specialist with the U.S. Bureau of Indian Affairs (BIA), state recognition of Indian tribes plays a very small role with regard to federal recognition. The only exception is when a state recognized a tribe before 1900.

(8) At least 15 other states have recognized their resident indigenous people as Native American Indian tribes without any of those tribes previously or subsequently acquiring federal recognition.

(9) State-recognized Native American Indian tribes and their members will continue to be subject to all laws of the state, and recognition shall not be construed to create any basis or authority for tribes to establish or promote any form of prohibited gambling activity or to claim any interest in land or real estate in Vermont.

Sec. 2. 1 V.S.A. chapter 23 is amended to read:

CHAPTER 23. ~~ABENAKI~~ NATIVE AMERICAN INDIAN PEOPLE

Sec. 3. 1 V.S.A. § 852 is amended to read:

§ 852. VERMONT COMMISSION ON NATIVE AMERICAN AFFAIRS ESTABLISHED; AUTHORITY

(a) In order to recognize the historic and cultural contributions of Native Americans to Vermont, to protect and strengthen their heritage, and to address their needs in state policy, programs, and actions, there is hereby established the Vermont commission on Native American affairs (the "commission").

(b) The commission shall ~~comprise seven~~ be composed of nine members appointed by the governor for staggered two-year terms from a list of candidates compiled by the division for historic preservation. The governor shall appoint ~~a chair from among the members of the commission.~~ members who reflect a diversity of affiliations and geographic locations in Vermont. A member may serve for no more than two consecutive terms. The division shall compile a list of ~~candidates' recommendations from the following:~~

~~(1) Recommendations from the Missisquoi Abenaki and other Abenaki and other Native American regional tribal councils and communities in Vermont.~~

~~(2) Applicants~~ candidates who apply ~~in response to solicitations, publications, and website notification by~~ to the division ~~of historical preservation~~ and are residents of Vermont, and of documented Native American ancestry.

(c) The commission shall ~~have the authority to assist Native American tribal councils, organizations, and individuals to~~:

~~(1) Secure social services, education, employment opportunities, health care, housing, and census information.~~

~~(2) Permit the creation, display, and sale of Native American arts and crafts and legally to label them as Indian- or Native American-produced as provided in 18 U.S.C. § 1159(c)(3)(B) and 25 U.S.C. § 305e(d)(3)(B).~~

~~(3) Receive assistance and support from the federal Indian Arts and Crafts Board, as provided in 25 U.S.C. § 305 et seq.~~

~~(4) Become eligible for federal assistance with educational, housing, and cultural opportunities.~~

~~(5) Establish and continue programs offered through the U.S. Department of Education Office on Indian Education pursuant to Title VII of the Elementary and Secondary Education Act established in 1972 to support educational and cultural efforts of tribal entities that have been either state or federally recognized.~~

(1) Elect a chair each year.

(2) Participate in protecting unmarked burial sites and designate appropriate repatriation of remains in any case in which lineal descendants cannot be ascertained.

(3) Provide technical assistance and an explanation of the process to applicants for state recognition.

(4) Compile and maintain a list of individuals for appointment to a review panel.

(5) Appoint a three-member panel to review supporting documentation of an application for recognition to advise the commission of its accuracy and relevance.

(6) Review each application, supporting documentation, and findings of the review panel and make recommendations for or against state recognition.

(7) Assist Native American Indian tribes recognized by the state to:

(A) Secure assistance for social services, education, employment opportunities, health care, and housing.

(B) Develop and market Vermont Native American fine and performing arts, craft work, and cultural events.

(8) Develop policies and programs to benefit Vermont's Native American Indian population.

(d) The commission shall meet at least three times a year and at any other times at the request of the chair. The division of historic preservation within the agency of commerce and community development ~~and the department of education~~ shall provide administrative support to the commission, including providing communication and contact resources.

(e) The commission may seek and receive funding from federal and other sources to assist with its work.

Sec. 4. 1 V.S.A. § 853 is amended to read:

§ 853. CRITERIA AND PROCESS FOR STATE RECOGNITION OF ~~ABENAKI PEOPLE~~ NATIVE AMERICAN INDIAN TRIBES

~~(a) The state of Vermont recognizes the Abenaki people and recognizes all Native American people who reside in Vermont as a minority population.~~

~~(b) Recognition of the Native American or Abenaki people provided in subsection (a) of this section shall be for the sole purposes specified in subsection 852(c) of this title and shall not be interpreted to provide any Native American or Abenaki person with any other special rights or privileges that the state does not confer on or grant to other state residents.~~

~~(c) This chapter shall not be construed to recognize, create, extend, or form the basis of any right or claim to land or real estate in Vermont for the Abenaki people or any Abenaki individual and shall be construed to confer only those rights specifically described in this chapter.~~

(a) For the purposes of this section:

(1) "Applicant" means a group or band seeking formal state recognition as a Native American Indian tribe.

(2) "Legislative committees" means the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs.

(3) "Recognized" or "recognition" means acknowledged as a Native American Indian tribe by the Vermont general assembly.

(4) "Tribe" means an assembly of Native American Indian people who are related to each other by kinship and who trace their ancestry to a kinship group which has historically maintained influence and authority over its members.

(b) In order to be eligible for recognition, an applicant must file an application with the commission and demonstrate compliance with subdivisions (1) through (8) of this subsection which may be supplemented by subdivision (9) of this subsection:

(1) A majority of the applicant's members currently reside in a specific geographic location within Vermont.

(2) A substantial number of the applicant's members are related to each other by kinship and trace their ancestry to a kinship group through genealogy.

(3) The applicant has maintained a connection with Native American Indian tribes and bands that have historically inhabited Vermont.

(4) The applicant has historically maintained influence and authority over its members that are supported by documentation of their structure, membership criteria, the tribal roll that indicates the members' names and residential addresses, and the methods by which the applicant conducts its affairs.

(5) The applicant has an enduring community presence within the boundaries of Vermont that is documented by archaeology, ethnography, physical anthropology, history, folklore, or any other applicable scholarly research and data.

(6) The applicant is organized in part:

(A) To preserve, document, and promote its Native American Indian culture and history, and this purpose is reflected in its bylaws.

(B) To address the social, economic, or cultural needs of the members with ongoing educational programs and activities.

(7) The applicant can document traditions, customs, oral stories, and histories that signify the applicant's Native American heritage and connection to their historical homeland.

(8) The applicant has not been recognized as a tribe in any other state, province, or nation.

(9) Submission of letters, statements, and documents from:

(A) Municipal, state, or federal authorities that document the applicant's history of tribe-related business and activities.

(B) Tribes in and outside Vermont that attest to the Native American Indian heritage of the applicant.

(c) The commission shall consider the application pursuant to the following process which shall include at least the following requirements:

(1) The commission shall:

(A) Provide public notice of receipt of the application and supporting documentation.

(B) Hold at least one public hearing on the application.

(C) Provide written notice of completion of each step of the recognition process to the applicant.

(2) Established appropriate time frames that include a requirement that the commission and the review panel shall complete a review of the application and issue a determination regarding recognition within one year after an application and all the supporting documentation have been filed, and if a recommendation is not issued, the commission shall provide written explanation to the applicant and the legislative committees of the reasons for the delay and the expected date that a decision will be issued.

(3) A process for appointing a three-member review panel for each application to review the supporting documentation and determine its sufficiency, accuracy, and relevance. The review panel shall provide a detailed written report of its findings and conclusions to the commission, the applicant, and legislative committees. Members of each review panel shall be appointed cooperatively by the commission and the applicant from a list of professionals and academic scholars with expertise in cultural or physical anthropology, Indian law, archaeology, Native American Indian genealogy, history, or another related Native American Indian subject area. If the applicant and the commission are unable to agree on a panel, the state historic preservation officer shall appoint the panel. No member of the review panel may be a member of the commission or affiliated with or on the tribal rolls of the applicant.

(4) The commission shall review the application, the supporting documentation, the report from the review panel, and any other relevant information to determine compliance with subsection (b) of this section and make a determination to recommend or deny recognition. The decision to recommend recognition shall require a majority vote of all eligible members of the commission. A member of the commission who is on the tribal roll of the applicant is ineligible to participate in any action regarding the application. If the commission denies recognition, the commission shall provide the applicant and the legislative committees with written notice of the reasons for the denial, including specifics of all insufficiencies of the application.

(5) The applicant may file additional supporting documentation for reconsideration within one year after receipt of the notice of denial.

(6) An applicant may withdraw an application any time before the commission issues a recommendation, and may not file a new application for two years following withdrawal. A new application and supporting documentation shall be considered a de novo filing, and the commission shall not consider the withdrawn application or its supporting documentation.

(7) If the commission recommends that the applicant be recognized as a Native American Indian tribe, the commission shall provide a detailed written report of its findings and conclusions to the applicant and the legislative committees along with a recommendation that the general assembly recognize the applicant as a Native American Indian tribe.

(8) All proceedings, applications, and supporting documentation shall be public except material exempt pursuant to subsection 317 of this title.

(d) An applicant for recognition shall be recognized as follows:

(1) By approval of the general assembly.

(2) Two years after a recommendation to recognize a tribe by the commission is filed with the legislative committees, provided the general assembly took no action on the recommendation.

(e) A decision by the commission to recommend denial of recognition is final unless an applicant or a successor of interest to the applicant that has previously applied for and been denied recognition under this chapter provides new and substantial documentation and demonstrates that the new documentation was not reasonably available at the time of the filing of the original application.

(f) Vermont Native American Indian bands and tribes and individual members of those bands and tribes remain subject to all the laws of the state.

(g) Recognition of a Native American Indian tribe shall not be construed to create, extend, or form the basis of any right or claim to land or real estate in Vermont or right to conduct any gambling activities prohibited by law, but confers only those rights specifically described in this chapter.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

And that the bill title be amended to read:

"An act relating to state recognition of Native American Indian tribes in Vermont."

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Miller, on behalf of the Committee on Economic Development, Housing and General Affairs, moved that the Senate

concur with the House proposal of amendment with the a further proposal of amendment as follows:

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

Sec. 1. 1 V.S.A. § 851 is amended to read:

§ 851. FINDINGS

The general assembly finds that:

(1) At least 1,700 Vermonters claim to be direct descendants of the several indigenous Native American peoples, now known as Western Abenaki tribes, who originally inhabited all of Vermont and New Hampshire, parts of western Maine, parts of southern Quebec, and parts of upstate New York for hundreds of years, beginning long before the arrival of Europeans.

(2) There is ample archaeological evidence that demonstrates that the Missisquoi and Cowasuck Abenaki were indigenous to and farmed the river floodplains of Vermont at least as far back as the 1100s A.D.

(3) The Western Abenaki, including the Missisquoi, have a very definite and carefully maintained oral tradition that consistently references the Champlain valley in western Vermont.

(4) State recognition confers official acknowledgment of the long-standing existence in Vermont of Native American Indians who predated European settlement and enhances dignity and pride in their heritage and community.

~~(4)~~(5) Many contemporary Abenaki families continue to produce traditional crafts and intend to continue to pass on these indigenous traditions to the younger generations. In order to create and sell Abenaki crafts that may be labeled as Indian- or Native American-produced, the Abenaki must be recognized by the state of Vermont.

~~(5) Federal programs may be available to assist with educational and cultural opportunities for Vermont Abenaki and other Native Americans who reside in Vermont~~

(6) According to a public affairs specialist with the U.S. Bureau of Indian Affairs (BIA), state recognition of Indian tribes plays a very small role with regard to federal recognition. The only exception is when a state recognized a tribe before 1900.

(7) At least 15 other states have recognized their resident indigenous people as Native American Indian tribes without any of those tribes previously or subsequently acquiring federal recognition.

(8) State-recognized Native American Indian tribes and their members will continue to be subject to all laws of the state, and recognition shall not be construed to create any basis or authority for tribes to establish or promote any form of prohibited gambling activity or to claim any interest in land or real estate in Vermont.

Sec. 2. 1 V.S.A. chapter 23 is amended to read:

CHAPTER 23. ~~ABENAKI~~ NATIVE AMERICAN INDIAN PEOPLE

Sec. 3. 1 V.S.A. § 852 is amended to read:

§ 852. VERMONT COMMISSION ON NATIVE AMERICAN AFFAIRS ESTABLISHED; AUTHORITY

(a) In order to recognize the historic and cultural contributions of Native Americans to Vermont, to protect and strengthen their heritage, and to address their needs in state policy, programs, and actions, there is hereby established the Vermont commission on Native American affairs (the "commission").

(b) The commission shall ~~comprise seven~~ be composed of nine members appointed by the governor for staggered two-year terms from a list of candidates compiled by the division for historic preservation. The governor shall appoint ~~a chair from among the members of the commission~~ members who have been residents of Vermont for a minimum of three years and reflect a diversity of affiliations and geographic locations in Vermont. A member may serve for no more than two consecutive terms, unless there are insufficient eligible candidates. The division shall compile a list of ~~candidates' recommendations~~ candidates from the following:

(1) Recommendations from ~~the Missisquoi Abenaki and other Abenaki and other~~ Native American ~~regional tribal councils and~~ communities residing in Vermont. Once a Native American Indian tribe has been recognized under this chapter, a qualified candidate recommended by that tribe shall have priority for appointment to fill the next available vacancy on the commission.

~~(2) Applicants~~ Individuals who apply ~~in response to solicitations, publications, and website notification by~~ to the division of historical preservation. Candidates shall indicate their residence and Native American affiliation.

(c) The commission shall ~~have the authority to assist Native American tribal councils, organizations, and individuals to~~:

~~(1) Secure social services, education, employment opportunities, health care, housing, and census information.~~

~~(2) Permit the creation, display, and sale of Native American arts and crafts and legally to label them as Indian- or Native American-produced as provided in 18 U.S.C. § 1159(c)(3)(B) and 25 U.S.C. § 305e(d)(3)(B).~~

~~(3) Receive assistance and support from the federal Indian Arts and Crafts Board, as provided in 25 U.S.C. § 305 et seq.~~

~~(4) Become eligible for federal assistance with educational, housing, and cultural opportunities.~~

~~(5) Establish and continue programs offered through the U.S. Department of Education Office on Indian Education pursuant to Title VII of the Elementary and Secondary Education Act established in 1972 to support educational and cultural efforts of tribal entities that have been either state or federally recognized.~~

(1) Elect a chair each year.

(2) Provide technical assistance and an explanation of the process to applicants for state recognition.

(3) Compile and maintain a list of professionals and scholars for appointment to a review panel.

(4) Appoint a three-member panel acceptable to both the applicant and the commission to review supporting documentation of an application for recognition and advise the commission of its accuracy and relevance.

(5) Review each application, supporting documentation and findings of the review panel, and make recommendations for or against state recognition to the legislative committees.

(6) Assist Native American Indian tribes recognized by the state to:

(A) Secure assistance for social services, education, employment opportunities, health care, and housing.

(B) Develop and market Vermont Native American fine and performing arts, craft work, and cultural events.

(7) Develop policies and programs to benefit Vermont's Native American Indian population within the scope of the commission's authority.

(d) The commission shall meet at least three times a year and at any other times at the request of the chair. The division of historic preservation within the agency of commerce and community development ~~and the department of education~~ shall provide administrative support to the commission, including providing communication and contact resources.

(e) The commission may seek and receive funding from federal and other sources to assist with its work.

Sec. 4. 1 V.S.A. § 853 is amended to read:

§ 853. CRITERIA AND PROCESS FOR STATE RECOGNITION OF ~~ABENAKI PEOPLE~~ NATIVE AMERICAN INDIAN TRIBES

~~(a) The state of Vermont recognizes the Abenaki people and recognizes all Native American people who reside in Vermont as a minority population.~~

~~(b) Recognition of the Native American or Abenaki people provided in subsection (a) of this section shall be for the sole purposes specified in subsection 852(c) of this title and shall not be interpreted to provide any Native American or Abenaki person with any other special rights or privileges that the state does not confer on or grant to other state residents.~~

~~(c) This chapter shall not be construed to recognize, create, extend, or form the basis of any right or claim to land or real estate in Vermont for the Abenaki people or any Abenaki individual and shall be construed to confer only those rights specifically described in this chapter.~~

(a) For the purposes of this section:

(1) "Applicant" means a group or band seeking formal state recognition as a Native American Indian tribe.

(2) "Legislative committees" means the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs.

(3) "Recognized" or "recognition" means acknowledged as a Native American Indian tribe by the Vermont general assembly.

(4) "Tribe" means an assembly of Native American Indian people who are related to each other by kinship and who trace their ancestry to a kinship group that has historically maintained an organizational structure that exerts influence and authority over its members.

(b) The state recognizes all individuals of Native American Indian heritage who reside in Vermont as an ethnic minority. This designation does not confer any status to any collective group of individuals.

(c) In order to be eligible for recognition, an applicant must file an application with the commission and demonstrate compliance with subdivisions (1) through (8) of this subsection which may be supplemented by subdivision (9) of this subsection:

(1) A majority of the applicant's members currently reside in a specific geographic location within Vermont.

(2) A substantial number of the applicant's members are related to each other by kinship and trace their ancestry to a kinship group through genealogy or other methods. Genealogical documents shall be limited to those that show a descendency from identified Vermont or regional native people.

(3) The applicant has a connection with Native American Indian tribes and bands that have historically inhabited Vermont.

(4) The applicant has historically maintained an organizational structure that exerts influence and authority over its members that is supported by documentation of the structure, membership criteria, the names and residential addresses of its members, and the methods by which the applicant conducts its affairs.

(5) The applicant has an enduring community presence within the boundaries of Vermont that is documented by archaeology, ethnography, physical anthropology, history, folklore, or any other applicable scholarly research and data.

(6) The applicant is organized in part:

(A) To preserve, document, and promote its Native American Indian culture and history, and this purpose is reflected in its bylaws.

(B) To address the social, economic, political or cultural needs of the members with ongoing educational programs and activities.

(7) The applicant can document traditions, customs, oral stories, and histories that signify the applicant's Native American heritage and connection to their historical homeland.

(8) The applicant has not been recognized as a tribe in any other state, province, or nation.

(9) Submission of letters, statements, and documents from:

(A) Municipal, state, or federal authorities that document the applicant's history of tribe-related business and activities.

(B) Tribes in and outside Vermont that attest to the Native American Indian heritage of the applicant.

(d) The commission shall consider the application pursuant to the following process which shall include at least the following requirements:

(1) The commission shall:

(A) Provide public notice of receipt of the application and supporting documentation.

(B) Hold at least one public hearing on the application.

(C) Provide written notice of completion of each step of the recognition process to the applicant.

(2) Established appropriate time frames that include a requirement that the commission and the review panel shall complete a review of the application and issue a determination regarding recognition within one year after an application and all the supporting documentation have been filed, and if a recommendation is not issued, the commission shall provide written explanation to the applicant and the legislative committees of the reasons for the delay and the expected date that a decision will be issued.

(3) A process for appointing a three-member review panel for each application to review the supporting documentation and determine its sufficiency, accuracy, and relevance. The review panel shall provide a detailed written report of its findings and conclusions to the commission, the applicant, and legislative committees. Members of each review panel shall be appointed cooperatively by the commission and the applicant from a list of professionals and academic scholars with expertise in cultural or physical anthropology, Indian law, archaeology, Native American Indian genealogy, history, or another related Native American Indian subject area. If the applicant and the commission are unable to agree on a panel, the state historic preservation officer shall appoint the panel. No member of the review panel may be a member of the commission or affiliated with or on the tribal rolls of the applicant.

(4) The commission shall review the application, the supporting documentation, the report from the review panel, and any other relevant information to determine compliance with subsection (b) of this section and make a determination to recommend or deny recognition. The decision to recommend recognition shall require a majority vote of all eligible members of the commission. A member of the commission who is on the tribal roll of the applicant is ineligible to participate in any action regarding the application. If the commission denies recognition, the commission shall provide the applicant and the legislative committees with written notice of the reasons for the denial, including specifics of all insufficiencies of the application.

(5) The applicant may file additional supporting documentation for reconsideration within one year after receipt of the notice of denial.

(6) An applicant may withdraw an application any time before the commission issues a recommendation, and may not file a new application for two years following withdrawal. A new application and supporting documentation shall be considered a de novo filing, and the commission shall not consider the withdrawn application or its supporting documentation.

(7) The commission shall provide a detailed written report of its findings and conclusions to the applicant and the legislative committees along with a recommendation that the general assembly recognize or deny recognition to the applicant as a Native American Indian tribe.

(8) All proceedings, applications, and supporting documentation shall be public except material exempt pursuant to subsection 317(40) of this title. Any documents relating to genealogy submitted in support of the application shall be available only to the three-member review panel.

(e) An applicant for recognition shall be recognized as follows:

(1) By approval of the general assembly.

(2) Two years after a recommendation to recognize a tribe by the commission is filed with the legislative committees, provided the general assembly took no action on the recommendation.

(f) A decision by the commission to recommend denial of recognition is final unless an applicant or a successor of interest to the applicant that has previously applied for and been denied recognition under this chapter provides new and substantial documentation and demonstrates that the new documentation was not reasonably available at the time of the filing of the original application.

(g) Vermont Native American Indian bands and tribes and individual members of those bands and tribes remain subject to all the laws of the state.

(h) Recognition of a Native American Indian tribe shall not be construed to create, extend, or form the basis of any right or claim to land or real estate in Vermont or right to conduct any gambling activities prohibited by law, but confers only those rights specifically described in this chapter.

Sec. 5. 1 V.S.A. § 317(40) is added to read:

(40) Records of genealogy provided in support of an application for tribal recognition pursuant to chapter 23 of this title.

Sec. 6. TRANSITIONAL PROVISIONS

(a) The terms of the present members of the commission on Native American affairs shall be deemed expired and the governor shall appoint all nine members of the commission.

(b) The present members of the commission may not reapply for appointment to the commission for two years following the end of their term.

(c) Appointments to the commission shall be made no later than September 1, 2010, provided a sufficient number of qualified candidates have been submitted to the governor.

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.

And that the bill title be amended to read:

"An act relating to state recognition of Native American Indian tribes in Vermont".

Which was agreed to on a roll call, Yeas 28, Nays 0.

Senator Miller 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, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: None.

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

House Proposal of Amendment Concurred In with Amendment

S. 88.

House proposal of amendment to Senate bill entitled:

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

Was taken up.

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

* * * HEALTH CARE REFORM PROVISIONS * * *

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) The cost of health care in Vermont is estimated to increase by $1 billion, from $4.9 billion in 2010 to $5.9 billion, by 2012.

(3) 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.

(4) 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.

(5) 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.

(6) At the national level, health care expenses are estimated at 18 percent of GDP and are estimated to rise to 34 percent by 2040.

(7) 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.

(8) Of the approximately 47,000 Vermonters who remain uninsured, more than one-half qualify for state health care programs, and nearly 40 percent of those who qualify do so at an income level which requires no premium.

(9) Many Vermonters do not access health care because of unaffordable insurance premiums, deductibles, co-payments, and coinsurance.

(10) 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.

(11) At a time when high health care costs are negatively affecting families, employers, nonprofit organizations, and government at the local, state, and federal levels, Vermont is making positive progress toward health care reform.

(12) An additional 30,000 Vermonters are currently covered under state health care programs than were covered in 2007, including approximately 12,000 Vermonters who receive coverage through Catamount Health.

(13) Vermont's health care reform efforts to date have included the Blueprint for Health, a vision, plan, and statewide partnership that strives to strengthen the primary care health care delivery and payment systems and create new community resources to keep Vermonters healthy. Expanding the Blueprint for Health statewide may result in a significant systemwide savings in the future.

(14) Health information technology, a system designed to promote patient education, patient privacy, and licensed health care practitioner best practices through the shared use of electronic health information by health care facilities, health care professionals, public and private payers, and patients, has already had a positive impact on health care in this state and should continue to improve quality of care in the future.

(15) Indicators show Vermont's utilization rates and spending are significantly lower than those of the vast majority of other states. However, significant variation in both utilization and spending are observed within Vermont which provides for substantial opportunity for quality improvements and savings.

(16) Other Vermont health care reform efforts that have proven beneficial to thousands of Vermonters include Dr. Dynasaur, VHAP, Catamount Health, and the department of health's wellness and prevention initiatives.

(17) 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 subdivisions (12), (13), (14), (15), and (16) of this section will not, on their own, provide health care coverage for all Vermonters or sufficiently reduce escalating health care costs.

(18) Only continued structural reform will provide all Vermonters with access to affordable, high quality health care.

(19) Federal health care reform efforts will provide Vermont with many opportunities to grow and a framework by which to strengthen a universal and affordable health care system.

(20) To supplement federal reform and maximize opportunities for this state, Vermont must provide additional state health care reform initiatives.

* * * 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 essential 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) Every Vermonter should be able to choose his or her primary care provider, as well as choosing providers of institutional and specialty care.

(5) The health care system will recognize the primacy of the patient-provider relationship, respecting the professional judgment of providers and the informed decisions of patients.

(6) Vermont's health delivery system must model continuous improvement of health care quality and safety and, therefore, the system must be evaluated for improvement in access, quality, and reliability and for a reduction in cost.

(7) A system for containing all system costs and eliminating unnecessary expenditures, including by reducing administrative costs; reducing costs that do not contribute to efficient, quality health services; and reducing care that does not improve health outcomes, must be implemented for the health of the Vermont economy.

(8) The financing of health care in Vermont must be sufficient, fair, sustainable, and shared equitably.

(9) 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 affordable 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, preferably to reducing health care costs below today's amounts, and to raising revenues that are sufficient to support the state's financial obligations for health care on an ongoing basis.

(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 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, and the values and priorities of Vermonters, and analyzing required federal health benefit packages.

(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 representatives appointed by the speaker of the house, four 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:

(A) be in the employ of or holding any official relation to any health care provider or insurer or be engaged in the management of a health care provider or insurer;

(B) own stock, bonds, or other securities of a health care provider or insurer, unless the stock, bond, or other security is purchased by or through a mutual fund, blind trust, or other mechanism where a person other than the member chooses the stock, bond, or security;

(C) in any manner, be connected with the operation of a health care provider or insurer; or

(D) 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 and the president pro tempore of the senate shall appoint the new members of the joint legislative commission on health care reform as specified in Sec. 4 of this act. All other current members, including those appointed by the governor and the legislative members, shall continue to serve their existing terms.

Sec. 6. HEALTH CARE SYSTEM DESIGN AND IMPLEMENTATION PLAN

(a)(1) By February 1, 2011, one or more consultants of 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)(A)(i) One option shall design 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.

(ii) One option shall design a public health benefit option administered by state government, which allows individuals to choose between the public option and private insurance coverage and allows for fair and robust competition among public and private plans.

(iii) One option shall design a system based on Vermont's current health care reform initiatives as provided for in 3 V.S.A. § 2222a, on the provisions in this act expanding the state's health care reform initiatives, and on the new federal insurance exchange, insurance regulatory provisions, and other provisions in the Patient Protection and Affordable Care Act of 2010, as

amended by the Health Care and Education Reconciliation Act of 2010, which further the principles in Sec. 2 of this act, the goals in Sec. 3, or the parameters described in this section.

(B) Any additional options shall be designed by the consultant, in consultation with the commission, taking into consideration the principles in Sec. 2 of this act, the goals in Sec. 3, and the parameters described in this section.

(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. The recommendation section of the proposal shall not be finalized until after the receipt of public input as provided in subdivision (g)(1) of this section.

(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 designs, the consultant shall review and consider the following fundamental elements:

(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)(i) Packages of health services. In order to allow the general assembly a choice among varied packages of health services in each design option, the consultant shall provide at least two packages of health services providing for the integration of physical and mental health as further described in subdivision (A)(ii) of this subdivision (1) as part of each design option.

(ii)(I) Each design option shall include one package of health services which includes access to and coverage for primary care, preventive care, chronic care, acute episodic care, palliative care, hospice care, hospital services, prescription drugs, and mental health and substance abuse services.

(II) Each design option shall include at least one additional package of health services, which includes the services described in subdivision (A)(ii)(I) of this subdivision (1) and coverage for supplemental health services, such as home- and community-based services, services in nursing homes, payment for transportation related to health services, or dental, hearing, or vision services.

(iii)(I) Each proposed package of health services shall include a cost-sharing proposal that includes a waiver of any deductible and other cost-sharing payments for chronic care for individuals participating in chronic care management and for preventive care.

(II) Each package of health service shall include a proposal that has no cost-sharing, including the cost differential between subdivision (A)(iii)(I) of this subdivision (1) and this subdivision (II).

(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. Payment methods for mental health services shall be consistent with mental health parity. 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

(VII) 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 be in an amount which provides reasonable access to health services, provides sufficient uniform payment to health care professionals, and assists to create financial stability of health care professionals. Payment amounts shall be consistent with mental health parity. 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 consultant 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 regional health systems. The consultant shall propose in each design a coordinated regional health system, which ensures that the delivery of health services to the citizens of Vermont is coordinated in order to improve health outcomes, improve the efficiency of the health system, and improve patients' experience of health services. The consultant shall review and analyze Vermont's existing efforts to reform the delivery of health care, including the Blueprint for Health described in chapter 13 of Title 18, and recommend how to build on or improve current reform efforts. In designing coordinated regional health systems, the consultant shall consider:

(A) how to ensure that health professionals, hospitals, health care facilities, and home- and community-based service providers offer health services in an integrated manner designed to optimize health services at a

lower cost, to reduce redundancies in the health system as a whole, and to improve quality;

(B) the creation of regional mechanisms to solicit public input for the regional health system; conduct a community needs assessment for incorporation into the health resources allocation plan; and plan for community health needs based on the community needs assessment; and

(C) the development of a regional entity to manage health services for that region's population, including by making budget recommendations and resource allocations for the region; providing oversight and evaluation regarding the delivery of care in its region; developing payment methodologies and incentive payments; and other functions necessary to manage the region's health system.

(3) Financing and estimated costs, including federal financing. The consultant shall provide:

(A) an estimate of the total costs of each design option, including any additional costs for providing access to and coverage for health services to the uninsured and underinsured; any estimated costs necessary to build a new system; and any estimated savings from implementing a single system.

(B) all estimated cost savings and reductions for existing health care programs, including Medicaid or Medicaid-funded programs. Medicaid cost savings reductions shall be presented relative to actual fiscal 2009 expenditures and by the following service categories: nursing home; home- and community-based service – mental retardation; pharmacy; mental health clinic; physician; outpatient; interdepartmental diagnosis and prevention services; inpatient; day treatment mental health services; home- and community-based services; disproportionate hospital payments; Catamount premiums; assistive community care; personal care services; dental; physiologist; alcohol and drug abuse families in recovery; transportation; and federally qualified health care centers.

(C) financing proposals for sustainable revenue, including by maximizing federal revenues, or reductions from existing health care programs, services, state agencies, or other sources necessary for funding the cost of the new system.

(D) 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.

(E) 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 in order to maximize federal funds and, if applicable, for a waiver from these provisions when available.

(4) A method to address compliance of the proposed design option or options with federal law if necessary, including 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. 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 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 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 consultant shall include a recommendation for key indicators to measure and evaluate the design option chosen by the general assembly and an analysis of each design option as compared to the current state of health care in Vermont, including:

(A) the financing and cost estimates outlined in subdivision (e)(3) of this section;

(B) the impacts on the current private and public insurance system;

(C) the expected net fiscal impact, including tax implications, on individuals and on businesses from the modifications to the health care system proposed in the design;

(D) impacts on the state's economy;

(E) 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

(F) the pros and cons of each design option and of no changes to the current system.

(h) After receipt of the proposal and implementation plan pursuant to subdivision (g)(2) of this section, the general assembly shall solicit input from interested members of the public and engage in a full and open public review and hearing process on the proposal and implementation plan.

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 shall first be used to offset any state funds that are appropriated or allocated in this act or in other acts related to the requirements of Sec. 6. Any grant funds received in excess of the appropriated amount may be used for the analysis.

* * * HEALTH CARE REFORM – MISCELLANEOUS * * *

Sec. 8. 18 V.S.A. § 9401 is amended to read:

§ 9401. POLICY

(a) It is the policy of the state of Vermont ~~to~~ that health care is a public good for all Vermonters, and that the state must ensure that all residents have access to quality health services at costs that are affordable. To achieve this policy, it is necessary that the state ensure the quality of health care services provided in Vermont and, until health care systems are successful in controlling their costs and resources, to oversee cost containment.

* * *

Sec. 9. 8 V.S.A. § 4062c is amended to read:

§ 4062c. COMPLIANCE WITH FEDERAL LAW

Except as otherwise provided in this title, health insurers, hospital or medical service corporations, and health maintenance organizations that issue, sell, renew, or offer health insurance coverage in Vermont shall comply with

the requirements of the Health Insurance Portability and Accountability Act of 1996, as amended from time to time (42 U.S.C., Chapter 6A, Subchapter XXV), and 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. The commissioner shall enforce such requirements pursuant to his or her authority under this title.

Sec. 10. IMPLEMENTATION OF CERTAIN FEDERAL HEALTH CARE REFORM PROVISIONS

(a) From the effective date of this act through July 1, 2011, the commissioner of health shall undertake such planning steps and other actions as are necessary to secure grants and other beneficial opportunities for Vermont provided by 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.

(b) From the effective date of this act through July 1, 2011, the commissioner of Vermont health access shall undertake such planning steps as are necessary to ensure Vermont's participation in beneficial opportunities created by 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.

* * * HEALTH CARE DELIVERY SYSTEM PROVISIONS * * *

Sec. 11. INTENT

It is the intent of the general assembly to reform the health care delivery system in order to manage total costs of the system, improve health outcomes for Vermonters, and provide a positive health care experience for patients and providers. In order to achieve this goal and to ensure the success of health care reform, it is essential to pursue innovative approaches to a single system of health care delivery that integrates health care at a community level and contains costs through community-based payment reform, such as developing a network of community health systems. It is also the intent of the general assembly to ensure sufficient state involvement and action in designing and implementing community health systems in order to comply with federal anti-trust provisions by replacing competition between payers and others with state regulation and supervision.

Sec. 12. BLUEPRINT FOR HEALTH; COMMITTEES

It is the intent of the general assembly to codify and recognize the existing expansion design and evaluation committee and payer implementation work group and to codify the current consensus-building process provided for by these committees in order to develop payment reform models in the Blueprint

for Health. The director of the Blueprint may continue the current composition of the committees and need not reappoint members as a result of this act.

Sec. 13. 18 V.S.A. chapter 13 is amended to read:

CHAPTER 13. CHRONIC CARE INFRASTRUCTURE AND PREVENTION MEASURES

§ 701. DEFINITIONS

For the purposes of this chapter:

(1) "Blueprint for Health" or "Blueprint" means the state's ~~plan for chronic care infrastructure, prevention of chronic conditions, and chronic care management program, and includes an integrated approach to patient self-management, community development, health care system and professional practice change, and information technology initiatives~~ program for integrating a system of health care for patients, improving the health of the overall population, and improving control over health care costs by promoting health maintenance, prevention, and care coordination and management.

(2) "Chronic care" means health services provided by a health care professional for an established clinical condition that is expected to last a year or more and that requires ongoing clinical management attempting to restore the individual to highest function, minimize the negative effects of the condition, prevent complications related to chronic conditions, engage in advanced care planning, and promote appropriate access to palliative care. Examples of chronic conditions include diabetes, hypertension, cardiovascular disease, cancer, asthma, pulmonary disease, substance abuse, mental illness, spinal cord injury, hyperlipidemia, and chronic pain.

(3) "Chronic care information system" means the electronic database developed under the Blueprint for Health that shall include information on all cases of a particular disease or health condition in a defined population of individuals.

(4) "Chronic care management" means a system of coordinated health care interventions and communications for individuals with chronic conditions, including significant patient self-care efforts, systemic supports for ~~the physician and patient relationship~~ licensed health care practitioners and their patients, and a plan of care emphasizing prevention of complications utilizing evidence-based practice guidelines, patient empowerment strategies, and evaluation of clinical, humanistic, and economic outcomes on an ongoing basis with the goal of improving overall health.

(5) "Health care professional" means an individual, partnership, corporation, facility, or institution licensed or certified or authorized by law to provide professional health care services.

(6) ~~"Health risk assessment" means screening by a health care professional for the purpose of assessing an individual's health, including tests or physical examinations and a survey or other tool used to gather information about an individual's health, medical history, and health risk factors during a health screening.~~ "Health benefit plan" shall have the same meaning as 8 V.S.A. § 4088h.

(7) "Health insurer" shall have the same meaning as in section 9402 of this title.

(8) "Hospital" shall have the same meaning as in section 9456 of this title.

§ 702. BLUEPRINT FOR HEALTH; STRATEGIC PLAN

(a)(1) ~~As used in this section, "health insurer" shall have the same meaning as in section 9402 of this title.~~

~~(b)~~ The department of Vermont health access shall be responsible for the Blueprint for Health.

(2) The director of the Blueprint, in collaboration with the commissioner of health and the commissioner of Vermont health access, shall oversee the development and implementation of the Blueprint for Health, including ~~the five-year~~ a strategic plan describing the initiatives and implementation timelines and strategies. Whenever private health insurers are concerned, the director shall collaborate with the commissioner of banking, insurance, securities, and health care administration.

~~(c)~~(b)(1)(A) The ~~secretary~~ commissioner of Vermont health access 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; the commissioner of mental health; a representative from the department of banking, insurance, securities, and health care administration; a representative from the office of Vermont health access; a representative from the Vermont medical society; a representative from the Vermont nurse practitioners association; 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~~ professions; a primary

care professional serving low income or uninsured Vermonters; a representative of the Vermont assembly of home health agencies who has clinical experience, a representative from a self-insured employer who offers a health benefit plan to its employees, 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.

~~(2)~~(B) The executive committee shall engage a broad range of health care professionals who provide health services as defined under ~~section~~ 8 V.S.A. § 4080f ~~of Title 18~~, health ~~insurance plans~~ insurers, professional organizations, community and nonprofit groups, consumers, businesses, school districts, and state and local government in developing and implementing a five-year strategic plan.

(2)(A) The director shall convene an expansion design and evaluation committee, which shall meet no fewer than six times annually, to recommend a design plan, including modifications over time, for the statewide implementation of the Blueprint for Health and to recommend appropriate methods to evaluate the Blueprint. This committee shall be composed of the members of the executive committee, representatives of participating health insurers, representatives of participating medical homes and community health teams, the deputy commissioner of health care reform, a representative of the Bi-State Primary Care Association, a representative of the University of Vermont College of Medicine's Office of Primary Care, a representative of the Vermont information technology leaders, and consumer representatives. The committee shall comply with open meeting and public record requirements in chapter 5 of Title 1.

(B) The director shall also convene a payer implementation work group, which shall meet no fewer than six times annually, to design the medical home and community health team enhanced payments, including modifications over time, and to make recommendations to the expansion design and evaluation committee described in subdivision (A) of this subdivision (2). The work group shall include representatives of the participating health insurers, representatives of participating medical homes and community health teams, and the commissioner of Vermont health access or designee. The work group shall comply with open meeting and public record requirements in chapter 5 of Title 1.

~~(d)~~(c) The Blueprint shall be developed and implemented to further the following principles:

(1) the primary care provider should serve a central role in the coordination of care and shall be compensated appropriately for this effort;

(2) use of information technology should be maximized;

(3) local service providers should be used and supported, whenever possible;

(4) transition plans should be developed by all involved parties to ensure a smooth and timely transition from the current model to the Blueprint model of health care delivery and payment;

(5) implementation of the Blueprint in communities across the state should be accompanied by payment to providers sufficient to support care management activities consistent with the Blueprint, recognizing that interim or temporary payment measures may be necessary during early and transitional phases of implementation; and

(6) interventions designed to prevent chronic disease and improve outcomes for persons with chronic disease should be maximized, should target specific chronic disease risk factors, and should address changes in individual behavior, the physical and social environment, and health care policies and systems.

(d) The Blueprint for Health shall include the following initiatives:

(1) technical assistance as provided for in section 703 of this title to implement:

(A) a patient-centered medical home;

(B) community health teams; and

(C) a model for uniform payment for health services by health insurers, Medicaid, Medicare if available, and other entities that encourage the use of the medical home and the community health teams.

(2) collaboration with Vermont information technology leaders established in section 9352 of this title to assist health care professionals and providers to create a statewide infrastructure of health information technology in order to expand the use of electronic medical records through a health information exchange and a centralized clinical registry on the Internet.

(3) in consultation with employers, consumers, health insurers, and health care providers, the development, maintenance, and promotion of evidence-based, nationally recommended guidelines for greater commonality, consistency, and coordination across health insurers in care management programs and systems.

(4) the adoption and maintenance of clinical quality and performance measures for each of the chronic conditions included in Medicaid's care management program established in 33 V.S.A. § 1903a. These conditions include asthma, chronic obstructive pulmonary disease, congestive heart failure, diabetes, and coronary artery disease.

(5) the adoption and maintenance of clinical quality and performance measures, aligned with but not limited to existing outcome measures within the agency of human services, to be reported by health care professionals, providers or health insurers and used to assess and evaluate the impact of the Blueprint for health and cost outcomes. In accordance with a schedule established by the Blueprint executive committee, all clinical quality and performance measures shall be reviewed for consistency with those used by the Medicare program and updated, if appropriate.

(6) the adoption and maintenance of clinical quality and performance measures for pain management, palliative care, and hospice care.

(7) the use of surveys to measure satisfaction levels of patients, health care professionals, and health care providers participating in the Blueprint.

(e)~~(1) The strategic plan shall include:~~

~~(A) a description of the Vermont Blueprint for Health model, which includes general, standard elements established in section 1903a of Title 33, patient self-management, community initiatives, and health system and information technology reform, to be used uniformly statewide by private insurers, third party administrators, and public programs;~~

~~(B) a description of prevention programs and how these programs are integrated into communities, with chronic care management, and the Blueprint for Health model;~~

~~(C) a plan to develop and implement reimbursement systems aligned with the goal of managing the care for individuals with or at risk for conditions in order to improve outcomes and the quality of care;~~

~~(D) the involvement of public and private groups, health care professionals, insurers, third party administrators, associations, and firms to facilitate and assure the sustainability of a new system of care;~~

~~(E) the involvement of community and consumer groups to facilitate and assure the sustainability of health services supporting healthy behaviors and good patient self-management for the prevention and management of chronic conditions;~~

~~(F) alignment of any information technology needs with other health care information technology initiatives;~~

~~(G) the use and development of outcome measures and reporting requirements, aligned with existing outcome measures within the agency of human services, to assess and evaluate the system of chronic care;~~

~~(H) target timelines for inclusion of specific chronic conditions in the chronic care infrastructure and for statewide implementation of the Blueprint for Health;~~

~~(I) identification of resource needs for implementing and sustaining the Blueprint for Health and strategies to meet the needs; and~~

~~(J) a strategy for ensuring statewide participation no later than January 1, 2011 by health insurers, third-party administrators, health care professionals, hospitals and other professionals, and consumers in the chronic care management plan, including common outcome measures, best practices and protocols, data reporting requirements, payment methodologies, and other standards. In addition, the strategy should ensure that all communities statewide will have implemented at least one component of the Blueprint by January 1, 2009.~~

~~(2)~~ The strategic plan developed under subsection (a) of this section shall be reviewed biennially and amended as necessary to reflect changes in priorities. Amendments to the plan shall be included in the report established under ~~subsection (i) of this section~~ section 709 of this title.

~~(f) The director of the Blueprint shall facilitate timely progress in adoption and implementation of clinical quality and performance measures as indicated by the following benchmarks:~~

~~(1) by July 1, 2007, clinical quality and performance measures are adopted for each of the chronic conditions included in the Medicaid Chronic Care Management Program. These conditions include, but are not limited to, asthma, chronic obstructive pulmonary disease, congestive heart failure, diabetes, and coronary artery disease.~~

~~(2) at least one set of clinical quality and performance measures will be added each year and a uniform set of clinical quality and performance measures for all chronic conditions to be addressed by the Blueprint will be available for use by health insurers and health care providers by January 1, 2010.~~

~~(3) in accordance with a schedule established by the Blueprint executive committee, all clinical quality and performance measures shall be reviewed for consistency with those used by the Medicare program and updated, if appropriate.~~

~~(g) The director of the Blueprint shall facilitate timely progress in coordination of chronic care management as indicated by the following benchmarks:~~

~~(1) by October 1, 2007, risk stratification strategies shall be used to identify individuals with or at risk for chronic disease and to assist in the determination of the severity of the chronic disease or risk thereof, as well as the appropriate type and level of care management services needed to manage those chronic conditions.~~

~~(2) by January 1, 2009, guidelines for promoting greater commonality, consistency, and coordination across health insurers in care management programs and systems shall be developed in consultation with employers, consumers, health insurers, and health care providers.~~

~~(3) beginning July 1, 2009, and each year thereafter, health insurers, in collaboration with health care providers, shall report to the secretary on evaluation of their disease management programs and the progress made toward aligning their care management program initiatives with the Blueprint guidelines.~~

~~(h)(1) No later than January 1, 2009, the director shall, in consultation with employers, consumers, health insurers, and health care providers, complete a comprehensive analysis of sustainable payment mechanisms. No later than January 1, 2009, the director shall report to the health care reform commission and other stakeholders his or her recommendations for sustainable payment mechanisms and related changes needed to support achievement of Blueprint goals for health care improvement, including the essential elements of high quality chronic care, such as care coordination, effective use of health care information by physicians and other health care providers and patients, and patient self-management education and skill development.~~

~~(2) By January 1, 2009, and each year thereafter, health insurers will participate in a coordinated effort to determine satisfaction levels of physicians and other health care providers participating in the Blueprint care management initiatives, and will report on these satisfaction levels to the director and in the report established under subsection (i) this section.~~

~~(i) The director shall report annually, no later than January 1, on the status of implementation of the Vermont Blueprint for Health for the prior calendar year, and shall provide the report to the house committee on health care, the senate committee on health and welfare, the health access oversight committee, and the commission on health care reform. The report shall include the number of participating insurers, health care professionals and patients; the progress for achieving statewide participation in the chronic care management plan, including the measures established under subsection (e) of this section;~~

~~the expenditures and savings for the period; the results of health care professional and patient satisfaction surveys; the progress toward creation and implementation of privacy and security protocols; information on the progress made toward the requirements in subsections (g) and (h) of this section; and other information as requested by the committees. The surveys shall be developed in collaboration with the executive committee established under subsection (c) of this section.~~

~~(j) It is the intent of the general assembly that health insurers shall participate in the Blueprint for Health no later than January 1, 2009 and shall engage health care providers in the transition to full participation in the Blueprint.~~

§ 703. HEALTH PREVENTION; CHRONIC CARE MANAGEMENT

(a) The director shall develop a model for integrating a system of health care for patients, improving the health of the overall population, and improving control over health care costs by promoting health maintenance, prevention, and care coordination and management through an integrated system, including a patient-centered medical home and a community health team; and uniform payment for health services by health insurers, Medicaid, Medicare if available, and other entities that encourage the use of the medical home and the community health teams.

(b) When appropriate, the model may include the integration of social services provided by the agency of human services or may include coordination with a team at the agency of human services to ensure the individual's comprehensive care plan is consistent with the agency's case management plan for that individual or family.

(c) In order to maximize the participation of federal health care programs and to maximize federal funds available, the model for care coordination and management may meet the criteria for medical home, community health team, or other related demonstration projects established by the U.S. Department of Health and Human Services and the criteria of any other federal program providing funds for establishing medical homes, community health teams, or associated payment reform.

(d) The model for care coordination and management shall include the following components:

(1) a process for identifying individuals with or at risk for chronic disease and to assist in the determination of the risk for or severity of a chronic disease, as well as the appropriate type and level of care management services needed to manage those chronic conditions.

(2) evidence-based clinical practice guidelines, which shall be aligned with the clinical quality and performance measures provided for in section 702 of this title.

(3) models for the collaboration of health care professionals in providing care, including through a community health team.

(4) education for patients on how to manage conditions or diseases, including prevention of disease; programs to modify a patient's behavior; and a method of ensuring compliance of the patient with the recommended behavioral change.

(5) education for patients on health care decision-making, including education related to advance directives, palliative care, and hospice care.

(6) measurement and evaluation of the process and health outcomes of patients.

(7) a method for all health care professionals treating the same patient on a routine basis to report and share information about that patient.

(8) requirements that participating health care professionals and providers have the capacity to implement health information technology that meets the requirements of 42 U.S.C. § 300jj in order to facilitate coordination among members of the community health team, health care professionals, and primary care practices; and, where applicable, to report information on quality measures to the director of the Blueprint.

(9) a sustainable, scalable, and adaptable financial model reforming primary care payment methods through medical homes supported by community health teams that lead to a reduction in avoidable emergency room visits and hospitalizations and a shift by health insurer expenditures from disease management contracts to local community health teams in order to promote health, prevent disease, and manage care in order to increase positive health outcomes and reduce costs over time.

(e) The director of the Blueprint shall provide technical assistance and training to health care professionals, health care providers, health insurers, and others participating in the Blueprint.

§ 704. MEDICAL HOME

Consistent with federal law to ensure federal financial participation, a health care professional providing a patient's medical home shall:

(1) provide comprehensive prevention and disease screening for his or her patients and managing his or her patients' chronic conditions by coordinating care;

(2) enable patients to have access to personal health information through a secure medium, such as through the Internet, consistent with federal health information technology standards;

(3) use a uniform assessment tool provided by the Blueprint in assessing a patient's health;

(4) collaborate with the community health teams, including by developing and implementing a comprehensive plan for participating patients;

(5) ensure access to a patient's medical records by the community health team members in a manner compliant with the Health Insurance Portability and Accountability Act, 12 V.S.A. § 1612, 18 V.S.A. §§ 1852, 7103, 9332, and 9351, and 21 V.S.A. § 516; and

(6) meet regularly with the community health team to ensure integration of a participating patient's care.

§ 705. COMMUNITY HEALTH TEAMS

(a) Consistent with federal law to ensure federal financial participation, the community health team shall consist of health care professionals from multiple disciplines, including obstetrics and gynecology, pharmacy, nutrition and diet, social work, behavioral and mental health, chiropractic, other complementary and alternative medical practice licensed by the state, home health care, public health, and long-term care.

(b) The director shall assist communities to identify the service areas in which the teams work, which may include a hospital service area or other geographic area.

(c) Health care professionals participating in a community health team shall:

(1) collaborate with other health care professionals and with existing state agencies and community-based organizations in order to coordinate disease prevention, manage chronic disease, coordinate social services if appropriate, and provide an appropriate transition of patients between health care professionals or providers. Priority may be given to patients willing to participate in prevention activities or patients with chronic diseases or conditions identified by the director of the Blueprint;

(2) support a health care professional or practice which operates as a medical home, including by:

(A) assisting in the development and implementation of a comprehensive care plan for a patient that integrates clinical services with prevention and health promotion services available in the community and with

relevant services provided by the agency of human services. Priority may be given to patients willing to participate in prevention activities or patients with chronic diseases or conditions identified by the director of the Blueprint;

(B) providing a method for health care professionals, patients, caregivers, and authorized representatives to assist in the design and oversight of the comprehensive care plan for the patient;

(C) coordinating access to high-quality, cost-effective, culturally appropriate, and patient- and family-centered health care and social services, including preventive services, activities which promote health, appropriate specialty care, inpatient services, medication management services provided by a pharmacist, and appropriate complementary and alternative (CAM) services.

(D) providing support for treatment planning, monitoring the patient's health outcomes and resource use, sharing information, assisting patients in making treatment decisions, avoiding duplication of services, and engaging in other approaches intended to improve the quality and value of health services;

(E) assisting in the collection and reporting of data in order to evaluate the Blueprint model on patient outcomes, including collection of data on patient experience of care, and identification of areas for improvement; and

(F) providing a coordinated system of early identification and referral for children at risk for developmental or behavioral problems such as through the use of health information technology or other means as determined by the director of the Blueprint.

(3) provide care management and support when a patient moves to a new setting for care, including by:

(A) providing on-site visits from a member of the community health team, assisting with the development of discharge plans and medication reconciliation upon admission to and discharge from the hospitals, nursing homes, or other institution settings;

(B) generally assisting health care professionals, patients, caregivers, and authorized representatives in discharge planning, including by assuring that postdischarge care plans include medication management as appropriate;

(C) referring patients as appropriate for mental and behavioral health services;

(D) ensuring that when a patient becomes an adult, his or her health care needs are provided for; and

(E) serving as a liaison to community prevention and treatment programs.

§ 706. HEALTH INSURER PARTICIPATION

(a) As provided for in 8 V.S.A. § 4088h, health insurance plans shall be consistent with the Blueprint for Health as determined by the commissioner of banking, insurance, securities, and health care administration.

(b) No later than January 1, 2011, health insurers shall participate in the Blueprint for Health as a condition of doing business in this state as provided for in this section and in 8 V.S.A. § 4088h. Under 8 V.S.A. § 4088h, the commissioner of banking, insurance, securities, and health care administration may exclude or limit the participation in the Blueprint of Health insurers offering a stand-alone dental plan or specific disease or other limited benefit coverage. Health insurers shall be exempt from participation if the insurer only offers benefit plans which are paid directly to the individual insured or the insured's assigned beneficiaries and for which the amount of the benefit is not based upon potential medical costs or actual costs incurred.

(c)(1) The Blueprint payment reform methodologies shall include per-person per-month payments to medical home practices by each health insurer and Medicaid for their attributed patients and for contributions to the shared costs of operating the community health teams. Per-person per-month payments to practices shall be based on the official National Committee for Quality Assurance's Physician Practice Connections – Patient Centered Medical Home (NCQA PPC-PCMH) score and shall be in addition to their normal fee-for-service or other payments.

(2) Consistent with the recommendation of the Blueprint expansion design and evaluation committee, the director of the Blueprint may implement changes to the payment amounts or to the payment reform methodologies described in subdivision (1) of this subsection, including by providing for enhanced payment to health care professional practices which operate as a medical home, payment toward the shared costs for community health teams, or other payment methodologies required by the Centers for Medicare and Medicaid Services (CMS) for participation by Medicaid or Medicare.

(3) Health insurers shall modify payment methodologies and amounts to health care professionals and providers as required for the establishment of the model described in sections 703 through 705 of this title and this section, including any requirements specified by the Centers for Medicare and Medicaid Services (CMS) in approving federal participation in the model to ensure consistency of payment methods in the model.

(4) In the event that the secretary of human services is denied permission from the Centers for Medicare and Medicaid Services (CMS) to include financial participation by Medicare, health insurers shall not be required to cover the costs associated with individuals covered by Medicare.

(d) An insurer may appeal a decision of the director to require a particular payment methodology or payment amount to the commissioner of Vermont health access, who shall provide a hearing in accordance with chapter 25 of Title 3. An insurer aggrieved by the decision of the commissioner may appeal to the superior court for the Washington district within 30 days after the commissioner issues his or her decision.

§ 707. PARTICIPATION BY HEALTH CARE PROFESSIONALS AND HOSPITALS

(a) No later than July 1, 2011, hospitals shall participate in the Blueprint for Health by creating or maintaining connectivity to the state's health information exchange network as provided for in this section and in section 9456 of this title. The director of health care reform or designee and the director of the Blueprint shall establish criteria by rule for this requirement consistent with the state health information technology plan required under section 9351 of this title. The criteria shall not require a hospital to create a level of connectivity that the state's exchange is not able to support.

(b) The director of health care reform or designee shall ensure hospitals have access to state and federal resources to support connectivity to the state's health information exchange network.

(c) The director of the Blueprint shall engage health care professionals and providers to encourage participation in the Blueprint, including by providing information and assistance.

§ 708. CERTIFICATION OF HOSPITALS

(a) The director of health care reform or designee shall establish a process for annually certifying that a hospital meets the participation requirements established under section 707 of this title. Once a hospital is fully connected to the state's health information exchange, the director of health care reform or designee shall waive further certification. The director may require a hospital to resume certification if the criteria for connectivity change, if the hospital loses connectivity to the state's health information exchange, or for another reason which results in the hospital not meeting the participation requirement in section 707 of this title. The certification process, including a time for appeal, shall be completed prior to the hospital budget review required under section 9456 of this title.

(b) Once the hospital has been certified or certification has been waived, the director of health care reform or designee shall provide the hospital with documentation to include in its annual budget review as required by section 9456 of this title.

(c) A denial of certification by the director of health care reform or designee may be appealed to the commissioner of Vermont health access, who shall provide a hearing in accordance with chapter 25 of Title 3. A hospital aggrieved by the decision of the commissioner may appeal to the superior court for the district in which the hospital is located within 30 days after the commissioner issues his or her decision.

§ 709. ANNUAL REPORT

(a) The director of the Blueprint shall report annually, no later than January 15, on the status of implementation of the Vermont Blueprint for Health for the prior calendar year, and shall provide the report to the house committee on health care, the senate committee on health and welfare, the health access oversight committee, and the joint legislative commission on health care reform.

(b) The report shall include the number of participating insurers, health care professionals, and patients; the progress for achieving statewide participation in the chronic care management plan, including the measures established under this subchapter; the expenditures and savings for the period; the results of health care professional and patient satisfaction surveys; the progress toward creation and implementation of privacy and security protocols; information on the progress made toward the requirements in this subchapter; and other information as requested by the committees.

Sec. 14. COMMUNITY HEALTH SYSTEMS; PILOT

(a)(1) The department of Vermont health access shall be responsible for developing pilot programs which develop community health systems as provided for under this section. The director of community health systems shall oversee the development, implementation, and evaluation of the community health system pilot projects. Whenever health insurers are concerned, the director shall collaborate with the commissioner of banking, insurance, securities, and health care administration. The terms used in this section shall have the same meanings as in chapter 13 of Title 18.

(2) The director of community health systems shall convene a broad-based group of stakeholders, including health care professionals who provide health services as defined under 8 V.S.A. § 4080f, health insurers, professional organizations, community and nonprofit groups, consumers,

businesses, school districts, and state and local government to advise the director in developing and implementing the pilot projects.

(3) Community health system pilot projects shall be developed and implemented to manage the total costs of the health care delivery system in a region, improve health outcomes for Vermonters, provide a positive health care experience for patients and providers, and further the following objectives:

(A) community health systems should be organized around primary care providers;

(B) community health systems should align with the Blueprint for Health strategic plan and the statewide health information technology plan;

(C) health care providers and professionals should integrate patient care through a local entity or organization facilitating this integration;

(D) health insurers, Medicaid, Medicare, and all other payers should reimburse the entity or organization of health care providers and professionals for integrated patient care through a single system of coordinated payments and a global budget;

(E) the design and implementation of the community health system should be aligned with the requirements of federal law to ensure the full participation of Medicare in multi-payer payment reform.

(F) the global budget should include a broad, comprehensive set of services, including prescription drugs, diagnostic services, and services received in a hospital, from a licensed health care practitioner.

(G) after consultation with long-term care providers, the global budget may also include home health services, and long-term care services if feasible.

(H) transition plans should be developed by all involved parties to ensure a smooth and timely transition from the current model to community health systems;

(I) financial performance of an integrated community of care should be measured instead of the financial viability of a single institution.

(4) The strategic plan for the pilot projects shall include:

(A) A description of the proposed community health system pilot projects organized around primary care professionals. The population served by a community health system pilot project would be those who use the primary care professionals in the community health system.

(B) An implementation time line for pilot projects with the first project to become operational no later than January 1, 2012, and with two or more additional pilot projects to become operational no later than July 1, 2012.

(C) A description of the possible organizational model or models for health care providers or professionals to become part of a community health system pilot project, including a description of the legal or contractual mechanisms available. The models considered should include traditional physician hospital organizations, regional structures that support more than one community health system, and community health foundations that include providers but are not necessarily provider-based.

(D) A design of the financial model or models, including:

(i) gradual modification over time of existing reimbursement methods used by health insurers, Medicaid, Medicare, and other payers to pay health care providers and professionals from existing models to a global budget with a single system of payment for the community health system;

(ii) cost-containment targets to reduce health care system inflation in a particular community, which may include shared savings, risk-sharing, or other incentives for the community health system to reduce costs while maintaining or improving health outcomes and patient satisfaction;

(iii) health care outcome target to encourage both effective care and prevention programs, which may include shared savings or other incentives for the community health system;

(iv) patient satisfaction targets to ensure that individuals have positive experiences with their community health systems, which may include shared savings or other incentives for the community health system.

(v) An estimate of savings to the health care system from cost reductions due to reduced administration and from a reduction in health care inflation.

(vi) The scope of services to be included in a comprehensive global budget in order to contain costs and ensure high quality and patient satisfaction.

(vii) Ongoing program evaluation and improvement protocols.

(b) Health insurer participation.

(1)(A) Health insurers shall participate in the development of the community health system strategic plan for the pilot projects and in the implementation of community health systems pilot projects, including by providing incentives or fees, as required in this section. This requirement may

be enforced by the department of banking, insurance, securities, and health care administration to the same extent as the requirement to participate in the Blueprint for Health provided for in 8 V.S.A. § 4088h.

(B) In consultation with the director of the Blueprint for Health and the director of health care reform, the commissioner of banking, insurance, securities, and health care administration may establish procedures to exempt or limit the participation of health insurers offering a stand-alone dental plan, specific disease, or other limited benefit coverage, or insurers with a minimal number of covered lives as defined by the commissioner. Health insurers shall be exempt from participation if the insurer only offers benefit plans which are paid directly to the individual insured or the insured's assigned beneficiaries and for which the amount of the benefit is not based upon potential medical costs or actual costs incurred.

(C) Health insurers shall have the same appeal rights provided for in 18 V.S.A. § 706 for participation in the Blueprint for Health.

(2) In the event that the secretary of human services is denied permission from the Centers for Medicare and Medicaid Services to include financial participation by Medicare in the pilot projects, health insurers shall not be required to cover the costs associated with individuals covered by Medicare.

(c) To the extent required to avoid federal anti-trust violations, the commissioner of banking, insurance, securities, and health care administration shall facilitate and supervise the participation of health care professionals, health care facilities, and insurers in the planning and implementation of the community health system pilot projects, including creating a shared incentive pool. The department shall ensure that the process and implementation includes sufficient state supervision over these entities to comply with federal anti-trust provisions.

(d) The commissioner of Vermont health access or designee shall apply for grant funding, if available, for the design and implementation of the pilot projects described in this act. Any amounts received in grant funds shall first be used to offset any state funds that are appropriated or allocated in this act or in other acts related to the pilot projects described in this section. Any grant funds received in excess of the appropriated amount may be used for the analysis.

(e) The director shall report to the house committee on health care and senate committee on health and welfare by March 15, 2011, on the implementation of the first pilot project and present a detailed description of and a timetable for the implementation of the additional pilot projects.

(f)(1) Beginning in 2012, the director of community health systems shall report annually by January 15 on the status of implementation of the community health systems for the prior calendar year, and shall provide the report to the house committee on health care, the senate committee on health and welfare, the health access oversight committee, and the commission on health care reform.

(2) The report shall include the number of participating insurers, health care professionals, and patients; the progress for achieving statewide participation in the community health systems; the expenditures and savings for the period; the results of health care professional and patient satisfaction surveys; and other information as requested by the committees.

Sec. 15. 8 V.S.A. § 4088h is amended to read:

§ 4088h. HEALTH INSURANCE AND THE BLUEPRINT FOR HEALTH

(a)(1) A health insurance plan shall be offered, issued, and administered consistent with the blueprint for health established in chapter 13 of Title 18, as determined by the commissioner.

~~(b)~~(2) As used in this section, "health insurance plan" means any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this state by a health insurer, as defined in ~~section~~ 18 V.S.A. § 9402 ~~of Title 18~~. The term shall include the health benefit plan offered by the state of Vermont to its employees and any health benefit plan offered by any agency or instrumentality of the state to its employees. The term shall not include benefit plans providing coverage for specific disease or other limited benefit coverage unless so directed by the commissioner.

(b) Health insurers as defined in 18 V.S.A. § 701 shall participate in the Blueprint for Health as specified in 18 V.S.A. § 706. In consultation with the director of the Blueprint for Health and the director of health care reform, the commissioner may establish procedures to exempt or limit the participation of health insurers offering a stand-alone dental plan or specific disease or other limited benefit coverage. Health insurers shall be exempt from participation if the insurer only offers benefit plans which are paid directly to the individual insured or the insured's assigned beneficiaries and for which the amount of the benefit is not based upon potential medical costs or actual costs incurred.

Sec. 16. 18 V.S.A. § 9456(a) is amended to read:

(a) The commissioner shall conduct reviews of each hospital's proposed budget based on the information provided pursuant to this subchapter, and in accordance with a schedule established by the commissioner. The

commissioner shall require the submission of documentation certifying that the hospital is participating in the Blueprint for Health if required by section 708 of this title.

Sec. 17. FEDERAL HEALTH CARE REFORM; DEMONSTRATION PROGRAMS

(a)(1) Medicare waivers. Upon establishment by the Secretary of the U.S. Department of Health and Human Services (HHS) of an advanced practice primary care medical home demonstration program or a community health team demonstration program pursuant to Sec. 3502 of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, the secretary of human services may apply to the Secretary of HHS to enable Vermont to include Medicare as a participant in the Blueprint for Health as described in chapter 13 of Title 18.

(2) Upon establishment by the Secretary of the U.S. Department of Health and Human Services (HHS) of a shared savings program pursuant to Sec. 3022 of H.R. 3590, the Patient Protection and Affordable Care Act, as amended by H.R. 4872, the Health Care and Education Reconciliation Act of 2010, the secretary of human services may apply to the Secretary of HHS to enable Vermont to participate in the program by establishing community health system pilot projects as provided for in Sec. 14 of this act.

(b)(1) Medicaid waivers. The intent of this section is to provide the secretary of human services with the authority to pursue Medicaid participation in the Blueprint for Health through any existing or new waiver.

(2) Upon establishment by the Secretary of the U.S. Department of Health and Human Services (HHS) of a health home demonstration program pursuant to Sec. 3502 of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, the secretary of human services may apply to the Secretary of HHS to include Medicaid as a participant in the Blueprint for Health as described in chapter 13 of Title 18. In the alternative, under Section 1115 of the Social Security Act, the secretary of human services may apply for an amendment to an existing Section 1115 waiver or may include in the renegotiation of the Global Commitment for Health Section 1115 waiver a request to include Medicaid as a participant in the Blueprint for Health as described in chapter 13 of Title 18.

Sec. 18. EXPEDITED RULES

Notwithstanding the provisions of chapter 25 of Title 3, the agency of human services shall specify the requirements and time frame that an insurer or health care provider must meet to be considered participating in the Blueprint for Health as required by chapter 13 of Title 18 or the community health

systems as required by this act by adopting 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 online 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. 19. BLUEPRINT FOR HEALTH; EXPANSION

The commissioner of Vermont health access shall expand the Blueprint for Health as described in chapter 13 of Title 18 to at least two primary care practices in every hospital services area no later than July 1, 2011, and statewide to primary care practices who wish to participate no later than October 1, 2013.

* * * IMMEDIATE COST-CONTAINMENT PROVISIONS * * *

Sec. 20. HOSPITAL BUDGETS

(a)(1) The commissioner of banking, insurance, securities, and health care administration shall implement this section consistent with the goals identified in Sec. 50 of No. 61 of the Acts of 2009, 18 V.S.A. § 9456, the goals of systemic health care reform, containing costs, solvency for efficient and effective hospitals, and promoting fairness and equity in health care financing. The authority provided in this section shall be in addition to the commissioner's authority under subchapter 7 of chapter 221 of Title 8 (hospital budget reviews).

(2) Except as provided for in subdivision (3) of this subsection, the commissioner of banking, insurance, securities, and health care administration shall target hospital budgets consistent with the following:

(A) For fiscal years 2011 and 2012, the commissioner shall aim to minimize rate increases for each hospital in an effort to balance the goals outlined in this section and shall ensure that the systemwide increase shall be lower than the prior year's increase.

(B)(i) For fiscal year 2011, the total systemwide net patient revenue increase for all hospitals reviewed by the commissioner shall not exceed 4.5 percent.

(ii) For fiscal year 2012, the total systemwide net patient revenue increase for all hospitals reviewed by the commissioner shall not exceed 4.0 percent.

(3)(A) 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.

(B) In calculating the hospital budgets as provided for in subdivision (2) of this subsection and if necessary to achieve the goals identified in this section, the commissioner may exempt hospital revenue and expenses associated with health care reform, hospital expenses related to electronic medical records or other information technology, hospital expenses related to acquiring or starting new physician practices, and other expenses, such as all or a portion of the provider tax. The expenditures shall be specifically reported, supported with sufficient documentation as required by the commissioner and may only be exempt if approved by the commissioner.

(b) Notwithstanding 18 V.S.A. § 9456(e), permitting the commissioner to waive a hospital from the budget review process, and consistent with this section and the overarching goal of containing health care and hospital costs, the commissioner may waive 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. 21. 18 V.S.A. § 9440(b)(1) is amended to read:

(b)(1) The application shall be in such form and contain such information as the commissioner establishes. In addition, the commissioner may require of an applicant any or all of the following information that the commissioner deems necessary:

* * *

(I) additional information as needed by the commissioner, including information from affiliated corporations or other persons in the control of or controlled by the applicant.

Sec. 22. 18 V.S.A. § 9456(g) is amended to read:

(g) The commissioner may request, and a hospital shall provide, information determined by the commissioner to be necessary to determine whether the hospital is operating within a budget established under this section. For purposes of this subsection, subsection (h) of this section, and subdivision 9454(a)(7) of this title, the commissioner's authority shall extend to an affiliated corporation or other person in the control of or controlled by the hospital, to the extent such authority is necessary to carry out the purposes of this subsection, subsection (h) of this section, or subdivision 9454(a)(7) of this title. As used in this subsection, a rebuttable presumption of "control" is created if the entity, hospital, or other person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 20 percent or more of the voting securities or membership interest or other governing interest of the hospital or other controlled entity.

Sec. 23. 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 (B) shall be issued after notice and an opportunity to be heard, except 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 (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 conclusion of the hearing. The commissioner may enlarge the time to hold the hearing or render the decision for good cause shown. Hospitals may appeal any decision in this subsection to superior court. 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. 24. 18 V.S.A. § 9456(b) is amended to read:

(b) In conjunction with budget reviews, the commissioner shall:

(1) review utilization information;

(2) consider the goals and recommendations of the health resource allocation plan;

(3) consider the expenditure analysis for the previous year and the proposed expenditure analysis for the year under review;

(4) consider any reports from professional review organizations;

(5) solicit public comment on all aspects of hospital costs and use and on the budgets proposed by individual hospitals;

(6) meet with hospitals to review and discuss hospital budgets for the forthcoming fiscal year;

(7) give public notice of the meetings with hospitals, and invite the public to attend and to comment on the proposed budgets;

(8) consider the extent to which costs incurred by the hospital in connection with services provided to Medicaid beneficiaries are being charged to non-Medicaid health benefit plans and other non-Medicaid payers;

(9) require each hospital to file an analysis that reflects a reduction in net revenue needs from non-Medicaid payers equal to any anticipated increase in Medicaid, Medicare, or another public health care program reimbursements, and to any reduction in bad debt or charity care due to an increase in the number of insured individuals;

(10) require each hospital to provide information on administrative costs, as defined by the commissioner, including specific information on the amounts spent on marketing and advertising costs.

Sec. 25. 18 V.S.A. § 9439(f) is amended to read:

(f) ~~The commissioner shall establish, by rule, annual cycles for the review of applications for certificates under this subchapter, in addition to the review cycles for skilled nursing and intermediate care beds established under subsections (d) and (e) of this section. A review cycle may include in the same group some or all of the types of projects subject to certificate of need review. Such rules may exempt emergency applications, pursuant to subsection 9440(d) of this title.~~ Unless an application meets the requirements of subsection 9440(e) of this title, the commissioner shall consider disapproving a certificate of need application for a hospital if a project was not identified prospectively as needed at least two years prior to the time of filing in the hospital's four-year capital plan required under subdivision 9454(a)(6) of this title. The commissioner shall review all hospital four-year capital plans as part of the review under subdivision 9437(2)(B) of this title.

Sec. 26. 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. 27. 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. 28. 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. 29. RULEMAKING; REPORTING OF INFORMATION

The commissioner of banking, insurance, securities, and health care administration shall adopt rules pursuant to chapter 25 of Title 3 requiring each health insurer licensed to do business in this state to report to the department of banking, insurance, securities, and health care administration, at least annually, information specific to its Vermont contracts, including enrollment data, loss ratios, and such other information as the commissioner deems appropriate.

Sec. 30. 8 V.S.A. § 4089b(g) is amended to read:

(g) On or before July 15 of each year, health insurance companies doing business in Vermont~~, and~~ whose individual share of the commercially-insured Vermont market, as measured by covered lives, comprises at least five percent of the commercially-insured Vermont market, shall file with the commissioner, in accordance with standards, procedures, and forms approved by the commissioner:

* * *

(2) The health insurance plan's revenue loss and expense ratio relating to the care and treatment of mental health conditions covered under the health insurance plan. The expense ratio report shall list amounts paid in claims for services and administrative costs separately. A managed care organization providing or administering coverage for treatment of mental health conditions

on behalf of a health insurance plan shall comply with the minimum loss ratio requirements pursuant to 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, applicable to the underlying health insurance plan with which the managed care organization has contracted to provide or administer such services. The health insurance plan shall also bear responsibility for ensuring the managed care organization's compliance with the minimum loss ratio requirement pursuant to this subdivision.

* * * HEALTH CARE WORKFORCE PROVISIONS * * *

Sec. 31. INTERIM STUDY OF VERMONT'S PRIMARY CARE WORKFORCE DEVELOPMENT

(a) Creation of committee. There is created a primary care workforce development committee to determine the additional capacity needed in the primary care delivery system if Vermont achieves the health care reform principles and purposes established in Secs. 1 and 2 of No. 191 of the Acts of the 2005 Adj. Sess. (2006) and to create a strategic plan for ensuring that the necessary workforce capacity is achieved in the primary care delivery system. The primary care workforce includes physicians, advanced practice nurses, and other health care professionals providing primary care as defined in 8 V.S.A. § 4080f.

(b) Membership. The primary care workforce development committee shall be composed of 18 members as follows:

(1) the commissioner of Vermont health access;

(2) the deputy commissioner of the division of health care administration or designee;

(3) the director of the Blueprint for Health;

(4) the commissioner of health or designee;

(5) a representative of the University of Vermont College of Medicine's Area Health Education Centers (AHEC) program;

(6) a representative of the University of Vermont College of Medicine's Office of Primary Care, a representative of the University of Vermont College of Nursing and Health Sciences, a representative of nursing programs at the Vermont State Colleges, and a representative from Norwich University's nursing programs;

(7) a representative of the Vermont Association of Naturopathic Physicians;

(8) a representative of Bi-State Primary Care Association;

(9) a representative of Vermont Nurse Practitioners Association;

(10) a representative of Physician Assistant Academy of Vermont;

(11) a representative of the Vermont Medical Society;

(12) a representative from a voluntary group of organizations known as the Vermont health care workforce development partners;

(13) a mental health or substance abuse treatment professional currently in practice;

(14) a representative of the Vermont assembly of home health agencies; and

(15) the commissioner of labor or designee.

(c) Powers and duties.

(1) The committee shall study the primary care workforce development system in Vermont, including the following issues:

(A) the current capacity and capacity issues of the primary care workforce and delivery system in Vermont, including the number of primary care professionals, issues with geographic access to services, and unmet primary health care needs of Vermonters.

(B) the resources needed to ensure that the primary care workforce and the delivery system are able to provide sufficient access to services should all or most of Vermonters become insured, to provide sufficient access to services given demographic factors in the population and in the workforce, and to participate fully in health care reform initiatives, including participation in the Blueprint for Health and transition to electronic medical records; and

(C) how state government, universities and colleges, and others may develop the resources in the primary care workforce and delivery system to achieve Vermont's health care reform principles and purposes.

(2) The committee shall create a detailed and targeted five-year strategic plan with specific action steps for attaining sufficient capacity in the primary care workforce and delivery system to achieve Vermont's health care reform principles and purposes. By November 15, 2010, the department of health, in collaboration with AHEC and the department of Vermont health access, shall report to the joint legislative commission on health care reform, the house committee on health care, and the senate committee on health and welfare its findings, the strategic plan, and any recommendations for legislative action.

(3) For purposes of its study of these issues, the committee shall have administrative support from the department of health. The department of

health, in collaboration with AHEC, shall call the first meeting of the committee and shall operate as co-chairs of the committee.

(d) Term of committee. The committee shall cease to exist on January 31, 2011.

* * * PRESCRIPTION DRUG PROVISIONS * * *

Sec. 32. 18 V.S.A. § 4631a is amended to read:

§ 4631a. ~~GIFTS~~ EXPENDITURES BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a) As used in this section:

(1) "Allowable expenditures" means:

(A) Payment to the sponsor of a significant educational, medical, scientific, or policy-making conference or seminar, provided:

(i) the payment is not made directly to a health care ~~provider~~ professional or pharmacist;

(ii) funding is used solely for bona fide educational purposes, except that the sponsor may, in the sponsor's discretion, apply some or all of the funding to provide meals and other food for all conference participants; and

(iii) all program content is objective, free from industry control, and does not promote specific products.

(B) Honoraria and payment of the expenses of a health care professional who serves on the faculty at a bona fide significant educational, medical, scientific, or policy-making conference or seminar, provided:

(i) there is an explicit contract with specific deliverables which are restricted to medical issues, not marketing activities; and

(ii) consistent with federal law, the content of the presentation, including slides and written materials, is determined by the health care professional.

(C) For a bona fide clinical trial:

(i) gross compensation for the Vermont location or locations involved;

(ii) direct salary support per principal investigator and other health care professionals per year; and

(iii) expenses paid on behalf of investigators or other health care professionals paid to review the clinical trial.

(D) For a research project that constitutes a systematic investigation, is designed to develop or contribute to general knowledge, and reasonably can be considered to be of significant interest or value to scientists or health care professionals working in the particular field of inquiry:

(i) gross compensation;

(ii) direct salary support per health care professional; and

(iii) expenses paid on behalf of each health care professional.

(E) Payment or reimbursement for the reasonable expenses, including travel and lodging-related expenses, necessary for technical training of individual health care professionals on the use of a medical device if the commitment to provide such expenses and the amounts or categories of reasonable expenses to be paid are described in a written agreement between the health care provider and the manufacturer.

(F) Royalties and licensing fees paid to health care providers in return for contractual rights to use or purchase a patented or otherwise legally recognized discovery for which the health care provider holds an ownership right.

(G) The payment of the reasonable expenses of an individual related to the interview of the individual by a manufacturer of prescribed products in connection with a bona fide employment opportunity.

~~(G)~~(H) Other reasonable fees, payments, subsidies, or other economic benefits provided by a manufacturer of prescribed products at fair market value.

(2) "Bona fide clinical trial" means an FDA-reviewed clinical trial that constitutes "research" as that term is defined in 45 C.F.R. § 46.102 and reasonably can be considered to be of interest to scientists or health care professionals working in the particular field of inquiry.

(3) "Clinical trial" means any study assessing the safety or efficacy of prescribed products administered alone or in combination with other prescribed products or other therapies, or assessing the relative safety or efficacy of prescribed products in comparison with other prescribed products or other therapies.

(4) "Free clinic" means a health care facility operated by a nonprofit private entity that:

(A) in providing health care, does not accept reimbursement from any third-party payor, including reimbursement from any insurance policy,

health plan, or federal or state health benefits program that is individually determined;

(B) in providing health care, either:

(i) does not impose charges on patients to whom service is provided; or

(ii) imposes charges on patients according to their ability to pay;

(C) may accept patients' voluntary donations for health care service provision; and

(D) is licensed or certified to provide health services in accordance with Vermont law.

(5) "Gift" means:

(A) Anything of value provided to a health care provider for free; or

(B) ~~Any~~ Except as otherwise provided in subdivision (a)(1)(A)(ii) of this section, any payment, food, entertainment, travel, subscription, advance, service, or anything else of value provided to a health care provider, unless:

(i) it is an allowable expenditure as defined in subdivision (a)(1) of this section; or

(ii) the health care provider reimburses the cost at fair market value.

(6) "Health benefit plan administrator" means the person or entity who sets formularies on behalf of an employer or health insurer.

~~(5)~~(7)(A) "Health care professional" means:

(i) a person who is authorized by law to prescribe or to recommend prescribed products, who regularly practices in this state, and who either is licensed by this state to provide or is otherwise lawfully providing health care in this state; or

(ii) a partnership or corporation made up of the persons described in subdivision (i) of this subdivision ~~(5)~~(7)(A); or

(iii) an officer, employee, agent, or contractor of a person described in subdivision (i) of this subdivision ~~(5)~~(7)(A) who is acting in the course and scope of employment, of an agency, or of a contract related to or supportive of the provision of health care to individuals.

(B) The term shall not include a person described in subdivision (A) of this subdivision ~~(5)~~(7) who is employed solely by a manufacturer.

~~(6)~~(8) "Health care provider" means a health care professional, ~~a~~ hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to dispense or purchase for distribution prescribed products in this state. The term does not include a hospital foundation that is organized as a nonprofit entity separate from a hospital.

~~(7)~~(9) "Manufacturer" means a pharmaceutical, biological product, or medical device manufacturer or any other person who is engaged in the production, preparation, propagation, compounding, processing, marketing, packaging, repacking, distributing, or labeling of prescribed products. The term does not include a wholesale distributor of biological products, a retailer, or a pharmacist licensed under chapter 36 of Title 26.

~~(8)~~(10) "Marketing" shall include promotion, detailing, or any activity that is intended to be used or is used to influence sales or market share or to evaluate the effectiveness of a professional sales force.

~~(9)~~(11) "Pharmaceutical manufacturer" means any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drugs, whether directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling, or distribution of prescription drugs. The term does not include a wholesale distributor of prescription drugs, a retailer, or a pharmacist licensed under chapter 36 of Title 26.

~~(10)~~(12) "Prescribed product" means a drug or device as defined in section 201 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321, ~~or~~ a compound drug or drugs, or a biological product as defined in section 351 of the Public Health Service Act, 42 U.S.C. § 262, for human use.

(13) "Sample" means a unit of a prescription drug, biological product, or medical device that is not intended to be sold and is intended to promote the sale of the drug, product, or device. The term includes starter packs and coupons or other vouchers that enable an individual to receive a prescribed product free of charge or at a discounted price.

~~(11)~~(14) "Significant educational, scientific, or policy-making conference or seminar" means an educational, scientific, or policy-making conference or seminar that:

(A) is accredited by the Accreditation Council for Continuing Medical Education or a comparable organization, or is presented by an approved sponsor of continuing education, provided that the sponsor is not a manufacturer of prescribed products; and

(B) offers continuing ~~medical~~ education credit, features multiple presenters on scientific research, or is authorized by the ~~sponsoring association~~ sponsor to recommend or make policy.

(b)(1) It is unlawful for any manufacturer of a prescribed product or any wholesale distributor of medical devices, or any agent thereof, to offer or give any gift to a health care provider.

(2) The prohibition set forth in subdivision (1) of this subsection shall not apply to any of the following:

(A) Samples of a prescribed product or reasonable quantities of an over-the-counter drug, nonprescription medical device, or item of nonprescription durable medical equipment provided to a health care provider for free distribution to patients.

(B) The loan of a medical device for a short-term trial period, not to exceed 90 days, to permit evaluation of a medical device by a health care provider or patient.

(C) The provision of reasonable quantities of medical device demonstration or evaluation units to a health care provider to assess the appropriate use and function of the product and determine whether and when to use or recommend the product in the future.

(D) The provision, distribution, dissemination, or receipt of peer-reviewed academic, scientific, or clinical articles or journals and other items that serve a genuine educational function provided to a health care provider for the benefit of patients.

(E) Scholarship or other support for medical students, residents, and fellows to attend a significant educational, scientific, or policy-making conference or seminar of a national, regional, or specialty medical or other professional association if the recipient of the scholarship or other support is selected by the association.

(F) Rebates and discounts for prescribed products provided in the normal course of business.

(G) Labels approved by the federal Food and Drug Administration for prescribed products.

(H) The provision of free prescription drugs or over-the-counter drugs, medical devices, biological products, medical equipment or supplies, or financial donations to a free clinic.

(I) The provision of free prescription drugs to or on behalf of an individual through a prescription drug manufacturer's patient assistance program.

(J) Fellowship salary support provided to fellows through grants from manufacturers of prescribed products, provided:

(i) such grants are applied for by an academic institution or hospital;

(ii) the institution or hospital selects the recipient fellows;

(iii) the manufacturer imposes no further demands or limits on the institution's, hospital's, or fellow's use of the funds; and

(iv) fellowships are not named for a manufacturer, and no individual recipient's fellowship is attributed to a particular manufacturer of prescribed products.

(K) The provision of coffee or other snacks or refreshments at a booth at a conference or seminar.

(c) The attorney general may bring an action in Washington superior court for injunctive relief, costs, and attorney's fees and may impose on a manufacturer that violates this section a civil penalty of no more than $10,000.00 per violation. Each unlawful gift shall constitute a separate violation.

Sec. 33. 18 V.S.A. § 4632 is amended to read:

§ 4632. DISCLOSURE OF ALLOWABLE EXPENDITURES AND GIFTS BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a)(1) Annually on or before October 1 of each year, every manufacturer of prescribed products shall disclose to the office of the attorney general for the fiscal year ending the previous June 30th the value, nature, purpose, and recipient information of:

(A) any allowable expenditure or gift permitted under subdivision 4631a(b)(2) of this title to any health care provider, except:

(i) royalties and licensing fees as described in subdivision 4631a(a)(1)(F) of this title;

(ii) rebates and discounts for prescribed products provided in the normal course of business as described in subdivision 4631a(b)(2)(F) of this title;

(iii) payments for clinical trials as described in subdivision 4631a(a)(1)(C) of this title, which shall be disclosed after the earlier of the date

of the approval or clearance of the prescribed product by the Food and Drug Administration or two calendar years after the date the payment was made. For a clinical trial for which disclosure is delayed under this subdivision (iii), the manufacturer shall identify to the attorney general the clinical trial, the start date, and the web link to the clinical trial registration on the national clinical trials registry; ~~and~~

(iv) ~~samples of a prescription drug or biological product provided to a health care professional for free distribution to patients~~ interview expenses as described in subdivision 4631a(a)(1)(G) of this title; and

(v) coffee or other snacks or refreshments at a booth at a conference or seminar.

(B) any allowable expenditure or gift ~~permitted under subdivision 4631a(b)(2) of this title~~ to an academic institution, to a nonprofit hospital foundation, or to a professional, educational, or patient organization representing or serving health care providers or consumers, located in or providing services in Vermont, except:

(i) royalties and licensing fees as described in subdivision 4631a(a)(1)(F) of this title;

(ii) rebates and discounts for prescribed products provided in the normal course of business as described in subdivision 4631a(b)(2)(F) of this title; and

(iii) payments for clinical trials as described in subdivision 4631a(a)(1)(C) of this title, which shall be disclosed after the earlier of the date of the approval or clearance of the prescribed product by the Food and Drug Administration or two calendar years after the date the payment was made. For a clinical trial for which disclosure is delayed under this subdivision (iii), the manufacturer shall identify to the attorney general the clinical trial, the start date, and the web link to the clinical trial registration on the national clinical trials registry~~; and~~

~~(iv) samples of a prescription drug provided to a health care professional for free distribution to patients~~.

(2)(A)(i) Subject to the provisions of subdivision (B) of this subdivision (a)(2) and to the extent allowed under federal law, annually on or before October 1 of each year, each manufacturer of prescribed products shall disclose to the office of the attorney general all free samples of prescribed products, including starter packs, provided to health care providers during the fiscal year ending the previous June 30, identifying for each sample the product, recipient, number of units, and dosage.

(ii) The office of the attorney general may contract with academic researchers to release to such researchers data relating to manufacturer distribution of free samples, subject to confidentiality provisions and without including the names or license numbers of individual recipients, for analysis and aggregated public reporting.

(iii) Any public reporting of manufacturer distribution of free samples shall not include information that allows for the identification of individual recipients of samples or connects individual recipients with the monetary value of the samples provided.

(B) Subdivision (A) of this subdivision (a)(2) shall not apply to samples of prescription drugs required to be reported under Sec. 6004 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, if, as of January 1, 2011, the office of the attorney general has determined that the U.S. Department of Health and Human Services will collect and report state- and recipient-specific information regarding manufacturer distribution of free samples of such prescription drugs.

~~(2)~~(3) Annually on July 1, each manufacturer of prescribed products also shall disclose to the office of the attorney general the name and address of the individual responsible for the manufacturer's compliance with the provisions of this section.

~~(3)~~(4) Disclosure shall be made on a form and in a manner prescribed by the office of the attorney general and shall require manufacturers of prescribed products to report each allowable expenditure or gift permitted under subdivision 4631a(b)(2) of this title including:

(A) except as otherwise provided in subdivision (a)(2) of this section, the value, nature, and purpose of each allowable expenditure, and gift permitted under subdivision 4631a(b)(2) of this title according to specific categories identified by the office of the attorney general;

(B) the name of the recipient;

(C) the recipient's address;

(D) the recipient's institutional affiliation;

(E) prescribed product or products being marketed, if any; and

(F) the recipient's state board number.

~~(4)~~(5) The office of the attorney general shall report annually on the disclosures made under this section to the general assembly and the governor on or before April 1. The report shall include:

(A) Information on allowable expenditures and gifts required to be disclosed under this section, which shall be presented in both aggregate form and by selected types of health care providers or individual health care providers, as prioritized each year by the office.

(B) Information on violations and enforcement actions brought pursuant to this section and section 4631a of this title.

~~(5)~~(6) After issuance of the report required by subdivision ~~(a)~~(5) of this ~~section~~ subsection and except as otherwise provided in subdivision (2)(A)(i) of this subsection, the office of the attorney general shall make all disclosed data used for the report publicly available and searchable through an Internet website.

~~(6)~~(7) The office of Vermont health access shall examine the data available from the office of the attorney general for relevant expenditures and determine whether and to what extent prescribing patterns by health care providers of prescribed products reimbursed by Medicaid, VHAP, Dr. Dynasaur, VermontRx, and VPharm may reflect manufacturer influence. The office may select the data most relevant to its analysis. The office shall report its analysis annually to the general assembly and the governor on or before October 1.

(b)(1) Annually on July 1, the office of the attorney general shall collect a $500.00 fee from each manufacturer of prescribed products filing annual disclosures of expenditures greater than zero described in subsection (a) of this section.

(2) Fees collected under this section shall fund collection and analysis of information on activities related to the marketing of prescribed products under sections 4631a and 4632 of ~~Title 18~~ of this title. The fees shall be collected in a special fund assigned to the office.

(c) The attorney general may bring an action in Washington superior court for injunctive relief, costs, and attorney's fees, and to impose on a manufacturer of prescribed products that fails to disclose as required by subsection (a) of this section a civil penalty of no more than $10,000.00 per violation. Each unlawful failure to disclose shall constitute a separate violation.

(d) The terms used in this section shall have the same meanings as they do in section 4631a of this title.

* * * HEALTH INSURANCE COVERAGE PROVISIONS * * *

Sec. 34. 8 V.S.A. chapter 107, subchapter 12 is added to read:

Subchapter 12. Coverage for Dental Procedures

§ 4100i. ANESTHESIA COVERAGE FOR CERTAIN DENTAL PROCEDURES

(a) A health insurance plan shall provide coverage for the hospital or ambulatory surgical center charges and administration of general anesthesia administered by a licensed anesthesiologist or certified registered nurse anesthetist for dental procedures performed on a covered person who is:

(1) a child seven years of age or younger who is determined by a dentist licensed pursuant to chapter 13 of Title 26 to be unable to receive needed dental treatment in an outpatient setting, where the provider treating the patient certifies that due to the patient's age and the patient's condition or problem, hospitalization or general anesthesia in a hospital or ambulatory surgical center is required in order to perform significantly complex dental procedures safely and effectively;

(2) a child 12 years of age or younger with documented phobias or a documented mental illness, as determined by a physician licensed pursuant to chapter 23 of Title 26 or by a licensed mental health professional, whose dental needs are sufficiently complex and urgent that delaying or deferring treatment can be expected to result in infection, loss of teeth, or other increased oral or dental morbidity; for whom a successful result cannot be expected from dental care provided under local anesthesia; and for whom a superior result can be expected from dental care provided under general anesthesia; or

(3) a person who has exceptional medical circumstances or a developmental disability, as determined by a physician licensed pursuant to chapter 23 of Title 26, which place the person at serious risk.

(b) A health insurance plan may require prior authorization for general anesthesia and associated hospital or ambulatory surgical center charges for dental care in the same manner that prior authorization is required for these benefits in connection with other covered medical care.

(c) A health insurance plan may restrict coverage for general anesthesia and associated hospital or ambulatory surgical center charges to dental care that is provided by:

(1) a fully accredited specialist in pediatric dentistry;

(2) a fully accredited specialist in oral and maxillofacial surgery; and

(3) a dentist to whom hospital privileges have been granted.

(d) The provisions of this section shall not be construed to require a health insurance plan to provide coverage for the dental procedure or other dental care for which general anesthesia is provided.

(e) The provisions of this section shall not be construed to prevent or require reimbursement by a health insurance plan for the provision of general anesthesia and associated facility charges to a dentist holding a general anesthesia endorsement issued by the Vermont board of dental examiners if the dentist has provided services pursuant to this section on an outpatient basis in his or her own office and the dentist is in compliance with the endorsement's terms and conditions.

(f) As used in this section:

(1) "Ambulatory surgical center" shall have the same meaning as in 18 V.S.A. § 9432.

(2) "Anesthesiologist" means a person who is licensed to practice medicine or osteopathy under chapter 23 or 33 of Title 26 and who either:

(A) has completed a residency in anesthesiology approved by the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology or their predecessors or successors; or

(B) is credentialed by a hospital to practice anesthesiology and engages in the practice of anesthesiology at that hospital full-time.

(3) "Certified registered nurse anesthetist" means an advanced practice registered nurse licensed by the Vermont board of nursing to practice as a certified registered nurse anesthetist.

(4) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, but does not include policies or plans providing coverage for a specified disease or other limited benefit coverage.

(5) "Licensed mental health professional" means a licensed physician, psychologist, social worker, mental health counselor, or nurse with professional training, experience, and demonstrated competence in the treatment of mental illness.

Sec. 35. 8 V.S.A. chapter 107, subchapter 13 is added to read:

Subchapter 13. Tobacco Cessation

§ 4100j. COVERAGE FOR TOBACCO CESSATION PROGRAMS

(a) A health insurance plan shall provide coverage of at least one three-month supply of tobacco cessation medication per year if prescribed by a licensed health care practitioner for an individual insured under the plan. A

health insurance plan may require the individual to pay the plan's applicable prescription drug co-payment for the tobacco cessation medication.

(b) As used in this subchapter:

(1) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in section 9402 of Title 18, as well as Medicaid, the Vermont health access plan, and any other public health care assistance program offered or administered by the state or by any subdivision or instrumentality of the state. The term does not include policies or plans providing coverage for specified disease or other limited benefit coverage.

(2) "Tobacco cessation medication" means therapies approved by the federal Food and Drug Administration for use in tobacco cessation.

* * * CATAMOUNT PROVISIONS * * *

Sec. 36. 2 V.S.A. § 903(b)(2) is amended to read:

(2) If the commission determines that the market is not cost-effective, the agency of administration shall issue a request for proposals for the administration only of Catamount Health as described in section 4080f of Title 8. A contract entered into under this subsection shall not include the assumption of risk. If Catamount Health is administered under this subsection, the agency shall purchase a stop-loss policy for an aggregate claims amount for Catamount Health as a method of managing the state's financial risk. The agency shall determine the amount of aggregate stop-loss reinsurance and may purchase additional types of reinsurance if prudent and cost-effective. ~~The agency may include in the contract the chronic care management program established under section 1903a of Title 33.~~

Sec. 37. 8 V.S.A. § 4080f is amended to read:

§ 4080f. CATAMOUNT HEALTH

* * *

(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:

* * *

(2) Catamount Health shall provide ~~a~~ chronic care management ~~program that has criteria substantially similar to the chronic care management program established in section 1903a of Title 33~~ in accordance with the Blueprint for Health established under chapter 13 of Title 18 and shall share the data on

enrollees, to the extent allowable under federal law, with the secretary of administration or designee in order to inform the health care reform initiatives under section 2222a of Title 3.

* * *

(f)(1) Except as provided for in subdivision (2) of this subsection, the carrier shall pay a health care professional the lowest of the health care professional's contracted rate, the health care professional's billed charges, or the rate derived from the Medicare fee schedule, at an amount 10 percent greater than fee schedule amounts paid under the Medicare program in 2006. Payments based on Medicare methodologies under this subsection shall be indexed to the Medicare economic index developed annually by the Centers for Medicare and Medicaid Services. The commissioner may approve adjustments to the amounts paid under this section in accordance with a carrier's pay for performance, quality improvement program, or other payment methodologies in accordance with the ~~blueprint for health~~ Blueprint for Health established under chapter 13 of Title 18.

(2) Payments for hospital services shall be calculated using a hospital-specific cost-to-charge ratio approved by the commissioner, adjusted for each hospital to ensure payments at 110 percent of the hospital's actual cost for services. The commissioner may use individual hospital budgets established under section 9456 of Title 18 to determine approved ratios under this subdivision. Payments under this subdivision shall be indexed to changes in the Medicare payment rules, but shall not be lower than 102 percent of the hospital's actual cost for services. The commissioner may approve adjustments to the amounts paid under this section in accordance with a carrier's pay for performance, quality improvement program, or other payment methodologies in accordance with the ~~blueprint for health~~ Blueprint for Health established under chapter 13 of Title 18.

(3) Payments for chronic care and chronic care management shall meet the requirements in section 702 of Title 18 ~~and section 1903a of Title 33~~.

* * *

* * * OBESITY PREVENTION * * *

Sec. 38. REPORT ON OBESITY PREVENTION INITIATIVE

No later than November 15, 2010, the attorney general shall report to the house committees on health care and on human services, the senate committee on health and welfare, and the commission on health care reform regarding the results of the attorney general's initiative on the prevention of obesity. Specifically, the report shall include:

(1) a list of the stakeholders involved in the initiative;

(2) the actions the stakeholder group identified and developed related to obesity prevention;

(3) the stakeholder group's recommendations; and

(4) opportunities identified by the group to generate revenue and the group's recommendations on how such revenue should be applied.

* * * MISCELLANEOUS PROVISIONS* * *

Sec. 39. POSITIONS

In fiscal year 2011, the department of Vermont health access may establish one new exempt position to create a director of community health systems in the division of health care reform to fulfill the requirements in Sec. 14 of this act. This position shall be transferred and converted from existing vacant positions in the executive branch of state government.

Sec. 40. APPROPRIATIONS

(a)(1) It is the intent of the general assembly to fund the community health system pilot projects described in Sec. 14 of this act, including the position provided for in Sec. 39 of this act, and the health care reform design options and implementation plans in Sec. 6 of this act in a budget neutral manner. The total cost in state funds is $389,175.00, all of which is reallocated from existing sources.

(2) The community health system pilots have a total cost of $250,000 ($89,175 state; $160,825 federal funds).

(3) The health care reform design options and implementation plans have a total cost of $300,000; $250,000 is reallocated from other sources and $50,000 is allocated from the commission on health care reform's existing budget.

(b) In fiscal year 2011, $527,242.00 of the amount appropriated in Catamount funds in Sec. B.312 of H.789 of the Acts of 2009 (Adj. Sess.) and allocated to the department of health for the Blueprint for Health is transferred to the agency of human services Global Commitment fund.

(c) In fiscal year 2011, $250,000.00 of the amount appropriated in general funds in Sec. B.301 of H.789 of the Acts of 2009 (Adj. Sess.) and allocated to the agency of human services is transferred to the joint fiscal office for hiring the consultant required under Sec. 6 of this act.

(d) In fiscal year 2011, $500,000.00 is appropriated from federal funds to the agency of human services Global Commitment fund.

(e) In fiscal year 2011, $250,000.00 is appropriated from the Global Commitment fund to the department of Vermont health access to fill the position described in Sec. 39 and to implement the community health systems pilot projects described in Sec. 14 of this act.

(f) In fiscal year 2011, $527,242.00 is appropriated from the Global Commitment fund to the department of health for the Blueprint for Health.

(g) In fiscal year 2011, $50,000.00 of the amount appropriated in general funds in Sec. B.125 of H.789 of the Acts of the 2009 Adj. Sess. (2010) and allocated to the commission on health care reform for studies is transferred to the joint fiscal office for hiring the consultant required in Sec. 6 of this act.

Sec. 41. EFFECTIVE DATES

(a) This section, Secs. 1 (findings), 2 (principles), 3 (goals), 4 (health care reform commission membership), 5 (appointments), 6 (design options), 7 (grants), 8 (public good), 9 (federal health care reform; BISHCA), 10 (federal health care reform; AHS), 11 (intent), 17 (demonstration waivers), 18 (expedited rules), 20 through 24 (hospital budgets), 25 (CON prospective need), 29 (rules; insurers), 31 (primary care study), 32 and 33 (pharmaceutical expenditures), and 38 (obesity report) of this act shall take effect upon passage.

(b) Secs. 12 and 13 (Blueprint for Health), 14 (community health systems), 15 (8 V.S.A. § 4088h), 16 (hospital certification), 19 (Blueprint Expansion), 26 through 28 (insurer rate review), 36 and 37 (citation corrections), 39 (position), and 40 (appropriations) of this act shall take effect on July 1, 2010.

(c) Sec. 30 (8 V.S.A. § 4089b; loss ratio) shall take effect on January 1, 2011 and shall apply to all health insurance plans on and after January 1, 2011, on such date as a health insurer offers, issues, or renews the health insurance plan, but in no event later than January 1, 2012.

(d) Secs. 34 and 35 of this act shall take effect on October 1, 2010, and shall apply to all health insurance plans on and after October 1, 2010, on such date as a health insurer offers, issues, or renews the health insurance plan, but in no event later than October 1, 2011.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Racine moved that the Senate concur in the House proposal of amendment with an amendment as follows:

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

* * * HEALTH CARE REFORM PROVISIONS * * *

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) The cost of health care in Vermont is estimated to increase by $1 billion, from $4.9 billion in 2010 to $5.9 billion, by 2012.

(3) 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.

(4) 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.

(5) 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.

(6) At the national level, health care expenses are estimated at 18 percent of GDP and are estimated to rise to 34 percent by 2040.

(7) 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.

(8) Of the approximately 47,000 Vermonters who remain uninsured, more than one-half qualify for state health care programs, and nearly 40 percent of those who qualify do so at an income level which requires no premium.

(9) Many Vermonters do not access health care because of unaffordable insurance premiums, deductibles, co-payments, and coinsurance.

(10) 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.

(11) At a time when high health care costs are negatively affecting families, employers, nonprofit organizations, and government at the local, state, and federal levels, Vermont is making positive progress toward health care reform.

(12) An additional 30,000 Vermonters are currently covered under state health care programs than were covered in 2007, including approximately 12,000 Vermonters who receive coverage through Catamount Health.

(13) Vermont's health care reform efforts to date have included the Blueprint for Health, a vision, plan, and statewide partnership that strives to strengthen the primary care health care delivery and payment systems and create new community resources to keep Vermonters healthy. Expanding the Blueprint for Health statewide may result in a significant systemwide savings in the future.

(14) Health information technology, a system designed to promote patient education, patient privacy, and licensed health care practitioner best practices through the shared use of electronic health information by health care facilities, health care professionals, public and private payers, and patients, has already had a positive impact on health care in this state and should continue to improve quality of care in the future.

(15) Indicators show Vermont's utilization rates and spending are significantly lower than those of the vast majority of other states. However, significant variation in both utilization and spending are observed within Vermont which provides for substantial opportunity for quality improvements and savings.

(16) Other Vermont health care reform efforts that have proven beneficial to thousands of Vermonters include Dr. Dynasaur, VHAP, Catamount Health, and the department of health's wellness and prevention initiatives.

(17) 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 subdivisions (12), (13), (14), (15), and (16) of this section will not, on their own, provide health care coverage for all Vermonters or sufficiently reduce escalating health care costs.

(18) Only continued structural reform will provide all Vermonters with access to affordable, high quality health care.

(19) Federal health care reform efforts will provide Vermont with many opportunities to grow and a framework by which to strengthen a universal and affordable health care system.

(20) To supplement federal reform and maximize opportunities for this state, Vermont must provide additional state health care reform initiatives.

* * * 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 essential 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) Every Vermonter should be able to choose his or her primary care provider, as well as choosing providers of institutional and specialty care.

(5) The health care system will recognize the primacy of the patient-provider relationship, respecting the professional judgment of providers and the informed decisions of patients.

(6) Vermont's health delivery system must model continuous improvement of health care quality and safety and, therefore, the system must be evaluated for improvement in access, quality, and reliability and for a reduction in cost.

(7) A system for containing all system costs and eliminating unnecessary expenditures, including by reducing administrative costs; reducing costs that do not contribute to efficient, quality health services; and reducing care that does not improve health outcomes, must be implemented for the health of the Vermont economy.

(8) The financing of health care in Vermont must be sufficient, fair, sustainable, and shared equitably.

(9) 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 affordable 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, preferably to reducing health care costs below today's amounts, and to raising revenues that are sufficient to support the state's financial obligations for health care on an ongoing basis.

(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 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 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, and the values and priorities of Vermonters, and analyzing required federal health benefit packages.

(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 representatives appointed by the speaker of the house, four 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:

(A) be in the employ of or holding any official relation to any health care provider or insurer or be engaged in the management of a health care provider or insurer;

(B) own stock, bonds, or other securities of a health care provider or insurer, unless the stock, bond, or other security is purchased by or through a mutual fund, blind trust, or other mechanism where a person other than the member chooses the stock, bond, or security;

(C) in any manner, be connected with the operation of a health care provider or insurer; or

(D) 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 and the president pro tempore of the senate shall appoint the new members of the joint legislative commission on health care reform as specified in Sec. 4 of this act. All other current members, including those appointed by the governor and the legislative members, shall continue to serve their existing terms.

Sec. 6. HEALTH CARE SYSTEM DESIGN AND IMPLEMENTATION PLAN

(a)(1)(A) By February 1, 2011, one or more consultants of 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. The proposal shall contain the analysis and recommendations as provided for in subsection (g) of this section.

(B) By January 1, 2011, the 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 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)(A) One option shall design 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.

(B) One option shall design a public health benefit option administered by state government, which allows individuals to choose between the public option and private insurance coverage and allows for fair and robust competition among public and private plans.

(C) A third and any additional options shall be designed by the consultant, in consultation with the commission, taking into consideration the principles in Sec. 2 of this act, the goals in Sec. 3, and the parameters described in this section.

(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.

(b)(1) 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 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.

(2) The commission shall serve as a resource for the consultant by providing information and feedback to the consultant upon request, by recommending additional resources, and by receiving periodic progress reports by the consultant as needed. In order to maintain the independence of the consultant, the commission shall not direct the consultant's recommendations or proposal.

(c) In creating the designs, the consultant shall review and consider the following fundamental elements:

(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 regional delivery systems;

(3) health system planning, regulation, and public health;

(4) financing and estimated costs, including federal financings; 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)(i) Packages of health services. In order to allow the general assembly a choice among varied packages of health services in each design option, the consultant shall provide at least two packages of health services providing for the integration of physical and mental health as further described in subdivision (A)(ii) of this subdivision (1) as part of each design option.

(ii)(I) Each design option shall include one package of health services which includes access to and coverage for primary care, preventive care, chronic care, acute episodic care, palliative care, hospice care, hospital services, prescription drugs, and mental health and substance abuse services.

(II) For each design option, the consultant shall consider including at least one additional package of health services, which includes the services described in subdivision (A)(ii)(I) of this subdivision (1) and coverage for supplemental health services, such as home- and community-based services, services in nursing homes, payment for transportation related to health services, or dental, hearing, or vision services.

(iii)(I) For each proposed package of health services, the consultant shall consider including a cost-sharing proposal that may provide a waiver of any deductible and other cost-sharing payments for chronic care for individuals participating in chronic care management and for preventive care.

(II) For each proposed package of health services, the consultant shall consider including a proposal that has no cost-sharing. If this proposal is included, the consultant shall provide the cost differential between subdivision (A)(iii)(I) of this subdivision (1) and this subdivision (II).

(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. Payment methods for mental health services shall be consistent with mental health parity. 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 be in an amount which provides reasonable access to health services, provides sufficient uniform payment to health care professionals, and assists to create financial stability of health care professionals. Payment amounts shall be consistent with mental health parity. 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 consultant 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 regional health systems. The consultant shall propose in each design a coordinated regional health system, which ensures that the

delivery of health services to the citizens of Vermont is coordinated in order to improve health outcomes, improve the efficiency of the health system, and improve patients' experience of health services. The consultant shall review and analyze Vermont's existing efforts to reform the delivery of health care, including the Blueprint for Health described in chapter 13 of Title 18, and consider whether to build on or improve current reform efforts. In designing coordinated regional health systems, the consultant shall consider:

(A) how to ensure that health professionals, hospitals, health care facilities, and home- and community-based service providers offer health services in a coordinated manner designed to optimize health services at a lower cost, to reduce redundancies in the health system as a whole, and to improve quality;

(B) the creation of regional mechanisms to solicit public input for the regional health system; conduct a community needs assessment for incorporation into the health resources allocation plan; and plan for community health needs based on the community needs assessment; and

(C) the development of a regional entity, organization, or another mechanism to manage health services for that region's population, which may include making budget recommendations and resource allocations for the region; providing oversight and evaluation regarding the delivery of care in its region; developing payment methodologies and incentive payments; or other functions necessary to manage the region's health system.

(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 and estimated costs, including federal financing. The consultant shall provide:

(A) an estimate of the total costs of each design option, including any additional costs for providing access to and coverage for health services to the uninsured and underinsured; any estimated costs necessary to build a new system; and any estimated savings from implementing a single system.

(B) financing proposals for sustainable revenue, including by maximizing federal revenues, or reductions from existing health care programs, services, state agencies, or other sources necessary for funding the cost of the new system.

(C) 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.

(D) 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 in order to maximize federal funds and, if applicable, a waiver from these provisions when available.

(5) A method to address compliance of the proposed design option or options with federal law if necessary, including 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. 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) In the proposal and implementation plan provided to the general assembly and the governor as provided for in subsection (a) of this section, the consultant shall include:

(1) A recommendation for key indicators to measure and evaluate the design option chosen by the general assembly.

(2) An analysis of each design option, including:

(A) the financing and cost estimates outlined in subdivision (e)(4) of this section;

(B) the impacts on the current private and public insurance system;

(C) the expected net fiscal impact, including tax implications, on individuals and on businesses from the modifications to the health care system proposed in the design;

(D) impacts on the state's economy;

(E) 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

(F) the pros and cons of each design option and of no changes to the current system.

(3) A comparative analysis of the coverage, benefits, payments, health care delivery, and other features in each design option with Vermont's current health care system and health care reform efforts. The comparative analysis should be in a format to allow the general assembly to compare easily each design option with the current system and efforts. If appropriate, the analysis shall include a comparison of financial or other changes in Medicaid and Medicaid-funded programs in a format currently used by the department of Vermont health access in order to compare the estimates for the design option to the most current actual expenditures available.

(4) 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. The recommendation section of the proposal shall not be finalized until after the receipt of public input as provided for in subdivision (a)(1)(B) of this section.

(h) After receipt of the proposal and implementation plan pursuant to subdivision (g)(2) of this section, the general assembly shall solicit input from interested members of the public and engage in a full and open public review and hearing process on the proposal and implementation plan.

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 shall first be used to offset any state funds that are appropriated or allocated in this act or in other acts related to the requirements of Sec. 6. Any grant funds received in excess of the appropriated amount may be used for the analysis.

* * * HEALTH CARE REFORM – MISCELLANEOUS * * *

Sec. 8. 18 V.S.A. § 9401 is amended to read:

§ 9401. POLICY

(a) It is the policy of the state of Vermont that health care is a public good for all Vermonters and to ensure that all residents have access to quality health services at costs that are affordable. To achieve this policy, it is necessary that the state ensure the quality of health care services provided in Vermont and, until health care systems are successful in controlling their costs and resources, to oversee cost containment.

* * *

Sec. 9. 8 V.S.A. § 4062c is amended to read:

§ 4062c. COMPLIANCE WITH FEDERAL LAW

Except as otherwise provided in this title, health insurers, hospital or medical service corporations, and health maintenance organizations that issue, sell, renew, or offer health insurance coverage in Vermont shall comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, as amended from time to time (42 U.S.C., Chapter 6A, Subchapter XXV), and 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. The commissioner shall enforce such requirements pursuant to his or her authority under this title.

Sec. 10. IMPLEMENTATION OF CERTAIN FEDERAL HEALTH CARE REFORM PROVISIONS

(a) From the effective date of this act through July 1, 2011, the commissioner of health shall undertake such planning steps and other actions as are necessary to secure grants and other beneficial opportunities for Vermont provided by 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.

(b) From the effective date of this act through July 1, 2011, the commissioner of Vermont health access shall undertake such planning steps as are necessary to ensure Vermont's participation in beneficial opportunities created by 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.

* * * HEALTH CARE DELIVERY SYSTEM PROVISIONS * * *

Sec. 11. INTENT

It is the intent of the general assembly to reform the health care delivery system in order to manage total costs of the system, improve health outcomes for Vermonters, and provide a positive health care experience for patients and providers. In order to achieve this goal and to ensure the success of health care reform, it is essential to pursue innovative approaches to a single system of health care delivery that integrates health care at a community level and contains costs through community-based payment reform. It is also the intent of the general assembly to ensure sufficient state involvement and action in designing and implementing payment reform pilot projects in order to comply with federal anti-trust provisions by replacing competition between payers and others with state regulation and supervision.

Sec. 12. BLUEPRINT FOR HEALTH; COMMITTEES

It is the intent of the general assembly to codify and recognize the existing expansion design and evaluation committee and payer implementation work group and to codify the current consensus-building process provided for by these committees in order to develop payment reform models in the Blueprint for Health. The director of the Blueprint may continue the current composition of the committees and need not reappoint members as a result of this act.

Sec. 13. 18 V.S.A. chapter 13 is amended to read:

CHAPTER 13. CHRONIC CARE INFRASTRUCTURE AND PREVENTION MEASURES

§ 701. DEFINITIONS

For the purposes of this chapter:

(1) "Blueprint for Health" or "Blueprint" means the state's ~~plan for chronic care infrastructure, prevention of chronic conditions, and chronic care management program, and includes an integrated approach to patient self-management, community development, health care system and professional practice change, and information technology initiatives~~ program for integrating a system of health care for patients, improving the health of the overall population, and improving control over health care costs by promoting health maintenance, prevention, and care coordination and management.

(2) "Chronic care" means health services provided by a health care professional for an established clinical condition that is expected to last a year or more and that requires ongoing clinical management attempting to restore the individual to highest function, minimize the negative effects of the condition, prevent complications related to chronic conditions, engage in

advanced care planning, and promote appropriate access to palliative care. Examples of chronic conditions include diabetes, hypertension, cardiovascular disease, cancer, asthma, pulmonary disease, substance abuse, mental illness, spinal cord injury, hyperlipidemia, and chronic pain.

(3) "Chronic care information system" means the electronic database developed under the Blueprint for Health that shall include information on all cases of a particular disease or health condition in a defined population of individuals.

(4) "Chronic care management" means a system of coordinated health care interventions and communications for individuals with chronic conditions, including significant patient self-care efforts, systemic supports for ~~the physician and patient relationship~~ licensed health care practitioners and their patients, and a plan of care emphasizing prevention of complications utilizing evidence-based practice guidelines, patient empowerment strategies, and evaluation of clinical, humanistic, and economic outcomes on an ongoing basis with the goal of improving overall health.

(5) "Health care professional" means an individual, partnership, corporation, facility, or institution licensed or certified or authorized by law to provide professional health care services.

(6) ~~"Health risk assessment" means screening by a health care professional for the purpose of assessing an individual's health, including tests or physical examinations and a survey or other tool used to gather information about an individual's health, medical history, and health risk factors during a health screening.~~ "Health benefit plan" shall have the same meaning as in 8 V.S.A. § 4088h.

(7) "Health insurer" shall have the same meaning as in section 9402 of this title.

(8) "Hospital" shall have the same meaning as in section 9456 of this title.

§ 702. BLUEPRINT FOR HEALTH; STRATEGIC PLAN

(a)(1) ~~As used in this section, "health insurer" shall have the same meaning as in section 9402 of this title.~~

~~(b)~~ The department of Vermont health access shall be responsible for the Blueprint for Health.

(2) The director of the Blueprint, in collaboration with the commissioner of health and the commissioner of Vermont health access, shall oversee the development and implementation of the Blueprint for Health, including ~~the five-year~~ a strategic plan describing the initiatives and implementation time

lines and strategies. Whenever private health insurers are concerned, the director shall collaborate with the commissioner of banking, insurance, securities, and health care administration.

~~(c)~~(b)(1)(A) The ~~secretary~~ commissioner of Vermont health access 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; the commissioner of mental health; a representative from the department of banking, insurance, securities, and health care administration; a representative from the office of Vermont health access; a representative from the Vermont medical society; a representative from the Vermont nurse practitioners association; 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~~ professions; a primary care professional serving low income or uninsured Vermonters; a representative of the Vermont assembly of home health agencies who has clinical experience; a representative from a self-insured employer who offers a health benefit plan to its employees; 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.

~~(2)~~(B) The executive committee shall engage a broad range of health care professionals who provide health services as defined under ~~section~~ 8 V.S.A. § 4080f ~~of Title 18~~, health ~~insurance plans~~ insurers, professional organizations, community and nonprofit groups, consumers, businesses, school districts, and state and local government in developing and implementing a five-year strategic plan.

(2)(A) The director shall convene an expansion design and evaluation committee, which shall meet no fewer than six times annually, to recommend a design plan, including modifications over time, for the statewide implementation of the Blueprint for Health and to recommend appropriate methods to evaluate the Blueprint. This committee shall be composed of the members of the executive committee, representatives of participating health insurers, representatives of participating medical homes and community health teams, the deputy commissioner of health care reform, a representative of the Bi-State Primary Care Association, a representative of the University of

Vermont College of Medicine's Office of Primary Care, a representative of the Vermont information technology leaders, and consumer representatives. The committee shall comply with open meeting and public record requirements in chapter 5 of Title 1.

(B) The director shall also convene a payer implementation work group, which shall meet no fewer than six times annually, to design the medical home and community health team enhanced payments, including modifications over time, and to make recommendations to the expansion design and evaluation committee described in subdivision (A) of this subdivision (2). The work group shall include representatives of the participating health insurers, representatives of participating medical homes and community health teams, and the commissioner of Vermont health access or designee. The work group shall comply with open meeting and public record requirements in chapter 5 of Title 1.

~~(d)~~(c) The Blueprint shall be developed and implemented to further the following principles:

(1) the primary care provider should serve a central role in the coordination of care and shall be compensated appropriately for this effort;

(2) use of information technology should be maximized;

(3) local service providers should be used and supported, whenever possible;

(4) transition plans should be developed by all involved parties to ensure a smooth and timely transition from the current model to the Blueprint model of health care delivery and payment;

(5) implementation of the Blueprint in communities across the state should be accompanied by payment to providers sufficient to support care management activities consistent with the Blueprint, recognizing that interim or temporary payment measures may be necessary during early and transitional phases of implementation; and

(6) interventions designed to prevent chronic disease and improve outcomes for persons with chronic disease should be maximized, should target specific chronic disease risk factors, and should address changes in individual behavior, the physical and social environment, and health care policies and systems.

(d) The Blueprint for Health shall include the following initiatives:

(1) Technical assistance as provided for in section 703 of this title to implement:

(A) a patient-centered medical home;

(B) community health teams; and

(C) a model for uniform payment for health services by health insurers, Medicaid, Medicare if available, and other entities that encourage the use of the medical home and the community health teams.

(2) Collaboration with Vermont information technology leaders established in section 9352 of this title to assist health care professionals and providers to create a statewide infrastructure of health information technology in order to expand the use of electronic medical records through a health information exchange and a centralized clinical registry on the Internet.

(3) In consultation with employers, consumers, health insurers, and health care providers, the development, maintenance, and promotion of evidence-based, nationally recommended guidelines for greater commonality, consistency, and coordination among health insurers in care management programs and systems.

(4) The adoption and maintenance of clinical quality and performance measures for each of the chronic conditions included in Medicaid's care management program established in 33 V.S.A. § 1903a. These conditions include asthma, chronic obstructive pulmonary disease, congestive heart failure, diabetes, and coronary artery disease.

(5) The adoption and maintenance of clinical quality and performance measures, aligned with but not limited to existing outcome measures within the agency of human services, to be reported by health care professionals, providers, or health insurers and used to assess and evaluate the impact of the Blueprint for health and cost outcomes. In accordance with a schedule established by the Blueprint executive committee, all clinical quality and performance measures shall be reviewed for consistency with those used by the Medicare program and updated, if appropriate.

(6) The adoption and maintenance of clinical quality and performance measures for pain management, palliative care, and hospice care.

(7) The use of surveys to measure satisfaction levels of patients, health care professionals, and health care providers participating in the Blueprint.

(e)~~(1) The strategic plan shall include:~~

~~(A) a description of the Vermont Blueprint for Health model, which includes general, standard elements established in section 1903a of Title 33, patient self-management, community initiatives, and health system and information technology reform, to be used uniformly statewide by private insurers, third party administrators, and public programs;~~

~~(B) a description of prevention programs and how these programs are integrated into communities, with chronic care management, and the Blueprint for Health model;~~

~~(C) a plan to develop and implement reimbursement systems aligned with the goal of managing the care for individuals with or at risk for conditions in order to improve outcomes and the quality of care;~~

~~(D) the involvement of public and private groups, health care professionals, insurers, third party administrators, associations, and firms to facilitate and assure the sustainability of a new system of care;~~

~~(E) the involvement of community and consumer groups to facilitate and assure the sustainability of health services supporting healthy behaviors and good patient self-management for the prevention and management of chronic conditions;~~

~~(F) alignment of any information technology needs with other health care information technology initiatives;~~

~~(G) the use and development of outcome measures and reporting requirements, aligned with existing outcome measures within the agency of human services, to assess and evaluate the system of chronic care;~~

~~(H) target timelines for inclusion of specific chronic conditions in the chronic care infrastructure and for statewide implementation of the Blueprint for Health;~~

~~(I) identification of resource needs for implementing and sustaining the Blueprint for Health and strategies to meet the needs; and~~

~~(J) a strategy for ensuring statewide participation no later than January 1, 2011 by health insurers, third party administrators, health care professionals, hospitals and other professionals, and consumers in the chronic care management plan, including common outcome measures, best practices and protocols, data reporting requirements, payment methodologies, and other standards. In addition, the strategy should ensure that all communities statewide will have implemented at least one component of the Blueprint by January 1, 2009.~~

~~(2)~~ The strategic plan developed under subsection (a) of this section shall be reviewed biennially and amended as necessary to reflect changes in priorities. Amendments to the plan shall be included in the report established under ~~subsection (i) of this section~~ section 709 of this title.

~~(f) The director of the Blueprint shall facilitate timely progress in adoption and implementation of clinical quality and performance measures as indicated by the following benchmarks:~~

~~(1) by July 1, 2007, clinical quality and performance measures are adopted for each of the chronic conditions included in the Medicaid Chronic Care Management Program. These conditions include, but are not limited to, asthma, chronic obstructive pulmonary disease, congestive heart failure, diabetes, and coronary artery disease.~~

~~(2) at least one set of clinical quality and performance measures will be added each year and a uniform set of clinical quality and performance measures for all chronic conditions to be addressed by the Blueprint will be available for use by health insurers and health care providers by January 1, 2010.~~

~~(3) in accordance with a schedule established by the Blueprint executive committee, all clinical quality and performance measures shall be reviewed for consistency with those used by the Medicare program and updated, if appropriate.~~

~~(g) The director of the Blueprint shall facilitate timely progress in coordination of chronic care management as indicated by the following benchmarks:~~

~~(1) by October 1, 2007, risk stratification strategies shall be used to identify individuals with or at risk for chronic disease and to assist in the determination of the severity of the chronic disease or risk thereof, as well as the appropriate type and level of care management services needed to manage those chronic conditions.~~

~~(2) by January 1, 2009, guidelines for promoting greater commonality, consistency, and coordination across health insurers in care management programs and systems shall be developed in consultation with employers, consumers, health insurers, and health care providers.~~

~~(3) beginning July 1, 2009, and each year thereafter, health insurers, in collaboration with health care providers, shall report to the secretary on evaluation of their disease management programs and the progress made toward aligning their care management program initiatives with the Blueprint guidelines.~~

~~(h)(1) No later than January 1, 2009, the director shall, in consultation with employers, consumers, health insurers, and health care providers, complete a comprehensive analysis of sustainable payment mechanisms. No later than January 1, 2009, the director shall report to the health care reform commission and other stakeholders his or her recommendations for sustainable payment mechanisms and related changes needed to support achievement of Blueprint goals for health care improvement, including the essential elements of high quality chronic care, such as care coordination, effective use of health care~~

~~information by physicians and other health care providers and patients, and patient self-management education and skill development.~~

~~(2) By January 1, 2009, and each year thereafter, health insurers will participate in a coordinated effort to determine satisfaction levels of physicians and other health care providers participating in the Blueprint care management initiatives, and will report on these satisfaction levels to the director and in the report established under subsection (i) this section.~~

~~(i) The director shall report annually, no later than January 1, on the status of implementation of the Vermont Blueprint for Health for the prior calendar year, and shall provide the report to the house committee on health care, the senate committee on health and welfare, the health access oversight committee, and the commission on health care reform. The report shall include the number of participating insurers, health care professionals and patients; the progress for achieving statewide participation in the chronic care management plan, including the measures established under subsection (e) of this section; the expenditures and savings for the period; the results of health care professional and patient satisfaction surveys; the progress toward creation and implementation of privacy and security protocols; information on the progress made toward the requirements in subsections (g) and (h) of this section; and other information as requested by the committees. The surveys shall be developed in collaboration with the executive committee established under subsection (c) of this section.~~

~~(j) It is the intent of the general assembly that health insurers shall participate in the Blueprint for Health no later than January 1, 2009 and shall engage health care providers in the transition to full participation in the Blueprint.~~

§ 703. HEALTH PREVENTION; CHRONIC CARE MANAGEMENT

(a) The director shall develop a model for integrating a system of health care for patients, improving the health of the overall population, and improving control over health care costs by promoting health maintenance, prevention, and care coordination and management through an integrated system, including a patient-centered medical home and a community health team; and uniform payment for health services by health insurers, Medicaid, Medicare if available, and other entities that encourage the use of the medical home and the community health teams.

(b) When appropriate, the model may include the integration of social services provided by the agency of human services or may include coordination with a team at the agency of human services to ensure the individual's comprehensive care plan is consistent with the agency's case management plan for that individual or family.

(c) In order to maximize the participation of federal health care programs and to maximize federal funds available, the model for care coordination and management may meet the criteria for medical home, community health team, or other related demonstration projects established by the U.S. Department of Health and Human Services and the criteria of any other federal program providing funds for establishing medical homes, community health teams, or associated payment reform.

(d) The model for care coordination and management shall include the following components:

(1) A process for identifying individuals with or at risk for chronic disease and to assist in the determination of the risk for or severity of a chronic disease, as well as the appropriate type and level of care management services needed to manage those chronic conditions.

(2) Evidence-based clinical practice guidelines, which shall be aligned with the clinical quality and performance measures provided for in section 702 of this title.

(3) Models for the collaboration of health care professionals in providing care, including through a community health team.

(4) Education for patients on how to manage conditions or diseases, including prevention of disease; programs to modify a patient's behavior; and a method of ensuring compliance of the patient with the recommended behavioral change.

(5) Education for patients on health care decision-making, including education related to advance directives, palliative care, and hospice care.

(6) Measurement and evaluation of the process and health outcomes of patients.

(7) A method for all health care professionals treating the same patient on a routine basis to report and share information about that patient.

(8) Requirements that participating health care professionals and providers have the capacity to implement health information technology that meets the requirements of 42 U.S.C. § 300jj in order to facilitate coordination among members of the community health team, health care professionals, and primary care practices; and, where applicable, to report information on quality measures to the director of the Blueprint.

(9) A sustainable, scalable, and adaptable financial model reforming primary care payment methods through medical homes supported by community health teams that lead to a reduction in avoidable emergency room visits and hospitalizations and a shift of health insurer expenditures from

disease management contracts to financial support for local community health teams in order to promote health, prevent disease, and manage care in order to increase positive health outcomes and reduce costs over time.

(e) The director of the Blueprint shall provide technical assistance and training to health care professionals, health care providers, health insurers, and others participating in the Blueprint.

§ 704. MEDICAL HOME

Consistent with federal law to ensure federal financial participation, a health care professional providing a patient's medical home shall:

(1) provide comprehensive prevention and disease screening for his or her patients and managing his or her patients' chronic conditions by coordinating care;

(2) enable patients to have access to personal health information through a secure medium, such as through the Internet, consistent with federal health information technology standards;

(3) use a uniform assessment tool provided by the Blueprint in assessing a patient's health;

(4) collaborate with the community health teams, including by developing and implementing a comprehensive plan for participating patients;

(5) ensure access to a patient's medical records by the community health team members in a manner compliant with the Health Insurance Portability and Accountability Act, 12 V.S.A. § 1612, 18 V.S.A. §§ 1852, 7103, 9332, and 9351, and 21 V.S.A. § 516; and

(6) meet regularly with the community health team to ensure integration of a participating patient's care.

§ 705. COMMUNITY HEALTH TEAMS

(a) Consistent with federal law to ensure federal financial participation, the community health team shall consist of health care professionals from multiple disciplines, including obstetrics and gynecology, pharmacy, nutrition and diet, social work, behavioral and mental health, chiropractic, other complementary and alternative medical practice licensed by the state, home health care, public health, and long-term care.

(b) The director shall assist communities to identify the service areas in which the teams work, which may include a hospital service area or other geographic area.

(c) Health care professionals participating in a community health team shall:

(1) Collaborate with other health care professionals and with existing state agencies and community-based organizations in order to coordinate disease prevention, manage chronic disease, coordinate social services if appropriate, and provide an appropriate transition of patients between health care professionals or providers. Priority may be given to patients willing to participate in prevention activities or patients with chronic diseases or conditions identified by the director of the Blueprint.

(2) Support a health care professional or practice which operates as a medical home, including by:

(A) assisting in the development and implementation of a comprehensive care plan for a patient that integrates clinical services with prevention and health promotion services available in the community and with relevant services provided by the agency of human services. Priority may be given to patients willing to participate in prevention activities or patients with chronic diseases or conditions identified by the director of the Blueprint.

(B) providing a method for health care professionals, patients, caregivers, and authorized representatives to assist in the design and oversight of the comprehensive care plan for the patient;

(C) coordinating access to high-quality, cost-effective, culturally appropriate, and patient- and family-centered health care and social services, including preventive services, activities which promote health, appropriate specialty care, inpatient services, medication management services provided by a pharmacist, and appropriate complementary and alternative (CAM) services;

(D) providing support for treatment planning, monitoring the patient's health outcomes and resource use, sharing information, assisting patients in making treatment decisions, avoiding duplication of services, and engaging in other approaches intended to improve the quality and value of health services;

(E) assisting in the collection and reporting of data in order to evaluate the Blueprint model on patient outcomes, including collection of data on patient experience of care, and identification of areas for improvement; and

(F) providing a coordinated system of early identification and referral for children at risk for developmental or behavioral problems such as through the use of health information technology or other means as determined by the director of the Blueprint.

(3) Provide care management and support when a patient moves to a new setting for care, including by:

(A) providing on-site visits from a member of the community health team, assisting with the development of discharge plans and medication reconciliation upon admission to and discharge from the hospital, nursing home, or other institution setting;

(B) generally assisting health care professionals, patients, caregivers, and authorized representatives in discharge planning, including by assuring that postdischarge care plans include medication management as appropriate;

(C) referring patients as appropriate for mental and behavioral health services;

(D) ensuring that when a patient becomes an adult, his or her health care needs are provided for; and

(E) serving as a liaison to community prevention and treatment programs.

§ 706. HEALTH INSURER PARTICIPATION

(a) As provided for in 8 V.S.A. § 4088h, health insurance plans shall be consistent with the Blueprint for Health as determined by the commissioner of banking, insurance, securities, and health care administration.

(b) No later than January 1, 2011, health insurers shall participate in the Blueprint for Health as a condition of doing business in this state as provided for in this section and in 8 V.S.A. § 4088h. Under 8 V.S.A. § 4088h, the commissioner of banking, insurance, securities, and health care administration may exclude or limit the participation of health insurers offering a stand-alone dental plan or specific disease or other limited benefit coverage in the Blueprint for Health. Health insurers shall be exempt from participation if the insurer only offers benefit plans which are paid directly to the individual insured or the insured's assigned beneficiaries and for which the amount of the benefit is not based upon potential medical costs or actual costs incurred.

(c)(1) The Blueprint payment reform methodologies shall include per-person per-month payments to medical home practices by each health insurer and Medicaid for their attributed patients and for contributions to the shared costs of operating the community health teams. Per-person per-month payments to practices shall be based on the official National Committee for Quality Assurance's Physician Practice Connections – Patient Centered Medical Home (NCQA PPC-PCMH) score and shall be in addition to their normal fee-for-service or other payments.

(2) Consistent with the recommendation of the Blueprint expansion design and evaluation committee, the director of the Blueprint may implement changes to the payment amounts or to the payment reform methodologies

described in subdivision (1) of this subsection, including by providing for enhanced payment to health care professional practices which operate as a medical home, payment toward the shared costs for community health teams, or other payment methodologies required by the Centers for Medicare and Medicaid Services (CMS) for participation by Medicaid or Medicare.

(3) Health insurers shall modify payment methodologies and amounts to health care professionals and providers as required for the establishment of the model described in sections 703 through 705 of this title and this section, including any requirements specified by the Centers for Medicare and Medicaid Services (CMS) in approving federal participation in the model to ensure consistency of payment methods in the model.

(4) In the event that the secretary of human services is denied permission from the Centers for Medicare and Medicaid Services (CMS) to include financial participation by Medicare, health insurers shall not be required to cover the costs associated with individuals covered by Medicare.

(d) An insurer may appeal a decision of the director to require a particular payment methodology or payment amount to the commissioner of Vermont health access, who shall provide a hearing in accordance with chapter 25 of Title 3. An insurer aggrieved by the decision of the commissioner may appeal to the superior court for the Washington district within 30 days after the commissioner issues his or her decision.

§ 707. PARTICIPATION BY HEALTH CARE PROFESSIONALS AND HOSPITALS

(a) No later than July 1, 2011, hospitals shall participate in the Blueprint for Health by creating or maintaining connectivity to the state's health information exchange network as provided for in this section and in section 9456 of this title. The director of health care reform or designee and the director of the Blueprint shall establish criteria by rule for this requirement consistent with the state health information technology plan required under section 9351 of this title. The criteria shall not require a hospital to create a level of connectivity that the state's exchange is not able to support.

(b) The director of health care reform or designee shall ensure hospitals have access to state and federal resources to support connectivity to the state's health information exchange network.

(c) The director of the Blueprint shall engage health care professionals and providers to encourage participation in the Blueprint, including by providing information and assistance.

§ 708. CERTIFICATION OF HOSPITALS

(a) The director of health care reform or designee shall establish a process for annually certifying that a hospital meets the participation requirements established under section 707 of this title. Once a hospital is fully connected to the state's health information exchange, the director of health care reform or designee shall waive further certification. The director may require a hospital to resume certification if the criteria for connectivity change, if the hospital loses connectivity to the state's health information exchange, or for another reason which results in the hospital's not meeting the participation requirement in section 707 of this title. The certification process, including the appeal process, shall be completed prior to the hospital budget review required under section 9456 of this title.

(b) Once the hospital has been certified or certification has been waived, the director of health care reform or designee shall provide the hospital with documentation to include in its annual budget review as required by section 9456 of this title.

(c) A denial of certification by the director of health care reform or designee may be appealed to the commissioner of Vermont health access, who shall provide a hearing in accordance with chapter 25 of Title 3. A hospital aggrieved by the decision of the commissioner may appeal to the superior court for the district in which the hospital is located within 30 days after the commissioner issues his or her decision.

§ 709. ANNUAL REPORT

(a) The director of the Blueprint shall report annually, no later than January 15, on the status of implementation of the Vermont Blueprint for Health for the prior calendar year and shall provide the report to the house committee on health care, the senate committee on health and welfare, the health access oversight committee, and the joint legislative commission on health care reform.

(b) The report required by subsection (a) of this section shall include the number of participating insurers, health care professionals, and patients; the progress made in achieving statewide participation in the chronic care management plan, including the measures established under this subchapter; the expenditures and savings for the period; the results of health care professional and patient satisfaction surveys; the progress made toward creation and implementation of privacy and security protocols; information on the progress made toward the requirements in this subchapter; and other information as requested by the committees.

Sec. 14. PAYMENT REFORM; PILOTS

(a)(1) The department of Vermont health access shall be responsible for developing pilot projects to test payment reform methodologies as provided under this section. The director of payment reform shall oversee the development, implementation, and evaluation of the payment reform pilot projects. Whenever health insurers are concerned, the director shall collaborate with the commissioner of banking, insurance, securities, and health care administration. The terms used in this section shall have the same meanings as in chapter 13 of Title 18.

(2) The director of payment reform shall convene a broad-based group of stakeholders, including health care professionals who provide health services as defined under 8 V.S.A. § 4080f, health insurers, professional organizations, community and nonprofit groups, consumers, businesses, school districts, and state and local government to advise the director in developing and implementing the pilot projects.

(3) Payment reform pilot projects shall be developed and implemented to manage the total costs of the health care delivery system in a region, improve health outcomes for Vermonters, provide a positive health care experience for patients and providers, and further the following objectives:

(A) payment reform pilot projects should be organized around primary care professionals and be structured to serve the population using the primary care professionals;

(B) payment reform pilot projects should align with the Blueprint for Health strategic plan and the statewide health information technology plan;

(C) health care providers and professionals should coordinate patient care through a local entity or organization facilitating this coordination or another structure which results in the coordination of patient care;

(D) health insurers, Medicaid, Medicare, and all other payers should reimburse health care providers and professionals for coordinating patient care through a single system of payments; a global budget; a system of cost-containment, health care outcome, and patient satisfaction targets which may include shared savings, risk-sharing, or other incentives designed to reduce costs while maintaining or improving health outcomes and patient satisfaction; or another payment method providing an incentive to coordinate care;

(E) the design and implementation of the payment reform pilot projects should be aligned with the requirements of federal law to ensure the full participation of Medicare in multipayer payment reform;

(F) the global budget should include a broad, comprehensive set of services, including prescription drugs, diagnostic services, services received in a hospital, and services from a licensed health care practitioner;

(G) with input from long-term care providers, the global budget may also include home health services, and long-term care services if feasible;

(H) financial performance of an integrated community of care should be measured instead of the financial viability of a single institution.

(4)(A) No later than February 1, 2011, the director of payment reform shall provide a strategic plan for the pilot projects to the house committee on health care and the senate committee on health and welfare. The strategic plan shall provide:

(i) A description of the proposed payment reform pilot projects, including a description of the possible organizational model or models for health care providers or professionals to coordinate patient care, a detailed design of the financial model or models, and an estimate of savings to the health care system from cost reductions due to reduced administration, from a reduction in health care inflation, or from other sources.

(ii) An ongoing program evaluation and improvement protocol.

(iii) An implementation time line for pilot projects, with the first project to become operational no later than January 1, 2012, and with two or more additional pilot projects to become operational no later than July 1, 2012.

(B) The director shall not implement the pilot projects until the strategic plan has been approved or modified by the general assembly.

(b) Health insurer participation.

(1)(A) Health insurers shall participate in the development of the payment reform strategic plan for the pilot projects and, after approval by the general assembly, in the implementation of the pilot projects, including by providing incentives or fees, as required in this section. This requirement may be enforced by the department of banking, insurance, securities, and health care administration to the same extent as the requirement to participate in the Blueprint for Health provided for in 8 V.S.A. § 4088h.

(B) In consultation with the director of the Blueprint for Health and the director of payment reform, the commissioner of banking, insurance, securities, and health care administration may establish procedures to exempt or limit the participation of health insurers offering a stand-alone dental plan or specific disease or other limited-benefit coverage or participation by insurers with a minimal number of covered lives as defined by the commissioner. Health insurers shall be exempt from participation if the insurer offers only

benefit plans which are paid directly to the individual insured or the insured's assigned beneficiaries and for which the amount of the benefit is not based upon potential medical costs or actual costs incurred.

(C) After the pilot projects are implemented, health insurers shall have the same appeal rights provided for in 18 V.S.A. § 706 for participation in the Blueprint for Health.

(2) In the event that the secretary of human services is denied permission from the Centers for Medicare and Medicaid Services to include financial participation by Medicare in the pilot projects, health insurers shall not be required to cover the costs associated with individuals covered by Medicare.

(c) To the extent required to avoid federal anti-trust violations, the commissioner of banking, insurance, securities, and health care administration shall facilitate and supervise the participation of health care professionals, health care facilities, and insurers in the planning and implementation of the payment reform pilot projects, including by creating a shared incentive pool if appropriate. The department shall ensure that the process and implementation includes sufficient state supervision over these entities to comply with federal anti-trust provisions.

(d) The commissioner of Vermont health access or designee shall apply for grant funding, if available, for the design and implementation of the pilot projects described in this act. Any amounts received in grant funds shall first be used to offset any state funds that are appropriated or allocated in this act or in other acts related to the pilot projects described in this section. Any grant funds received in excess of the appropriated amount may be used for the design and implementation of the pilot projects.

(e) If the pilot projects are approved by the general assembly, the director of payment reform shall report annually by January 15 beginning in 2012 on the status of implementation of the pilot projects for the prior calendar year, including any analysis or evaluation of the effectiveness of the pilot projects, and shall provide the report to the house committee on health care, the senate committee on health and welfare, the health access oversight committee, and the commission on health care reform.

Sec. 15. 8 V.S.A. § 4088h is amended to read:

§ 4088h. HEALTH INSURANCE AND THE BLUEPRINT FOR HEALTH

(a)(1) A health insurance plan shall be offered, issued, and administered consistent with the blueprint for health established in chapter 13 of Title 18, as determined by the commissioner.

~~(b)~~(2) As used in this section, "health insurance plan" means any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this state by a health insurer, as defined in ~~section~~ 18 V.S.A. § 9402 ~~of Title 18~~. The term shall include the health benefit plan offered by the state of Vermont to its employees and any health benefit plan offered by any agency or instrumentality of the state to its employees. The term shall not include benefit plans providing coverage for specific disease or other limited benefit coverage unless so directed by the commissioner.

(b) Health insurers as defined in 18 V.S.A. § 701 shall participate in the Blueprint for Health as specified in 18 V.S.A. § 706. In consultation with the director of the Blueprint for Health and the director of health care reform, the commissioner may establish procedures to exempt or limit the participation of health insurers offering a stand-alone dental plan or specific disease or other limited-benefit coverage. A health insurer shall be exempt from participation if the insurer offers only benefit plans which are paid directly to the individual insured or the insured's assigned beneficiaries and for which the amount of the benefit is not based upon potential medical costs or actual costs incurred.

Sec. 16. 18 V.S.A. § 9456(a) is amended to read:

(a) The commissioner shall conduct reviews of each hospital's proposed budget based on the information provided pursuant to this subchapter, and in accordance with a schedule established by the commissioner. The commissioner shall require the submission of documentation certifying that the hospital is participating in the Blueprint for Health if required by section 708 of this title.

Sec. 17. FEDERAL HEALTH CARE REFORM; DEMONSTRATION PROGRAMS

(a)(1) Medicare waivers. Upon establishment by the secretary of the U.S. Department of Health and Human Services (HHS) of an advanced practice primary care medical home demonstration program or a community health team demonstration program pursuant to Sec. 3502 of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, the secretary of human services may apply to the secretary of HHS to enable Vermont to include Medicare as a participant in the Blueprint for Health as described in chapter 13 of Title 18.

(2) Upon establishment by the secretary of HHS of a shared savings program pursuant to Sec. 3022 of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education

Reconciliation Act of 2010, Public Law 111-152, the secretary of human services may apply to the secretary of HHS to enable Vermont to participate in the program by establishing payment reform pilot projects as provided for by Sec. 14 of this act.

(b)(1) Medicaid waivers. The intent of this section is to provide the secretary of human services with the authority to pursue Medicaid participation in the Blueprint for Health through any existing or new waiver.

(2) Upon establishment by the secretary of HHS of a health home demonstration program pursuant to Sec. 3502 of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, the secretary of human services may apply to the secretary of HHS to include Medicaid as a participant in the Blueprint for Health as described in chapter 13 of Title 18. In the alternative, under Section 1115 of the Social Security Act, the secretary of human services may apply for an amendment to an existing Section 1115 waiver or may include in the renegotiation of the Global Commitment for Health Section 1115 waiver a request to include Medicaid as a participant in the Blueprint for Health as described in chapter 13 of Title 18.

Sec. 18. [DELETED]

Sec. 19. BLUEPRINT FOR HEALTH; EXPANSION

The commissioner of Vermont health access shall expand the Blueprint for Health as described in chapter 13 of Title 18 to at least two primary care practices in every hospital services area no later than July 1, 2011, and no later than October 1, 2013, to primary care practices statewide whose owners wish to participate.

* * * IMMEDIATE COST-CONTAINMENT PROVISIONS * * *

Sec. 20. HOSPITAL BUDGETS

(a)(1) The commissioner of banking, insurance, securities, and health care administration shall implement this section consistent with the goals identified in Sec. 50 of No. 61 of the Acts of 2009, 18 V.S.A. § 9456 and the goals of systemic health care reform, containing costs, solvency for efficient and effective hospitals, and promoting fairness and equity in health care financing. The authority provided in this section shall be in addition to the commissioner's authority under subchapter 7 of chapter 221 of Title 8 (hospital budget reviews).

(2) Except as provided for in subdivision (3) of this subsection, the commissioner of banking, insurance, securities, and health care administration shall target hospital budgets consistent with the following:

(A) For fiscal years 2011 and 2012, the commissioner shall aim to minimize rate increases for each hospital in an effort to balance the goals outlined in this section and shall ensure that the systemwide increase shall be lower than the prior year's increase.

(B)(i) For fiscal year 2011, the total systemwide net patient revenue increase for all hospitals reviewed by the commissioner shall not exceed 4.5 percent.

(ii) For fiscal year 2012, the total systemwide net patient revenue increase for all hospitals reviewed by the commissioner shall not exceed 4.0 percent.

(3)(A) Consistent with the goal 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.

(B) In calculating the hospital budgets as provided for in subdivision (2) of this subsection and if necessary to achieve the goals identified in this section, the commissioner may exempt hospital revenue and expenses associated with health care reform, hospital expenses related to electronic medical records or other information technology, hospital expenses related to acquiring or starting new physician practices, and other expenses, such as all or a portion of the provider tax. The expenditures shall be specifically reported, supported with sufficient documentation as required by the commissioner, and may only be exempt if approved by the commissioner.

(b) Notwithstanding 18 V.S.A. § 9456(e), permitting the commissioner to waive a hospital from the budget review process, and consistent with this section and the overarching goal of containing health care and hospital costs, the commissioner may waive 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. 21. 18 V.S.A. § 9440(b)(1) is amended to read:

(b)(1) The application shall be in such form and contain such information as the commissioner establishes. In addition, the commissioner may require of an applicant any or all of the following information that the commissioner deems necessary:

* * *

(I) additional information as needed by the commissioner, including information from affiliated corporations or other persons in the control of or controlled by the applicant.

Sec. 22. 18 V.S.A. § 9456(g) is amended to read:

(g) The commissioner may request, and a hospital shall provide, information determined by the commissioner to be necessary to determine whether the hospital is operating within a budget established under this section. For purposes of this subsection, subsection (h) of this section, and subdivision 9454(a)(7) of this title, the commissioner's authority shall extend to an affiliated corporation or other person in the control of or controlled by the hospital to the extent that such authority is necessary to carry out the purposes of this subsection, subsection (h) of this section, or subdivision 9454(a)(7) of this title. As used in this subsection, a rebuttable presumption of "control" is created if the entity, hospital, or other person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 20 percent or more of the voting securities or membership interest or other governing interest of the hospital or other controlled entity.

Sec. 23. 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 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 of the hospital's request for a hearing, and a decision shall be issued within 30 days after conclusion of the hearing. The commissioner may increase the time to hold the hearing or to render the decision for good cause shown. Hospitals may appeal any decision in this subsection to superior court. 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. 24. 18 V.S.A. § 9456(b) is amended to read:

(b) In conjunction with budget reviews, the commissioner shall:

(1) review utilization information;

(2) consider the goals and recommendations of the health resource allocation plan;

(3) consider the expenditure analysis for the previous year and the proposed expenditure analysis for the year under review;

(4) consider any reports from professional review organizations;

(5) solicit public comment on all aspects of hospital costs and use and on the budgets proposed by individual hospitals;

(6) meet with hospitals to review and discuss hospital budgets for the forthcoming fiscal year;

(7) give public notice of the meetings with hospitals, and invite the public to attend and to comment on the proposed budgets;

(8) consider the extent to which costs incurred by the hospital in connection with services provided to Medicaid beneficiaries are being charged to non-Medicaid health benefit plans and other non-Medicaid payers;

(9) require each hospital to file an analysis that reflects a reduction in net revenue needs from non-Medicaid payers equal to any anticipated increase in Medicaid, Medicare, or another public health care program reimbursements, and to any reduction in bad debt or charity care due to an increase in the number of insured individuals;

(10) require each hospital to provide information on administrative costs, as defined by the commissioner, including specific information on the amounts spent on marketing and advertising costs.

Sec. 25. 18 V.S.A. § 9439(f) is amended to read:

(f) ~~The commissioner shall establish, by rule, annual cycles for the review of applications for certificates under this subchapter, in addition to the review cycles for skilled nursing and intermediate care beds established under subsections (d) and (e) of this section. A review cycle may include in the same group some or all of the types of projects subject to certificate of need review. Such rules may exempt emergency applications, pursuant to subsection 9440(d) of this title.~~ Unless an application meets the requirements of subsection 9440(e) of this title, the commissioner shall consider disapproving a certificate of need application for a hospital if a project was not identified prospectively as needed at least two years prior to the time of filing in the hospital's four-year capital plan required under subdivision 9454(a)(6) of this title. The commissioner shall review all hospital four-year capital plans as part of the review under subdivision 9437(2)(B) of this title.

Sec. 26. INSURANCE REGULATION; INTENT

It is the intent of the general assembly that the commissioner of banking, insurance, securities, and health care administration use the existing 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 may include imposing limits on:

(1) administrative costs as a percentage of the premium;

(2) contributions to reserves;

(3) producer commissions in specified markets;

(4) medical trends;

(5) pharmacy trends; and

(6) such other areas as the commissioner deems appropriate.

Sec. 27. 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 occur at the time a rate increase is sought 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. 28. 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 occur at the time a rate increase is sought and shall be in the manner and form directed by the commissioner. Such information shall be made available to the public in a manner that is easy to understand.

Sec. 29. RULEMAKING; REPORTING OF INFORMATION

The commissioner of banking, insurance, securities, and health care administration shall adopt rules pursuant to chapter 25 of Title 3 requiring each health insurer licensed to do business in this state to report to the department of banking, insurance, securities, and health care administration at least annually information specific to its Vermont contracts, including enrollment data, loss ratios, and such other information as the commissioner deems appropriate.

Sec. 30. 8 V.S.A. § 4089b(g) is amended to read:

(g) On or before July 15 of each year, health insurance companies doing business in Vermont~~, and~~ whose individual share of the commercially-insured Vermont market, as measured by covered lives, comprises at least five percent of the commercially-insured Vermont market, shall file with the commissioner, in accordance with standards, procedures, and forms approved by the commissioner:

* * *

(2) The health insurance plan's revenue loss and expense ratio relating to the care and treatment of mental health conditions covered under the health insurance plan. The expense ratio report shall list amounts paid in claims for services and administrative costs separately. A managed care organization providing or administering coverage for treatment of mental health conditions on behalf of a health insurance plan shall comply with the minimum loss ratio requirements pursuant to 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, applicable to the underlying health insurance plan with which the managed care organization has contracted to provide or administer such services. The health insurance plan shall also bear responsibility for ensuring the managed care organization's compliance with the minimum loss ratio requirement pursuant to this subdivision.

* * * HEALTH CARE WORKFORCE PROVISIONS * * *

Sec. 31. INTERIM STUDY OF VERMONT'S PRIMARY CARE WORKFORCE DEVELOPMENT

(a) Creation of committee. There is created a primary care workforce development committee to determine the additional capacity needed in the primary care delivery system if Vermont achieves the health care reform principles and purposes established in Secs. 1 and 2 of No. 191 of the Acts of the 2005 Adj. Sess. (2006) and to create a strategic plan for ensuring that the necessary workforce capacity is achieved in the primary care delivery system. The primary care workforce includes physicians, advanced practice nurses, and other health care professionals providing primary care as defined in 8 V.S.A. § 4080f.

(b) Membership. The primary care workforce development committee shall be composed of 18 members as follows:

(1) the commissioner of Vermont health access;

(2) the deputy commissioner of the division of health care administration or designee;

(3) the director of the Blueprint for Health;

(4) the commissioner of health or designee;

(5) a representative of the University of Vermont College of Medicine's Area Health Education Centers (AHEC) program;

(6) a representative of the University of Vermont College of Medicine's Office of Primary Care, a representative of the University of Vermont College of Nursing and Health Sciences, a representative of nursing programs at the Vermont State Colleges, and a representative from Norwich University's nursing programs;

(7) a representative of the Vermont Association of Naturopathic Physicians;

(8) a representative of Bi-State Primary Care Association;

(9) a representative of Vermont Nurse Practitioners Association;

(10) a representative of Physician Assistant Academy of Vermont;

(11) a representative of the Vermont Medical Society;

(12) a representative of the Vermont health care workforce development partners;

(13) a mental health or substance abuse treatment professional currently in practice, to be appointed by the commissioner of Vermont health access;

(14) a representative of the Vermont assembly of home health agencies; and

(15) the commissioner of labor or designee.

(c) Powers and duties.

(1) The committee established in subsection (a) of this section shall study the primary care workforce development system in Vermont, including the following issues:

(A) the current capacity and capacity issues of the primary care workforce and delivery system in Vermont, including the number of primary care professionals, issues with geographic access to services, and unmet primary health care needs of Vermonters.

(B) the resources needed to ensure that the primary care workforce and the delivery system are able to provide sufficient access to services should all or most Vermonters become insured, to provide sufficient access to services given demographic factors in the population and in the workforce, and to participate fully in health care reform initiatives, including participation in the Blueprint for Health and transition to electronic medical records; and

(C) how state government, universities and colleges, and others may develop the resources in the primary care workforce and delivery system to achieve Vermont's health care reform principles and purposes.

(2) The committee shall create a detailed and targeted five-year strategic plan with specific action steps for attaining sufficient capacity in the primary care workforce and delivery system to achieve Vermont's health care reform principles and purposes. By November 15, 2010, the department of Vermont health access in collaboration with AHEC and the department of health shall report to the joint legislative commission on health care reform, the house committee on health care, and the senate committee on health and welfare its findings, the strategic plan, and any recommendations for legislative action.

(3) For purposes of its study of these issues, the committee shall have administrative support from the department of Vermont health access. The commissioner of Vermont health access shall call the first meeting of the committee and shall jointly operate with the representative from AHEC to cochair of the committee.

(d) Term of committee. The committee shall cease to exist on January 31, 2011.

Sec. 31a. 1 V.S.A. § 376 is added to read:

§ 376. HEALTH CARE CAREER AWARENESS MONTH

October of each year is designated as health care career awareness month.

* * * PRESCRIPTION DRUG PROVISIONS * * *

Sec. 32. 18 V.S.A. § 4631a is amended to read:

§ 4631a. ~~GIFTS~~ EXPENDITURES BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a) As used in this section:

(1) "Allowable expenditures" means:

(A) Payment to the sponsor of a significant educational, medical, scientific, or policy-making conference or seminar, provided:

(i) the payment is not made directly to a health care ~~provider~~ professional or pharmacist;

(ii) funding is used solely for bona fide educational purposes, except that the sponsor may, in the sponsor's discretion, apply some or all of the funding to provide meals and other food for all conference participants; and

(iii) all program content is objective, free from industry control, and does not promote specific products.

(B) Honoraria and payment of the expenses of a health care professional who serves on the faculty at a bona fide significant educational, medical, scientific, or policy-making conference or seminar, provided:

(i) there is an explicit contract with specific deliverables which are restricted to medical issues, not marketing activities; and

(ii) consistent with federal law, the content of the presentation, including slides and written materials, is determined by the health care professional.

(C) For a bona fide clinical trial:

(i) gross compensation for the Vermont location or locations involved;

(ii) direct salary support per principal investigator and other health care professionals per year; and

(iii) expenses paid on behalf of investigators or other health care professionals paid to review the clinical trial.

(D) For a research project that constitutes a systematic investigation, is designed to develop or contribute to general knowledge, and reasonably can be considered to be of significant interest or value to scientists or health care professionals working in the particular field of inquiry:

(i) gross compensation;

(ii) direct salary support per health care professional; and

(iii) expenses paid on behalf of each health care professional.

(E) Payment or reimbursement for the reasonable expenses, including travel and lodging-related expenses, necessary for technical training of individual health care professionals on the use of a medical device if the commitment to provide such expenses and the amounts or categories of reasonable expenses to be paid are described in a written agreement between the health care provider and the manufacturer.

(F) Royalties and licensing fees paid to health care providers in return for contractual rights to use or purchase a patented or otherwise legally recognized discovery for which the health care provider holds an ownership right.

(G) The payment of the reasonable expenses of an individual related to the interview of the individual by a manufacturer of prescribed products in connection with a bona fide employment opportunity.

~~(G)~~(H) Other reasonable fees, payments, subsidies, or other economic benefits provided by a manufacturer of prescribed products at fair market value.

(2) "Bona fide clinical trial" means an FDA-reviewed clinical trial that constitutes "research" as that term is defined in 45 C.F.R. § 46.102 and reasonably can be considered to be of interest to scientists or health care professionals working in the particular field of inquiry.

(3) "Clinical trial" means any study assessing the safety or efficacy of prescribed products administered alone or in combination with other prescribed products or other therapies, or assessing the relative safety or efficacy of prescribed products in comparison with other prescribed products or other therapies.

(4) "Free clinic" means a health care facility operated by a nonprofit private entity that:

(A) in providing health care, does not accept reimbursement from any third-party payor, including reimbursement from any insurance policy,

health plan, or federal or state health benefits program that is individually determined;

(B) in providing health care, either:

(i) does not impose charges on patients to whom service is provided; or

(ii) imposes charges on patients according to their ability to pay;

(C) may accept patients' voluntary donations for health care service provision; and

(D) is licensed or certified to provide health services in accordance with Vermont law.

(5) "Gift" means:

(A) Anything of value provided to a health care provider for free; or

(B) ~~Any~~ Except as otherwise provided in subdivision (a)(1)(A)(ii) of this section, any payment, food, entertainment, travel, subscription, advance, service, or anything else of value provided to a health care provider, unless:

(i) it is an allowable expenditure as defined in subdivision (a)(1) of this section; or

(ii) the health care provider reimburses the cost at fair market value.

(6) "Health benefit plan administrator" means the person or entity who sets formularies on behalf of an employer or health insurer.

~~(5)~~(7)(A) "Health care professional" means:

(i) a person who is authorized by law to prescribe or to recommend prescribed products, who regularly practices in this state, and who either is licensed by this state to provide or is otherwise lawfully providing health care in this state; or

(ii) a partnership or corporation made up of the persons described in subdivision (i) of this subdivision ~~(5)~~(7)(A); or

(iii) an officer, employee, agent, or contractor of a person described in subdivision (i) of this subdivision ~~(5)~~(7)(A) who is acting in the course and scope of employment, of an agency, or of a contract related to or supportive of the provision of health care to individuals.

(B) The term shall not include a person described in subdivision (A) of this subdivision ~~(5)~~(7) who is employed solely by a manufacturer.

~~(6)~~(8) "Health care provider" means a health care professional, ~~a~~ hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to dispense or purchase for distribution prescribed products in this state. The term does not include a hospital foundation that is organized as a nonprofit entity separate from a hospital.

~~(7)~~(9) "Manufacturer" means a pharmaceutical, biological product, or medical device manufacturer or any other person who is engaged in the production, preparation, propagation, compounding, processing, marketing, packaging, repacking, distributing, or labeling of prescribed products. The term does not include a wholesale distributor of biological products, a retailer, or a pharmacist licensed under chapter 36 of Title 26.

~~(8)~~(10) "Marketing" shall include promotion, detailing, or any activity that is intended to be used or is used to influence sales or market share or to evaluate the effectiveness of a professional sales force.

~~(9)~~(11) "Pharmaceutical manufacturer" means any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drugs, whether directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling, or distribution of prescription drugs. The term does not include a wholesale distributor of prescription drugs, a retailer, or a pharmacist licensed under chapter 36 of Title 26.

~~(10)~~(12) "Prescribed product" means a drug or device as defined in section 201 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321, ~~or~~ a compound drug or drugs, or a biological product as defined in section 351 of the Public Health Service Act, 42 U.S.C. § 262, for human use.

(13) "Sample" means a unit of a prescription drug, biological product, or medical device that is not intended to be sold and is intended to promote the sale of the drug, product, or device. The term includes starter packs and coupons or other vouchers that enable an individual to receive a prescribed product free of charge or at a discounted price.

~~(11)~~(14) "Significant educational, scientific, or policy-making conference or seminar" means an educational, scientific, or policy-making conference or seminar that:

(A) is accredited by the Accreditation Council for Continuing Medical Education or a comparable organization or is presented by an approved sponsor of continuing education, provided that the sponsor is not a manufacturer of prescribed products; and

(B) offers continuing ~~medical~~ education credit, features multiple presenters on scientific research, or is authorized by the ~~sponsoring association~~ sponsor to recommend or make policy.

(b)(1) It is unlawful for any manufacturer of a prescribed product or any wholesale distributor of medical devices, or any agent thereof, to offer or give any gift to a health care provider.

(2) The prohibition set forth in subdivision (1) of this subsection shall not apply to any of the following:

(A) Samples of a prescribed product or reasonable quantities of an over-the-counter drug, nonprescription medical device, or item of nonprescription durable medical equipment provided to a health care provider for free distribution to patients.

(B) The loan of a medical device for a short-term trial period, not to exceed 90 days, to permit evaluation of a medical device by a health care provider or patient.

(C) The provision of reasonable quantities of medical device demonstration or evaluation units to a health care provider to assess the appropriate use and function of the product and determine whether and when to use or recommend the product in the future.

(D) The provision, distribution, dissemination, or receipt of peer-reviewed academic, scientific, or clinical articles or journals and other items that serve a genuine educational function provided to a health care provider for the benefit of patients.

(E) Scholarship or other support for medical students, residents, and fellows to attend a significant educational, scientific, or policy-making conference or seminar of a national, regional, or specialty medical or other professional association if the recipient of the scholarship or other support is selected by the association.

(F) Rebates and discounts for prescribed products provided in the normal course of business.

(G) Labels approved by the federal Food and Drug Administration for prescribed products.

(H) The provision of free prescription drugs or over-the-counter drugs, medical devices, biological products, medical equipment or supplies, or financial donations to a free clinic.

(I) The provision of free prescription drugs to or on behalf of an individual through a prescription drug manufacturer's patient assistance program.

(J) Fellowship salary support provided to fellows through grants from manufacturers of prescribed products, provided:

(i) such grants are applied for by an academic institution or hospital;

(ii) the institution or hospital selects the recipient fellows;

(iii) the manufacturer imposes no further demands or limits on the institution's, hospital's, or fellow's use of the funds; and

(iv) fellowships are not named for a manufacturer and no individual recipient's fellowship is attributed to a particular manufacturer of prescribed products.

(K) The provision of coffee or other snacks or refreshments at a booth at a conference or seminar.

(c) The attorney general may bring an action in Washington superior court for injunctive relief, costs, and attorney's fees and may impose on a manufacturer that violates this section a civil penalty of no more than $10,000.00 per violation. Each unlawful gift shall constitute a separate violation.

Sec. 33. 18 V.S.A. § 4632 is amended to read:

§ 4632. DISCLOSURE OF ALLOWABLE EXPENDITURES AND GIFTS BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a)(1) Annually on or before October 1 of each year, every manufacturer of prescribed products shall disclose to the office of the attorney general for the fiscal year ending the previous June 30th the value, nature, purpose, and recipient information of:

(A) any allowable expenditure or gift permitted under subdivision 4631a(b)(2) of this title to any health care provider, except:

(i) royalties and licensing fees as described in subdivision 4631a(a)(1)(F) of this title;

(ii) rebates and discounts for prescribed products provided in the normal course of business as described in subdivision 4631a(b)(2)(F) of this title;

(iii) payments for clinical trials as described in subdivision 4631a(a)(1)(C) of this title, which shall be disclosed after the earlier of the date

of the approval or clearance of the prescribed product by the Food and Drug Administration or two calendar years after the date the payment was made. For a clinical trial for which disclosure is delayed under this subdivision (iii), the manufacturer shall identify to the attorney general the clinical trial, the start date, and the web link to the clinical trial registration on the national clinical trials registry; ~~and~~

(iv) ~~samples of a prescription drug or biological product provided to a health care professional for free distribution to patients~~ interview expenses as described in subdivision 4631a(a)(1)(G) of this title; and

(v) coffee or other snacks or refreshments at a booth at a conference or seminar.

(B) any allowable expenditure or gift ~~permitted under subdivision 4631a(b)(2) of this title~~ to an academic institution, to a nonprofit hospital foundation, or to a professional, educational, or patient organization representing or serving health care providers or consumers located in or providing services in Vermont, except:

(i) royalties and licensing fees as described in subdivision 4631a(a)(1)(F) of this title;

(ii) rebates and discounts for prescribed products provided in the normal course of business as described in subdivision 4631a(b)(2)(F) of this title; and

(iii) payments for clinical trials as described in subdivision 4631a(a)(1)(C) of this title, which shall be disclosed after the earlier of the date of the approval or clearance of the prescribed product by the Food and Drug Administration or two calendar years after the date the payment was made. For a clinical trial for which disclosure is delayed under this subdivision (iii), the manufacturer shall identify to the attorney general the clinical trial, the start date, and the web link to the clinical trial registration on the national clinical trials registry~~; and~~

~~(iv) samples of a prescription drug provided to a health care professional for free distribution to patients~~.

(2)(A)(i) Subject to the provisions of subdivision (B) of this subdivision (a)(2) and to the extent allowed under federal law, annually on or before April 1 of each year beginning in 2012, each manufacturer of prescribed products shall disclose to the office of the attorney general all free samples of prescribed products provided to health care providers during the preceding calendar year, identifying for each sample the product, recipient, number of units, and dosage.

(ii) The office of the attorney general may contract with academic researchers to release to such researchers data relating to manufacturer distribution of free samples, subject to confidentiality provisions and without including the names or license numbers of individual recipients, for analysis and aggregated public reporting.

(iii) Any public reporting of manufacturer distribution of free samples shall not include information that allows for the identification of individual recipients of samples or connects individual recipients with the monetary value of the samples provided.

(B) Subdivision (A) of this subdivision (a)(2) shall not apply to samples of prescription drugs required to be reported under Sec. 6004 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, if as of January 1, 2011, the office of the attorney general has determined that the U.S. Department of Health and Human Services will collect and report state- and recipient-specific information regarding manufacturer distribution of free samples of such prescription drugs.

~~(2)~~(3) Annually on July 1, each manufacturer of prescribed products also shall disclose to the office of the attorney general the name and address of the individual responsible for the manufacturer's compliance with the provisions of this section.

~~(3)~~(4) Disclosure shall be made on a form and in a manner prescribed by the office of the attorney general and shall require manufacturers of prescribed products to report each allowable expenditure or gift permitted under subdivision 4631a(b)(2) of this title including:

(A) except as otherwise provided in subdivision (a)(2) of this section, the value, nature, and purpose of each allowable expenditure, and gift permitted under subdivision 4631a(b)(2) of this title according to specific categories identified by the office of the attorney general;

(B) the name of the recipient;

(C) the recipient's address;

(D) the recipient's institutional affiliation;

(E) prescribed product or products being marketed, if any; and

(F) the recipient's state board number.

~~(4)~~(5) The office of the attorney general shall report annually on the disclosures made under this section to the general assembly and the governor on or before April 1. The report shall include:

(A) Information on allowable expenditures and gifts required to be disclosed under this section, which shall be presented in both aggregate form and by selected types of health care providers or individual health care providers, as prioritized each year by the office.

(B) Information on violations and enforcement actions brought pursuant to this section and section 4631a of this title.

~~(5)~~(6) After issuance of the report required by subdivision ~~(a)~~(5) of this ~~section~~ subsection and except as otherwise provided in subdivision (2)(A)(i) of this subsection, the office of the attorney general shall make all disclosed data used for the report publicly available and searchable through an Internet website.

~~(6)~~(7) The office of Vermont health access shall examine the data available from the office of the attorney general for relevant expenditures and determine whether and to what extent prescribing patterns by health care providers of prescribed products reimbursed by Medicaid, VHAP, Dr. Dynasaur, VermontRx, and VPharm may reflect manufacturer influence. The office may select the data most relevant to its analysis. The office shall report its analysis annually to the general assembly and the governor on or before October 1.

(b)(1) Annually on July 1, the office of the attorney general shall collect a $500.00 fee from each manufacturer of prescribed products filing annual disclosures of expenditures greater than zero described in subsection (a) of this section.

(2) Fees collected under this section shall fund collection and analysis of information on activities related to the marketing of prescribed products under ~~sections~~ section 4631a ~~and 4632~~ of ~~Title 18~~ this title and under this section. The fees shall be collected in a special fund assigned to the office.

(c) The attorney general may bring an action in Washington superior court for injunctive relief, costs, and attorney's fees, and to impose on a manufacturer of prescribed products that fails to disclose as required by subsection (a) of this section a civil penalty of no more than $10,000.00 per violation. Each unlawful failure to disclose shall constitute a separate violation.

(d) The terms used in this section shall have the same meanings as they do in section 4631a of this title.

* * * HEALTH INSURANCE COVERAGE PROVISIONS * * *

Sec. 34. 8 V.S.A. chapter 107, subchapter 12 is added to read:

Subchapter 12. Coverage for Dental Procedures

§ 4100i. ANESTHESIA COVERAGE FOR CERTAIN DENTAL PROCEDURES

(a) A health insurance plan shall provide coverage for the hospital or ambulatory surgical center charges and administration of general anesthesia administered by a licensed anesthesiologist or certified registered nurse anesthetist for dental procedures performed on a covered person who is:

(1) a child seven years of age or younger who is determined by a dentist licensed pursuant to chapter 13 of Title 26 to be unable to receive needed dental treatment in an outpatient setting, where the provider treating the patient certifies that due to the patient's age and the patient's condition or problem, hospitalization or general anesthesia in a hospital or ambulatory surgical center is required in order to perform significantly complex dental procedures safely and effectively;

(2) a child 12 years of age or younger with documented phobias or a documented mental illness, as determined by a physician licensed pursuant to chapter 23 of Title 26 or by a licensed mental health professional, whose dental needs are sufficiently complex and urgent that delaying or deferring treatment can be expected to result in infection, loss of teeth, or other increased oral or dental morbidity; for whom a successful result cannot be expected from dental care provided under local anesthesia; and for whom a superior result can be expected from dental care provided under general anesthesia; or

(3) a person who has exceptional medical circumstances or a developmental disability, as determined by a physician licensed pursuant to chapter 23 of Title 26, which place the person at serious risk.

(b) A health insurance plan may require prior authorization for general anesthesia and associated hospital or ambulatory surgical center charges for dental care in the same manner that prior authorization is required for these benefits in connection with other covered medical care.

(c) A health insurance plan may restrict coverage for general anesthesia and associated hospital or ambulatory surgical center charges to dental care that is provided by:

(1) a fully accredited specialist in pediatric dentistry;

(2) a fully accredited specialist in oral and maxillofacial surgery; and

(3) a dentist to whom hospital privileges have been granted.

(d) The provisions of this section shall not be construed to require a health insurance plan to provide coverage for the dental procedure or other dental care for which general anesthesia is provided.

(e) The provisions of this section shall not be construed to prevent or require reimbursement by a health insurance plan for the provision of general anesthesia and associated facility charges to a dentist holding a general anesthesia endorsement issued by the Vermont board of dental examiners if the dentist has provided services pursuant to this section on an outpatient basis in his or her own office and the dentist is in compliance with the endorsement's terms and conditions.

(f) As used in this section:

(1) "Ambulatory surgical center" shall have the same meaning as in 18 V.S.A. § 9432.

(2) "Anesthesiologist" means a person who is licensed to practice medicine or osteopathy under chapter 23 or 33 of Title 26 and who either:

(A) has completed a residency in anesthesiology approved by the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology or their predecessors or successors; or

(B) is credentialed by a hospital to practice anesthesiology and engages in the practice of anesthesiology at that hospital full-time.

(3) "Certified registered nurse anesthetist" means an advanced practice registered nurse licensed by the Vermont board of nursing to practice as a certified registered nurse anesthetist.

(4) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, but does not include policies or plans providing coverage for a specified disease or other limited benefit coverage.

(5) "Licensed mental health professional" means a licensed physician, psychologist, social worker, mental health counselor, or nurse with professional training, experience, and demonstrated competence in the treatment of mental illness.

Sec. 35. 8 V.S.A. chapter 107, subchapter 13 is added to read:

Subchapter 13. Tobacco Cessation

§ 4100j. COVERAGE FOR TOBACCO CESSATION PROGRAMS

(a) A health insurance plan shall provide coverage of at least one three-month supply per year of tobacco cessation medication, including over-the-counter medication, if prescribed by a licensed health care

practitioner for an individual insured under the plan. A health insurance plan may require the individual to pay the plan's applicable prescription drug co-payment for the tobacco cessation medication.

(b) As used in this subchapter:

(1) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, as well as Medicaid, the Vermont health access plan, and any other public health care assistance program offered or administered by the state or by any subdivision or instrumentality of the state. The term does not include policies or plans providing coverage for specified disease or other limited benefit coverage.

(2) "Tobacco cessation medication" means all therapies approved by the federal Food and Drug Administration for use in tobacco cessation.

* * * CATAMOUNT PROVISIONS * * *

Sec. 36. 2 V.S.A. § 903(b)(2) is amended to read:

(2) If the commission determines that the market is not cost-effective, the agency of administration shall issue a request for proposals for the administration only of Catamount Health as described in section 4080f of Title 8. A contract entered into under this subsection shall not include the assumption of risk. If Catamount Health is administered under this subsection, the agency shall purchase a stop-loss policy for an aggregate claims amount for Catamount Health as a method of managing the state's financial risk. The agency shall determine the amount of aggregate stop-loss reinsurance and may purchase additional types of reinsurance if prudent and cost-effective. ~~The agency may include in the contract the chronic care management program established under section 1903a of Title 33.~~

Sec. 37. 8 V.S.A. § 4080f is amended to read:

§ 4080f. CATAMOUNT HEALTH

* * *

(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:

* * *

(2) Catamount Health shall provide ~~a~~ chronic care management ~~program that has criteria substantially similar to the chronic care management program established in section 1903a of Title 33~~ in accordance with the Blueprint for Health established under chapter 13 of Title 18 and shall share the data on

enrollees, to the extent allowable under federal law, with the secretary of administration or designee in order to inform the health care reform initiatives under ~~section~~ 3V.S.A. § 2222a ~~of Title 3~~.

* * *

(f)(1) Except as provided for in subdivision (2) of this subsection, the carrier shall pay a health care professional the lowest of the health care professional's contracted rate, the health care professional's billed charges, or the rate derived from the Medicare fee schedule, at an amount 10 percent greater than fee schedule amounts paid under the Medicare program in 2006. Payments based on Medicare methodologies under this subsection shall be indexed to the Medicare economic index developed annually by the Centers for Medicare and Medicaid Services. The commissioner may approve adjustments to the amounts paid under this section in accordance with a carrier's pay for performance, quality improvement program, or other payment methodologies in accordance with the ~~blueprint for health~~ Blueprint for Health established under chapter 13 of Title 18.

(2) Payments for hospital services shall be calculated using a hospital-specific cost-to-charge ratio approved by the commissioner, adjusted for each hospital to ensure payments at 110 percent of the hospital's actual cost for services. The commissioner may use individual hospital budgets established under ~~section~~ 18 V.S.A. § 9456 ~~of Title 18~~ to determine approved ratios under this subdivision. Payments under this subdivision shall be indexed to changes in the Medicare payment rules, but shall not be lower than 102 percent of the hospital's actual cost for services. The commissioner may approve adjustments to the amounts paid under this section in accordance with a carrier's pay for performance, quality improvement program, or other payment methodologies in accordance with the ~~blueprint for health~~ Blueprint for Health established under chapter 13 of Title 18.

(3) Payments for chronic care and chronic care management shall meet the requirements in ~~section~~ 18 V.S.A. § 702 ~~of Title 18 and section 1903a of Title 33~~.

* * *

* * * OBESITY PREVENTION * * *

Sec. 38. REPORT ON OBESITY PREVENTION INITIATIVE

No later than November 15, 2010, the attorney general shall report to the house committees on health care and on human services, the senate committee on health and welfare, and the commission on health care reform regarding the results of the attorney general's initiative on the prevention of obesity. Specifically, the report shall include:

(1) a list of the stakeholders involved in the initiative;

(2) the actions the stakeholder group identified and developed related to obesity prevention;

(3) the stakeholder group's recommendations; and

(4) opportunities identified by the group to generate revenue and the group's recommendations on how such revenue should be applied.

* * * MISCELLANEOUS PROVISIONS * * *

Sec. 39. POSITION

In fiscal year 2011, the department of Vermont health access may establish one new exempt position to create a director of payment reform in the division of health care reform to fulfill the requirements in Sec. 14 of this act. This position shall be transferred and converted from existing vacant positions in the executive branch of state government.

Sec. 40. APPROPRIATIONS

(a) It is the intent of the general assembly to fund the payment reform pilot projects described in Sec. 14 of this act, including the position provided for in Sec. 39 of this act for a total of $250,000.00 in a budget neutral manner through the reallocation of existing sources in the fiscal year 2011 appropriations act.

(b) In fiscal year 2011, $250,000.00 in general funds is appropriated to the joint fiscal committee for hiring the consultant required under Sec. 6 of this act.

(c) In fiscal year 2011, $50,000.00 of the amount appropriated in general funds in Sec. B.125 of H.789 of the Acts of the 2009 Adj. Sess. (2010) and allocated to the commission on health care reform for studies is transferred to the joint fiscal committee for hiring the consultant required in Sec. 6 of this act.

Sec. 41. EFFECTIVE DATES

(a) This section and Secs. 1 (findings), 2 (principles), 3 (goals), 4 (health care reform commission membership), 5 (appointments), 6 (design options), 7 (grants), 8 (public good), 9 (federal health care reform; BISHCA), 10 (federal health care reform; AHS), 11 (intent), 17 (demonstration waivers), 20 through 24 (hospital budgets), 25 (CON prospective need), 29 (rules; insurers), 31 (primary care study), 32 and 33 (pharmaceutical expenditures), and 38 (obesity report) of this act shall take effect upon passage.

(b) Secs. 12 and 13 (Blueprint for Health), 14 (payment reform pilots), 15 (8 V.S.A. § 4088h), 16 (hospital certification), 19 (Blueprint Expansion), 26

through 28 (insurer rate review), 31a (health care career awareness month), 36 and 37 (citation corrections), 39 (position), and 40 (appropriations) of this act shall take effect on July 1, 2010.

(c) Sec. 30 (8 V.S.A. § 4089b; loss ratio) shall take effect on January 1, 2011 and shall apply to all health insurance plans on and after January 1, 2011, on such date as a health insurer offers, issues, or renews the health insurance plan, but in no event later than January 1, 2012.

(d) Secs. 34 and 35 of this act shall take effect on October 1, 2010, and shall apply to all health insurance plans on and after October 1, 2010, on such date as a health insurer offers, issues, or renews the health insurance plan, but in no event later than October 1, 2011.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment with further proposal of amendment as moved by Senator Racine?, Senators Ashe and Giard moved to amend the proposal of amendment of Senator Racine as follows:

By adding a new section to be numbered Sec. 20a to read as follows:

Sec. 20a. VERMONT NONPROFIT HOSPITAL SERVICE CORPORATIONS; VERMONT NONPROFIT MEDICAL CORPORATIONS; BOARD OF DIRECTORS; COMPENSATION

The total combined compensation of the board of directors of any Vermont nonprofit hospital service corporation or Vermont nonprofit medical service corporation, excluding nonprofit stand-alone dental plans, in calendar year 2011 shall be no more than 90 percent of the total combined compensation of the board in calendar year 2010.

Thereupon, pending the question, Shall the proposal of amendment of Senator Racine be amended as moved by Senators Ashe and Giard?, Senator Sears moved that the bill be committed to the Committee on Judiciary.

Thereupon, pending the question, Shall the bill be committed to the Committee on Judiciary?, Senators Sears requested and was granted leave to withdraw his motion.

Thereupon, the pending question, Shall the proposal of amendment of Senator Racine be amended as moved by Senators Ashe and Giard?, 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: Ashe, Campbell, Carris, Flanagan, Giard, Illuzzi, Kittell, MacDonald, Starr, White.

Those Senators who voted in the negative were: Ayer, Bartlett, Brock, Choate, Cummings, Doyle, Flory, Hartwell, Kitchel, Lyons, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Snelling.

The Senator absent and not voting was: Shumlin.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment with further proposal of amendment as moved by Senator Racine?, Senators Sears, Bartlett, Brock, Choate, Cummings, Doyle, Flory, Giard, Hartwell, Mazza, McCormack, Miller, Mullin, Nitka, Scott, Snelling, and Starr moved to amend the proposal of amendment of Senator Racine as follows:

By striking out Sec. 33 in its entirety and inserting in lieu thereof a new Sec. 33 to read as follows:

Sec. 33. 18 V.S.A. § 4632 is amended to read:

§ 4632. DISCLOSURE OF ALLOWABLE EXPENDITURES AND GIFTS BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a)(1) Annually on or before October 1 of each year, every manufacturer of prescribed products shall disclose to the office of the attorney general for the fiscal year ending the previous June 30th the value, nature, purpose, and recipient information of:

(A) any allowable expenditure or gift permitted under subdivision 4631a(b)(2) of this title to any health care provider, except:

(i) royalties and licensing fees as described in subdivision 4631a(a)(1)(F) of this title;

(ii) rebates and discounts for prescribed products provided in the normal course of business as described in subdivision 4631a(b)(2)(F) of this title;

(iii) payments for clinical trials as described in subdivision 4631a(a)(1)(C) of this title, which shall be disclosed after the earlier of the date of the approval or clearance of the prescribed product by the Food and Drug Administration or two calendar years after the date the payment was made. For a clinical trial for which disclosure is delayed under this subdivision (iii), the manufacturer shall identify to the attorney general the clinical trial, the start date, and the web link to the clinical trial registration on the national clinical trials registry; ~~and~~

(iv) samples of a prescription drug provided to a health care professional for free distribution to patients;

(v) interview expenses as described in subdivision 4631a(a)(1)(G) of this title; and

(vi) coffee or other snacks or refreshments at a booth at a conference or seminar.

(B) any allowable expenditure or gift ~~permitted under subdivision 4631a(b)(2) of this title~~ to an academic institution, to a nonprofit hospital foundation, or to a professional, educational, or patient organization representing or serving health care providers or consumers, located in or providing services in Vermont, except:

(i) royalties and licensing fees as described in subdivision 4631a(a)(1)(F) of this title;

(ii) rebates and discounts for prescribed products provided in the normal course of business as described in subdivision 4631a(b)(2)(F) of this title;

(iii) payments for clinical trials as described in subdivision 4631a(a)(1)(C) of this title, which shall be disclosed after the earlier of the date of the approval or clearance of the prescribed product by the Food and Drug Administration or two calendar years after the date the payment was made. For a clinical trial for which disclosure is delayed under this subdivision (iii), the manufacturer shall identify to the attorney general the clinical trial, the start date, and the web link to the clinical trial registration on the national clinical trials registry; and

(iv) samples of a prescription drug provided to a health care professional for free distribution to patients.

(2) Annually on July 1, each manufacturer of prescribed products also shall disclose to the office of the attorney general the name and address of the individual responsible for the manufacturer's compliance with the provisions of this section.

(3) Disclosure shall be made on a form and in a manner prescribed by the office of the attorney general and shall require manufacturers of prescribed products to report each allowable expenditure or gift permitted under subdivision 4631a(b)(2) of this title including:

(A) except as otherwise provided in subdivision (a)(2) of this section, the value, nature, and purpose of each allowable expenditure, and gift permitted under subdivision 4631a(b)(2) of this title according to specific categories identified by the office of the attorney general;

(B) the name of the recipient;

(C) the recipient's address;

(D) the recipient's institutional affiliation;

(E) prescribed product or products being marketed, if any; and

(F) the recipient's state board number.

(4) The office of the attorney general shall report annually on the disclosures made under this section to the general assembly and the governor on or before April 1. The report shall include:

(A) Information on allowable expenditures and gifts required to be disclosed under this section, which shall be presented in both aggregate form and by selected types of health care providers or individual health care providers, as prioritized each year by the office.

(B) Information on violations and enforcement actions brought pursuant to this section and section 4631a of this title.

(5) After issuance of the report required by subdivision (a)(5) of this section, the office of the attorney general shall make all disclosed data used for the report publicly available and searchable through an Internet website.

(6) The office of Vermont health access shall examine the data available from the office of the attorney general for relevant expenditures and determine whether and to what extent prescribing patterns by health care providers of prescribed products reimbursed by Medicaid, VHAP, Dr. Dynasaur, VermontRx, and VPharm may reflect manufacturer influence. The office may select the data most relevant to its analysis. The office shall report its analysis annually to the general assembly and the governor on or before October 1.

(b)(1) Annually on July 1, the office of the attorney general shall collect a $500.00 fee from each manufacturer of prescribed products filing annual disclosures of expenditures greater than zero described in subsection (a) of this section.

(2) Fees collected under this section shall fund collection and analysis of information on activities related to the marketing of prescribed products under ~~sections~~ section 4631a of this title and ~~4632 of Title 18~~ this section. The fees shall be collected in a special fund assigned to the office.

(c) The attorney general may bring an action in Washington superior court for injunctive relief, costs, and attorney's fees, and to impose on a manufacturer of prescribed products that fails to disclose as required by subsection (a) of this section a civil penalty of no more than $10,000.00 per

violation. Each unlawful failure to disclose shall constitute a separate violation.

(d) The terms used in this section shall have the same meanings as they do in section 4631a of this title.

Which was agreed to on a roll call, Yeas 18, Nays 10.

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: Bartlett, Brock, Campbell, Cummings, Doyle, Flory, Giard, Hartwell, Illuzzi, Mazza, McCormack, Miller, Mullin, Nitka, Scott, Sears, Snelling, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Carris, Flanagan, Kitchel, Kittell, Lyons, MacDonald, Racine, White.

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

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment with further proposal of amendment as moved by Senator Racine, as amended?, Senator Mullin moved to amend the proposal of amendment as follows:

First: By adding a Sec. 38a to read:

Sec. 38a. STATUTORY REVISION

18 V.S.A. §§ 4051–4071 shall be recodified as subchapter 1 (labeling for marketing and sale) of chapter 82 of Title 18.

Second: By adding a Sec. 38b to read:

Sec. 38b. 18 V.S.A. chapter 82, subchapter 2 is added to read:

Subchapter 2. Menu Labeling

§ 4086. MENUS AND MENU BOARDS

(a) Except as otherwise provided in 4091 of this title, in the case of food that is a standard menu item that is offered for sale in a restaurant or similar retail food establishment that is part of a chain with 20 or more locations doing business under the same name, regardless of the type of ownership of the locations and offering for sale substantially the same menu items, the restaurant or similar retail food establishment shall disclose the information described in subsection (b) of this section.

(b) Except as otherwise provided in section 4091 of this title, the restaurant or similar retail food establishment shall disclose in a clear and conspicuous manner:

(1) On a menu listing an item for sale:

(A) in a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, the number of calories contained in the standard menu item, as usually prepared and offered for sale; and

(B) a succinct statement concerning suggested daily caloric intake, as specified by federal regulation or, in the absence of an applicable federal regulation, by the commissioner of health by rule, posted prominently on the menu and designed to enable the public to understand, in the context of a total daily diet, the significance of the caloric information that is provided on the menu.

(2) On a menu board, including a drive-through menu board:

(A) in a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, the number of calories contained in the standard menu item, as usually prepared and offered for sale; and

(B) a succinct statement concerning suggested daily caloric intake, as specified by federal regulation or, in the absence of an applicable federal regulation, by the commissioner of health by rule, posted prominently on the menu board, designed to enable the public to understand, in the context of a total daily diet, the significance of the nutrition information that is provided on the menu board.

(3)(A) In a written form, available on the premises of the restaurant or similar retail establishment and to the consumer upon request, the following nutrition information:

(i) the total number of calories in each serving size or other unit of measure of the food that are:

(I) derived from any source; and

(I) derived from the total fat; and

(ii) the amount of each of the following nutrients: Total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, and total protein contained in each serving size or other unit of measure;

(B) To the extent that federal statutes or regulations require disclosure of different or additional nutrition information, a restaurant or similar retail establishment that follows the federal law shall be deemed to be in compliance with the requirements of this subdivision (3).

(4) On the menu or menu board, a prominent, clear, and conspicuous statement regarding the availability of the information described in subdivision (3) of this subsection.

§ 4087. SELF-SERVICE FOOD AND FOOD ON DISPLAY

Except as otherwise provided in section 4091 of this title, in the case of food sold at a salad bar, buffet line, cafeteria line, or similar self-service facility, and for self-service beverages or food that is on display and that is visible to customers, a restaurant or similar retail food establishment shall place adjacent to each food offered a sign that lists calories per displayed food item or per serving.

§ 4088. REASONABLE BASIS

For the purposes of this chapter, a restaurant or similar retail food establishment shall have a reasonable basis for its nutrient content disclosures, including nutrient databases, cookbooks, laboratory analyses, and other reasonable means, as described in Section 101.10 of Title 21, Code of Federal Regulations, or any successor regulation, or in a related guidance of the United States Food and Drug Administration.

§ 4089. MENU VARIABILITY AND COMBINATION MEALS

Except as otherwise provided by federal law or regulation, the commissioner of health shall establish by rule, pursuant to chapter 25 of Title 3, standards for determining and disclosing the nutrient content for standard menu items that come in different flavors, varieties, or combinations, but which are listed as a single menu item, such as soft drinks, ice cream, pizza, doughnuts, or children's combination meals, through means determined by the commissioner, including ranges, averages, or other methods.

§ 4090. ADDITIONAL INFORMATION

Except as otherwise provided by federal law or regulation, if the commissioner of health determines that a nutrient, other than a nutrient required under subdivision 4086(b)(3) of this title, should be disclosed for the purpose of providing information to assist consumers in maintaining healthy dietary practices, the commissioner may require, by rule, disclosure of such nutrient in the written form required under subdivision 4086(b)(3).

§ 4091. NONAPPLICABILITY TO CERTAIN FOOD

Sections 4086 through 4090, inclusive, of this chapter shall not apply to:

(1) items that are not listed on a menu or menu board, such as condiments and other items placed on the table or counter for general use;

(2) daily specials, temporary menu items appearing on the menu for fewer than 60 days per calendar year, or custom orders;

(3) such other food that is part of a customary market test appearing on the menu for fewer than 90 days, under terms and conditions established by federal law or regulation, if applicable; if not applicable, then under terms and conditions established by the commissioner of health by rule; or

(4) alcoholic beverages.

§ 4092. VOLUNTARY PROVISION OF NUTRITION INFORMATION

(a) An authorized official of any restaurant or similar retail food establishment not subject to the requirements of this chapter may elect to be subject to such requirements by registering biannually the name and address of such restaurant or similar retail food establishment with the Secretary of the U.S. Department of Health and Human Services and the commissioner of health, as specified by the Secretary by regulation and the commissioner by rule.

(b) To the extent allowed by federal law, within 120 days following the effective date of this chapter, the commissioner of health shall engage in rulemaking pursuant to chapter 25 of Title 3 specifying the terms and conditions for implementation of subsection (a) of this section.

(c) Nothing in this section shall be construed to authorize the commissioner of health to require an application, review, or licensing process for any entity to register with the Secretary pursuant to subsection (a) of this section.

§ 4093. RULEMAKING

(a) To the extent permitted under federal law, within one year after the effective date of this chapter, the commissioner of health shall adopt rules pursuant to chapter 25 of Title 3 to carry out the purposes of this chapter.

(b) In adopting rules, the commissioner shall:

(1) consider standardization of recipes and methods of preparation, reasonable variation in serving size and formulation of menu items, space on menus and menu boards, inadvertent human error, training of food service workers, variations in ingredients, and other factors, as the commissioner shall determine;

(2) specify the format and manner of the nutrient content disclosure requirements under this chapter; and

(3) reasonably align the rules, to the extent practicable, with federal and other states' laws on menu labeling.

(c) No later than January 15, 2011, the commissioner shall report to the house committee on human services and the senate committee on health and welfare a report on the commissioner's progress toward adopting rules under this section.

§ 4094. DEFINITIONS

To the extent not inconsistent with federal law, as used in this chapter:

(1) "Menu" or "menu board" means the primary writing of the restaurant or other similar retail food establishment from which a consumer makes an order selection.

(2) "Restaurant" or "other similar retail food establishment" means an establishment from which food or beverage of the type for immediate consumption is sold, whether such food is consumed on the premises or not.

(A) "Restaurant" shall not include any school, hospital, nursing home, assisted living facility, or any restaurant-like facility operated by or in connection with a school, hospital, medical clinic, nursing home, or assisted living facility providing food for students, patients, visitors, and their families.

(B) "Restaurant" shall not include grocery stores, except for separately owned food facilities to which this section otherwise applies that are located in a grocery store. For purposes of this subdivision, "grocery store" means a store primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, and fresh meats, fish, and poultry. The term "grocery store" includes convenience stores.

(C) "Restaurant" shall not include any fraternal organization or any organization whose members consist solely of veterans of the armed forces of the United States.

(3) "Standard menu item" means any item listed on a menu or menu board by a restaurant, but excluding alcoholic beverages.

§ 4095. ENFORCEMENT; LIABILITY; PENALTY

(a) The commissioner of health or duly authorized agents or employees who inspect restaurants and food establishments on behalf of the department of health shall be required to determine that the nutrition information required under this subchapter is listed on the menu or menu board, and that any additional required information is available for customers upon request. If,

upon inspection, the required information is not clearly visible on a menu or menu board or the additional required information is not available upon request, the commissioner or inspector shall note such fact on the inspection report and cause a corresponding reduction in points from the restaurant's or other food establishment's rating score.

(b) Nothing in this section shall be construed to create or enhance any claim, right of action, or civil liability that did not previously exist under state or federal law or to limit any claim, right of action, or civil liability that otherwise exists under state or federal law.

(c) No private right of action shall arise from this subchapter. The sole enforcement authority for this subchapter shall be the state of Vermont.

§ 4096. RELATION TO OTHER LAWS

To the extent permitted by federal law, nothing in this chapter shall be construed to restrict the ability of cities or towns to impose labeling requirements in excess of those required by this chapter.

Which was agreed to.

Thereupon, the pending question, Shall the Senate concur in the House Proposal of amendment with further proposal of amendment?, was agreed to.

Rules Suspended; Bills Messaged

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

S. 88, S. 222.

Adjournment

On motion of Senator Campbell, the Senate adjourned until one o'clock in the afternoon.

WEDNESDAY, MAY 5, 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. 71

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. 90. An act relating to representative annual meetings.

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

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

S. 222. An act relating to recognition of Abenaki tribes.

And has concurred therein.

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

H. 784.

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

To the Senate and House of Representatives:

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

An act relating to the state's transportation program.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and by inserting in lieu thereof the following:

Sec. 1. TRANSPORTATION PROGRAM

(a) The state's proposed fiscal year 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:

FY11	As Proposed	As Amended	Change
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:

FY11	As Proposed	As Amended	Change
Construction	0	26,231,846	26,231,846
Total	0	26,231,846	26,231,846
Sources of funds			
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:

FY11	As Proposed	As Amended	Change
Personal Services	15,786,441	15,786,441	0
Operating Expenses	8,377,553	8,303,553	-74,000
Grants	136,476	136,476	0
Total	24,300,470	24,226,470	-74,000
Sources of funds			
State	23,096,730	23,022,730	-74,000
Federal	1,203,740	1,203,740	0
Total	24,300,470	24,226,470	-74,000

* * * 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:

FY11	As Proposed	As Amended	Change
PE	100,000	100,000	0
Construction	0	350,000	350,000
Total	100,000	450,000	350,000
Sources of funds			
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:

FY11	As Proposed	As Amended	Change
PE	100,000	100,000	0
Construction	500,000	447,500	-52,500
Total	600,000	547,500	-52,500
Sources of funds			
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:

Rutland STP 3000( ) - Rutland Center Street Marketplace Improvements - $973,834.00; 100 percent federal funds.

Sec. 5. PROGRAM DEVELOPMENT – INTERSTATE BRIDGE

The following modification is made to the program development – interstate bridge program:

Authorized spending on the Littleton, NH – Waterford, VT IM 093-1( ) project (rehabilitation of I-93 bridges over CT River connecting VT and NH) is added to read:

FY11	As Proposed	As Amended	Change
Construction	0	500,000	500,000
Total	0	500,000	500,000
Sources of funds			
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:

Thetford STP 0180( ) – Thetford Village Pedestrian Improvements – $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	Change
ROW	4,050,000	4,050,000	0
Construction	10,880,000	10,850,000	-30,000
Total	14,930,000	14,900,000	-30,000
Sources of funds			
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.

FY11	As Proposed	As Amended	Change
PE	100,000	0	-100,000
Construction	900,000	0	-900,000
Total	1,000,000	0	-1,000,000
Sources of funds			
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:

FY11	As Proposed	As Amended	Change
Construction	322,000	263,600	-58,400
Total	322,000	263,600	-58,400
Sources of funds			
State	322,000	263,600	-58,400
Total	322,000	263,600	-58,400

* * * Vermont Local Roads * * *

Sec. 9. TOWN HIGHWAY – VERMONT LOCAL ROADS

Spending authority for the town highway – Vermont local roads program is amended to read:

FY11	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 Transit * * *

Sec. 10. PUBLIC TRANSIT

The following modifications are made to the public transit program:

(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.

(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) The state 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 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.

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 REDUCE FISCAL YEAR 2010 APPROPRIATIONS AND TRANSFER TRANSPORTATION FUNDS TO THE TIB FUND 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 reduce fiscal year 2010 transportation fund appropriations, other than appropriations for the town highway state aid, structures, and class 2 roadway programs, or TIB fund appropriations, and transfer in fiscal year 2010 the amount of the reductions from the transportation fund 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 reduce appropriations is limited to appropriations, the reduction 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 reduced pursuant to this section, the secretary shall report the reduction 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 REDUCE FISCAL YEAR 2011 APPROPRIATIONS AND TRANSFER THE BALANCE TO THE TIB FUND 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 reduce fiscal year 2011 transportation fund appropriations, other than appropriations for the town highway state aid, structures, and class 2 roadway programs, or TIB fund appropriations, and transfer in fiscal year 2011 the amount of the reductions from the transportation fund 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 reduce appropriations is limited to appropriations, the reduction of which, by itself, in the context of any spending authorized for the project in the fiscal year 2011 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 reduced pursuant to this section, the secretary shall report the reduction 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. Upon its completion, the agency shall send an electronic copy of the grant application to the joint fiscal office.

(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:

FY11	As Proposed	As Amended	Change
Other	0	7,500,000	7,500,000
Total	0	7,500,000	7,500,000
Sources of funds			
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.

(h) 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~~ fiscal committee, the ~~secretarys shall~~ secretary's report ~~to the committee on~~ shall discuss 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 awarded by the agency or by municipalities cooperating with the agency to advance projects in the state's transportation program;

* * *

* * * 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.

* * * Out-of-State First Responder Vehicles * * *

Sec. 39. 23 V.S.A. § 1251 is amended to read:

§ 1251. SIRENS AND COLORED SIGNAL LAMPS; OUT OF STATE EMERGENCY AND RESCUE VEHICLES

(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, law enforcement vehicles, ambulances, fire vehicles, or vehicles owned or leased by, or provided to, volunteer firefighters or rescue squad members which are registered or licensed by another state or province may use sirens and 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. 40. 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. 41. 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. 42. 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. 43. 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. 44. 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. 45. RELINQUISHMENT OF U.S. ROUTE 5 AND NORWICH STATE HIGHWAY IN 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)). The relinquishment shall continue 6,496 feet (approximately 1.230 miles) northerly and easterly along the center of U.S. Route 5 (Church Street) to its intersection with the Norwich State Highway at approximately U.S. Route 5 mile marker 2.448.

(b) 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. 46. 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. 47. 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).

* * * Study of Councils * * *

Sec. 48. RAIL, AVIATION, PUBLIC TRANSIT ADVISORY, AND SCENERY PRESERVATION COUNCILS

The agency of transportation shall examine the current functions of the Vermont Rail Advisory Council, the Vermont Aviation Advisory Council, the public transit advisory council, and the scenery preservation council. The agency shall, in consultation with the respective council being examined, 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. 49. 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. The council shall meet no more than two times per year, and meetings may be called by the chair of the council or the secretary of transportation or his or her designee.

~~(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. 50. 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. 51. 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. 52. 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. 53. LAKE CHAMPLAIN BRIDGE FACILITIES

(a) The secretary of transportation and the commissioner of fish and wildlife shall work together in consultation with the division for historic preservation 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 consultation with the division for historic preservation 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. 54. 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. 55. REPEAL

19 V.S.A. § 12c (rest area advisory committee) is repealed.

* * * Low-Bed Trailer Permits * * *

Sec. 56. 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.]

* * * Limited Access Facility Sign Restriction; Exemption * * *

Sec. 57. ON-PREMISE SIGN ON LIMITED ACCESS FACILITY

Notwithstanding the restriction on on-premise signs located as to be readable primarily from a limited access facility set forth in 10 V.S.A. § 495(b) and the requirement set forth in 10 V.S.A. § 493(1) that on-premise signs be erected no more than 1,500 feet from a main entrance from the highway to the activity or premises advertised, an on-premise sign directing traffic to the facilities of a postsecondary educational institution may be erected at the intersection of U.S. Route 4 Western Bypass and U.S. Route 7 in the city of Rutland.

* * * Effective Dates * * *

Sec. 58. 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 reduce FY10 appropriations).

(5) Sec. 40 (speed limits).

(6) Sec. 41 (traffic committee rulemaking).

(7) Sec. 43 (replacement of gasoline dispensers). Notwithstanding 1 V.S.A. § 214, Sec. 43 shall apply retroactively to gasoline dispensers installed at an existing gasoline dispensing facility after May 1, 2009.

(8) Sec. 56 (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.

RICHARD T. MAZZA
PHILIP B. SCOTT
M. JANE KITCHEL

Committee on the part of the Senate

PATRICK M. BRENNAN
DAVID E. POTTER
TIMOTHY R. CORCORAN

Committee on the part of the House

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

Proposal of Amendment; Third Reading Ordered

H. 709.

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

An act relating to creating a prekindergarten–16 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. POLICY

It is the policy of the state of Vermont to encourage and enable all Vermonters to acquire the postsecondary education and training necessary for the state to develop and maintain a skilled, highly educated, and engaged citizenry and a competitive workforce.

Sec. 2. 16 V.S.A. § 2905 is added to read:

§ 2905. PREKINDERGARTEN–16 COUNCIL

(a) A prekindergarten–16 council (the "council") is created to help coordinate and better align the efforts of the prekindergarten–12 educational system with the higher education community in order to increase:

(1) postsecondary aspirations;

(2) the enrollment of Vermont high school graduates in higher education programs;

(3) the postsecondary degree completion rates of Vermonters; and

(4) public awareness of the economic, intellectual, and societal benefits of higher education.

(b) The council shall be composed of:

(1) the commissioner of education or designee;

(2) the commissioner of labor or designee;

(3) the president of the University of Vermont or designee;

(4) the chancellor of the Vermont State Colleges or designee;

(5) the president of the Vermont Student Assistance Corporation or designee;

(6) the president of the Association of Vermont Independent Colleges or designee;

(7) a principal of a secondary school selected by the Vermont Principals' Association;

(8) a superintendent selected by the Vermont Superintendents Association;

(9) a teacher selected by the Vermont-National Education Association;

(10) a member of the Building Bright Futures Council or designee;

(11) a technical education director selected by the Vermont Association of Career and Technical Center Directors;

(12) a representative from the business and industry community selected by the Vermont Business Roundtable;

(13) an advocate for low income children selected by Voices for Vermont's Children;

(14) a member of the house of representatives, who shall be selected by the speaker and shall serve until the beginning of the biennium immediately after the one in which the member is appointed;

(15) a member of the senate, who shall be selected by the committee on committees and shall serve until the beginning of the biennium immediately after the one in which the member is appointed; and

(16) A member of the faculty of the Vermont State Colleges, the University of Vermont, or a Vermont independent college selected by United Professions AFT Vermont, Inc.

(c) The council shall develop and regularly update a statewide plan to increase aspirations for and the successful completion of postsecondary education among students of all ages and otherwise advance the purposes for which the council is created, which shall include strategies to:

(1) ensure that every high school graduate in Vermont is prepared to succeed in postsecondary education without remedial assistance;

(2) increase the percentage of Vermonters who earn an associate's or higher level degree or a postsecondary certification;

(3) identify and address areas of educator preparation that could benefit from improved collaboration between the prekindergarten–12 educational system and the higher education community;

(4) promote early career awareness and nurture postsecondary aspirations;

(5) develop programs that guarantee college admission and financial aid for low income students who successfully complete early commitment requirements;

(6) enhance student engagement in secondary school, ensuring that learning opportunities are relevant, rigorous, and personalized and that all students aspire to and prepare for success in postsecondary learning opportunities;

(7) expand access to dual enrollment programs in order to serve students of varying interests and abilities, including those who are likely to attend college, those who are from groups that attend college at disproportionately low rates, and those who are prepared for a postsecondary curriculum prior to graduation from secondary school;

(8) develop proposals for statewide college and career readiness standards and assessments;

(9) create incentives for adults to begin or continue their postsecondary education; and

(10) ensure implementation of a prekindergarten–16 longitudinal data system, which it shall use to assess the success of the plan required by this subsection.

(d) Together with the secretary of administration or the secretary's designee, a higher education subcommittee of the council shall perform any statutory duties required of it in connection with the higher education endowment trust fund. The following members of the council shall be the members of the higher education subcommittee: the president of the University of Vermont, the chancellor of the Vermont State Colleges, the president of the Vermont Student Assistance Corporation, the president of the Association of Vermont Independent Colleges, the representative from the business and industry community, the member of the house of representatives, and the member of the senate.

(e) The legislative and higher education staff shall provide support to the council as appropriate to accomplish its tasks. Primary administrative support shall be provided by the legislative council.

(f) The council shall annually elect one of its members to be chair.

(g) The council shall meet at least quarterly.

(h) The council shall report on its activities to the house and senate committees on education and to the state board of education each year in January.

Sec. 3. 16 V.S.A. § 2885 is amended to read:

§ 2885. VERMONT HIGHER EDUCATION ENDOWMENT TRUST FUND

* * *

(d) During the first quarter of each fiscal year, ~~beginning in the year 2000,~~ the ~~commission on higher education funding~~ secretary of administration or the secretary's designee and the higher education subcommittee of the prekindergarten–16 council created in section 2905 of this title may authorize the state treasurer to make an amount equal to up to two percent of the assets available to Vermont public institutions for the purpose of creating or increasing a permanent endowment. In this subsection, "assets" means the average of the fund's market values at the end of each quarter for the most recent 12 quarters, or all quarters of operation, whichever is less. Therefore, up to two percent of the fund assets are hereby annually allocated pursuant to this section, provided that the amount allocated shall not exceed an amount which would bring the fund balance below the initial funding made in fiscal year 2000 plus any additional contributions to the principal. One-half of the amount allocated shall be available to the University of Vermont and one-half shall be available to the Vermont ~~state colleges~~ State Colleges. The University of Vermont or Vermont ~~state colleges~~ State Colleges may withdraw funds upon certification by the withdrawing institution to the commissioner of finance and management that it has received private donations which are double the amount it plans to withdraw.

(e) Annually, by September 30, the state treasurer shall render a financial report on the receipts, disbursements and earnings of the fund for the preceding fiscal year to the ~~commission on higher education funding~~ secretary of administration or the secretary's designee and the higher education subcommittee.

(f) All balances in the fund at the end of any fiscal year shall be carried forward and used only for the purposes set forth in this section. Earnings of the fund which are not withdrawn pursuant to this section shall remain in the fund.

(g) The University of Vermont, the Vermont State Colleges, and the Vermont Student Assistance Corporation shall review expenditures made from the fund, evaluate the impact of the expenditures on higher education in

Vermont, and report this information to the state treasurer each year in January.

Sec. 4. REPEAL

16 V.S.A. § 2886 (commission on higher education funding) is repealed, and the commission shall cease to exist on the effective date of this act.

Sec. 5. IMPLEMENTATION

(a) All members of the prekindergarten–16 council created in Sec. 2 of this act shall be selected before August 1, 2010.

(b) The commissioner of education shall convene the first meeting of the prekindergarten–16 council before September 1, 2010.

(c) The strategies developed by the prekindergarten–16 council pursuant to subdivision 2(c)(1) of this act shall include the goal of ensuring that at least 60 percent of the adult population will have earned an associate's or higher-level degree by 2020.

Sec. 6. EFFECTIVE DATE

This act shall take effect on 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 pending the question, Shall the Senate propose to the House to amend the bill as recommended by Committee on Education?, Senator Starr moved that the proposal of amendment recommended by the Committee on Education be amended as follows:

In Sec. 2, 16 V.S.A. § 2905, in subsection (d), in the first sentence, as follows:

First: after the word "statutory" by inserting the words or other

Second: after the words "required of it" by inserting the following:
, including duties

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 Education, as amended?, was agreed to.

Thereupon, third reading of the bill was ordered.

House Proposals of Amendment Concurred In

S. 278.

House proposals of amendment to Senate bill entitled:

An act relating to the department of banking, insurance, securities, and health care administration.

Were taken up.

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

First: By adding a new section to be numbered Sec. 1a to read as follows:

Sec. 1a. 8 V.S.A. § 2201(c) is amended to read:

(c) A person licensed pursuant to subdivision (a)(1) of this section may engage in mortgage brokerage and sales finance if such person informs the commissioner in advance that he or she intends to engage in sales finance and mortgage brokerage. Such person shall inform the commissioner of his or her intention on the original license application under section 2202 of this title, any renewal application under section 2209 of this title, or pursuant to section 2208 of this title, and shall pay the applicable fees required by subsection 2202(b) of this title for a mortgage broker license or sales finance company license.

Second: By adding a new section to be numbered Sec. 1b to read as follows:

Sec. 1b. 8 V.S.A. § 2500(2) is amended to read:

(2) "Authorized delegate" means a person located in this state that a licensee designates to provide money services on behalf of the licensee.

Third: In Sec. 4, subdivision (b)(3), by striking out the word "serves" and by inserting in lieu thereof the word served

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

Sec. 4a. 8 V.S.A. § 3577 is amended to read:

§ 3577. REQUIREMENTS FOR ACTUARIAL OPINIONS

(a) Each licensed insurance company shall include on or attached to its annual statement submitted under section 3561 of this title a statement of a qualified actuary, entitled "statement of actuarial opinion," setting forth an opinion on life and health policy and claim reserves and an opinion on property and casualty loss and loss adjustment expenses reserves.

(b) The "statement of actuarial opinion" shall be treated as a public document and shall conform to the Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries, the

standards of the Casualty Actuarial Society, and such additional standards as the commissioner may establish by rule. The commissioner by rule shall establish minimum standards applicable to the valuation of health disability, sickness and accident plans.

(c) Opinions required by this section shall apply to all business in force, and shall be stated in form and in substance acceptable to the commissioner as prescribed by rule.

(1) In the case of property and casualty insurance companies domiciled in this state, every company that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary, written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with the appropriate Property and Casualty Annual Statement Instructions of the National Association of Insurance Commissioners (NAIC) and shall be considered as a document supporting the actuarial opinion required in subsection (a) of this section. A property and casualty insurance company licensed but not domiciled in this state shall provide the actuarial opinion summary upon request.

(2) In the case of property and casualty insurance companies, an actuarial report and underlying work papers, as required by the appropriate Property and Casualty Annual Statement Instructions of the NAIC, shall be prepared to support each actuarial opinion. If the property and casualty insurance company fails to provide a supporting actuarial report or work papers at the request of the commissioner or if the commissioner determines that the supporting actuarial report or work papers provided by the insurance company is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting actuarial report or work papers.

(3) In the case of property and casualty insurance companies, the appointed actuary shall not be liable for damages to any person other than the insurance company and the commissioner for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary.

* * *

(l) Actuarial reports, actuarial opinion summaries, work papers, and any other documents, information, or materials provided to the department in connection with the actuarial report, work papers, or actuarial opinion summary shall be confidential by law and privileged, shall not be subject to inspection and copying under 1 V.S.A. § 316, shall not be subject to subpoena,

and shall not be subject to discovery or admissible in evidence in any private litigation.

(1) This subsection shall not be construed to limit the commissioner's authority to release documents to the Actuarial Board for Counseling and Discipline, provided the material is required for the purpose of professional disciplinary proceedings and further provided that procedures satisfactory to the commissioner are established for preserving the confidentiality of the documents, nor shall this subsection be construed to limit the commissioner's authority to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(2) Neither the commissioner nor any person who receives documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information under this subsection.

(3) In order to assist in the performance of the commissioner's duties, the commissioner may:

(A) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (d) of this section, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information and has the legal authority to maintain confidentiality.

(B) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of the disclosure to the commissioner under this section or as a result of sharing as authorized by subdivision (3) of this subsection.

Fifth: By striking out Sec. 7 in its entirety and by inserting in lieu thereof a new Sec. 7 to read as follows:

Sec. 7. 8 V.S.A. § 3810a(c) is added to read:

(c) The lives of individuals insured under a group policy authorized by this subchapter may continue to be insured following termination of employment, membership, or other affiliation of the individual with the group under a portability group approved by the commissioner, provided that the group policy complies with all the applicable requirements of this subchapter.

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

Sec. 7a. 8 V.S.A. § 4153 is amended to read:

§ 4153. SCOPE

(a) This subchapter shall provide coverage for the policies and contracts specified in subsection (b) of this section:

(1) ~~to~~ To persons who, regardless of where they reside (except for nonresident certificate holders under group policies or contracts and except for payees and beneficiaries of structured settlement annuities as specified in subdivision (3) of this subsection), are the beneficiaries, assignees, or payees of the persons covered under subdivision (2) of this subsection~~, and~~.

(2) ~~to~~ To persons who are owners of or certificate holders under such policies or contracts or, in the case of unallocated annuity contracts, to the persons who are the contract holders; and who

(A) are residents of this state, or

(B) are not residents of this state, but only if all of the following conditions are met:

(i) the insurers which issued such policies or contracts are domiciled in this state;

(ii) such insurers never held a license or certificate of authority in the states in which such persons reside;

(iii) such states have associations similar to the association created by this subchapter; and

(iv) such persons are not eligible for coverage by such associations.

(3) To persons who are payees under structured settlement annuities, or beneficiaries of such deceased payees, but only if the payees:

(A) are residents of this state, regardless of where the contract owners reside; or

(B) are not residents of this state, but only if both of the following conditions are met:

(i)(I) the contract owners of such structured settlement annuities are residents of this state; or

(II) the contract owners of such structured settlement annuities are not residents of this state, but only if:

(aa) the insurers which issued such structured settlement annuities are domiciled in this state; and

(bb) the states in which such contract owners reside have associations similar to the association created by this subchapter; and

(ii) Neither the payees, beneficiaries, nor the contract owners are eligible for coverage by the associations of the states in which such payees or contract owners reside.

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

Sec. 7b. 8 V.S.A. § 4153(b)(2) is amended to read:

(2) This subchapter shall not provide coverage for:

* * *

(C) any portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

* * *

(G) any unallocated annuity contract issued to an employee benefit plan protected under the federal Pension Benefit Guaranty Corporation; ~~and~~

* * *

(I) any portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which has not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been

credited and are not subject to forfeiture under this subdivision, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture; and

(J) any policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant Medicare Part C or Part D of subchapter XVIII, Chapter 7 of Title 42 of the United States Code, or any regulations issued pursuant thereto.

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

Sec. 7c. 8 V.S.A. § 4155 is amended to read:

§ 4155. DEFINITIONS

* * *

(7) "Impaired insurer" means~~:~~

~~(A) an insurer which after April 27, 1972, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction, or~~

~~(B) an insurer determined by the commissioner after April 27, 1972 to be unable or potentially unable to fulfill its contractual obligations~~ a member insurer which, after the effective date of this subchapter, is not an insolvent insurer and who is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(8) "Insolvent insurer" means a member insurer which, after the effective date of this subchapter, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

~~(8)~~(9) "Member insurer" means any person authorized to transact in this state any kind of insurance to which this subchapter applies under section 4153 of this title.

~~(9)~~(10) "Premiums" means amounts received on covered policies or contracts less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon. "Premiums" does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under subsection 4153(b) of this title except that assessable premium shall not be reduced on account of subdivisions 4153(b)(2)(C), relating to interest limitations, and 4158(8) of this title relating to limitations with respect to any one individual, any one participant and any one contract holder; provided that "premiums"

shall not include any premiums in excess of ~~one million dollars~~ $5,000,000.00 on any unallocated annuity contract not issued under a governmental retirement plan established under section 401, subsection 403(b) or section 457 of the United States Internal Revenue Code.

~~(10)~~(11) "Person" means any individual, corporation, partnership, association or voluntary organization.

~~(11)~~(12) "Resident" means any person who resides in this state ~~at the time the impairment is determined~~ on the date of entry of a court order that determines a member insurer to be an impaired insurer or of a court order that determines a member insurer to be an insolvent insurer, and to whom contractual obligations are owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business.

~~(12)~~(13) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

~~(13)~~(14) "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

~~(14)~~(15) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate and shall include guaranteed investment contracts, guaranteed interest contracts, guaranteed accumulation contracts, deposit administration contracts, and unallocated funding agreements.

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

Sec. 7d. 8 V.S.A. § 4158 is amended to read as follows:

§ 4158. POWERS AND DUTIES OF THE ASSOCIATION

In addition to the powers and duties enumerated in other sections of this subchapter:

(1) If a ~~domestic insurer is an impaired insurer, the association,~~

~~(A) may, prior to an order of liquidation or rehabilitation, and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer and approved by the impaired insurer and the commissioner: or~~

~~(B) shall, after entry of an order of liquidation or rehabilitation, subject to any conditions imposed by the association and approved by the~~

~~commissioner, guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of the impaired insurer, and shall make or cause to be made prompt payment of the contractual obligations of the impaired insurer~~ member insurer is an impaired insurer, the association, in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the commissioner, may:

(A) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer; and

(B) provide such monies, pledges, loans, notes, guarantees, or other means as are proper to effectuate subdivision (A) of this subdivision (1) and assure payment of the contractual obligations of the impaired insurer pending action under subdivision (A) of this subdivision (1).

(2) If a ~~foreign or alien insurer is an impaired insurer under an order of liquidation, rehabilitation, or conservation, the association shall, subject to any conditions imposed by the association and approved by the commissioner, guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of residents, and shall make or cause to be made prompt payment of the impaired insurer's contractual obligations to residents~~ member insurer is an insolvent insurer, the association, in its discretion, shall either:

(A)(i)(I) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or

(II) Assure payment of the contractual obligations of the insolvent insurer; and

(ii) Provide monies, pledges, loans, notes, guarantees, or other means reasonably necessary to discharge the association's duties; or

(B) Provide benefits and coverages in accordance with the following provisions:

(i) With respect to life and health insurance policies and annuities, assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(I) With respect to group policies and contracts, not later than the earlier of the next renewal date under those policies or contracts or 45 days,

but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies and contracts.

(II) With respect to nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date (if any) under the policies or contracts or one year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to the policies or contracts.

(ii) Make diligent efforts to provide all known insureds or annuitants (for nongroup policies and contracts), or group policy owners with respect to group policies and contracts, 30 days notice of the termination, pursuant to subdivision (i) of this subdivision (B), of the benefits provided.

(iii) With respect to nongroup life and health insurance policies and annuities covered by the association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subdivision (iv) of this subdivision (B), if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class.

(iv)(I) In providing the substitute coverage required under subdivision (iii) of this subdivision (B), the association may offer either to reissue the terminated coverage or to issue an alternative policy.

(II) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(III) The association may reinsure any alternative or reissued policy.

(v)(I) Alternative policies adopted by the association shall be subject to the approval of the domiciliary insurance commissioner and the receivership court. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(II) Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that it shall adopt. The premium

shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(III) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(vi) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the domiciliary insurance commissioner and the receivership court;

(vii) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date the coverage or policy is replaced by another similar policy by the policy owner, the insured, or the association;

(viii) When proceeding under subdivision (B) with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with subdivision 4153(b)(2)(C) of this title.

* * *

(6) The association shall have standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this subchapter. Such standing shall extend to all matters germane to the powers and duties of the association.

(7)(A) Any person receiving benefits under this subchapter shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this subchapter whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this subchapter upon such person. The association shall be subrogated to these rights against the assets of any impaired or insolvent insurer.

(B) The subrogation rights of the association under this subdivision shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this subchapter.

(8) The benefits for which the association may become liable shall in no event exceed the lesser of:

(A) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(B)(i) With respect to any one life, regardless of the number of policies or contracts:

(I) $300,000.00 in life insurance death benefits, but not more than $100,000.00 in net cash surrender and net cash withdrawal values for life insurance;

(II) In health insurance benefits:

(aa) $100,000.00 for coverages not defined as disability insurance or basic hospital, medical, and surgical insurance, or major medical insurance, or long-term care insurance, including any net cash surrender and net cash withdrawal values;

(bb) $300,000.00 for disability insurance and $300,000.00 for long-term care insurance;

(cc) $500,000.00 for basic hospital, medical, and surgical insurance, or major medical insurance; or

(III) $250,000.00 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; or

(ii) With respect to each individual participating in a governmental retirement plan established under Section 401, 403(b), or 457 of the U.S. Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, $250,000.00 in present value annuity benefits, including net cash surrender and net cash withdrawal values; or

(iii) With respect to each payee of a structured settlement annuity (or beneficiary or beneficiaries of the payee if deceased) for which coverage is provided under subdivision 4153(a)(3) of this title, $250,000.00 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(iv) With respect to any one contract holder covered by any unallocated annuity contract not included in subdivision (B)(ii) of this subdivision (8), $5,000,000.00 in benefits, irrespective of the number of such contracts held by that contract holder; and

~~(iv)~~(v) Provided, however, that in no event shall the association be liable to expend more than $300,000.00 in the aggregate with respect to any

one individual under subdivisions (B)(i)(I), (B)(i)(II)(aa) and (bb), B(i)(III), (B)(ii), and (B)(iii) of this subdivision (8); and provided further, however, that in no event shall the association be liable to expend more than $500,000.00 in the aggregate with respect to any one individual under subdivision (B)(i)(II)(cc) of this subdivision (8).

* * *

(10)(A)(i) At any time within 180 days of the date of the order of liquidation, the association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered, in whole or in part, by the association, in each case under any one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the association or the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on its behalf sending written notice, return receipt requested, to the affected reinsurers.

(ii) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the association or to NOLHGA on its behalf as soon as possible after commencement of formal delinquency proceedings: copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed; and notices of any defaults under the reinsurance contacts or any known event or condition which with the passage of time could become a default under the reinsurance contracts.

(iii) The following subdivisions (I) through (IV) shall apply to reinsurance contracts so assumed by the association:

(I) The association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation, and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies or annuities covered, in whole or in part, by the association. The association may charge policies or annuities covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association and shall provide notice and an accounting of these charges to the receiver.

(II) The association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to

policies or annuities covered, in whole or in part, by the association, provided that, upon receipt of any such amounts, the association shall be obliged to pay to the beneficiary under the policy or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:

(aa) The amount received by the association; and

(bb) The excess of the amount received by the association over the amount equal to the benefits paid by the association on account of the policy or annuity less the retention of the insurer applicable to the loss or event.

(III) Within 30 days following the association's election (the "election date"), the association and each reinsurer under contracts assumed by the association shall calculate the net balance due to or from the association under each reinsurance contract as of the election date with respect to policies or annuities covered, in whole or in part, by the association, which calculation shall give full credit to all items paid by either the insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid for periods prior to the date, and the association or reinsurer shall pay any remaining balance due the other, in each case within five days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the association pursuant to subdivision (iii)(II) of this subdivision (A), the receiver shall remit the same to the association as promptly as practicable.

(IV) If the association or receiver, on the association's behalf, within 60 days of the election date, pays the unpaid premiums due for periods both before and after the election date that relate to policies or annuities covered, in whole or in part, by the association, the reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay premium insofar as the reinsurance contracts relate to policies or annuities covered, in whole or in part, by the association, and shall not be entitled to set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the association, against amounts due the association.

(B) During the period from the date of the order of liquidation until the election date (or, if the election date does not occur, until 180 days after the date of the order of liquidation):

(i)(I) Neither the association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the association has the right to

assume under subdivision (A) of this subdivision (10), whether for periods prior to or after the date of the order of liquidation; and

(II) The reinsurer, the receiver, and the association shall, to the extent practicable, provide each other data and records reasonably requested;

(ii) Provided that once the association has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by subdivision (A) of this subdivision (10).

(C) If the association does not elect to assume a reinsurance contract by the election date pursuant to subdivision (A) of this subdivision (10), the association shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

(D) When policies or annuities, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies or annuities may also be transferred by the association, in the case of contracts assumed under subdivision (A) of this subdivision (10), subject to the following:

(i) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred shall not cover any new policies of insurance or annuities in addition to those transferred;

(ii) The obligations described in subdivision (A) of this subdivision (10) shall no longer apply with respect to matters arising after the effective date of the transfer; and

(iii) Notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than 30 days prior to the effective date of the transfer.

(E) The provisions of this subdivision (10) shall supersede the provisions of any law or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the date of the order of liquidation, to the receiver of the insolvent insurer or any other person. The receiver shall remain entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods prior to the date of the order of liquidation, subject to applicable setoff provisions.

(F) Except as otherwise provided in this section, nothing in this subdivision (10) shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this section shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract.

Nothing in this section shall give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this section shall limit or affect the association's rights as a creditor of the estate against the assets of the estate. Nothing in this section shall apply to reinsurance agreements covering property or casualty risks.

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

Sec. 7e. CONFORMING AMENDMENTS

The legislative council, when codifying the amendments enacted by this act to chapter 112 of Title 8, Vermont Statutes Annotated, shall also amend chapter 112 as follows:

(1) In 8 V.S.A. §§ 4158(3), (5) and (9), 4159, 4161(1) and (4), 4164, and 4169, by striking the word "impaired" wherever it appears and inserting in lieu thereof the words "impaired or insolvent"; and

(2) In 8 V.S.A. §§ 4152, 4161(1)(C), and 4162, by striking out the word "impairment" wherever it appears and inserting in lieu thereof the words "impairment or insolvency."

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

Sec. 7f. 8 V.S.A. § 8204 is amended to read:

§ 8204. ASSUMPTION, TRANSFER AND NOTICE REQUIREMENTS

(a) ~~The~~ Except as provided in, and subject to subsection 8207(d) of this title, the transferring insurer shall provide or cause to be provided to each policyholder a notice of transfer by first-class mail, addressed to the policyholder's last known address or to the address to which premium notices or other policy documents are sent or, with respect to home service business, by personal delivery with receipt acknowledged by the policyholder. A notice of transfer shall also be sent to the transferring insurer's agents or brokers of record on the affected policies.

* * *

(j) ~~The~~ Except as provided in, and subject to subsection 8207(d) of this title, the commissioner may modify the notice requirements of this chapter if the commissioner determines that the transfer is between affiliates or that the transfer is not contemplated within the purposes of this chapter.

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

Sec. 7g. 8 V.S.A. § 8207(d) is amended to read:

(d) In the case of policyholders who do not reside in this state, and where the insurance regulatory authority in such other state has approved or intends to approve the notice requirements and other policyholder rights with respect to such policyholders, the commissioner shall defer to the decisions of such other insurance regulatory authority. In the case of policyholders who do not reside in this state, and where the insurance regulatory authority in such other state has not established an obligation to file forms used by an insurer in a transaction under this subchapter, the commissioner may modify notice requirements and other policyholder rights when in his or her judgment it appears that the interests of the policyholders and insurers are best served by the exercise of such discretion. Factors to be considered in making this determination shall include the following:

* * *

Thirteenth: By striking out Sec. 8 in its entirety and by inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. 8 V.S.A. § 4800(4) is added to read:

(4) In order to assist in the performance of the commissioner's duties under this chapter, the commissioner may:

(A) contract with nongovernmental entities, including the National Association of Insurance Commissioners (NAIC) or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, and the collection of system charges related to producer licensing or to any other activities which require a license under this chapter that the commissioner and the nongovernmental entity may deem appropriate;

(B) participate, in whole or in part, with the NAIC, or any affiliates or subsidiaries the NAIC oversees, in a centralized producer license registry to effect the licensure and appointment of producers and other persons required to be licensed under this chapter;

(C) adopt by rule any uniform standards and procedures as are necessary to participate in a centralized registry. Such rules may include the central collection of all fees and system charges for license or appointments that are processed through the registry, and the establishment of uniform license and appointment renewal dates;

(D) require persons engaged in activities which require a license under this chapter to make any filings with the department in a digital, electronic manner approved by the commissioner for applications, renewal,

amendments, notifications, reporting, appointments, terminations, the payment of fees and system charges, and such other activities relating to licensure under this chapter as the commissioner may require, subject to such hardship circumstances demonstrated by the applicant or licensee which the commissioner deems appropriate for the utilization of the central registry in a nondigital and nonelectronic manner; and

(E)(i) authorize the centralized producer license registry to collect fingerprints on behalf of the commissioner in order to receive or conduct criminal history background checks;

(ii) use the centralized producer license registry as a channeling agent for requesting information from and distributing information to the U.S. Department of Justice or any governmental agency, in order to reduce the points of contact which the Federal Bureau of Investigation (FBI) or the commissioner may have to maintain for purposes of this subsection; and

(iii) require persons engaged in activities that require a license under this chapter to submit fingerprints, and the commissioner may utilize the services of the centralized producer license registry to process the fingerprints and to submit the fingerprints to the FBI, the Vermont state police, or any equivalent state or federal law enforcement agency for the purpose of conducting a criminal history background check. The licensee or applicant shall pay the cost of such criminal history background check, including any charges imposed by the centralized producer licensing system.

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

Sec. 9a. REPEAL

8 V.S.A. § 4807(b) (surplus lines broker; requirement of one year's experience) is repealed.

Fifteenth: 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. § 4081 is amended to read:

§ 4081. BLANKET HEALTH INSURANCE

(a) Blanket health insurance is hereby declared to be that form of health insurance which is supplemental to comprehensive health insurance, or which provides coverage other than the payment of all or a portion of the cost of health care services or products, and covering special groups of persons set forth as follows:

(1) Under a policy or contract issued to any common carrier, which shall be deemed the policyholder, covering a group defined as all persons who may become passengers on such common carrier;

(2) Under a policy or contract issued to an employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment;

(3) Under a policy or contract issued to a college, school, or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder, covering students or teachers;

(4) Under a policy or contract issued in the name of any volunteer fire department, first aid, or other such volunteer group, which shall be deemed the policyholder, covering all of the members of such department or group in connection with their department or group activities; or

(5) Under a policy or contract issued to any other substantially similar group which, in the discretion of the commissioner and after the prior approval by the commissioner of the group, may be subject to the issuance of a blanket health policy or contract.

Sixteenth: By striking out Sec. 25 in its entirety and inserting in lieu thereof a new Sec. 25 to read as follows:

Sec. 25. 8 V.S.A. § 4082 is amended to read:

§ 4082. BLANKET INSURANCE; POLICY CONTENTS

(a) No such blanket health insurance policy shall contain any provision relative to notice of claim, proofs of loss, time of payment of claims, or time within which legal action must be brought upon the policy which, in the opinion of the commissioner, is less favorable to the persons insured than would be permitted by the provisions set forth in section 4065 of this title. An individual application shall not be required from a person covered under a blanket health policy or contract, nor shall it be necessary for the insurer to furnish each person a certificate. All benefits under any blanket health policy shall, unless for hospital and physician service or surgical benefits, be payable to the person insured, or to his or her designated beneficiary or beneficiaries, or to his or her estate, except that if the person insured be a minor, such benefits may be made payable to his or her parent, guardian, or other person actually supporting him or her. Nothing contained in this section or section 4081 of this title shall be deemed to affect the legal liability of policyholders for the death of, or injury to, any such members of such group.

(b) No such blanket health insurance policy which provides coverage for the payment of all or a portion of the cost of health care services or products

shall contain any provision not in compliance with a requirement of this title, or a rule adopted pursuant to this title applicable to health insurance, other than those requirements applicable to nongroup health insurance or small group health insurance. The commissioner may waive the application to a blanket insurance policy of one or more of the health insurance requirements of this title, or a rule adopted pursuant to this title, if such requirement is not relevant to the types of risks and duration of risks insured against in such blanket insurance policy.

Seventeenth: By adding a new section to be numbered Sec. 26a to read as follows:

Sec. 26a. Sec. 51(h) of No. 61 of the Acts of 2009 is amended to read:

(h) The summary disclosure form required by 18 V.S.A. § 9418c(b), shall be included in all contracts entered into or ~~renewed~~ renegotiated on or after July 1, 2009, and shall be provided for all other existing contracts no later than July 1, 2014.

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

Sec. 28a. 32 V.S.A. § 8557(b) is added to read:

(b) The executive director of the division of fire safety shall, at the end of each fiscal quarter, prepare a comprehensive written report on the status of training programs and expenditures to date. The report shall be submitted to the commissioner of public safety, the chairperson of the legislative joint fiscal committee when the legislature is not in session and the chairperson of the house appropriations committee when the legislature is in session. The department of public safety shall continue to provide budgeting, accounting and administrative support to the Vermont division of fire safety as such was originally described in Sec. 98 of No. 245 of the Acts of 1992.

Nineteenth: In Sec. 29, by striking out subsection (a) in its entirety and by inserting in lieu thereof the following:

(a) This act shall take effect on July 1, 2010, except that this section, Secs. 16 through 23 (captive insurance companies), 26a (fair contract standards; summary disclosure form), and 27 (health information technology assessment) shall take effect on passage.

(b) Sec. 4 (registered agent for financial institutions) shall take effect on October 1, 2010.

And by relettering the remaining subsections to be alphabetically correct.

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

House Proposal of Amendment Not Concurred In; Committee of Conference Requested

J.R.S. 54.

House proposal of amendment to joint Senate resolution entitled:

Joint resolution related to the payment of dairy hauling costs.

Was taken up.

The House proposes to the Senate to amend the joint resolution by striking out all after the title and inserting in lieu thereof the following:

Whereas, in the past three years, the Vermont General Assembly has carefully considered the issue of dairy hauling costs and the impact upon Vermont dairy farmers, and

Whereas, New England dairy farmers typically are responsible for the majority of the costs of hauling milk from the farm to a buyer's processing plant or similar facility, and

Whereas, dairy hauling costs are incurred by dairy farmers, regardless of the price of milk, and

Whereas, dairy hauling costs for a Vermont farm milking 200 cows can exceed $20,000.00 per year, and

Whereas, according to a recent New York study of dairy hauling costs, hauling charges paid by dairy producers range from an annual average of $0.50 to $0.57 per hundredweight of milk for all size farms, and the average hauling charge, including transportation credits, ranges from 3.1 to 4.4 percent of the gross value of the farm milk, and

Whereas, pursuant to Vermont's Act 50 (2007), the Vermont Milk Commission carefully considered the potential economic impacts of shifting responsibility for dairy hauling costs from the producer to the purchaser of milk, and

Whereas, the Vermont Milk Commission has concluded, and legislative testimony received from the Vermont agency of agriculture, food and markets, industry representatives, and dairy farmers has confirmed that shifting the payment of dairy hauling costs from producer to purchaser will increase the price of Vermont milk, making Vermont milk more expensive and less competitive than milk produced in neighboring states, and

Whereas, Vermont, or any other state which unilaterally mandates a shift in the cost of dairy hauling from producer to purchaser, will suffer a competitive disadvantage relative to neighboring producer states due to the increased cost of its milk, and

Whereas, given this reality and the economic crisis facing dairy farmers throughout New England, it is extremely unlikely that any state will elect to be the first to mandate this shift in dairy hauling costs, therefore requiring a solution that is national in scope, and

Whereas, in November 2009, United States Representatives Michael Arcuri and Chris Lee of New York introduced federal legislation (H.R. 4117) to eliminate all hauling costs for milk producers, and

Whereas, United States Secretary of Agriculture Thomas Vilsack has convened a 17-member United States Department of Agriculture Dairy Industry Advisory Committee to review the issues of farm milk price volatility and dairy farmer profitability, and to offer suggestions and ideas on how the United States Department of Agriculture can best address these issues to meet the dairy industry's needs, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the Vermont General Assembly urges United States Secretary of Agriculture Thomas Vilsack and the United States Department of Agriculture Dairy Industry Advisory Committee to pursue a national policy requiring that dairy hauling costs be borne by the marketplace rather than dairy producers as a means to address dairy farmer profitability, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to United States Secretary of Agriculture Thomas Vilsack, the Vermont Congressional Delegation, and the members of the United States Department of Agriculture Dairy Industry Advisory Committee.

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.

House Proposal of Amendment Concurred In

S. 58.

House proposal of amendment to Senate bill entitled:

An act relating to electronic payment of wages.

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. 21 V.S.A. §§ 342 and 343 are amended to read:

§ 342. WEEKLY PAYMENT OF WAGES

(a)(1) Any person having employees ~~in his or her service~~ doing and transacting business within the state shall pay each week, in lawful money or checks, ~~each of his or her employees,~~ the wages earned by ~~such~~ each employee to a day not more than six days prior to the date of such payment.

~~(b)~~(2) After giving written notice to ~~his or her~~ the employees, any person having employees ~~in his or her service~~ doing and transacting business within the state may, notwithstanding ~~subsection (a) of this section~~ subdivision (1) of this subsection, pay bi-weekly or semi-monthly in lawful money or checks, each ~~of his or her employees,~~ employee the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.

~~(c)(1)~~(b) An employee who ~~voluntarily~~:

(1) Voluntarily leaves ~~his~~ employment shall be paid on the last regular pay day, or if there is no regular pay day, on the following Friday.

(2) ~~An employee who is~~ Is discharged from employment shall be paid within 72 hours of ~~his~~ discharge.

(3) ~~If an employee is~~ Is absent from his or her regular place of employment on the employer's regular scheduled date of wages or salary payment ~~such employee~~ shall be entitled to ~~such~~ payment upon demand.

~~(d)~~(c) With the written authorization of an employee, an employer may pay wages due the employee by ~~deposit~~ any of the following methods:

(1) Deposit through electronic funds transfer or other direct deposit systems to a checking, savings, or other deposit account maintained by or for the employee in any financial institution within or without the state.

(2) Credit to a payroll card account directly or indirectly established by an employer in a federally insured depository institution to which electronic fund transfers of the employee's wages, salary, or other employee compensation is made on a recurring basis, other than a checking, savings, or other deposit account described in subdivision (1) of this subsection, provided all the following:

(A) The employer provides the employee written disclosure in plain language, in at least 10-point type of both the following:

(i) All the employee's wage payment options.

(ii) The terms and conditions of the payroll card account option, including a complete list of all known fees that may be deducted from the employee's payroll card account by the employer or the card issuer and whether third parties may assess fees in addition to the fees assessed by the employer or issuer.

(B) Copies of the written disclosures required by subdivisions (A) and (F) of this subsection and by subsection (d) of this section shall be provided to the employee in the employee's primary language or in a language the employee understands.

(C) The employee voluntarily consents in writing to payment of wages by payroll card account after receiving the disclosures described in subdivision (A) of this subdivision (2), and this consent is not a condition of hire or continued employment.

(D) The employer ensures that the payroll card account provides that during each pay period, the employee has at least three free withdrawals from the payroll card, one of which permits withdrawal of the full amount of the balance at a federally insured depository institution or other location convenient to the place of employment.

(E) None of the employer's costs associated with the payroll card account are passed on to the employee, and the employer shall not receive any financial remuneration for using the pay card at the employee's expense.

(F)(i) At least 21 days before any change takes effect, the employer provides the employee with written notice in plain language, in at least 10 point type, of the following:

(I) any change to any of the terms and conditions of the payroll card account, including any changes in the itemized list of fees;

(II) the employee's right to discontinue receipt of wages by a payroll card account at any time and without penalty.

(ii) The employer may not charge the employee any additional fees until the employer has notified the employee in writing of the changes.

(G) The employer provides the employee the option to discontinue receipt of wages by a payroll card account at any time and without penalty to the employee.

(H) The payroll card issued to the employee shall be a branded-type payroll card that complies with both the following:

(i) Can be used at a PIN-based or a signature-based outlet.

(ii) The payroll card agreement prevents withdrawals in excess of the account balance and to the extent possible protects against the account being overdrawn.

(I) The employer ensures that the payroll card account provides one free replacement payroll card per year at no cost to the employee before the card's expiration date. A replacement card need not be provided if the card has been inactive for a period of at least 12 months or the employee is no longer employed by the employer.

(J) A nonbranded payroll card may be issued for temporary purposes and shall be valid for no more than 60 days.

(K) The payroll card account shall not be linked to any form of credit, including a loan against future pay or a cash advance on future pay.

(L) The employer shall not charge the employee an initiation, loading, or other participatory fee to receive wages payable in an electronic fund transfer to a payroll card account, with the exception of the cost required to replace a lost, stolen, or damaged payroll card.

(M) The employer shall ensure that the payroll card account provides to the employee, upon the employee's written or oral request, one free written transaction history each month which includes all deposits, withdrawals, deductions, or charges by any entity from or to the employee's payroll card account for the preceding 60 days. The employer shall also ensure that the account allows the employee to elect to receive the monthly transaction history by electronic mail.

(d)(1) If a payroll card account is established with a financial institution as an account that is individually owned by the employee, the employer's obligations and the protections afforded under subsection (c) of this section shall cease 30 days after the employer-employee relationship ends and the employee has been paid his or her final wages.

(2) Upon the termination of the relationship between the employer and the employee who owns the individual payroll card account:

(A) the employer shall notify the financial institution of any changes in the relationship between the employer and employee; and

(B) the financial institution holding the individually owned payroll card account shall provide the employee with a written statement in plain language describing a full list of the fees and obligations the employee might incur by continuing a relationship with the financial institution.

(e) The department of banking, insurance, securities, and health care administration may adopt rules to implement subsection (c) of this section.

§ 343. FORM OF PAYMENT

~~Such~~ An employer shall not pay ~~its~~ employees with any form of evidence of indebtedness, including~~, without limitation,~~ all scrip, vouchers, due bills, or store orders, unless the employer is in compliance with one or both of the following:

(1) ~~the~~ The employer is a cooperative corporation in which the employee is a stockholder~~. However, such~~ , in which case, the cooperative corporation shall, upon request of any ~~such~~ shareholding employee, pay ~~him~~ the shareholding employee as provided in section 342 of this title~~; or~~ .

(2) ~~payment~~ Payment is made by check as defined in Title 9A or by an electronic fund transfer as provided in section 342 of this title.

Sec. 2. 8 V.S.A. § 2707(6) is added to read:

(6) A payroll card account issued pursuant to and in full compliance with 21 V.S.A. § 342(c).

Sec. 3. LEGISLATIVE INTENT; REPORT

The intent of this act is to provide employees with a convenient, safe, and flexible way to receive wages and to reduce employers' payroll costs by allowing for the transfer of wages to a payroll card account. The general assembly recognizes that unforeseen issues regarding the use of payroll accounts may arise. The department of banking, insurance, securities, and health care administration and the department of labor shall report to the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs if they identify any problems associated with the use of payroll card accounts.

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.

House Proposals of Amendment to Senate Proposal of Amendment Not Concurred In; Committee of Conference Requested

H. 281.

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

An act relating to the removal of bodily remains.

Were taken up.

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

First: In Sec. 2, in subdivision (b)(2) by striking out the final sentence and inserting in lieu thereof the following: Each treatment plan shall include the following as appropriate:

Second: In Sec. 4. 18 V.S.A. § 5217 in subdivision (c)(3) by striking out the word "decedent" and inserting in lieu thereof the word descendant

Third: In Sec. 4. 18 V.S.A. § 5217 in subdivision (c), by adding a new subdivision (4) to read as follows:

(4) The state archeologist.

Fourth: In Sec. 4. 18 V.S.A. § 5217 in subdivision (d), in the first sentence by striking out the following: "one of the individuals listed" and by inserting in lieu thereof the following: any person listed

Fifth: In Sec. 4. 18 V.S.A. § 5217 in subdivision (h), by striking out the first sentence in its entirety and inserting in lieu thereof the following: The permit shall require that all remains, markers, and relevant funeral-related materials associated with the burial site be removed, and the permit may require that the removal be conducted or supervised by a qualified professional archeologist in compliance with standard archeological process.

Fifth: By striking out Secs. 5, 6, and 8.

Sixth: In Sec. 7. 18 V.S.A. § 5201 by striking out subsection (c) and inserting in lieu thereof the following:

* * *

Seventh: In Sec. 9 by striking out the following ", except that Sec. 8 shall take effect on January 1, 2012."

Eighth: By striking out the change of title of the bill

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

House Proposal of Amendment Concurred In

S. 263.

House proposal of amendment to Senate bill entitled:

An act relating to the Vermont Benefit Corporations Act.

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. 11A V.S.A. chapter 21 is added to read:

CHAPTER 21. BENEFIT CORPORATIONS

§ 21.01. SHORT TITLE

This chapter shall be known and may be cited as the "Vermont Benefit Corporations Act."

§ 21.02. LAW APPLICABLE

(a) This chapter shall apply only to a domestic corporation meeting the definition of a benefit corporation in subdivision 21.03(a)(1) of this title. The provisions of this title other than those set forth in this chapter shall apply to a benefit corporation in the absence of a contrary or inconsistent provision in this chapter. A corporation whose status as a benefit corporation terminates shall immediately become subject to the obligations and rights of a general corporation as provided in this title.

(b) The existence of a provision of this chapter does not of itself create any implication that a contrary or different rule of law is or would be applicable to a corporation that is not a benefit corporation. This chapter does not affect any statute or rule of law as it applies to a corporation that is not a benefit corporation.

(c) A provision of the articles of incorporation or bylaws of a benefit corporation may not be inconsistent with any provision of this chapter.

(d) Terms that are defined in other chapters of this title shall have the same meaning when used in this chapter, except that in this chapter, "corporation" shall have the meaning set forth in section 1.40 of this title.

§ 21.03. DEFINITIONS

(a) As used in this chapter:

(1) "Benefit corporation" means a corporation as defined in section 1.40 of this title whose articles of incorporation include the statement "This corporation is a benefit corporation."

(2) "Benefit director" means a director designated as a benefit director of a benefit corporation as provided in section 21.10 of this title.

(3) "Benefit officer" means the officer of a benefit corporation, if any, designated as the benefit officer as provided in section 21.12 of this title.

(4) "General public benefit" means a material positive impact on society and the environment, as measured by a third-party standard, through activities that promote some combination of specific public benefits.

(5) "Independent" means that a person has no material relationship with a benefit corporation or any of its subsidiaries (other than the relationship of serving as the benefit director or benefit officer), either directly or as an owner or manager of an entity that has a material relationship with the benefit corporation or any of its subsidiaries. A material relationship between a person and the benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:

(A) the person is, or has been within the last three years, an employee of the benefit corporation or any of its subsidiaries, other than as a benefit officer;

(B) an immediate family member of the person is, or has been within the last three years, an executive officer, other than a benefit officer, of the benefit corporation or any of its subsidiaries; or

(C) the person, or an entity of which the person is a manager or in which the person owns beneficially or of record five percent or more of the equity interests, owns beneficially or of record five percent or more of the shares of the benefit corporation.

(6) "Specific public benefit" includes:

(A) providing low income or underserved individuals or communities with beneficial products or services;

(B) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(C) preserving or improving the environment;

(D) improving human health;

(E) promoting the arts or sciences or the advancement of knowledge;

(F) increasing the flow of capital to entities with a public benefit purpose; and

(G) the accomplishment of any other identifiable benefit for society or the environment.

(7) "Subsidiary" of a person means an entity in which the person owns beneficially or of record 50 percent or more of the equity interests.

(8) "Third-party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that:

(A) is developed by a person that is independent of the benefit corporation; and

(B) is transparent because the following information about the standard is publicly available:

(i) the factors considered when measuring the performance of a business;

(ii) the relative weightings of those factors; and

(iii) the identity of the persons who developed and control changes to the standard and the process by which those changes are made.

(b) For purposes of subdivisions (a)(5)(C) and (7), a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

§ 21.04. INCORPORATION OF A BENEFIT CORPORATION

A benefit corporation shall be formed in accordance with sections 2.01, 2.02, 2.03, and 2.05 of this title, except that its articles of incorporation shall also contain the provision required by subdivision 21.03(a)(1) of this title to meet the definition of a benefit corporation.

§ 21.05. ELECTION OF EXISTING CORPORATION TO BECOME A BENEFIT CORPORATION

Any corporation organized under this title may become a benefit corporation by amending its articles of incorporation to add the statement required by subdivision 21.03(a)(1) of this title to meet the definition of a

benefit corporation. The amendment shall be adopted and shall become effective in accordance with sections 10.01 through 10.09 of this title, except that:

(1) the notice of the meeting of shareholders that will approve the amendment shall include a statement from the board of directors of the reasons why the board is proposing the amendment and the anticipated effect on shareholders of becoming a benefit corporation; and

(2) the amendment shall be approved by the higher of:

(A) the vote required by the articles of incorporation; or

(B) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.06. MERGER AND SHARE EXCHANGE

(a) A plan of merger or share exchange that if effected would terminate the benefit corporation status of a corporation shall be adopted and shall become effective in accordance with chapter 11 of this title, except that:

(1) the notice of the meeting of shareholders that will approve the plan shall include a statement from the board of directors of the reasons why the board is proposing that the surviving corporation should not be a benefit corporation and the anticipated effect on the shareholders of the surviving corporation ceasing to be a benefit corporation; and

(2) the plan shall be approved by the higher of:

(A) the vote required by the articles of incorporation; or

(B) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

(b) If a corporation that is not a benefit corporation is a party to a plan of merger or share exchange in which the surviving corporation is a benefit corporation, the plan of merger shall be adopted and shall become effective in accordance with chapter 11 of this title, except that:

(1) the notice of the meeting of shareholders that will approve the plan shall include a statement from the board of directors of the reasons why the board is proposing that the surviving corporation should become a benefit

corporation and the effect on the shareholders of the surviving corporation becoming a benefit corporation; and

(2) the plan shall be approved in the case of the corporation that is not a benefit corporation by the higher of:

(A) the vote required by the articles of incorporation; or

(B) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.07. TERMINATION OF BENEFIT CORPORATION STATUS BY AMENDMENT OF ARTICLES OF INCORPORATION; VOTE REQUIRED

A corporation may terminate its status as a benefit corporation and cease to be subject to this chapter by amending its articles of incorporation to delete the provision required by subdivision 21.03(a)(1) of this title to meet the definition of a benefit corporation, in addition to the provisions required by section 2.02 of this title to be stated in the articles of incorporation of a benefit corporation. The amendment shall be adopted and shall become effective in accordance with sections 10.01 through 10.09 of this title, except that:

(1) the notice of the meeting of shareholders that will approve the plan shall include a statement from the board of directors of the reasons why the board is proposing the amendment and the effect of terminating the status of the corporation as a benefit corporation; and

(2) the amendment shall be approved by the higher of:

(A) the vote required by the articles of incorporation; or

(B) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.08. CORPORATE PURPOSE

(a) A benefit corporation shall have the purpose of creating general public benefit. This purpose is in addition to, and may be a limitation on, the purposes of the benefit corporation under subsection 3.01(a) of this title.

(b) The articles of incorporation of a benefit corporation may identify one or more specific public benefits that are the purpose of the benefit corporation to create in addition to its purposes under subsection 3.01(a) of this title and

subsection (a) of this section. The adoption of a specific public benefit purpose under this subsection does not limit the obligation of a benefit corporation to create general public benefit.

(c) The creation of general and specific public benefit as provided in subsections (a) and (b) of this section is in the best interests of the benefit corporation.

(d) A benefit corporation may amend its articles of incorporation to add, amend, or delete a specific public benefit. The amendment shall be adopted and shall become effective in accordance with sections 10.01 through 10.09 of this title and shall be approved by the higher of the vote required by the articles of incorporation or by subsection (e) of this section.

(e) An amendment of the articles of incorporation of a benefit corporation to add, amend, or delete a specific public benefit in the articles of incorporation shall be adopted by a vote of at least two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.09. STANDARD OF CONDUCT FOR DIRECTORS

(a) Each director of a benefit corporation, in discharging his or her duties as a director, including the director's duties as a member of a committee:

(1) shall, in determining what the director reasonably believes to be in the best interests of the benefit corporation, consider the effects of any action or inaction upon:

(A) the shareholders of the benefit corporation;

(B) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(C) the interests of customers to the extent they are beneficiaries of the general or specific public benefit purposes of the benefit corporation;

(D) community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(E) the local and global environment; and

(F) the long-term and short-term interests of the benefit corporation, including the possibility that those interests may be best served by the continued independence of the benefit corporation;

(2) may consider any other pertinent factors or the interests of any other group that the director determines are appropriate to consider;

(3) shall not be required to give priority to the interests of any particular person or group referred to in subdivisions (1) or (2) of this subsection over the interests of any other person or group unless the benefit corporation has stated its intention to give priority to interests related to its specific public benefit purpose in its articles of incorporation; and

(4) shall not be subject to a different or higher standard of care when an action or inaction might affect control of the benefit corporation.

(b) The consideration of interests and factors in the manner described in subsection (a) of this section shall not constitute a violation of section 8.30 of this title.

(c) A director is not liable for the failure of a benefit corporation to create general or specific public benefit.

(d) A director is not liable to the benefit corporation or any person entitled to bring a benefit enforcement proceeding under section 21.13 of this title for any action or failure to take action in his or her official capacity if the director performed the duties of his or her office in compliance with section 8.30 of this title and with this section.

(e) A director of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. A director of a benefit corporation shall not have any fiduciary duty to a person who is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary.

§ 21.10. BENEFIT DIRECTOR

(a) The board of directors of a benefit corporation shall include at least one director who shall be designated a "benefit director" and shall have, in addition to all of the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

(b) A benefit director shall be elected and may be removed in the manner provided by subchapter 1 of chapter 8 of this title and shall be an individual who is independent of the benefit corporation. A benefit director may serve as the benefit officer at the same time as serving as a benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of a benefit director not inconsistent with this subsection.

(c)(1) A benefit director shall be responsible for the preparation of the annual benefit report required under section 21.14 of this title.

(2) A benefit director may retain an independent third party to audit the annual benefit report or conduct any other assessment of the benefit corporation's social and environmental performance.

(3) A benefit director shall prepare and shall include in the annual benefit report a statement whether, in the opinion of the benefit director:

(A) the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report; and

(B) the directors and officers acted in accordance with the requirements of subsection 21.09(a) and section 21.11 of this title, respectively.

(4) If in the opinion of the benefit director the benefit corporation failed to act in accordance with its general and any specific public benefit purposes or if its directors or officers failed to act in accordance with the requirements of subsection 21.09(a) and section 21.11 of this title, respectively, then the statement of the benefit director shall include a description of the ways in which the benefit corporation or its directors or officers failed to so act.

(d) The acts and omissions of an individual in the capacity of a benefit director shall constitute for all purposes acts and omissions of that individual in the capacity of a director of the benefit corporation.

(e) If the articles of incorporation of a benefit corporation that is a close corporation dispense with a board of directors pursuant to sections 20.08 and 20.09 of this title, then the articles of incorporation shall provide that the persons who perform the duties of a board of directors shall include at least one person with the powers, duties, rights, and immunities of a benefit director.

(f) Regardless of whether the articles of incorporation of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by subdivision 2.02(b)(4) of this title, a benefit director shall not be personally liable for any act or omission taken in his or her official capacity as a benefit director unless the act or omission is not in good faith, involves intentional misconduct or a knowing violation of law, or involves a transaction from which the director directly or indirectly derived an improper personal benefit.

§ 21.11. STANDARD OF CONDUCT FOR OFFICERS

(a) An officer of a benefit corporation shall consider the interests and factors described in subsection 21.09(a) of this title in the manner provided in that subsection when:

(1) the officer has discretion in how to act or not act with respect to a matter; and

(2) it reasonably appears to the officer that the matter may have a material effect on:

(A) the creation of general or specific public benefit by the benefit corporation; or

(B) any of the interests or factors referred to in section 21.09(a)(1) of this title.

(b) The consideration of interests and factors in the manner described in subsection (a) of this section shall not constitute a violation of the fiduciary duty of an officer to the benefit corporation.

(c) An officer is not liable to the benefit corporation or any person entitled to bring a benefit enforcement proceeding under section 21.13 of this title for any action or failure to take action in his or her official capacity if the officer performed the duties of the position in compliance with section 8.41 of this title and with this section.

(d) An officer is not liable for the failure of a benefit corporation to create general or specific public benefit.

(e) An officer of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. An officer of a benefit corporation shall not have any fiduciary duty to a person that is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary.

§ 21.12. BENEFIT OFFICER

A benefit corporation may have an officer designated the "benefit officer" who shall have the authority and shall perform the duties in the management of the benefit corporation relating to the purpose of the corporation to create public benefit as set forth with respect to the office in the bylaws or, to the extent not inconsistent with the bylaws, prescribed with respect to the office by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of the office.

§ 21.13. RIGHT OF ACTION

(a) The duties of directors and officers under this chapter and the general and specific public benefit purposes of a benefit corporation may be enforced only in a benefit enforcement proceeding, and no person may bring such an action or claim against a benefit corporation or its directors or officers except as provided in this section.

(b) A benefit enforcement proceeding may be commenced or maintained only by:

(1) a shareholder that would otherwise be entitled to commence or maintain a proceeding in the right of the benefit corporation on any basis;

(2) a director of the corporation;

(3) a person or group of persons that owns beneficially or of record 10 percent or more of the equity interests in an entity of which the benefit corporation is a subsidiary; or

(4) such other persons as may be specified in the articles of incorporation of the benefit corporation.

(c) As used in this chapter, "benefit enforcement proceeding" means a claim or action against a director or officer for:

(1) failure to pursue the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in its articles of incorporation; or

(2) violation of a duty or standard of conduct under this chapter.

§ 21.14. ANNUAL BENEFIT REPORT

(a) A benefit corporation shall deliver to each shareholder, in a format approved by the directors, an annual benefit report, which shall include:

(1)(A) a statement of the specific goals or outcomes identified by the benefit corporation for creating general public benefit and any specific public benefit for the period of the benefit report;

(B) a description of the actions taken by the benefit corporation to attain the identified goals or outcomes and the extent to which the goals or outcomes were attained;

(C) a description of any circumstances that hindered the attainment of the identified goals or outcomes and the creation of general public benefit or any specific public benefit; and

(D) specific actions the benefit corporation can take to improve its social and environmental performance and attain the goals or outcomes identified for creating general public benefit and any specific public benefit.

(2) an assessment of the social and environmental performance of the benefit corporation prepared in accordance with a third-party standard that has been applied consistently with prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application;

(3) a statement of specific goals or outcomes identified by the benefit corporation and approved by the shareholders for creating general public benefit and any specific public benefit for the period of the next benefit report.

(4) the name of each benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed;

(5) the compensation paid by the benefit corporation during the year to each director in that capacity;

(6) the name of each person that owns beneficially or of record five percent or more of the shares of the benefit corporation; and

(7) the statement of a benefit director described in subsection 21.10(c) of this title.

(b) A benefit corporation shall annually deliver the benefit report to each shareholder within 120 days following the end of the fiscal year of the benefit corporation or at the same time that the benefit corporation delivers any other annual report to its shareholders.

(c) After reasonable opportunity for review, the shareholders of the benefit corporation shall approve or reject the annual benefit report by majority vote at the annual meeting of shareholders or at a special meeting held for that purpose.

(d) A benefit corporation shall post its most recent benefit report endorsed by its shareholders on the public portion of its website, if any, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted. If a benefit corporation does not have a public website, it shall deliver a copy of its most recent benefit report on demand and without charge to any person who requests a copy.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

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

Consideration Resumed; Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment

H. 769.

Consideration was resumed on House bill entitled:

An act relating to the licensing and inspection of plant and tree nurseries.

Thereupon, pending the question, Shall the bill pass in concurrence?, Senator Kittell, on behalf of the Committee on Agriculture, moved that the Senate propose to the House to amend the bill in Sec. 3, 6 V.S.A. § 4024, by adding a new subsection (d) to read as follows:

(d) A person selling $1,000.00 or less of nursery stock in a year shall be exempt from the requirement to obtain a license under this section.

Which was agreed to.

Thereupon, the pending question, Shall the bill pass in concurrence with proposal of amendment?, was agreed to.

House Proposal of Amendment Taken Up; Consideration Postponed

S. 292.

House proposal of amendment to Senate bill entitled:

An act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees.

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. PROBATION; LEGISLATIVE FINDINGS AND INTENT

(a) It is the intent of the general assembly that term probation be the standard, the default, for misdemeanors and nonviolent felonies and that the exception in the law that allows a court to deviate from this standard in the interest of justice should be used judiciously and sparingly.

(b) Similarly, it is the intent of the general assembly that administrative probation be the standard, the default, for qualifying offenses for which probation is ordered and that the exception in the law that allows a court to deviate from this standard in the interest of justice should be used judiciously and sparingly.

Sec. 2. OFFENDERS WITH SERIOUS FUNCTIONAL IMPAIRMENT; LEGISLATIVE FINDING

The general assembly finds that successful community discharge for offenders with serious functional impairment requires community planning with appropriate departments of the agency of human services and community organizations, including law enforcement, designated agencies, and housing providers and that the state interagency team and local interagency teams for persons with serious functional impairment offer the best model for such planning.

Sec. 3. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding sections 2056a-2056e of Title 20, the department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon their release from confinement:

(1) Sex offenders who have been convicted of:

* * *

(M) an attempt to commit any offense listed in this subdivision (a)(1).

* * *

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

* * *

(6) except as provided in subsection (l) of this section, the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:

* * *

(l) A sex offender's street address shall not be posted electronically if the offender has a developmental disability, receives funding from the department of disabilities, aging, and independent living (DAIL) for 24-hour supervision and treatment, and resides in a residence that is equipped with alarms. However, this information shall be otherwise available pursuant to this section. An agency designated pursuant to 18 V.S.A. § 8907 to provide mental health and developmental disability services (DA), or a specialized service agency (SSA) operating under an agreement entered into pursuant to 18 V.S.A. § 8912 which is providing supervision for the offender shall immediately notify the administrator of the sex offender registry and local law enforcement if the

individual's level of supervision is decreased from 24 hours or if the offender leaves his or her residence without authorization, and thereafter this subsection shall cease to apply to that offender. If after notice and hearing, the commissioner of DAIL finds that the DA or SSA has failed to notify the administrator of the sex offender registry and local law enforcement of a decrease from 24-hour supervision or absence without authorization by the offender within 24 hours of the change in status, the commissioner may impose an administrative penalty of not more than $1,000.00 for each day of the violation. A DA or SSA shall have the right to a de novo appeal of a decision under this subsection pursuant to rule 75 of the Vermont rules of civil procedure.

Sec. 4 24 V.S.A. § 290(b) is amended to read:

(b) Full-time deputy sheriffs whose primary responsibility is transportation of prisoners and mentally ill persons shall be paid by the state of Vermont. The appointment of such deputies and their salary shall be approved by the governor, or his or her designee. The executive committee of the Vermont sheriffs association and the executive director of the department of state's attorneys and sheriffs shall jointly have authority for the assignment of position locations in the counties of state-paid deputy sheriffs and shall review the county location assignments periodically for efficient use of resources.

Sec. 5. 28 V.S.A. § 301 is amended to read:

§ 301. SUMMONS OR ARREST OF PROBATIONER

* * *

(4) Detention pending hearing for probationer. Pending arraignment for any charge of violation, the probationer shall continue to be detained at a correctional facility. Thereafter, the court may release the probationer pursuant to ~~section 7554 of Title 13~~ 13 V.S.A. § 7554. There shall be no right to bail or release, unless the person is on probation for a nonviolent misdemeanor or nonviolent felony and the probation violation did not constitute a new crime. For purposes of this subdivision:

(A) "Nonviolent felony" means a felony offense which is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of chapter 64 of Title 13.

(B) "Nonviolent misdemeanor" means a misdemeanor offense which is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of chapter 64 of Title 13 or 13 V.S.A. § 1030.

Sec. 6. 28 V.S.A. § 801(e) and (f) are added to read:

(e) Except as otherwise provided in this subsection, an offender who is admitted to a correctional facility while under the medical care of a licensed physician, a licensed advanced practice registered nurse, or a licensed nurse practitioner and who is taking medication at the time of admission pursuant to a valid prescription as verified by the inmate's pharmacy of record, primary care provider, other licensed care provider, or as verified by the Vermont prescription monitoring system or other prescription monitoring or information system shall be entitled to continue that medication and to be provided that medication by the department pending an evaluation by a licensed physician, a licensed physician's assistant, a licensed nurse practitioner, or a licensed advanced practice registered nurse. However, the department may defer provision of medication in accordance with this subsection if, in the clinical judgment of a licensed physician, a physician's assistant, a nurse practitioner, or an advanced practice registered nurse, it is not in the inmate's best interest to continue the medication at that time. The licensed practitioner who makes the clinical judgment shall enter the reason for the discontinuance into the inmate's permanent medical record. It is not the intent of the general assembly that this subsection shall create a new or additional private right of action.

(f) Any contract between the department and a provider of physical or mental health services shall establish policies and procedures for continuation and provision of medication at the time of admission and thereafter, as determined by an appropriate evaluation, which will protect the mental and physical health of inmates.

Sec. 7. 28 V.S.A. § 808(a) is amended to read:

§ 808. FURLOUGHS GRANTED TO INMATES

(a) The department may extend the limits of the place of confinement of an inmate at any correctional facility if the inmate agrees to comply with such conditions of supervision the department, in its sole discretion, deems appropriate for that inmate's furlough. The department may authorize furlough for any of the following reasons:

(1) To visit a critically ill relative~~; or~~.

(2) To attend a funeral of a relative~~; or~~.

(3) To obtain medical services~~; or~~.

(4) To contact prospective employers~~; or~~.

(5) To secure a suitable residence for use upon discharge~~; or~~.

(6) To continue the process of reintegration initiated in a correctional facility. The inmate may be placed in a program of conditional reentry status by the department upon the inmate's completion of the minimum term of sentence. While on conditional reentry status, the inmate shall be required to participate in programs and activities that hold the inmate accountable to victims and the community pursuant to section 2a of this title~~; or~~.

(7) When recommended by the department and ordered by a court.

(A) Treatment furlough. The inmate may be sentenced to serve a term of imprisonment but placed by a court on furlough to participate in such programs administered by the department in the community that reduce the offender's risk to reoffend or that provide reparation to the community in the form of supervised work activities; ~~or~~

(B)(i) Home confinement furlough. The inmate may be sentenced to serve a term of imprisonment but placed by a court on home confinement furlough that restricts the defendant to a preapproved place of residence continuously, except for authorized absences, enforced by appropriate means of supervision, including electronic monitoring and other conditions such as limitations on alcohol, visitors, and access to firearms imposed by the court or the department or both. A sentence to home confinement furlough shall not exceed a total of 180 days and shall require the defendant:

(I) to remain at a preapproved residence at all times except for scheduled and preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the court may order; or

(II) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.

(ii) In determining whether a home confinement furlough sentence is appropriate and whether a place of residence is suitable for such a sentence, the court shall consider:

(I) the nature of the offense with which the defendant was charged and the nature of the offense with which the defendant was convicted;

(II) the defendant's criminal history record, history of violence, medical and mental health needs, history of supervision, and risk of flight; and

(III) any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from such placement.

* * *

Sec. 8. 28 V.S.A. § 808(h) is added to read:

(h) While appropriate community housing is an important consideration in release of inmates, the department of corrections shall not use lack of housing as the sole factor in denying furlough to inmates who have served at least their minimum sentence for a nonviolent misdemeanor or nonviolent felony provided that public safety and the best interests of the inmate will be served by reentering the community on furlough.

Sec. 9. Sec. 49 of No. 1 of the Acts of 2009 is amended to read:

Sec. 49. AUDIT OF THE STATE'S SEXUAL ABUSE RESPONSE SYSTEM

~~(a) On or before November 15, 2011, and every five years thereafter, the auditor of accounts shall submit to the house and senate committees on judiciary, the house committees on corrections and institutions, on appropriations, on education, and on human services, and the senate committee on health and welfare an independent audit which assesses the status of the state's sexual abuse response system, including prevention, criminal investigations, presentence investigations and sentencing of offenders, supervision and treatment of offenders, victim and family assistance and treatment, and training for those working in the system.~~

~~(b) The audit shall be conducted in consultation with the center for the prevention and treatment of sexual abuse.~~

The auditor of accounts and the Vermont network against domestic and sexual violence shall collaborate as to the best approach to conducting an audit of the state's sexual abuse response system while protecting confidentiality of victims and shall report their recommendations to the senate and house committees on judiciary no later than February 1, 2011.

Sec. 10. REINTEGRATION INTO THE COMMUNITY FROM THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS

(a) For purposes of this section:

(1) "Nonviolent felony" means a felony offense which is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of chapter 64 of Title 13.

(2) "Nonviolent misdemeanor" means a misdemeanor offense which is not a listed crime as defined in 13 V.S.A. § 5301(7) an offense involving sexual exploitation of children in violation of chapter 64 of Title 13 or 13 V.S.A. § 1030.

(b) The department of corrections shall request that the court discharge from probation offenders who on July 1, 2010:

(1) have served at least two years of an unlimited term of probation for a nonviolent misdemeanor and have completed all court-ordered services or programming designed to reduce the risk of recidivism; and

(2) have less than six months of term probation remaining for a nonviolent misdemeanor or a nonviolent felony, except those who are on probation pursuant to 23 V.S.A. § 1210(d) and who have completed all court-ordered services or programming designed to reduce the risk of recidivism.

(c) During the first three months of the fiscal year, pursuant to 28 V.S.A. § 808 including subsection 808(h), the department of corrections shall release to furlough inmates who on July 1, 2010, are incarcerated for nonviolent misdemeanors and nonviolent felonies, except those who are serving a sentence pursuant to 23 V.S.A. § 1210(d), who have served at least their minimum sentence and who:

(1) have not been released because of lack of housing; and

(2) have completed or are not required to complete a program designed to ensure successful reintegration into the community.

(d) Consistent with subdivisions (1) and (3) of Sec. 29 of H.792 of 2010, a portion of the money saved through implementation of this section shall be used to provide grants to community justice centers and similar programs to support offenders who are released pursuant to subsection (c) of this section to reintegrate into the community and to community providers for transitional beds, support services, and residential treatment services for offenders reentering the community. It is the intent of the general assembly that these grants shall be paid for from the amounts appropriated to the department of corrections and prior to actually realizing the savings from the provisions of this section. Support for offenders released pursuant to subsection (c) of this section may include helping them to seek employment, pursue an education, or engage in community service while they are on furlough. As appropriate, the department shall facilitate the offenders' engagement in such meaningful endeavors by removing barriers that impede offenders' participation in these activities. This may include removing unnecessary driving restrictions and changing workday-timed probation appointments and programs that inhibit regular employment.

(e) Offenders who are discharged from probation or released from incarceration pursuant to this section shall be eligible to continue voluntary attendance at the community high school of Vermont.

(f) In his or her monthly reports to the corrections oversight committee, the commissioner of corrections shall report on progress made in implementing subsections (b) and (c) of this section as well as in reductions in the number of detainees realized pursuant to Sec. 11 of this act.

Sec. 11. REDUCTION IN NUMBER OF PERSONS DETAINED

(a) The general assembly finds that the number of persons detained in Vermont's correctional system is rising. The average number of detainees has been reported by the department of corrections as follows:

(1) 336 for fiscal year 2008.

(2) 370 for fiscal year 2009.

(3) 402 for the first six months of fiscal year 2010.

(b) The court administrator, the administrative judge of the trial courts, the commissioner of the department of corrections, the executive director of the department of state's attorneys and sheriffs, and the defender general shall work cooperatively to reduce, to the extent possible, the average daily number of incarcerated detainees to 300 persons or less and to maintain the average daily number at this level. The group shall attempt to reach this level by January 1, 2011.

(c) Improvement in and greater implementation of existing strategies such as term probation, administrative probation, graduated sanctions, alternative sentences, home detention, and electronic monitoring shall be considered, in addition to new approaches and best practices employed in other states. Consideration shall be given to victim and community safety.

Sec. 12. STRATEGIES TO REDUCE NUMBER OF PEOPLE IN CUSTODY OF COMMISSIONER OF CORRECTIONS; REPORT

(a) The commissioner of corrections, the administrative judge of the trial courts, the court administrator, the executive director of the department of state's attorneys and sheriffs, and the defender general shall collaborate on strategies to reduce the number of people entering the custody of the commissioner of corrections and to minimize the time served of those who do enter the commissioner's custody, consistent with public safety.

(b) On or before March 15, 2011, the group described in subsection (a) of this section shall jointly report to the senate and house committees on judiciary, the senate committee on institutions, and the house committee on corrections and institutions on potential strategies including, but not limited to, the following:

(1) methods for increasing compliance with Sec. 1 of this act regarding term and administrative probation.

(2) strategies employed and success in reducing the average daily detainee population to 300 persons by January 1, 2011.

(3) a plan to coordinate efficient scheduling of court hearings and transportation of persons in the custody of the commissioner of corrections.

Sec. 13. OFFICE OF ALCOHOL AND DRUG ABUSE PROGRAMS; SUPERVISED BEDS; PUBLIC INEBRIATE SCREENING TOOL

(a) The office of alcohol and drug abuse programs shall develop a uniform screening tool which can be used to determine whether or not an inebriated person is incapacitated or in need of medical or other treatment or some combination of these. The screening tool shall be used by public inebriate screeners under contract with the office. To the extent practicable, the tool shall be based on evidence-based practices and standard emergency department policies and procedures.

(b) The office of alcohol and drug abuse programs shall develop supervised two-bed units for location of incapacitated persons taken into custody pursuant to 33 V.S.A. § 708. Units shall be developed as funding is available and placed in counties in which no bed space for incapacitated persons exists. Priority shall be based on population density and on demonstrated collaboration between stakeholders.

Sec. 14. Sec. 22(a) of No. 179 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

(a) Secs. 11 and 12 of this act shall take effect on July 1, ~~2011~~ 2012.

Sec. 15. 24 V.S.A. § 1940(c) is amended to read:

(c) A specialized investigative unit grants board is created which shall be comprised of the attorney general, the secretary of administration, the executive director of the department of state's attorneys, the commissioner of the department of public safety, the commissioner of the department of children and families, a representative of the Vermont sheriffs' association, a representative of the Vermont association of chiefs of police, the executive director of the center for crime victim services, and the executive director of the Vermont League of Cities and Towns, Inc. Specialized investigative units organized and operating under this section for the investigation of sex crimes, child abuse, elder abuse, domestic violence, or crimes against those with physical or developmental disabilities may apply to the board for a grant or grants covering the costs of salaries and employee benefits to be expended during a given year for the performance of unit duties as well as unit operating

costs for rent, utilities, equipment, training, and supplies. Grants under this section shall be approved by a majority of the entire board and shall not exceed 50 percent of the yearly salary and employee benefit costs of the unit. Preference shall be given to grant applications which include the participation of the department of public safety, the department for children and families, sheriffs' departments, community victims' advocacy organizations, and municipalities within the region.

Sec. 16. COMMISSIONER OF CORRECTIONS; INMATES WHO ARE PARENTS; FAMILIES; CONTACT POLICIES

(a) The commissioner of corrections may request information about minor children from anyone entering the system who is charged with or convicted of a criminal offense. Information the commissioner may request includes: how many minor children the person has; each child's date of birth and gender; who is the primary caregiver for each minor child; if the person is the primary caregiver, how the child is being cared for in the caregiver's absence.

(b) The commissioner of corrections shall examine department of corrections policies regarding use of mail, telephone, and personal visits and revise them to promote quality relations between inmates and their families as appropriate. Specifically, the commissioner shall:

(1) Review and revise if necessary policies and practices to better promote affordable telephone contact between inmates and their families.

(2) Eliminate any existing policy which limits telephone calls and visitation with minor children as a disciplinary measure.

(c) On or before January 15, 2011, the commissioner shall report on the information gathered and actions taken under this section to the senate committee on judiciary and the house committee on corrections and institutions along with recommendations for policy and statutory change which may result in improved contact between inmates and their families.

Sec. 17. 13 V.S.A. § 7030(a) is amended to read:

(a) In determining which of the following should be ordered, the court shall consider the nature and circumstances of the crime, the history and character of the defendant, the need for treatment, the impact on minor children if any, and the risk to self, others, and the community at large presented by the defendant:

(1) A deferred sentence pursuant to section 7041 of this title.

(2) Probation pursuant to ~~section~~ 28 V.S.A. § 205 ~~of Title 28~~.

(3) Supervised community sentence pursuant to ~~section~~ 28 V.S.A. § 352 ~~of Title 28~~.

(4) Sentence of imprisonment.

Sec. 18. EFFECTIVE DATE

This act shall take effect on July 1, 2010.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Shumlin consideration of the bill was postponed to the next legislative day.

Committees of Conference Appointed

H. 281.

An act relating to the removal of bodily remains.

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

Senator Illuzzi
Senator Carris
Senator Ashe

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

J.R.S. 54.

Joint Senate resolution related to the payment of dairy hauling costs.

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

Senator Starr
Senator Giard
Senator Kittell

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

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. 769, H. 784.

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. 54.

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. 58, S. 263, S. 278.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until five o'clock in the afternoon.

Evening

The Senate was called to order by the President.

Message from the House No. 72

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

Mr. President:

I am directed to inform the Senate that:

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

S. 290. An act relating to restoring solvency to the unemployment trust fund.

And has passed the same in concurrence.

Rules Suspended; House Proposal of Amendment Concurred in With an Amendment

S. 280.

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

An act relating to prohibiting texting while operating on a highway.

Was taken up for immediate consideration.

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:

Sec. 1. SHORT TITLE

This act shall be known as and may be cited as the "Highway Traffic Safety Act of 2010."

* * * Legislative Findings * * *

Sec. 2. LEGISLATIVE FINDINGS

The general assembly finds that:

* * * General Findings * * *

(1) In December 2006, the governor transmitted to the Division Administrator of the Federal Highway Administration the Strategic Highway Plan for Vermont that stated "The first half of 2006 was trending toward a near record-breaking year for highway deaths and incapacitating injuries." In response to this trend, the Strategic Highway Safety Plan for Vermont was created with the mission to "minimize the occurrence and severity of crashes, related human suffering, and economic losses on the Vermont transportation network."

(2) According to the governor's highway safety office, traffic crashes cost the nation about $230 billion each year in medical expenses, lost productivity, property damage, and related costs. Vermont pays $221 million of those costs. In 2008, workplace traffic crash injuries cost Vermonters more than $39 million.

(3) According to the governor's highway safety program, each highway fatality cost the state of Vermont more than $900,000.00.

(4) In recognition of the terrible toll in terms of human suffering and financial loss resulting from motor vehicle crashes, on July 6, 2006, the Vermont department of health's injury prevention program hosted the 2006 Symposium on Preventing Crashes Among Young Drivers at the Inn at Essex, Vermont. The symposium brought together key leaders in highway safety, transportation, public health, and youth development for an in-depth multidisciplinary exploration of the causes of crashes among young drivers and opportunities for prevention.

* * * Teen Driving Safety * * *

(1) The Strategic Highway Safety Plan for Vermont of 2006, signed by the governor and endorsed by state agencies, stated that "new language" should be added to the existing graduated driver license legislation to achieve:

(A) Restrictions on passengers in cars driven by young drivers.

(B) Nighttime limitations for young drivers.

(C) Primary safety belt enforcement to the age of 18.

(D) No cell phone or electronic device use by junior operators.

(2) From a public health perspective, "motor vehicle crashes are among the most serious problems facing teenagers." (Anatomy of Crashes Involving Young Drivers–Preventing Teen Motor Crashes.) According to the Centers for Disease Control and Prevention, highway injuries and deaths constitute the largest reason for youth injuries and deaths, and therefore constitute a public health risk warranting remedial action.

(3) According to these sources, the 2002 cost of crashes involving drivers ages 20 through 25 was $40.8 billion (National Center for Injury Prevention and Control, 2006).

(4) According to the Vermont Safety Education Center (VSEC), junior operator passenger restrictions are essential components of graduated licensing. Crash risks for teenage drivers increase incrementally with one, two, three, or more passengers. With three or more passengers, fatal crash risk is about three times higher than if a beginner were driving alone.

(5) According to VSEC, the presence of passengers is a major contributor to the teenage death toll. About two-thirds of all crash deaths of teens that involve 16-year-old drivers occur when the beginners were driving with teen passengers. Studies indicate that passenger restrictions can reduce this problem.

(6) According to VSEC, four out of every 10 deaths of teens in motor vehicles occur between 9:00 p.m. and 6:00 a.m. Nighttime is one of the riskiest times of day for junior operators due to DUI, darkness, and sleep deprivation in teens. Midnight to 2:00 a.m. is the most dangerous nighttime period.

* * * Cell Phones and Electronic Devices * * *

(1) The National Highway Traffic Safety Administration policy on cell phones states, "The primary responsibility of the driver is to operate a motor vehicle safely. The task of driving requires full attention and focus. Cell phone use can distract drivers from this task, risking harm to themselves and others. Therefore, the safest course of action is to refrain from using a cell phone while driving."

(2) Teens, driving, and cell phones are a dangerous mix due to teens' vulnerability to distractions and accidents ("Most Wanted Transportation Safety Improvements," National Transportation Safety Board, November 2008).

(3) In 2008, the National Safety Council called for a ban on cell phones while driving, stating that "drivers talking on a cell phone are four times as likely to have an accident as drivers who are not."

* * * Safety Belts * * *

(1) States with primary enforcement average 10-percent higher usage than states with secondary enforcement.

(2) A crash involving an unrestrained person costs 55 percent more than one involving someone who was restrained.

(3) Approximately 74 percent of the costs associated with crashes are paid for by society; the victim pays the balance.

(4) Traffic crashes are not just an enforcement issue.

* * * Nighttime Restrictions * * *

Sec. 3. 23 V.S.A. § 614(c) and (d) are added to read:

(c) A person operating with a junior operator's license shall not operate a motor vehicle between midnight and 5:00 a.m. except when accompanied by a parent or guardian or when carrying the signed and dated written permission of a parent or guardian that contains the parent's or guardian's home and work addresses and telephone numbers.

(d) A person in violation of subsection (c) of this section shall be allowed to drive home, on a direct route, following issuance of a traffic ticket by a law enforcement officer.

* * * Safety Restriction on the Use of Wireless Telephones and Handheld Electronic Devices * * *

Sec. 4. 23 V.S.A. § 1095a is added to read:

§ 1095a. USE OF WIRELESS TELEPHONES AND HANDHELD ELECTRONIC DEVICES

(a)(1) For the purposes of this section, "wireless telephone" shall mean a telephone that is:

(A) capable of sending or receiving telephone communications without being physically connected to a telephone wire or cord; and

(B) used pursuant to a subscription with a commercial entity that provides wireless telephone service.

(2) "Wireless telephone" shall not be construed to include:

(A) a two-way radio that is operated by using a push-to-talk feature and does not require proximity to the ear of the user; or

(B) a communication feature of a voice-activated global positioning or navigation system that is affixed within the passenger compartment of a motor vehicle.

(b) For the purposes of this section, "hands-free use" shall refer to the use of a mobile telephone or electronic communication device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone or electronic communication device, by which a user engages in a conversation without the use of either hand; provided, however, this definition shall not preclude the use of either hand to activate, deactivate, or initiate a function of the telephone or device.

(c) Subject to the exceptions set forth in subsection (b) of this section, for the purposes of this section, the term "use," when referring to the utilization of a wireless telephone or handheld electronic device, shall include telephone calls, texting, and all other functions.

(d) A person under 18 years of age shall not use any wireless telephone or handheld electronic device while operating a moving motor vehicle on a highway. This prohibition shall not apply if it is necessary to place an emergency 911 call.

(e) A person 18 years of age or older shall not use a wireless telephone or electronic communication device while operating a moving motor vehicle on a highway. This prohibition shall not apply to:

(1) hands-free use;

(2) placement of an emergency 911 call; or

(3) use by the following persons for the purpose of and during the course of performing their official duties:

(A) law enforcement officers;

(B) firefighters;

(C) operators of authorized emergency vehicles as defined in section 4 of this title; and

(D) state or municipal employees and their contractors who are actively engaged in road maintenance activities.

Sec. 5. WIRELESS TELEPHONE AND HANDHELD ELECTRONIC DEVICE REPORT

By July 1, 2012, the Vermont League of Cities and Towns, the Vermont state firefighters association, and the Vermont department of public safety, after consulting with their constituents and other appropriate entities whether or not under their direct control, shall submit to the house committee on judiciary a report regarding their constituents' progress toward utilization of hands-free communications technology in the course of motor vehicle operation.

* * * Texting Prohibition, Penalties, and Educational Campaign * * *

Sec. 6. 23 V.S.A. § 1099 is added to read:

§ 1099. TEXTING PROHIBITED

(a) As used in this section, "texting" means the composing, reading, or sending of electronic communications including text messages, instant messages, or e-mails using a portable electronic device. As used in this section, "portable electronic device" means a portable electronic or computing device including a cellular telephone, personal digital assistant (PDA), or laptop computer.

(b) A person operating a moving motor vehicle, electric personal mobility device, or farm tractor on a highway; or operating a moving snowmobile, all-terrain vehicle (as defined in section 3501 of this title), or all-surface vehicle on or off a highway; or operating a moving motorboat (as defined in section 3302 of this title) shall not engage in texting.

(c) A person who violates this section commits a traffic violation as defined in section 2302 of this title and shall be subject to a penalty of $100.00 upon adjudication of a first violation and $250.00 upon adjudication of a second or subsequent violation within any two-year period.

Sec. 7. 23 V.S.A. § 607a is amended to read:

§ 607a. RECALL OF LEARNER'S PERMIT OR JUNIOR OPERATOR'S LICENSE

(a) A learner's permit or junior operator's license shall contain an admonition that it is recallable and that the later procurement of an operator's license is conditional on the establishment of a record which is satisfactory to the commissioner and showing compliance with the motor vehicle laws of this and other states. The commissioner may recall any license issued to a minor whenever he or she is satisfied, from information provided by a credible person and upon investigation, that the operator is mentally or physically unfit or, because of his or her habits or record as to accidents or convictions, is unsafe to be trusted with the operation of motor vehicles. On recommendation of a diversion or reparative board, the commissioner may recall the learner's permit or junior operator's license of a person in a diversion or reparative program for up to 30 days. The commissioner shall also recall any learner's permit or junior operator's license for 30 days when an operator is adjudicated of a single texting violation under section 1099 of this title, 90 days following adjudication of a single speeding violation resulting in a three-point assessment ~~or~~, 90 days when a total of six points has been accumulated, or 90 days when an operator is ~~convicted for~~ adjudicated of a violation of section 678 of this title. When a learner's permit or junior operator's license is so recalled, it shall

be reinstated upon expiration of a specific term, and, if required by the commissioner, when the person has passed a reexamination approved by the commissioner.

* * *

Sec. 8. 23 V.S.A. § 2502 are amended to read:

§ 2502. POINT ASSESSMENT; SCHEDULE

(a) Any person operating a motor vehicle shall have points assessed against his or her driving record for convictions for moving violations of the indicated motor vehicle statutes in accord with the following schedule: (All references are to Title 23 of the Vermont Statutes Annotated.)

(1) Two points assessed for:

* * *

(LL)	§ 1095.	Operating with television set installed;
(MM)	§ 1099.	Texting prohibited—first offense;
~~(MM)~~(NN)	§ 1113.	Illegal backing;
~~(NN)~~(OO)	§ 1114.	Illegal riding on motorcycles;
~~(OO)~~(PP)	§ 1115.	Illegal operation of motorcycles on roadways laned for traffic;
~~(PP)~~(QQ)	§ 1116.	Clinging to other vehicles;
~~(QQ)~~(RR)	§ 1117.	Illegal footrests and handlebars;
~~(RR)~~(SS)	§ 1118.	Obstructing the driver's view;
~~(SS)~~(TT)	§ 1119.	Improper opening and closing vehicle doors;
~~(TT)~~(UU)	§ 1121.	Coasting prohibited;
~~(UU)~~(VV)	§ 1122.	Following fire apparatus prohibited;
~~(VV)~~(WW)	§ 1123.	Driving over fire hose;
~~(WW)~~(XX)	§ 1124.	Position of operator;
~~(XX)~~(YY)	§ 1127.	Unsafe control in presence of horses and cattle;
~~(YY)~~(ZZ)	§ 1131.	Failure to give warning signal;
~~(ZZ)~~(AAA)	§ 1132.	Illegal driving on sidewalk;
~~(AAA)~~(BBB)	§ 1243.	Lighting requirements;

~~(BBB)~~(CCC)	§ 1256.	Motorcycle headgear;
~~(CCC)~~(DDD)	§ 1257.	Face protection;
~~(DDD)~~(EEE)	§ 800.	Operating without financial responsibility;
~~(EEE)~~(FFF)		All other moving violations which have no specified points;

* * *

(4) Five points assessed for:

(A)	§ 1050.	Failure to yield to emergency vehicles;
(B)	§ 1075.	Illegal passing of school bus;
(C)	§ 1099.	Texting prohibited—second and subsequent offenses;
~~(C)~~(D)	§ 676.	Operating after suspension, revocation or refusal—civil violation;

* * *

Sec. 9. EDUCATIONAL CAMPAIGN

The commissioner of motor vehicles, in consultation with the commissioner of education, shall formulate a plan to educate operators as to the dangers of operating while texting and the penalties that may be imposed pursuant to this act.

* * * Primary Enforcement of Safety Belt Law; Federal Funds * * *

Sec. 10. REPEAL; PRIMARY ENFORCEMENT OF SAFETY BELT LAW; ACCEPTANCE OF FEDERAL FUNDS

(a) 23 V.S.A. § 1259(e) (secondary enforcement of safety belt law) is repealed.

(b) The state is authorized to accept any additional funding available from the federal government attributable to the passage of this section.

* * * Operation by a Junior Operator after Recall is a Civil Violation * * *

Sec. 11. 23 V.S.A. § 676 is amended to read:

§ 676. OPERATION AFTER SUSPENSION, REVOCATION, ~~OR~~ REFUSAL, OR RECALL - CIVIL VIOLATION

(a) A person whose license or privilege to operate a motor vehicle has been revoked, suspended ~~or~~, refused, or recalled by the commissioner of motor vehicles for any reason other than a violation of sections 1091(b), 1094(b),

1128(b) or (c), or 1201 or a suspension under section 1205 of this title and who operates or attempts to operate a motor vehicle upon a public highway before the license or privilege of the person to operate a motor vehicle has been reinstated by the commissioner commits a civil traffic violation.

(b) In establishing a prima facie case against a person accused of violating this section, the judicial bureau shall accept as evidence, a printout attested to by the law enforcement officer as the person's motor vehicle record showing convictions and resulting license suspensions. The admitted motor vehicle record shall establish a permissive inference that the person was under suspension or had his or her license revoked or recalled on the dates and time periods set forth in the record. The judicial bureau shall not require a certified copy of the person's motor vehicle record from the department of motor vehicles to establish the permissive inference.

Sec. 12. EFFECTIVE DATE

This act shall take effect on July 1, 2010.

And that after passage, the title of the bill be amended to read: "An act relating to the operation of motor vehicles by junior operators, operating with wireless or handheld devices, prohibiting texting, and primary safety belt enforcement"

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment? Senator Scott, for the Committee on Transportation, submitted the following report:

The Committee on Transportation to which was referred House Bill No. S. 280, entitled "An act relating to prohibiting texting while operating on a highway"

respectfully reports that it has considered the same and recommends that the Senate concur with the House proposal of amendment with further amendment thereto by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Definition * * *

Sec. 1. 23 V.S.A. § 4(81) is added to read:

(81) "Portable electronic device" means a portable electronic or computing device including a cellular telephone, personal digital assistant (PDA), or laptop computer.

* * * Texting Ban * * *

Sec. 2. 23 V.S.A. § 1099 is added to read:

§ 1099. TEXTING PROHIBITED

(a) As used in this section, "texting" means the reading or the manual composing or sending of electronic communications including text messages, instant messages, or e-mails using a portable electronic device as defined in subdivision 4(81) of this title, but shall not be construed to include use of a global positioning or navigation system.

(b) A person shall not engage in texting while operating a moving motor vehicle on a highway.

(c) A person who violates this section commits a traffic violation as defined in section 2302 of this title and shall be subject to a penalty of $100.00 upon adjudication of a first violation and $250.00 upon adjudication of a second or subsequent violation within any two-year period.

Sec. 3. 23 V.S.A. § 607a is amended to read:

§ 607a. RECALL OF LEARNER'S PERMIT OR JUNIOR OPERATOR'S LICENSE

(a) A learner's permit or junior operator's license shall contain an admonition that it is recallable and that the later procurement of an operator's license is conditional on the establishment of a record which is satisfactory to the commissioner and showing compliance with the motor vehicle laws of this and other states. The commissioner may recall any license issued to a minor whenever he or she is satisfied, from information provided by a credible person and upon investigation, that the operator is mentally or physically unfit or, because of his or her habits or record as to accidents or convictions, is unsafe to be trusted with the operation of motor vehicles. On recommendation of a diversion or reparative board, the commissioner may recall the learner's permit or junior operator's license of a person in a diversion or reparative program for up to 30 days. The commissioner shall also recall any learner's permit or junior operator's license for 30 days when an operator is adjudicated of a single texting violation under section 1099 of this title, 90 days following adjudication of a single speeding violation resulting in a three-point assessment ~~or~~, 90 days when a total of six points has been accumulated, or 90 days when an operator is ~~convicted for~~ adjudicated of a violation of section 678 of this title. When a learner's permit or junior operator's license is so recalled, it shall be reinstated upon expiration of a specific term, and, if required by the commissioner, when the person has passed a reexamination approved by the commissioner.

* * *

Sec. 4. 23 V.S.A. § 2502 is amended to read:

§ 2502. POINT ASSESSMENT; SCHEDULE

(a) Any person operating a motor vehicle shall have points assessed against his or her driving record for convictions for moving violations of the indicated motor vehicle statutes in accord with the following schedule: (All references are to Title 23 of the Vermont Statutes Annotated.)

(1) Two points assessed for:

* * *

(LL)	§ 1095.	Operating with television set installed;
(MM)	§ 1099.	Texting prohibited—first offense;
~~(MM)~~(NN)	§ 1113.	Illegal backing;
~~(NN)~~(OO)	§ 1114.	Illegal riding on motorcycles;
~~(OO)~~(PP)	§ 1115.	Illegal operation of motorcycles on roadways laned for traffic;
~~(PP)~~(QQ)	§ 1116.	Clinging to other vehicles;
~~(QQ)~~(RR)	§ 1117.	Illegal footrests and handlebars;
~~(RR)~~(SS)	§ 1118.	Obstructing the driver's view;
~~(SS)~~(TT)	§ 1119.	Improper opening and closing vehicle doors;
~~(TT)~~(UU)	§ 1121.	Coasting prohibited;
~~(UU)~~(VV)	§ 1122.	Following fire apparatus prohibited;
~~(VV)~~(WW)	§ 1123.	Driving over fire hose;
~~(WW)~~(XX)	§ 1124.	Position of operator;
~~(XX)~~(YY)	§ 1127.	Unsafe control in presence of horses and cattle;
~~(YY)~~(ZZ)	§ 1131.	Failure to give warning signal;
~~(ZZ)~~(AAA)	§ 1132.	Illegal driving on sidewalk;
~~(AAA)~~(BBB)	§ 1243.	Lighting requirements;
~~(BBB)~~(CCC)	§ 1256.	Motorcycle headgear;
~~(CCC)~~(DDD)	§ 1257.	Face protection;

~~(DDD)~~(EEE)	§ 800.	Operating without financial responsibility;
~~(EEE)~~(FFF)		All other moving violations which have no specified points;
		* * *

(4) Five points assessed for:

(A)	§ 1050.	Failure to yield to emergency vehicles;
(B)	§ 1075.	Illegal passing of school bus;
(C)	§ 1099.	Texting prohibited—second and subsequent offenses;
~~(C)~~(D)	§ 676.	Operating after suspension, revocation or refusal—civil violation;
		* * *

Sec. 5. EDUCATIONAL CAMPAIGN

The commissioner of motor vehicles, in consultation with the commissioner of education, shall formulate a plan to educate operators as to the dangers of operating while texting and the penalties that may be imposed pursuant to sections 2–4 of this act.

* * * Primary Seatbelt Enforcement; Persons Under Age 18 * * *

Sec. 6. 23 V.S.A. § 1258 is amended to read:

§ 1258. CHILD RESTRAINT SYSTEMS; PERSONS UNDER AGE ~~16~~ 18

(a) No person shall operate a motor vehicle, other than a type I school bus, in this state upon a public highway unless every occupant under age ~~16~~ 18 is properly restrained in a federally-approved child passenger restraining system as defined in 49 C.F.R. § 571.213 (1993) or a federally-approved safety belt, as follows:

(1) all children under the age of one, and all children weighing less than 20 pounds, regardless of age, shall be restrained in a rear-facing position, properly secured in a federally-approved child passenger restraining system, which shall not be installed in front of an active air bag;

(2) a child weighing more than 20 pounds, and who is one year of age or older and under the age of eight years, shall be restrained in a child passenger restraining system; and

(3) a child eight through ~~15~~ 17 years of age shall be restrained in a safety belt system or a child passenger restraining system.

* * *

Sec. 7. 23 V.S.A. § 1259 is amended to read:

§ 1259. SAFETY BELTS; PERSONS AGE ~~16~~ 18 AND OVER

(a) The operator of a motor vehicle shall be guilty of a violation of this section if any person ~~required to be restrained under this section~~ 18 years of age and older is occupying a seating position which has been manufactured with a federally-approved safety belt system and is not restrained by the safety belt system while the motor vehicle is in motion on a public highway.

* * *

(e) This section may be enforced only if a law enforcement officer has detained the operator of a motor vehicle for a suspected violation of another traffic offense. An operator shall not be subject to the penalty established in this section unless the operator is required to pay a penalty for the primary offense.

* * *

* * * Ban on Use of Portable Electronic Devices; Junior Operators * * *

Sec. 8. 23 V.S.A. § 1095a is added to read:

§ 1095a. JUNIOR OPERATOR USE OF PORTABLE ELECTRONIC DEVICES

A person under 18 years of age shall not use any portable electronic device as defined in subdivision 4(81) of this title while operating a moving motor vehicle on a highway. This prohibition shall not apply if it is necessary to place an emergency 911 call.

* * * Effective Date * * *

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage.

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

"An act relating to prohibiting texting, prohibiting use of portable electronic devices by junior operators, and primary seatbelt enforcement for persons under 18".

Which was agreed to.

Rules Suspended; House Proposal of Amendment Concurred in With an Amendment

S. 90.

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

An act relating to representative annual meetings.

Was taken up for immediate consideration.

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

Sec. 1. 17 V.S.A. § 2640a is added to read:

§ 2640a. REPRESENTATIVE ANNUAL MEETINGS

(a) A municipality with a population of 5,000 or greater may vote at a special or annual town meeting to establish a representative form of annual or special meeting.

(b)(1) A representative form of annual or special meeting is a meeting of members elected by district to exercise the powers vested in the voters of the town to act upon articles. However, the election of officers, public questions, and all articles to be voted upon by Australian ballot as required by law or as voted under section 2680 of this title at a prior annual or special meeting, and reconsideration of articles under section 2661 of this title shall remain vested in the voters of the town.

(2) An organizational resolution to adopt a representative form of annual or special meeting may be made by the legislative body of the municipality or by petition of five percent of the voters of the municipality. An official copy of the organizational resolution shall be filed in the office of the clerk of the municipality at least 10 days before the annual or special meeting at which the vote whether to adopt the organizational resolution shall take place, and copies thereof shall be made available to members of the public upon request.

(3) An organizational resolution shall include the following:

(A) a certain number of elected members, a range of elected members, or a ratio of elected members to the number of voters. However, in no case shall the number of elected members be less than 100;

(B) a certain number of districts and the boundaries of those districts;

(C) who shall be ex officio voting members, if any, of the meeting;

(D) the procedure for conducting the representative meeting;

(E) specific action, if any, to be taken at the representative meeting; and

(F) a procedure whereby the voters of the municipality may reconsider any action taken at a representative meeting.

(c) The form of the question of whether to establish a representative form of annual or special meeting shall be substantially as follows: "Shall the [name of municipality] adopt the representative form of annual or special meeting as set forth in the organizational resolution?"

(d) A vote establishing a representative form of annual or special meeting shall remain in effect until the municipality votes to discontinue or establish a new representative form of annual or special meeting at an annual or special meeting duly warned for that purpose.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment? Senator White moved that the Senate concur in the House proposal of amendment with an amendment, as follows;

In Sec. 1, 17 V.S.A. § 2640a(a), by striking out the following: "5,000" and inserting in lieu thereof the following: 2,500

Which was agreed to.

Bill Recommitted

H. 528.

Senate bill entitled:

An act relating to the illegal cutting, removal, or destruction of forest products.

Was taken up.

Thereupon, pending the reading of the report of the Committee on Judiciary, on motion of Senator Shumlin, the bill was recommitted to the Committee on Judiciary.

Rules Suspended; Bill Passed in Concurrence with Proposals of Amendment

H. 709.

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

An act relating to creating a prekindergarten–16 council.

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

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

Rules Suspended; Bills on Notice Calendar for Immediate Consideration

On motion of Senator Shumlin, the rules were suspended, and the following bills, appearing on the Calendar for notice, were ordered to be brought up for immediate consideration:

S. 205, H. 793

House Proposals of Amendment Concurred In

S. 205.

House proposals of amendment to Senate bill entitled:

An act relating to the Revised Uniform Anatomical Gift Act.

Were taken up.

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

First: In Sec. 1, 18 V.S.A. § 6002, by inserting a new subdivision (10) to read as follows:

(10) "Emancipated" with respect to a minor shall have the same meaning as in 12 V.S.A. § 7151.

And by renumbering the remaining subdivisions to be numerically correct.

Second: In Sec. 1, 18 V.S.A. § 6005, in subsection (a), by inserting a new subdivision (2) to read as follows:

(2) in an advance directive executed pursuant to chapter 231 of this title;

And by renumbering the remaining subdivisions in that subsection to be numerically correct.

Third: In Sec. 1, 18 V.S.A. § 6007, in subsection (a), by inserting a new subdivision (1) to read as follows:

(1) an advance directive executed pursuant to chapter 231 of this title;

And by renumbering the remaining subdivisions in that subsection to be numerically correct.

Fourth: In Sec. 1, 18 V.S.A. § 6007, in subsection (b), by striking out the following: "subdivision (a)(1)(B)" and inserting in lieu thereof the following: subdivision (a)(2)(B)

Fifth: In Sec. 1, 18 V.S.A. § 6020, in subsection (a), by striking out the words "and shall oversee the operation of the registry"

Sixth: In Sec. 1, by striking out 18 V.S.A. § 6022 in its entirety and inserting in lieu thereof the following:

§ 6022. COOPERATION BETWEEN MEDICAL EXAMINER AND PROCUREMENT ORGANIZATION

The chief medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education, except when the chief medical examiner believes such cooperation would be inconsistent with death investigation procedures or would negatively affect a death investigation.

Seventh: In Sec. 1, by striking out 18 V.S.A. § 6027 in its entirety

Eighth: By striking out Sec. 4 in its entirety and inserting in lieu thereof the following:

Sec. 4. 18 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

As used in this chapter:

* * *

(3) "Anatomical gift" shall have the same meaning as provided in subdivision ~~5238(1)~~ 6002(3) of this title.

* * *

(26) "Procurement organization" shall have the same meaning as in subdivision ~~5238(10)~~ 6002(21) of this title.

* * *

Ninth: By adding a Sec. 11 to read as follows:

Sec. 11. FUNDING FOR ADULT PROTECTIVE SERVICES EVALUATION

(a) In the event that an interested party identifies sources of funding for the adult protective services evaluation authorized by Sec. 12 of this act and prepares the documents necessary to obtain the funds, the agency of human services shall cooperate with the interested party to take such steps as are needed to secure the funds.

(b) In the event that the agency of human services receives federal funds for the purposes of protecting vulnerable adults, such funds shall be used to conduct the evaluation authorized by Sec. 12 of this act, up to the full cost of the evaluation.

(c) No later than March 15 of each year, the agency of human services shall provide an update to the house committee on human services and the senate committee on health and welfare regarding the status of efforts to secure funding for the evaluation authorized by Sec. 12 of this act and the issuance of a request for proposals to conduct the evaluation.

Tenth: By adding a Sec. 12 to read as follows:

Sec. 12. ADULT PROTECTIVE SERVICES EVALUATION

(a) Upon securing appropriate funding as provided in Sec. 11 of this act, the agency of human services shall issue a request for proposals to conduct an independent evaluation of the adult protective services provided by the department of disabilities, aging, and independent living's division of licensing and protection.

(b) The evaluation shall examine:

(1) the effectiveness of the adult protective services provided;

(2) the division's responsiveness to complaints;

(3) the appropriateness of the level of investigation into complaints;

(4) the adequacy of training for adult protective services staff;

(5) the ability of vulnerable adults to access adult protective services;

(6) the division's rules, protocols, and practices for prioritizing, responding to, and investigating complaints;

(7) the sufficiency of adult protective services staffing levels in the division;

(8) the number of reports, substantiations, and reversals by the commissioner or the human services board;

(9) the role that the division does or should play in assessing and providing emergency protective services to vulnerable adults;

(10) best practices from other states that would improve the division's ability to protect vulnerable adults from abuse and exploitation;

(11) the scope and effectiveness of current adult protective services public education efforts;

(12) public perception of and satisfaction with adult protective services;

(13) the relationship between the units of survey and certification and adult protective services in the division of licensing and protection in the department of disabilities, aging, and independent living with respect to investigations of abuse, exploitation, and neglect; and

(14) such other areas as the entity conducting the evaluation deems appropriate.

(c) Upon completion of the evaluation authorized by this section but in no event later than January 15, 2015, the entity conducting the evaluation shall report its findings and recommendations to the house committee on human services and the senate committee on health and welfare.

Eleventh: By adding a Sec. 13 to read as follows:

Sec. 13. 13 V.S.A. § 4815(g) is amended to read:

(g)(1) Inpatient examination at the state hospital or a designated hospital. The court shall not order an inpatient examination unless the designated mental health professional determines that the defendant is a person in need of treatment as defined in 18 V.S.A. § 7101(17).

(2) Before ordering the inpatient examination, the court shall ~~also~~ determine what terms, if any, shall govern the defendant's release from custody under sections 7553-7554 of this title ~~once the examination has been completed~~.

(3) An order for inpatient examination shall provide for placement of the defendant in the custody and care of the commissioner of mental health.

(A) If a Vermont state hospital or a designated hospital psychiatrist determines that the defendant is not in need of inpatient hospitalization prior to admission, the commissioner shall release the defendant pursuant to the terms governing the defendant's release from the commissioner's custody as ordered by the court. The commissioner of mental health shall ensure that all individuals who are determined not to be in need of inpatient hospitalization receive appropriate referrals for outpatient mental health services.

(B) If a Vermont state hospital or designated hospital psychiatrist determines

that the defendant is in need of inpatient hospitalization:

(i) The commissioner shall obtain an appropriate inpatient placement for the defendant at the Vermont state hospital or a designated hospital and, based on the defendant's clinical needs, may transfer the defendant between hospitals at any time while the order is in effect. A transfer to a designated hospital is subject to acceptance of the patient for admission by that hospital.

(ii) The defendant shall be returned to court for further appearance on the following business day if the defendant is no longer in need of inpatient hospitalization, unless the terms established by the court pursuant to

subdivision (2) of this section permit the defendant to be released from custody.

(C) The defendant shall be returned to court for further appearance within two business days after the commissioner notifies the court that the examination has been completed, unless the terms established by the court pursuant to subdivision (2) of this section permit the defendant to be released from custody.

(4) If ~~a return to court is not ordered and~~ the defendant is to be released pursuant to subdivisions (3)(A), (3)(B)(ii), or (3)(C) of this subsection and is not in the custody of the commissioner of corrections, the defendant shall be returned to the defendant's residence or such other appropriate place within the state of Vermont by the department of mental health at the expense of the court.

(5) If it appears that an inpatient examination cannot reasonably be completed within 30 days, the court issuing the original order, on request of the commissioner and upon good cause shown may order placement at the hospital extended for additional periods of 15 days in order to complete the examination, and the defendant on the expiration of the period provided for in such order shall be returned in accordance with this subsection.

(6) For the purposes of this subsection, "in need of inpatient hospitalization" means an individual has been determined under clinical standards of care to require inpatient treatment.

Twelfth: By adding a Sec. 14 to read as follows:

Sec. 14. WORK GROUP ON FORENSIC EXAMINATIONS OF MENTAL HEALTH PATIENTS

(a) The commissioner of mental health shall convene a work group to address issues relating to forensic examinations of mental health patients and defendants. The work group shall consist of the same members identified to participate in the study committee established in Sec. 113d of No. 71 of the Acts of 2005, as well as the commissioner of corrections or designee and any additional members whose participation the commissioner of mental health finds to be necessary and appropriate.

(b) The department of mental health shall provide administrative support to the work group.

(c) The commissioner of mental health shall report to the house committees on human services and on judiciary and the senate committees on health and welfare and on judiciary no later than January 31, 2012 and shall make recommendations regarding the following issues:

(1) disposition of defendants if it is determined at or after the time of admission that they do not meet the standards for hospitalization, including how subacute treatment needs can be met, consistent with the work of the agency of human services on interagency collaboration and the Vermont chief justice task force on criminal justice and mental health collaboration;

(2) any statutory revisions necessary to enable designated hospitals to accept referrals of defendants for inpatient forensic examinations;

(3) means to enable forensic examinations to occur during a voluntary inpatient hospitalization when that is the least restrictive setting, consistent with the requirements of 13 V.S.A. § 4815;

(4) appropriate discharge plan requirements; and

(5) the capacities that may be required to address the treatment needs of persons who were previously served with secure, subacute care at the Vermont state hospital following a forensic examination.

(d) The work group may discuss relationships between programs within the continuum of care in the department of mental health, including replacement services for the Vermont state hospital and inmates under the department of corrections who were or may have been in need of such services, within the context of the goals of interagency collaboration and best planning models. Such discussions shall be for the purposes of providing input to the agency of human services.

(e) The department of mental health shall collect data on the outcomes of patients referred for inpatient examinations at the Vermont state hospital and designated hospitals during the period from the effective date of this act through December 31, 2011 and report such information to the committees of jurisdiction no later than January 31, 2012.

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

Consideration Postponed

House bill entitled:

H. 793.

An act relating to approval of amendments to the charter of the village of Essex Junction.

Was taken up.

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

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. 90, S. 280, H. 709.

Rules Suspended; Bill Delivered

On motion of Senator Shumlin, the rules were suspended, and the following bill was ordered delivered to the Governor forthwith:

S. 205.

Message from the House No. 73

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

Mr. President:

I am directed to inform the Senate that:

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

S. 218. An act relating to voyeurism.

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 House bill of the following title:

H. 281. An act relating to the removal of bodily remains.

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

Rep. Head of South Burlington
Rep. Baker of West Rutland
Rep. Ram of Burlington

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

J.R.S. 54. Joint resolution related to the payment of dairy hauling costs.

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

Rep. Bray of New Haven
Rep. Conquest of Newbury
Rep. McAllister of Highgate

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

H. 540. An act relating to motor vehicles passing vulnerable users on the highway and to bicycle operation.

And has adopted the same on its part.

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

H. 784. An act relating to the state's transportation program.

And has adopted the same on its part.

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

S. 282. An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles.

And has adopted the same on its part.

Adjournment

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

THURSDAY, MAY 6, 2010

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

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Senate Resolution Placed on Calendar

S.R. 26.

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

By Senators Choate and Sears,

S.R. 26. Senate resolution urging Congress to enact H.R. 2754 that would amend the Public Health Service Act to establish the Nurse-Managed Health Clinic Investment Program.

Whereas, every person in Vermont and the United States deserves access to affordable, high-quality health care, and

Whereas, there is a growing health care crisis in the United States due to an insufficient number of primary care doctors, and

Whereas, nurses are advocates and educators, providing care for individuals, families and communities, and

Whereas, nurse-managed health clinics provide to the residents of rural and urban underserved communities a full range of health care services based on the nursing model, including primary care, wellness care services, and mental health and substance abuse support services, and

Whereas, there are more than 200 nurse-managed health clinics currently in operation in the United States, and these clinics annually record over 2,000,000 client visits, and

Whereas, nurse-managed health clinics meet the Institute of Medicine's definition of safety-net provider by offering care regardless of their patients' ability to pay, and

Whereas, approximately 75 percent of health care spending in the United States is related to chronic care, approximately 133,000,000 people in the United States (45 percent of the population) have at least one chronic disease, and these diseases account for 81 percent of hospital admissions, 91 percent of all prescriptions filled, and 76 percent of all physician visits, and

Whereas, as new strategies for increasing health coverage are implemented, utilization of nurse-managed health clinics will help meet the increased demand arising from newly-covered individuals while alleviating current primary care physician shortages, and

Whereas, in recognition of the growing need for nurse-managed health clinics, United States Senate Report 109-103 contained a call for the federal Bureau of Primary Health Care (BPHC) to "consider establishing a grant program that would support the establishment or expansion of nurse practice arrangements commonly referred to as nurse-managed health clinics," and

Whereas, United States Representative John Conyers, Jr. has introduced H.R. 2754 to amend the Public Health Service Act to establish the Nurse-Managed Health Clinic Investment Program, and

Whereas, H.R. 2754 would establish a grant program within BPHC that is a better fit for the changing role of nurse-managed health clinics and that would provide nurse-managed health clinics access to a stable source of funding, *now therefore be it*

Resolved by the Senate:

That the Senate of the State of Vermont urges Congress to enact H.R. 2754 that would amend the Public Health Service Act to establish the Nurse-Managed Health Clinic Investment Program, *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 to the Vermont Nurse Practitioners' Association.

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

Proposal of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposals of Amendment

H. 614.

Senator Lyons, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to the regulation of composting.

Reported recommending that the Senate propose to the House to amend the bill by adding a new section to be numbered Sec. 3a to read as follows:

Sec. 3a. SUNSET OF COMPOSTING EXEMPTIONS

10 V.S.A. §§ 6001(3)(D)(vii) (composting exemptions), 6001(31) (definition of farm for compost exemptions) and 6001e (circumvention authority) shall be repealed July 1, 2012.

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

Senator Kittell, for the Committee on Agriculture, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Natural Resources and Energy with the following amendments thereto:

First: By inserting a new section to be numbered Sec. 1 to read as follows:

Sec. 1. FINDINGS

The general assembly finds that:

(1) Composting is a process by which organic material is mixed and tended to create a soil amendment that reduces runoff, increases plant fertility, and builds living soil;

(2) Composting is an agricultural practice that farmers traditionally have practiced in order to recycle nutrients and manage wastes on their farms;

(3) The benefits of composting include the recapture of nutrients and the rebuilding of soils, both of which also help to protect surface waters from nutrient runoff, improve soil productivity, mitigate the generation of greenhouse gases, and reduce the demands on the state's solid waste management system;

(4) The development of composting facilities that support Vermont's goals for waste recycling, nutrient redistribution, farm viability, and sustainable food systems should be encouraged;

(5) Composting on farms should be regulated as a traditional farming activity subject to the management practices or relevant rules adopted by the agency of natural resources (ANR) as enforced by ANR in conjunction with the agency of agriculture, food and markets.

Second: By striking out Sec. 1a in its entirety.

Third: In Sec. 3, 10 V.S.A. § 6001, by adding a new subdivision (33) to read as follows:

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

Fourth: By adding a new section to be numbered Sec. 3a to read as follows:

Sec. 3a. 6 V.S.A. § 4810 is amended to read:

§ 4810. AUTHORITY; COOPERATION; COORDINATION

(a) Agricultural land use practices. In accordance with 10 V.S.A. ~~1259(i)~~ § 1259(i), the secretary shall adopt by rule, pursuant to chapter 25 of Title 3, and shall implement and enforce agricultural land use practices in order to reduce the amount of agricultural pollutants entering the waters of the state. These agricultural land use practices shall be created in two categories, pursuant to subdivisions (1) and (2) of this subsection.

(1) "Accepted Agricultural Practices" (AAPs) shall be standards to be followed in conducting agricultural activities in this state. These standards shall address activities which have a potential for causing pollutants to enter the groundwater and waters of the state, including dairy and other livestock operations plus all forms of crop and nursery operations and on-farm or agricultural fairground, registered pursuant to ~~section~~ 20 V.S.A. § 3902 ~~of Title 20~~, livestock and poultry slaughter and processing activities, and composting operations. The AAPs shall include, as well as promote and encourage, practices for farmers in preventing pollutants from entering the groundwater and waters of the state when engaged in, but not limited to, animal waste

management and disposal, soil amendment applications, plant fertilization, and pest and weed control. Persons engaged in farming, as defined in ~~section~~ 10 V.S.A. § 6001 ~~of Title 10~~, who follow these practices shall be presumed to be in compliance with water quality standards. AAPs shall be practical and cost effective to implement. The AAPs for groundwater shall include a process under which the agency shall receive, investigate, and respond to a complaint that a farm has contaminated the drinking water or groundwater of a property owner. The AAPs for composting shall include practices for managing odor, dust, noise, and vectors.

(2) "Best Management Practices" (BMPs) may be required by the secretary on a case by case basis. Before requiring BMPs, the secretary shall determine that sufficient financial assistance is available to assist farmers in achieving compliance with applicable BMPs. BMPs shall be practical and cost effective to implement.

(b) Cooperation and coordination. The secretary of agriculture, food and markets shall coordinate with the secretary of natural resources in implementing and enforcing programs, plans and practices developed for reducing and eliminating agricultural non-point source pollutants and discharges from concentrated animal feeding operations. The secretary of agriculture, food and markets and the secretary of natural resources shall develop a memorandum of understanding for the non-point program describing program administration, grant negotiation, grant sharing and how they will coordinate watershed planning activities to comply with Public Law 92-500. The secretary of agriculture, food and markets and the secretary of the agency of natural resources shall also develop a memorandum of understanding according to the public notice and comment process of ~~subsection~~ 10 V.S.A. § 1259(i) ~~of Title 10~~ regarding the implementation of the federal concentrated animal feeding operation program and the relationship between the requirements of the federal program and the state agricultural water quality requirements for large, medium, and small farms under chapter 215 of this title. The memorandum of understanding shall describe program administration, permit issuance, an appellate process, and enforcement authority and implementation. The memorandum of understanding shall be consistent with the federal National Pollutant Discharge Elimination System permit regulations for discharges from concentrated animal feeding operations. The allocation of duties under this chapter between the secretary of agriculture, food and markets and the secretary of natural resources shall be consistent with the secretary's duties, established under the provisions of ~~subsection~~ 10 V.S.A. § 1258(b) ~~of Title 10~~, to comply with Public Law 92-500. The secretary of natural resources shall be the state lead person in applying for federal funds under Public Law 92-500, but shall consult with the secretary of agriculture,

food and markets during the process. The agricultural non-point source program may compete with other programs for competitive watershed projects funded from federal funds. The secretary of agriculture, food and markets shall be represented in reviewing these projects for funding. Actions by the secretary of agriculture, food and markets under this chapter concerning agricultural non-point source pollution shall be consistent with the water quality standards and water pollution control requirements of chapter 47 of Title 10 and the federal Clean Water Act as amended. In addition, the secretary of agriculture, food and markets shall coordinate with the secretary of natural resources in implementing and enforcing programs, plans, and practices developed for the proper management of composting facilities when those facilities are located on a farm.

And by renumbering section numbers of the bill 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 pending the question, Shall the proposal of amendment of the Committee on Natural Resources and Energy be amended as recommended by the Committee on Agriculture?, Senator Kittell requested and was granted leave to substitute a proposal of amendment for the proposal of amendment of the Committee on Agriculture as follows:

First: By inserting a new section to be numbered Sec. 1 to read as follows:

Sec. 1. FINDINGS

The general assembly finds that:

(1) Composting is a process by which organic material is mixed and tended to create a soil amendment that reduces runoff, increases plant fertility, and builds living soil;

(2) Composting is an agricultural practice that farmers traditionally have practiced in order to recycle nutrients and manage wastes on their farms;

(3) The benefits of composting include the recapture of nutrients and the rebuilding of soils, both of which also help to protect surface waters from nutrient runoff, improve soil productivity, mitigate the generation of greenhouse gases, and reduce the demands on the state's solid waste management system; and

(4) The development of composting facilities that support Vermont's goals for waste recycling, nutrient redistribution, farm viability, and sustainable food systems should be encouraged.

Second: By striking out Sec. 1a in its entirety.

Third: In Sec. 3, 10 V.S.A. § 6001, by adding a new subdivision (33) to read as follows:

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

Fourth: By adding a new section to be numbered Sec. 3a to read as follows:

Sec. 3a. 6 V.S.A. § 4810(b) is amended to read:

(b) Cooperation and coordination. The secretary of agriculture, food and markets shall coordinate with the secretary of natural resources in implementing and enforcing programs, plans and practices developed for reducing and eliminating agricultural non-point source pollutants and discharges from concentrated animal feeding operations. The secretary of agriculture, food and markets and the secretary of natural resources shall develop a memorandum of understanding for the non-point program describing program administration, grant negotiation, grant sharing and how they will coordinate watershed planning activities to comply with Public Law 92-500. The secretary of agriculture, food and markets and the secretary of the agency of natural resources shall also develop a memorandum of understanding according to the public notice and comment process of ~~subsection~~ 10 V.S.A. § 1259(i) ~~of Title 10~~ regarding the implementation of the federal concentrated animal feeding operation program and the relationship between the requirements of the federal program and the state agricultural water quality requirements for large, medium, and small farms under chapter 215 of this title. The memorandum of understanding shall describe program administration, permit issuance, an appellate process, and enforcement authority and implementation. The memorandum of understanding shall be consistent with the federal National Pollutant Discharge Elimination System permit regulations for discharges from concentrated animal feeding operations. The allocation of duties under this chapter between the secretary of agriculture, food and markets and the secretary of natural resources shall be consistent with the secretary's duties, established under the provisions of ~~subsection~~ 10 V.S.A. § 1258(b) ~~of Title 10~~, to comply with Public Law 92-500. The secretary of natural resources shall be the state lead person in applying for federal funds under Public Law 92-500, but shall consult with the secretary of agriculture, food and markets during the process. The agricultural non-point source program may compete with other programs for competitive watershed projects funded from federal funds. The secretary of agriculture, food and markets shall be represented in reviewing these projects for funding. Actions by the

secretary of agriculture, food and markets under this chapter concerning agricultural non-point source pollution shall be consistent with the water quality standards and water pollution control requirements of chapter 47 of Title 10 and the federal Clean Water Act as amended. In addition, the secretary of agriculture, food and markets shall coordinate with the secretary of natural resources in implementing and enforcing programs, plans, and practices developed for the proper management of composting facilities when those facilities are located on a farm.

And by renumbering sections of the bill to be numerically correct.

Thereupon, the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Natural Resources and Energy?, was agreed to.

Senator Campbell Assumes the Chair

Thereupon, the question, Shall the Senate propose to the House to further amend the bill as recommended by the Committee on Agriculture, as substituted?, Senator White moved that the *second* proposal of amendment of the Committee on Agriculture be voted on separately.

Thereupon, the question, Shall the Senate propose to the House to further amend the bill as recommended by the Committee on Agriculture, as substituted?, in the *first*, *third* and *fourth* proposals of amendment?, was agreed to.

Senator Shumlin Assumes the Chair

Thereupon, the question, Shall the Senate propose to the House to further amend the bill as recommended by the Committee on Agriculture, as substituted, in the *second* proposal of amendment?, was disagreed to on a division of the Senate, Yeas 7, Nays 14.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Starr moved that the Senate propose to the House to amend the bill as follows:

First: In Sec, 3a, by striking out the following: "July 1, 2012" and inserting in lieu thereof the following: July 1, 2014

Second: By adding a new section to be numbered Sec. 3b to read as follows:

Sec. 3b. NATURAL RESOURCES BOARD REPORT

On or before January 15, 2012, and on or before January 15, 2014, the natural resources board, after consultation with the agency of agriculture, food and markets and the agency of natural resources, shall report to the senate and

house committees on agriculture, the senate and house committees on natural resources and energy, and the house committee on fish, wildlife and water resources regarding the application of 10 V.S.A. chapter 151 to commercial composting operations in the state. The report shall include:

(1) the number of composting operations that have applied for an Act 250 permit since July 1, 2010, the disposition of those applications, and a short summary of the composting operation proposed in each application; and

(2) recommendations for extending, amending, or repealing the exemptions under 10 V.S.A. chapter 151 that relate to composting.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Kittell moved that the Senate propose to the House to amend the bill in Sec. 3, 10 V.S.A. § 6001, by striking out subdivision (31) in its entirety and inserting in lieu thereof the following:

(31) "Farm," for purposes of subdivisions (3)(D)(vii)(V) and (VI) of this section, means a parcel of land devoted primarily to farming, as farming is defined in subdivision (22)(A) or (B) of this section, and:

(A) from which parcel, annual gross income from farming, as defined in subdivision (22) of this section, exceeds the annual gross income from a composting operation on that parcel. For purposes of this section, a federal, state, or municipal highway or road shall not be determined to divide tracts of land that are otherwise physically contiguous;

(B) for purposes of subdivision (3)(D)(vii)(V) of this section, uses no more than 10 acres or 10 percent of the parcel, whichever is smaller, for commercial compost management, not including land used for liquid nutrients management;

(C) for purposes of subdivision (3)(D)(vii)(VI) of this section, uses no more than four acres or 10 percent of the parcel, whichever is smaller, for commercial compost management, not including land used for liquid nutrients management.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

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

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

Senator Campbell Assumes the Chair

Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence

H. 793.

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 village of Essex Junction.

Reported that the bill ought to pass in concurrence.

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

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

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

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

H. 794.

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

An act relating to approval of the merger of the town of Cabot and the village of Cabot.

Was taken up for immediate consideration.

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

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

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

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

Rules Suspended; Bill Amended; Third Reading Ordered

H. 488.

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

An act relating to prohibiting the use of felt-soled boots and waders in the waters of Vermont.

Was taken up for immediate consideration.

Senator MacDonald, for the Committee on Natural Resources and Energy, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 4616 is added to read:

§ 4616. FELT-SOLED BOOTS AND WADERS; USE PROHIBITED

It is unlawful to use external felt-soled boots or external felt-soled waders in the waters of Vermont, except that a state or federal employee or emergency personnel, including fire, law enforcement, and EMT personnel, may use external felt-soled boots or external felt-soled waders in the discharge of official duties.

Sec. 2. 10 V.S.A. § 4572 is amended to read:

§ 4572. DEFINITIONS

(a) As used in this subchapter, a minor fish and game violation means:

(1) A violation of 10 V.S.A. § 4145 (violation of access and landing area rules);

(2) A violation of 10 V.S.A. § 4251 (taking wild animals and fish without a license);

(3) A violation of 10 V.S.A. § 4266 (failure to carry a license on person or failure to exhibit license);

(4) A violation of 10 V.S.A. § 4267 (false statements in license application; altering license; transferring license to another person; using another person's license; or guiding an unlicensed person); ~~or~~

(5) A violation of 10 V.S.A. § 4713 (tree or ground stands or blinds); or

(6) A violation of 10 V.S.A. § 4616 (use of external felt-soled boots or external felt-soled waders).

(b) "Bureau" means the judicial bureau as created in 4 V.S.A. § 1102.

Sec. 3. ANR PUBLIC OUTREACH REGARDING FELT-SOLED PROHIBITION

To provide education and outreach to the public regarding the prohibition on the use of external felt-soled boots and felt-soled waders under 10 V.S.A. § 4616, the agency of natural resources shall:

(1) post signage regarding the prohibition on the use of external felt-soled boots and felt-soled waders at access points to state surface waters;

(2) include a notification regarding the prohibition on the use of external felt-soled boots and felt-soled waders and instructions for checking, cleaning, and drying equipment to prevent the spread of didymo and other aquatic nuisance diseases on hunting and fishing license applications or in department of fish and wildlife printed materials made available where hunting and fishing licenses are sold.

Sec. 4. PENALTIES FOR USE OF FELT-SOLED BOOTS AND FELT-SOLED WADERS PRIOR TO JULY 1, 2010

Prior to July 1, 2010, a person violating 10 V.S.A. § 4616 (felt-soled prohibition) shall be issued a warning. A second violation prior to July 1, 2010, shall be enforceable under the judicial bureau as a minor fish and game violation.

Sec. 5. REPEAL

Sec. 4 of this act shall be repealed July 1, 2010.

Sec. 6. EFFECTIVE DATE

This act shall take effect upon passage.

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

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

Rules Suspended; Bills Messaged

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

H. 614, H. 793, H. 794.

Adjournment

On motion of Senator Mazza, the Senate recessed until three o'clock in the afternoon.

Afternoon

The Senate was called to order by the President.

Recess

On motion of Senator Ayer the Senate recessed until 4 P.M.

Called to Order

At 4 P.M. the Senate was called to order by the President.

House Proposal of Amendment Concurred In

S. 64.

House proposal of amendment to Senate bill entitled:

An act relating to growth center designations and appeals of such designations.

Was taken up.

The House proposes to the Senate to amend the bill by striking out Secs. 2 (creation of growth center board), 3 (changes to growth center designation process), 4 (enterprise zone study committee), and 5 (effective dates; transition; application) in their entirety and inserting in lieu thereof new Secs. 2, 3, 4, 5, and 6 to read as follows:

Sec. 2. 24 V.S.A. § 2792 is amended to read:

§ 2792. VERMONT DOWNTOWN DEVELOPMENT BOARD

(a) A "Vermont downtown development board," also referred to as the "state board," is created to administer the provisions of this chapter. The state board shall be composed of the following members~~,~~ or their designees:

(1) ~~The~~ the secretary of commerce and community development;

(2) ~~The~~ the secretary of transportation;

(3) ~~The~~ the secretary of natural resources;

(4) the commissioner of public safety;

(5) the state historic preservation officer;

(6) a person appointed by the governor from a list of three names submitted by the Vermont Natural Resources Council, the Preservation Trust of Vermont, and Smart Growth Vermont;

(7) a person appointed by the governor from a list of three names submitted by the Association of Chamber Executives; ~~and~~

(8) three public members representative of local government, one of whom shall be designated by the Vermont ~~league of cities and towns~~ League of Cities and Towns, and two shall be appointed by the governor;

(9) a member of the Vermont planners association (VPA) designated by the association;

(10) the chair of the natural resources board or a representative of the land use panel of the natural resources board designated by the chair; and

(11) a representative of a regional planning commission designated by the Vermont association of regional planning and development agencies (VAPDA) and an alternate representative designated by VAPDA to enable all applications to be considered by a representative from a regional planning commission other than the one of which the applicant municipality is a member. The alternate designated by VAPDA may vote only when the designated representative does not vote.

(b) In addition to the permanent members appointed pursuant to subsection (a) of this section, there shall also be two regional members from each region of the state on the downtown development board; one shall be designated by the regional development corporation of the region and one shall be designated by the regional planning commission of the region. Regional members shall be nonvoting members and shall serve during consideration by the board of applications from their respective regions. Regional members designated to serve on the downtown development board under this section, may also serve as regional members of the Vermont economic progress council established under 32 V.S.A. § 5930a.

(c) The state board shall elect its chair from among its membership.

(d) The department of economic, housing, and community ~~affairs~~ development shall provide staff and administrative support to the state board.

(e) On or before January 1, 1999, the state board shall report to the general assembly on the progress of the downtown development program.

(f) ~~In situations in which the state board is considering applications for designation as a growth center, in addition to the permanent members of the state board, membership shall include as a full voting member a member of the Vermont planners association (VPA) designated by the association; the chair of the natural resources board or a representative of the land use panel of the natural resources board designated by the chair; and a representative of a regional planning commission designated by the Vermont association of regional planning and development agencies (VAPDA) and an alternate representative designated by VAPDA to enable all applications to be considered by a representative from a regional planning commission other than the one to which the applicant municipality is a member. The alternate designated by VAPDA may vote only when the designated representative does not vote.~~

Sec. 3. 24 V.S.A. § 2793c is amended to read:

§ 2793c. DESIGNATION OF GROWTH CENTERS

* * *

(b) Growth center designation application assistance.

(1) ~~By October 1, 2006, the chair of the land use panel of the natural resources board and the commissioner of housing and community affairs jointly shall constitute a planning coordination group which shall develop a coordinated process to:~~ A subcommittee of the state board, to be known as the growth center subcommittee, shall develop and maintain a coordinated preapplication review process in accordance with this subdivision (1). The members of the growth center subcommittee shall be the members of the state board described under subdivisions 2792(1), (6), (7), (9), and (10) of this title and the member designated by the Vermont League of Cities and Towns under subdivision 2792(8) of this title. The growth center subcommittee shall elect a chair from among its members. In carrying out its duties, the growth center subcommittee shall have the support of the staff of the department of economic, housing, and community development and of the natural resources board.

(A) The purpose of the growth center subcommittee is to:

(i) ensure consistency between regions and municipalities regarding growth centers designation and related planning;

~~(B)~~(ii) provide municipalities with a preapplication review process ~~within the planning coordination group~~ early in the local planning process;

~~(C)~~(iii) ~~coordinate~~ encourage coordination of state agency review on matters of agency interest; and

~~(D)~~(iv) provide the state board with ongoing, coordinated ~~staff~~ support and expertise in land use, community planning, and natural resources protection.

(B) Under the preapplication review process, a municipality shall submit a preliminary application to the growth center subcommittee, consisting of a draft growth center map and a brief explanation of planning and implementation policies that the municipality anticipates it will enact prior to submission of an application under subsection (d) of this section in order to guide development inside the growth center and maintain the rural character of the surrounding area, to the extent that it exists. This preapplication review process shall be required prior to filing of an application under subsection (d) of this section. The growth center subcommittee shall solicit comments from state agencies regarding areas of respective agency interest; evaluate the preliminary application for conformance with the requirements of this section; identify potential issues related to the growth center's boundary and implementation tools; and provide recommendations for addressing those issues through adjustment to the growth center's boundary, revisions to

planned implementation tools, or consideration of alternative implementation tools. Preliminary review shall be available to municipalities while they are engaged in the municipal planning process so that recommendations may be considered prior to the adoption of the municipal plan and associated implementation measures.

(2) ~~This program shall include the following:~~

~~(A) The preparation of~~ After consultation with the growth center subcommittee and the land use panel of the natural resources board, the commissioner of economic, housing and community development or designee shall prepare a "municipal growth centers planning manual and implementation checklist" to assist municipalities and regional planning commissions to plan for growth center designation. The implementation manual shall identify state resources available to assist municipalities and shall include a checklist indicating the issues that should be addressed by the municipality in planning for growth center designation. The manual shall address other relevant topics in appropriate detail, such as: methodologies for conducting growth projections and build-out analyses; defining appropriate boundaries that are not unduly expansive; enacting plan policies and implementation bylaws that accommodate reasonable densities, compact settlement patterns, and an appropriate mix of uses within growth centers; planning for infrastructure, transportation facilities, and open space; avoiding or mitigating impacts to important natural resources and historic resources; and strategies for maintaining the rural character and working landscape outside growth center boundaries.

~~(B) A preapplication review process that allows municipalities to submit a preliminary application to the planning coordination group, consisting of a draft growth center map and a brief explanation of planning and implementation policies that the municipality anticipates enacting in order to guide development inside the growth center and maintain the rural character of the surrounding area, to the extent that it exists. Department and land use panel staff shall solicit comments from state agencies regarding areas of respective agency interest; evaluate the preliminary application for conformance with the requirements of this section; identify potential issues related to the growth center boundary and implementation tools; and provide recommendations for addressing those issues through adjustment to the growth centers boundary, revisions to planned implementation tools, or consideration of alternative implementation tools. Preliminary review shall be available to municipalities while they are engaged in the municipal planning process so that recommendations may be considered prior to the adoption of the municipal plan and associated implementation measures.~~

~~(C) Ongoing~~ (3) In consultation with the growth center subcommittee, the commissioner of economic, housing and community development or designee shall provide ongoing assistance to the state board to review applications for growth center designation, including coordinating review by state agencies on matters of agency interest and evaluating applications and associated plan policies and implementation measures for conformance with the definition under subdivision 2791(12) of this title and any designation requirements established under subsection (e) of this section.

~~(D)~~(4) The Vermont municipal planning grant program shall make funding for activities associated with growth centers planning a priority funding activity, and the Vermont community development program shall make funding for activities associated with growth centers planning a priority funding activity under the planning grant program.

* * *

(d) Application and designation requirements. Any application for designation as a growth center shall be to the state board and shall include a specific demonstration that the proposed growth center meets each provision of subdivisions (e)(1)(A) through (J) of this section. In addition to those provisions, each of the following shall apply:

(1) ~~a demonstration that the growth center proposal meets the definition of a growth center established in subdivision 2791(12) of this title;~~ In the event that a proposed growth center lacks one or a portion of one of the characteristics listed in subdivision 2791(12)(B) of this title, the application shall contain an explanation of the unique circumstances that prevent the growth center from possessing that characteristic and why, in the absence of that characteristic, the proposed growth center will comply with the purposes of this chapter and all other requirements of this section.

(2) Any demonstration that an application complies with subdivision (e)(1)(C) of this section shall include an analysis, with respect to each existing designated downtown or village or new town center located within the applicant municipality, of current vacancy rates, opportunities to develop or redevelop existing undeveloped or underdeveloped properties and whether such opportunities are economically viable, and opportunities to revise zoning or other applicable bylaws in a manner that would permit future development that is at a higher density than existing development.

~~(2) a~~ (3) A map and a conceptual plan for the growth center~~;~~.

~~(3) identification of important natural resources and historic resources within the proposed growth center, the anticipated impacts on those resources, and any proposed mitigation;~~

~~(4) when the secretary of agriculture, food and markets has developed guidelines in compliance with 6 V.S.A. § 8, the applicant shall demonstrate that the approved municipal plan and the regional plan both have been updated during any five-year plan readoption that has taken place since the date the secretary of agriculture, food and markets developed those guidelines, have been used to identify areas proposed for agriculture, and have been designed so as to avoid the conversion of primary agricultural soils, wherever possible;~~

~~(5) a demonstration:~~

~~(A) that the applicant has a regionally confirmed planning process and an approved municipal plan, pursuant to section 4350 of this title;~~

~~(B) that the approved plan contains provisions that are appropriate to implement the designated growth center proposal;~~

~~(C) that the applicant has adopted bylaws in conformance with the municipal plan that implement the provisions in the plan that pertain to the designated growth center;~~

~~(D) that the approved plan and the implementing bylaws further the goal of retaining a more rural character in the area surrounding the growth center, to the extent that a more rural character exists, and provide reasonable protection for important natural resources and historic resources located outside the proposed growth center;~~

~~(6) a capital budget and program adopted in accordance with section 4426 of this title, together with a demonstration that existing and planned infrastructure is adequate to implement the growth center;~~

~~(7) a~~ (4) A build-out analysis and needs study that demonstrates that the growth center~~:~~

~~(A) is of an appropriate size sufficient to accommodate a majority of the projected population and development over a 20-year planning period in a manner that is consistent with the definition under subdivision 2791(12) of this title; and~~

~~(B) does not encompass an excessive area of land that would involve the unnecessary extension of infrastructure to service low-density development, or result in a scattered or low-density pattern of development at the conclusion of the 20 year planning period;~~

~~(8) a demonstration:~~

~~(A) that the growth center will support and reinforce any existing designated downtown, village center, or new town center located in the municipality or adjacent municipality by accommodating concentrated~~

~~residential neighborhoods and a mix and scale of commercial, civic, and industrial uses that is consistent with the anticipated demand for those uses within the municipality and region;~~

~~(B) that the proposed growth center growth cannot reasonably be achieved within an existing designated downtown, village center, or new town center located within the applicant municipality~~ meets the provisions of subdivision (e)(1)(J) of this section.

(5) An explanation of all measures the applicant has undertaken to encourage a majority of growth in the municipality to take place within areas designated under this chapter. In the case of a growth center that is associated with a designated downtown or village center, the applicant shall also explain the manner in which the applicant's bylaws and policies will encourage growth to take place first in its designated downtown or village center and second in its proposed growth center.

(e) Designation decision.

(1) Within 90 days of the receipt of a completed application, after providing notice as required in the case of a proposed municipal plan or amendment under subsection 4384(e) of this title, and after providing an opportunity for the public to be heard, the state board formally shall designate a growth center if the state board finds, in a written decision, that the growth center proposal meets each of the following:

(A) ~~that the~~ The growth center ~~proposal~~ meets the definition of a growth center established in subdivision 2791(12) of this title~~;~~, including planned land uses, densities, settlement patterns, infrastructure, and transportation within the center and transportation relationships to areas outside the center. In the event that a proposed growth center lacks one or a portion of one of the characteristics listed in subdivision 2791(12)(B) of this title, the state board shall not approve the growth center proposal unless it finds that the absence of that characteristic will not prevent the proposed growth center from complying with the purposes of this chapter and all other requirements of this section. This subdivision (A) does not confer authority to approve a growth center that lacks more than one characteristic listed in subdivision 2791(12)(B) of this title.

(B) The growth center will support and reinforce any existing designated downtown, village center, or new town center located in the municipality or adjacent municipality by accommodating concentrated residential neighborhoods and a mix and scale of commercial, civic, and industrial uses that are consistent with the anticipated demand for those uses within the municipality and region.

(C) The growth that is proposed to occur in the growth center cannot reasonably be achieved within an existing designated downtown, village center, or new town center located within the applicant municipality.

(D) In the case of a growth center that is associated with a designated new town center, the applicable municipal bylaws provide that areas within the growth center that will be zoned predominantly for retail and office development will be located within the new town center.

(E) In the case of a growth center that is associated with a designated downtown or village center:

(i) the applicant has taken all reasonable measures to ensure that growth is encouraged to take place first in the designated downtown or village center and second in the proposed growth center; and

(ii) the applicable municipal bylaws provide that, with respect to those areas within the growth center that will be located outside the designated downtown or village center and will be zoned predominantly for retail and office development:

(I) such areas will serve as a logical expansion of the designated downtown or village center through such means as sharing of infrastructure and facilities and shared pedestrian accessibility; and

(II) such areas will be subject to enacted land use and development standards that will establish a development pattern that is compact, oriented to pedestrians, and consistent with smart growth principles.

~~(B) that the~~ (F) The applicant has identified important natural resources and historic resources within the proposed growth center and the anticipated impacts on those resources, and has proposed mitigation~~;~~.

~~(C) that the~~ (G) The approved municipal plan and the regional plan both have been updated during any five-year plan readoption that has taken place since the date the secretary of agriculture, food and markets has developed guidelines in compliance with 6 V.S.A. § 8, have been used to identify areas proposed for agriculture, and have been designed so as to avoid the conversion of primary agricultural soils, wherever possible~~;~~.

~~(D)~~(H)(i) ~~that the~~ The applicant has a regionally confirmed planning process and an approved municipal plan, pursuant to section 4350 of this title;

(ii) ~~that the~~ The approved plan contains provisions that are appropriate to implement the designated growth center proposal;

(iii) ~~that the~~ The applicant has adopted bylaws in conformance with the municipal plan that implement the provisions in the plan that pertain to the designated growth center~~;~~, including:

(I) bylaw provisions that ensure that land development and use in the growth center will comply with smart growth principles; and

(II) with respect to residential development in the growth center, bylaw provisions that allow a residential development density that is:

(aa) at least four dwelling units per acre; and

(bb) a higher development density if necessary to conform with the historic densities and settlement patterns in residential neighborhoods located in close proximity to a designated downtown or village center which the growth center is within or to which the growth center is adjacent under subdivision 2791(12)(A)(i) or (ii) of this title; and

(iv) ~~that the~~ The approved plan and the implementing bylaws further the goal of retaining a more rural character in the areas surrounding the growth center, to the extent that a more rural character exists, and provide reasonable protection for important natural resources and historic resources located outside the proposed growth center~~;~~.

~~(E) that the~~ (I) The applicant has adopted a capital budget and program in accordance with section 4426 of this title, and that existing and planned infrastructure is adequate to implement the growth center~~;~~.

~~(F) that the~~ (J) The growth center:

(i) is of an appropriate size sufficient to accommodate a majority of the projected population and development over a 20-year planning period in a manner that is consistent with the definition under subdivision 2791(12) of this title~~, and that the growth center~~;

(ii) does not encompass an excessive area of land that would involve the unnecessary extension of infrastructure to service low-density development or result in a scattered or low-density pattern of development at the conclusion of the 20-year planning period; and

(iii) using a 20-year planning period commencing with the year of the application, is sized to accommodate each of the following:

(I) an amount of residential development that is no more than 150 percent of the projected residential growth in the municipality; and

(II) an amount of commercial or industrial development, or both, that does not exceed 100 percent of the projected commercial and industrial growth in the municipality.

~~(G)(i) that the growth center will support and reinforce any existing designated downtown, village center, or new town center located in the municipality or adjacent municipality by accommodating concentrated residential neighborhoods and a mix and scale of commercial, civic, and industrial uses consistent with the anticipated demand for those uses within the municipality and region;~~

~~(ii) that the proposed growth center growth cannot reasonably be achieved within an existing designated downtown, village center, or new town center located within the applicant municipality.~~

* * *

(3) Within 21 days of a growth center designation under subdivision (1) of this subsection, a person or entity that submitted written or oral comments to the state board during its consideration of the application for the designated growth center may request that the state board reconsider the designation. Any such request for reconsideration shall identify each specific finding of the state board for which reconsideration is requested and state the reasons why each such finding should be reconsidered. The filing of such a request shall stay the effectiveness of the designation until the state board renders its decision on the request. On receipt of such a request, the state board shall promptly notify the applicant municipality of the request if that municipality is not the requestor. The state board shall convene at the earliest feasible date to consider the request and shall render its decision on the request within 90 days of the date on which the request was filed.

(4) Except as otherwise provided in this section, growth center designation shall extend for a period of 20 years. The state board shall review a growth center designation no less frequently than every five years, after providing notice as required in the case of a proposed municipal plan or amendment under subsection 4384(e) of this title, and after providing an opportunity for the public to be heard. For each applicant, the state board may adjust the schedule of review under this subsection so as to coincide with the review of the related and underlying designation of a downtown, village center, or new town center. If, at the time of the review, the state board determines that the growth center no longer meets the standards for designation ~~established in this section~~ in effect at the time the growth center initially was designated, it may take any of the following actions:

* * *

~~(4)~~(5) At any time a municipality shall be able to apply to the state board for amendment of a designated growth center or any related conditions or other matters, according to the procedures that apply in the case of an original application.

* * *

Sec. 4. 24 V.S.A. § 2793d is amended to read:

§ 2793d. DESIGNATION OF VERMONT NEIGHBORHOODS

(a) A municipality that has a duly adopted and approved plan and a planning process that is confirmed in accordance with section 4350 of this title, has adopted zoning bylaws and subdivision regulations in accordance with section 4442 of this title, and has a designated downtown district, a designated village center, a designated new town center, or a designated growth center served by municipal sewer infrastructure or a community or alternative wastewater system approved by the agency of natural resources, is authorized to apply for designation of a Vermont neighborhood. A municipal decision to apply for designation shall be made by the municipal legislative body after at least one duly warned public hearing. Designation is possible in two different situations:

* * *

(2) Designation by ~~expanded~~ downtown board in towns without growth centers. If an application is submitted in compliance with this subsection by a municipality that does not have a designated growth center and proposes to create a Vermont neighborhood that has boundaries that include land that is not within its designated downtown, village center, or new town center, the ~~expanded~~ downtown board shall consider the application. This application may be for approval of one or more Vermont neighborhoods that are outside but contiguous to a designated downtown district, village center, or new town center. The application for designation shall include a map of the boundaries of the proposed Vermont neighborhood, including the property outside but contiguous to a designated downtown district, village center, or new town center and verification that the municipality has notified the regional planning commission and the regional development corporation of its application for this designation.

(b) Designation Process. Within 45 days of receipt of a completed application, the ~~expanded~~ downtown board, after opportunity for public comment, shall designate a Vermont neighborhood if the board determines the applicant has met the requirements of subsections (a) and (c) of this section. When designating a Vermont neighborhood, the board may change the boundaries that were contained in the application by reducing the size of the area proposed to be included in the designated neighborhood, but may not include in the designation land that was not included in the application for designation. A Vermont neighborhood decision made by the ~~expanded~~ board is not subject to appeal. Any Vermont neighborhood designation shall

terminate when the underlying downtown, village center, new town center, or growth center designation terminates.

* * *

(e) Length of Designation. Initial designation of a Vermont neighborhood shall be for a period of five years, after which, the ~~expanded~~ state board shall review a Vermont neighborhood concurrently with the next periodic review conducted of the underlying designated downtown, village center, new town center or growth center, even if the underlying designated entity was originally designated by the downtown board and not by the ~~expanded~~ state board. However, the ~~expanded~~ board, on its motion, may review compliance with the designation requirements at more frequent intervals. If at any time the ~~expanded~~ state board determines that the designated Vermont neighborhood no longer meets the standards for designation established in this section, it may take any of the following actions:

* * *

Sec. 5. PAYMENT FOR UTILITY BURIAL; DESIGNATED AREAS; WORKSHOP; REPORT

(a) On or before November 1, 2010, the public service board shall conduct a workshop and, following the workshop and no later December 15, 2010, the department of public service shall submit a report containing recommendations on the question of paying for the burial of utility facilities and apparatus that are located in a designated downtown development district, designated village center, designated new town center development district, designated growth center, or designated Vermont neighborhood under chapter 76A of Title 24. The workshop and report shall address, evaluate, and include recommendations on at least each of the following possibilities for payment for the burial of such facilities and apparatus:

(1) Payment by the utility.

(2) Payment by the customers of the utility located within the boundary of the municipality containing the designated area, through a surcharge on rates.

(3) Payment by the customers of the utility located within the boundary of the designated area, through a surcharge on rates.

(4) Shared payment by the utility and the municipality.

(5) Payment by the municipality.

(6) Other sources of and arrangements for payment.

(b) The department shall apply 24 V.S.A. § 2790 (historic downtown development; legislative policy and purpose) and 30 V.S.A. § 202a (state energy policy) in performing the evaluations and making the recommendations contained in the report.

(c) The board shall give at least 12 days' prior notice of the workshop to the Vermont downtown development board under 24 V.S.A. § 2792; the agencies of commerce and community development, of natural resources, and of transportation; the department of public service; the natural resources board; the state historic preservation officer; the Vermont Natural Resources Council; the Preservation Trust of Vermont; Smart Growth Vermont; the Association of Chamber Executives; the Vermont League of Cities and Towns; the Vermont Planners Association; the Vermont Association of Regional Planning and Development Agencies; the utilities that provide electric transmission or distribution, cable television, or local telephone exchange service in Vermont; and such other entities as have requested prior notice or whom the board determines should receive notice. A representative of the department of public service shall attend and participate in the workshop.

(d) The report shall be submitted to the house and senate committees on natural resource and energy.

(e) For the purpose of this section, "utility" means a person or entity producing, transmitting, or distributing communications, cable television, electricity, or other similar commodity that directly or indirectly serves the public.

Sec. 6. EFFECTIVE DATES; DESIGNATIONS; APPLICATION

(a) This section and Sec. 5 of this act shall take effect on passage.

(b) No later than July 1, 2010, the Vermont planners association and the Vermont association of regional planning and development shall designate the members of the Vermont downtown development board described in Sec. 2 of this act, 24 V.S.A. § 2792(a)(9) and (11), that those provisions authorize them respectively to designate.

(c) Secs. 1 through 4 of this act shall take effect on July 1, 2010, and shall apply to applications for designation under 24 V.S.A § 2793c that are filed and to reviews of designations under 24 V.S.A § 2793c(e)(4) that are commenced on or after July 1, 2010.

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

Rules Suspended; Bill Passed in Concurrence with Proposal of Amendment

H. 488.

On motion of Senator Mazza, the rules were suspended and Senate bill entitled:

An act relating to prohibiting the use of felt-soled boots and waders in the waters of Vermont.

Was taken up for immediate consideration.

Thereupon, pending third reading of the bill, Senator Scott moved to amend the Senate proposal of amendment as follows:

First: In Sec. 3, after the following: "regarding the prohibition" by inserting the following: , beginning April 1, 2011,

Second: By striking out Secs. 4 (penalties for felt-soled use prior to July 1, 2010), 5 (repeal of penalties for felt-soled use prior to July 1, 2010), and 6 (effective date) and inserting in lieu thereof the following:

Sec. 4. EFFECTIVE DATES

(a) This section and Sec. 3 (education and outreach regarding felt-soled prohibition) of this act shall take effect upon passage.

(b) Secs. 1 (prohibition on use of felt-soled boots and waders) and 2 (minor fish and game violations) shall take effect April 1, 2011.

Which was agreed to.

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

Rules Suspended; Proposal of Amendment; Third Reading Ordered

H. 779.

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

An act relating to potable water supply and wastewater system permits.

Was taken up for immediate consideration.

Senator McCormack, for the Committee on Natural Resources and Energy, to which the bill was referred, reported recommending that the Senate propose to the House to amend the bill by striking out Sec. 1a in its entirety.

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

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

Rules Suspended; House Proposal of Amendment Concurred In

S. 218.

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

An act relating to voyeurism.

Was taken up for immediate consideration.

The House proposes to the Senate to amend the bill in Sec. 1, 13 V.S.A. § 2605(e), after the following: "while that person is" by inserting the following: in a place where a person has a reasonable expectation of privacy and that person is

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

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

S. 282.

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

An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

S. 282. An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles.

Respectfully reports that it has met and considered the same and recommends that the Senate concur with the House proposal of amendment, and the bill be further amended as follows:

First: By adding new sections to be sections 19a–19l to read:

Sec. 19a. 23 V.S.A. § 4 is amended to read:

§ 4. DEFINITIONS

Except as may be otherwise provided herein, and unless the context otherwise requires in statutes relating to motor vehicles and enforcement of the law regulating vehicles, as provided in this title and part 5 of Title 20, the following definitions shall apply:

* * *

(18) "Motorcycle" shall mean any motor driven vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding ~~mopeds~~ motor-driven cycles, golf carts, track driven vehicles, tractors, electric personal assistive mobility devices, and vehicles on which the operator and passengers ride within an enclosed cab, except that a vehicle which is fully enclosed, has three wheels in contact with the ground, weighs less than 1,500 pounds, has the capacity to maintain posted highway speed limits, and which uses electricity as its primary motive power shall be registered as a motorcycle but the operator of such vehicle shall not be required to have a motorcycle endorsement nor to comply with the provisions of section 1256 of this title (motorcycles-headgear) in the operation of such a vehicle.

* * *

(45) ~~"Moped"~~ "Motor-driven cycle" means ~~a motor driven cycle~~ any vehicle equipped with two or three wheels, ~~foot pedals to permit muscular propulsion,~~ a power source providing up to a maximum of two brake horsepower and having a maximum piston or rotor displacement of 50 cubic centimeters if a combustion engine is used, which will propel the vehicle, unassisted, at a speed not to exceed 30 miles per hour on a level road surface, and which is equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged. As motor vehicles, ~~mopeds~~ motor-driven cycles shall be subject to the purchase and use tax imposed under chapter 219 of Title 32 rather than to a general sales tax. An electric personal assistive mobility device is not a ~~moped~~ motor-driven cycle.

* * *

Sec. 19b. 23 V.S.A. § 364a is amended to read:

§ 364a. ~~MOPEDS~~ MOTOR-DRIVEN CYCLES: REGISTRATION; FINANCIAL RESPONSIBILITY

(a) The annual fee for registration of a ~~mo-ped~~ motor-driven cycle shall be $20.00.

(b) ~~Mo-ped~~ Motor-driven cycle operators shall be subject to the provisions of section 801 of this title, which requires, in certain cases, that proof of financial responsibility to be filed with the commissioner after an accident.

Sec. 19c. 23 V.S.A. § 453(d) is amended to read:

(d) If a dealer is engaged only in the manufacturing, buying, selling, or exchanging of motorcycles or ~~mopeds~~ motor-driven cycles, the registration fee shall be $45.00, which shall include three sets of number plates. The commissioner may, in his or her discretion, furnish further sets of plates at a fee of $10.00 for each set.

Sec. 19d. 23 V.S.A. § 476 is amended to read:

§ 476. MOTOR VEHICLE WARRANTY FEE

A motor vehicle warranty fee of $5.00 is imposed on the registration of each new motor vehicle in this state not including trailers, tractors, motorized highway building equipment, road-making appliances, snowmobiles, motorcycles, ~~mopeds~~ motor-driven cycles, or trucks with a gross vehicle weight over 12,000 pounds.

Sec. 19e. 23 V.S.A. § 601(e) is amended to read:

(e) A ~~mo-ped~~ motor-driven cycle may be operated only by a licensed driver at least 16 years of age.

Sec. 19f. 23 V.S.A. § 1114 is amended to read:

§ 1114. RIDING ON MOTORCYCLES AND ~~MOPEDS~~ MOTOR-DRIVEN CYCLES

(a) A person operating a motorcycle or ~~moped~~ motor-driven cycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle or ~~moped~~ motor-driven cycle unless such motorcycle or ~~moped~~ motor-driven cycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle or ~~moped~~ motor-driven cycle at the rear or side of the operator.

(b) A person shall ride upon a motorcycle or ~~moped~~ motor-driven cycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle or ~~moped~~ motor-driven cycle.

(c) No person shall operate a motorcycle or ~~moped~~ motor-driven cycle while carrying any package, bundle, or other article which prevents him from keeping both hands on the handlebars.

(d) No operator shall carry any person, nor shall any person ride, in a position that will interfere with the operation or control of the motorcycle or ~~moped~~ motor-driven cycle or the view of the operator.

Sec. 19g. 23 V.S.A. § 1115 is amended to read:

§ 1115. —OPERATING MOTORCYCLES AND ~~MOPEDS~~ MOTOR-DRIVEN CYCLES ON ROADWAYS LANED FOR TRAFFIC

(a) All motorcycles or ~~mopeds~~ motor-driven cycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle or ~~moped~~ motor-driven cycle of the full use of a lane.

(b) The operator of a motorcycle or ~~moped~~ motor-driven cycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(c) No person shall operate a motorcycle or ~~moped~~ motor-driven cycle between lanes of traffic or between adjacent lines or rows of vehicles.

(d) No motorcycle or ~~moped~~ motor-driven cycle may be operated in the same lane with, and along side of or closer than ten feet ahead of, or ten feet behind another motorcycle, ~~moped~~ motor-driven cycle, or other motor vehicle.

* * *

Sec. 19h. 23 V.S.A. § 1116 is amended to read:

§ 1116. —CLINGING TO OTHER VEHICLES

No person riding a motorcycle or ~~moped~~ motor-driven cycle shall attach himself or herself or the motorcycle or ~~moped~~ motor-driven cycle to any other vehicle on a roadway.

Sec. 19i. 23 V.S.A. § 1117 is amended to read:

§ 1117. —FOOTRESTS AND HANDLEBARS

(a) Any motorcycle or ~~moped~~ motor-driven cycle carrying a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for such passenger.

(b) No person shall operate any motorcycle or ~~moped~~ motor-driven cycle with handlebars more than 15 inches in height above that portion of the seat occupied by the operator.

Sec. 19j. 23 V.S.A. § 1243(a) is amended as follows:

(a) A motor vehicle, except a motorcycle and ~~moped~~ motor-driven cycle, in use or at rest on a highway, unless otherwise provided, during the period from 30 minutes after sunset to 30 minutes before sunrise, shall also be equipped with at least two lighted head lamps of substantially the same intensity and with reflectors and lenses of a design approved by the commissioner of motor vehicles, and with a lighted tail or rear lamp of a design so approved. A motorcycle or ~~moped~~ motor-driven cycle may be operated during the period mentioned if equipped with at least one lighted head lamp and at least one lighted tail or rear lamp, both of a design approved by the commissioner of motor vehicles. A side car attached to such motorcycle or ~~moped~~ motor-driven cycle shall be equipped with a light on the right side of such side car visible from the front thereof. A person shall not operate a motor vehicle during the period mentioned unless it is equipped as defined in this section.

Sec. 19k. 23 V.S.A. § 2012 is amended to read:

§ 2012. EXEMPTED VEHICLES

No certificate of title need be obtained for:

* * *

(8) A ~~moped~~ motor-driven cycle;

* * *

Sec. 19l. 9 V.S.A. § 4171(6) is amended to read:

(6) "Motor vehicle" means a passenger motor vehicle which is purchased or leased, or registered in the state of Vermont and shall not include tractors, motorized highway building equipment, road-making appliances, snowmobiles, motorcycles, ~~mopeds~~ motor-driven cycles, or the living portion of recreation vehicles, or trucks with a gross vehicle weight over 12,000 pounds.

Second: In Sec. 20, by inserting a new subsection to be subsection (d) to read as follows:

(d) Secs. 19a–19l shall take effect on September 1, 2010.

M. JANE KITCHEL
PHILIP B. SCOTT
RICHARD T. MAZZA

Committee on the part of the Senate

WILLIAM N. ASWAD
PATRICK M. BRENNAN
GALE P. COURCELLE

Committee on the part of the House

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

Rules Suspended; Proposals of Amendment; Third Reading Ordered

H. 781.

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

An act relating to renewable energy.

Was taken up for immediate consideration.

Senator Lyons, for the Committee on Natural Resources and Energy, to which the bill was referred, reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 3, 30 V.S.A. § 8005(b)(2)(F), in subdivision (i)(III), after the following: "provider to supply energy" by inserting the following: or attributes, including tradeable renewable energy credits and in subdivision (iv), by striking out the second and third sentences

Second: In Sec. 11, 30 V.S.A. § 5930z, in subdivision (c)(1)(D), by striking out the following: "July 15, 2010" and inserting in lieu thereof the following: December 31, 2010 and in subdivision (c)(2)(B), by striking out the following: "July 15, 2010" and inserting in lieu thereof the following: December 31, 2010

Third: In Sec. 12 (renewable energy property tax study committee), in subsection (c), by striking out subdivision (4) (adverse impacts to neighboring municipalities) and renumbering subdivisions (5) and (6) respectively to be (4) and (5)

Fourth: After Sec. 13 by inserting two new sections to be numbered Secs. 13a and 13b to read as follows:

* * * Report on Potential Renewable Portfolio Standard, Potential Revision to SPEED Program * * *

Sec. 13a. RENEWABLE PORTFOLIO STANDARD; SPEED PROGRAM; BOARD REPORT

(a) Findings. The general assembly finds that:

(1) In 2005, Vermont enacted a renewable portfolio standard (RPS).

(2) The 2005 RPS required that each retail electric utility shall supply an amount of energy equal to its total incremental energy growth between January 1, 2005, and January 1, 2012, through the use of electricity generated by new renewable resources.

(3) In 2005, the general assembly deferred the effective date of the RPS to allow implementation of the Sustainably Priced Energy Enterprise Development (SPEED) program. The SPEED program was and is designed to promote the development of in-state renewable energy resources.

(4) 30 V.S.A. § 8005(d)(1) provides that the RPS will go into effect only if one of the following SPEED goals is not met:

(A) the amount of qualifying SPEED resources coming into service or having been issued a certificate of public good after January 1, 2005, and before July 1, 2012, equals or exceeds total statewide growth in electric retail sales during that time, and in addition, at least five percent of the 2005 total statewide electric retail sales is provided by qualified SPEED resources or would be provided by qualified SPEED resources that have been issued a certificate of public good; or

(B) the amount of qualifying SPEED resources equals or exceeds 10 percent of total statewide electric retail sales for calendar year 2005.

(5) In 2005, the general assembly also adopted a state goal to assure that 20 percent of total statewide electric retail sales before July 1, 2017, shall be generated by SPEED resources. This particular goal is voluntary. It is separate from an RPS. It does not affect whether or not an RPS comes into effect.

(6) Although a purpose of the SPEED program is to encourage in-state renewable energy resources, the SPEED statute allows its 2012 and 2017 goals to be fulfilled by electricity at all facilities owned by or under long-term contract to Vermont utilities, as long as the generating resource came into service after December 31, 2004.

(7) In a February 2010 report to the general assembly, the public service board stated that, based on load growth since 2005 and the activities of the

SPEED program, it is likely that the SPEED goal will be met and an RPS will not come into effect. The board stated that:

(A) From January 1, 2005, to December 31, 2008, statewide energy usage decreased by approximately 0.1 percent.

(B) The SPEED goal of providing at least five percent of the January 1, 2005, total statewide electric retail sales from qualified SPEED resources translates into a goal of 287,421 MWh annually.

(C) The total estimated annual output of qualifying SPEED resources that are operating, approved, or pending before the board was 574,141 MWh.

(8) The total estimate annual output of SPEED resources stated in subdivision (5)(C) of this subsection is approximately 10 percent of Vermont's 2008 electric energy demand, which was 5,743,863,352 MWh.

(9) During the five years since Vermont adopted an RPS, other jurisdictions have adopted or amended their own renewable portfolio standards, including:

(A) Connecticut, which in 2007 amended its existing RPS to establish a goal that at least 23 percent of its retail load will be supplied using renewable energy by 2020.

(B) Massachusetts, which in 2008 amended its existing RPS to establish a goal that renewable energy will account for 15 percent of electricity consumption by 2020, increasing by one percent per year thereafter.

(C) New Hampshire, which in 2007 adopted an RPS that requires electricity providers to acquire renewable energy certificates (RECs) equivalent to 23.8 percent of retail electricity sold to customers by 2025.

(10) This act revises the statutory definition of "renewable" to remove a 200-MW limit on the size of hydroelectric facilities that can be considered renewable. The act delays the effective date of this revision so that it does not affect the 2012 SPEED goals described in subdivision (4) of this subsection. However, the revision could affect achievement of the 2017 SPEED goal described in subdivision (5) of this subsection, as well as the achievement of an RPS should one come into effect in Vermont.

(11) The general assembly has already recognized the environmental and economic benefits of encouraging renewable energy in adopting 30 V.S.A. §§ 202a (state energy policy) and 8001 (renewable energy goals). In light of these benefits, the history and structure of the SPEED program, and the adoption and expansion of renewable portfolio standards in other jurisdictions, there should be a reexamination of the potential implementation of an RPS in

Vermont and, in lieu of such implementation, the potential revision of the goals and requirements of the SPEED program.

(b) No later than February 1, 2011, the public service board shall file a report concerning the potential development of a renewable portfolio standard (RPS) in Vermont to amend or replace the RPS enacted in 2005 and the potential revision of the goals and requirements of the SPEED program in lieu of such an RPS.

(1) The report shall be filed with the house and senate committees on natural resources and energy, the house committee on commerce and economic development and the senate committee on finance.

(2) The report shall include at least the following:

(A) An evaluation of whether or not Vermont should adopt an RPS to amend or replace the RPS adopted in 2005 or, in lieu of adopting such an RPS, should adopt revised goals and requirements for the SPEED program.

(B) An evaluation of whether the voluntary goals and aspects of the SPEED program should be made mandatory.

(C) An evaluation of the economic and environmental benefits and costs of adopting an RPS at each of the following percentages of Vermont's electricity supply portfolio: 25, 50, 75, and 100 percent. The board shall also perform the same evaluation with respect to the imposition of mandatory SPEED goals at the same portfolio percentages.

(D) An evaluation of the effect on the development of in-state renewable energy resources that may occur if an RPS is adopted and, under such an RPS, out-of-state resources with capacities in excess of 200 MW are considered renewable. The board shall also perform the same evaluation with respect to the imposition of mandatory SPEED goals. Such evaluations shall take into account each of the percentages discussed under subdivision (2)(C) of this subsection.

(E) Analysis of RPS statutes and rules that have been adopted in other jurisdictions and their strengths and weaknesses, and a discussion of how a Vermont RPS and, in lieu of an RPS, revised SPEED goals and requirements might integrate with such statutes and rules.

(F) Consideration of whether or not Vermont should adopt a potential definition of renewable resources that includes tiers or classes and a recommended proposal for such a definition.

(G) Consideration of the manner in which Vermont would require third party certification that an energy resource is renewable.

(H) Consideration of the manner in which Vermont would require third party certification that a renewable resource has low environmental impact.

(I) Consideration of the extent to which a Vermont RPS and, in lieu of such an RPS, revised SPEED goals and requirements would include the purchase of electric energy efficiency resources and the appropriate means of verification that the associated energy savings are achieved.

(J) Consideration of whether 30 V.S.A. § 8005(d)(3) (resources that count toward SPEED goals) should be revised with respect to the description of those SPEED resources that will count toward the 2017 SPEED goal described in subdivision (a)(5) of this section.

(K)(i) Proposals for each of the following:

(I) An RPS to be considered for adoption in Vermont.

(II) In lieu of such an RPS, revised goals and requirements for the SPEED program to be considered for adoption in Vermont.

(ii) Each of these proposals shall include a summary of the proposal, a discussion of each major component, the reasons for the proposal, and draft statutory language for the proposal.

(3) The report may address any other issues that the board determines to be relevant to the adoption in Vermont of an RPS and revised goals and requirements for the SPEED program.

(4) Prior to drafting and submitting the report, the board shall consult with interested and affected persons and entities such as the department of public service, other state agencies, utilities, environmental advocates, consumer advocates, and business organizations.

(c) In performing its duties under this section, the board shall have authority to retain expert witnesses, counsel, advisors, and stenographic and other research assistance it may require. The board may compensate the same and allocate related costs, as well as the costs of performing or procuring studies, to retail electricity providers in the same manner authorized for personnel in particular proceedings under 30 V.S.A. §§ 20 and 21.

* * * Environmental Attributes; Utility Revenues * * *

Sec. 13b. 30 V.S.A. § 8008 is added to read:

§ 8008. AGREEMENTS; ATTRIBUTE REVENUES; DISPOSITION BY BOARD

(a) For the purpose of this section, "the revenues" means revenues that are from the sale, through tradeable renewable energy certificates or other means,

of environmental attributes associated with the generation of renewable energy from a system of generation resources with a total plant capacity greater than 200 MW and that are received by a Vermont retail electricity provider on and after May 1, 2012, pursuant to an agreement, contract, memorandum of understanding, or other transaction in which a person or entity agrees to transfer such revenues or rights associated with such attributes to the provider.

(b) After notice and opportunity for hearing, the board shall determine the disposition, allocation, and use of the revenues in a manner that promotes state energy policy as stated in section 202a of this title and the goals of this chapter and supports achievement of the greenhouse gas reduction and building efficiency goals contained in 10 V.S.A. §§ 578(a) and 581.

(1) The board shall provide notice of the proceeding to each Vermont retail electricity provider, the department of public service, the clean energy development board under 10 V.S.A. § 6523, each fuel efficiency service provider appointed under subsection 203a(b) of this title, each energy efficiency entity appointed under subdivision 209(d)(2) of this title, the institute for energy and the environment at the Vermont Law School, the transportation research center at the University of Vermont, and any other persons or entities that have requested notice. The board may provide notice to additional persons or entities.

(2) In determining the disposition, allocation, and use of the revenues, the board shall consider each of the following potential uses of the revenues:

(A) Development of in-state renewable energy resources.

(B) Deposit into the clean energy development fund for use pursuant to 10 V.S.A. § 6523.

(C) Deposit into the fuel efficiency fund for use pursuant to 10 V.S.A. § 203a.

(D) Deposit into the electric efficiency fund for use pursuant to 10 V.S.A. § 209(d).

(E) Application, for the benefit of ratepayers, to the revenue requirement of one or more Vermont retail electricity providers.

(F) Development of transportation alternatives to vehicles that use gasoline such as electric or natural gas vehicles and supporting infrastructure and the coordination of such development with so-called "smart grid" electric transmission and distribution networks.

(G) Any other uses that support the statutory policy and goals referenced in this subsection (b).

(c) A Vermont retail electricity provider shall notify the board within 30 days of the first receipt of the revenues pursuant to an agreement, contract, memorandum of understanding, or other transaction under which it will receive the revenues. The board will open a proceeding under this section promptly on receipt of such notice and shall issue a final order in the proceeding within 12 months of such receipt.

(d) Any of the revenues that are received prior to completion of the 12-month period described in subdivision (c) of this section shall be credited, for the benefit of ratepayers, against the revenue requirement of the Vermont retail electricity provider that receives the revenues.

Fifth: After Sec. 18, by inserting two new sections to be numbered Secs. 18a and 18b to read as follows:

* * * Natural Gas Vehicles * * *

Sec. 18a. 10 V.S.A. § 6523 is amended to read:

§ 6523. VERMONT CLEAN ENERGY DEVELOPMENT FUND

* * *

(c) Purposes of fund. The purposes of the fund shall be to promote the development and deployment of cost-effective and environmentally sustainable electric power and thermal energy or geothermal resources, and emerging energy-efficient technologies, for the long-term benefit of Vermont consumers, primarily with respect to renewable energy resources, and the use of combined heat and power technologies. The fund also may be used to support natural gas vehicles in accordance with subdivision (d)(1)(K) of this section. The general assembly expects and intends that the public service board, public service department, and the state's power and efficiency utilities will actively implement the authority granted in Title 30 to acquire all reasonably available cost-effective energy efficiency resources for the benefit of Vermont ratepayers and the power system.

(d) Expenditures authorized.

(1) Projects for funding may include, and in the case of subdivision (1)(E)(ii) of this subsection shall include continuous funding for as long as funds are available, the following:

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

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

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

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

(E) small scale renewable energy in Vermont residences, institutions, and businesses:

(i) generally; and

(ii) through the small-scale renewable energy incentive program;

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

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

(H) projects to develop and use thermal or geothermal energy, regardless of whether they also involve the generation of electricity;

(I) emerging energy-efficient technologies;

(J) effective projects that are not likely to be established in the absence of funding under the program; and

(K) natural gas vehicles and associated fueling infrastructure if each such vehicle is dedicated only to natural gas fuel and, on a life cycle basis, the vehicle's emissions will be lower than commercially available vehicles using other fossil fuel, and any such infrastructure will deliver gas without interruption of flow.

* * *

* * * Residential Building Energy Standards * * *

Sec. 18b. 21 V.S.A. § 266 is amended to read:

§ 266. RESIDENTIAL BUILDING ENERGY STANDARDS

(a) Definitions. For purposes of this subchapter, the following definitions apply:

(1) "Builder" means the general contractor or other person in charge of construction, who has the power to direct others with respect to the details to be observed in construction.

(2) "Residential buildings" means one family dwellings, two family dwellings, and multi-family housing three stories or less in height. "Residential buildings" shall not include hunting camps.

(3) "Residential construction" means new construction of residential buildings, and the construction of ~~residential~~ additions ~~that create 500 square feet of new floor space, or more. Before July 1, 1998, this definition shall only~~

~~apply to residential construction that is subject to the jurisdiction of 10 V.S.A. chapter 151. Effective July 1, 1998, this definition shall apply to residential construction, regardless of whether or not it is subject to the jurisdiction of 10 V.S.A. chapter 151~~, alterations, renovations, or repairs to an existing residential building.

(4) "IECC" means the International Energy Conservation Code of the International Code Council.

(b) Adoption of Residential Building Energy Standards (RBES). Residential construction ~~commencing on or after July 1, 1997~~ shall be in compliance with the standards ~~contained in the 1995 edition of the "Model Energy Code" (MEC) prepared by the Council of American Building Officials, as those standards have been amended by the general assembly in the act that initially adopts the Model Energy Code~~ adopted by the commissioner of public service in accordance with subsection (c) of this section.

(c) Revision and interpretation of energy standards. The commissioner of public service shall amend and update the RBES, by means of administrative rules adopted in accordance with ~~3 V.S.A.~~ chapter 25 of Title 3. No later than January 1, 2011, the commissioner shall complete rulemaking to amend the energy standards to ensure that, to comply with the standards, residential construction must be designed and constructed in a manner that complies with the 2009 edition of the IECC. These amendments shall be effective on final adoption. After January 1, 2011, the commissioner shall ensure that appropriate revisions are made promptly after the issuance of updated standards for residential construction under the IECC. The department of public service shall provide technical assistance and expert advice to the commissioner in the interpretation of the RBES and in the formulation of specific proposals for amending the RBES. Prior to final adoption of each required revision of the RBES, the department of public service shall convene an advisory committee to include one or more mortgage lenders, builders, building designers, utility representatives, and other persons with experience and expertise, such as consumer advocates and energy conservation experts. The advisory committee may provide the commissioner with additional recommendations for revision of the RBES.

* * *

(5) A home energy rating~~, from~~ conducted at the time of construction by a Vermont-accredited home energy rating organization~~, that is determined to indicate energy performance equivalent to the RBES,~~ shall be an acceptable means of demonstrating compliance if the rating indicates energy performance equivalent to the RBES.

* * *

Sec. 18c. FEDERAL RESIDENTIAL RETROFIT ENERGY LEGISLATION; ROLE OF EFFICIENCY UTILITY

The 111th Congress of the United States currently is considering H.R. 5019, the Home Energy Retrofit Act of 2010. With respect to any federal legislation pertaining to residential energy retrofits that is enacted during the 111th Congress, the governor, the public service board, the department of public service, any state agency that is authorized or eligible for authorization by the federal government to receive benefits or funding under such legislation, and any entity that is appointed pursuant to 30 V.S.A. § 209 promptly shall take those actions necessary to obtain the greatest possible benefit for the state from such legislation. To deliver services in the state pursuant to any such legislation, including implementation of quality assurance programs and coordination of financial service delivery, Vermont shall use the entities that are appointed under 30 V.S.A. § 209 and that deliver energy efficiency services to electric, heating, or process-fuel customers, to the extent such use is not prohibited by such federal legislation.

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

Senator McCormack, for the Committee on Finance, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Natural Resources and Energy with the following amendments thereto:

First: By striking out the *second* and *third* proposals of amendment in their entirety and inserting in lieu thereof new *second* and *third* proposals of amendment to read:

Second: By striking out Sec. 11 in its entirety and inserting in lieu thereof a new Sec. 11 to read as follows:

Sec. 11. 32 V.S.A. § 5930z is amended to read:

§ 5930z. ~~PASS-THROUGH OF FEDERAL ENERGY CREDIT FOR CORPORATIONS~~ SOLAR ENERGY TAX CREDIT

(a) A taxpayer of this state shall be eligible for ~~a~~ the business solar energy tax credit against the tax imposed under section 5822 or 5832 of this title in an amount equal to 100 percent of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit allowed against the taxpayer's federal income tax for the taxable year under Section 48 of the Internal Revenue Code; provided, however, that a taxpayer who receives any grants or similar funding from the clean energy development fund created under 10 V.S.A. § 6523 is not eligible to claim the business solar energy tax credit for that project; and provided further, that for

investments made on or after October 1, 2009, the tax credit will only apply to project costs not covered by any grants or similar funding from any public or private program that assists in providing capital investment for a renewable energy project.

(b) Any taxpayer who has received a credit under subsection (a) of this section in any prior year shall increase its personal or corporate income tax under this chapter by the amount of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit recapture for the taxable year.

(c) The clean energy development board (the board) established pursuant to 10 V.S.A. § 6523 shall certify to the department no more than $9,400,000.00 of eligible solar energy tax credits. The board shall set aside a portion of this amount for the systems described in subdivision (2) of this subsection. Credits shall be certified only if one of the two following criteria is met:

(1) The investment for which the solar energy tax credit is claimed is made after January 1, 2010, and:

(A) The investment pertains to a solar energy plant that has a plant capacity, as defined in 30 V.S.A. § 8002(13), of 2.2 MW or less;

(B) On or before July 15, 2010, the solar energy plant owner filed a complete petition with the public service board for a certificate of public good under 30 V.S.A. § 248;

(C) On or before September 1, 2011, construction on the solar energy plant is complete and the plant is commissioned or is ready to be commissioned within the meaning of 30 V.S.A. § 8002(11); and

(D) By July 15, 2010, the taxpayer has provided to the clean energy development board on a form prescribed by the board information necessary for the fund to determine the taxpayer's eligibility for the credit; or

(2)(A) The investment is made after January 1, 2010, and before December 31, 2010, and pertains to a system that constitutes energy property as defined in 26 U.S.C. § 48(a)(3)(A)(i) and that does not require a certificate of public good under 30 V.S.A. § 248, or pertains to a net metering system as defined in 30 V.S.A. § 219a(a)(3), provided that the system is of no more than 150 kilowatts (AC) capacity; and

(B) By December 15, 2010, the taxpayer has provided to the clean energy development board on a form prescribed by the board information necessary for the fund to determine the taxpayer's eligibility for the credit.

(d) The final amount of any solar energy tax credit certified under this section shall not exceed the amount awarded to the taxpayer under 26 U.S.C. § 48.

(e) Any unused solar energy tax credit may be carried forward for no more than five succeeding tax years following the first year in which the solar energy tax credit is claimed.

(f) On a regular basis, the department shall notify the treasurer and the clean energy development board of solar energy tax credits claimed pursuant to this section, and the board shall cause to be transferred from the clean energy development fund to the general fund an amount equal to the amount of solar energy tax credits as and when the credits are claimed.

(g) The clean energy development board and the department shall collaborate in implementing the certification of credits under this section.

Third: By striking out Sec. 12 (renewable energy property tax study committee) in its entirety and inserting in lieu thereof "Sec. 12. [Deleted]"

Second: In the *fourth* proposal of amendment, Sec. 13a, in subsection (b), by striking out the following: "February 1, 2011" and inserting in lieu thereof the following: October 1, 2011 and in subsection (b)(2)(F), by striking out the word "potential"

Third: By proposing to amend the bill in Sec. 7, subsection (a), by striking out the following: "December 31, 2010" and inserting in lieu thereof the following: February 15, 2011

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 Natural Resources and Energy was agreed to.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended by the Committee on Finance, was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senators Flory and McCormack, moved to amend the Senate proposal of amendment as follows:

First: By adding three new sections to be numbered Secs. 18d, 18e, and 18f to read as follows:

Sec. 18d. 26 V.S.A. § 894 is amended to read:

§ 894. ENERGIZING INSTALLATIONS; REENERGIZING AFTER EMERGENCY DISCONNECTION

(a) A new electrical installation in or on a complex structure; or an electrical installation used for the testing or construction of a complex structure shall not be connected or caused to be connected, to a source of electrical energy unless prior to ~~such~~ connection, either a temporary or a permanent energizing permit is issued for that installation by the commissioner or an electrical inspector.

(b) An existing electrical installation in any structure, including a single-family owner-occupied freestanding residence, that was disconnected as the result of an emergency that affects the internal electrical circuits, shall not be reconnected to a source of electrical energy until the electrical installation has been inspected and determined to be safe by a licensed journeyman or licensed master electrician.

(c) This section shall not be construed to limit or interfere with a contractor's right to receive payment for electrical work for which a certificate of completion has been granted.

Sec. 18e. 26 V.S.A. § 904(a) is amended to read:

(a) To be eligible for licensure as a type-S journeyman an applicant shall:

(1) complete an accredited training and experience program recognized by the board; or

(2) have had training and experience, within or without this state, acceptable to the board; and

(3) pass an examination to the satisfaction of the board in one or more of the following fields:

(A) Automatic gas or oil heating;

(B) Outdoor advertising;

(C) Refrigeration or air conditioning;

(D) Appliance and motor repairs;

(E) Well pumps;

(F) Farm equipment;

(G) Renewable energy systems for one- and two-family dwellings;

(H) Any miscellaneous specified area of specialized competence.

Sec. 18f. 26 V.S.A. § 910 is amended to read:

§ 910. LICENSE NOT REQUIRED

A license shall not be required for the following types of work:

(1) Any electrical work, including construction, installation, operation, maintenance, and repair of electrical installations in, on or about equipment or premises, which are owned or leased by the operator of any industrial or manufacturing plant, if the work is done under the supervision of an electrical engineer or master electrician in the employ of the operator;

(2) Installation in laboratories of exposed electrical wiring for experimental purposes only;

(3) Any electrical work by ~~an~~ the owner ~~or his or her regular employees~~ in the ~~owner's~~ owner-occupied freestanding single unit residence~~, in~~ and outbuildings accessory to ~~such~~ the freestanding single unit residence or any structure on owner-occupied farms;

(4) Electrical installations performed as a part of a training project of a vocational school or other educational institution. However, the installation shall be inspected if the building in which the installation is made, is to be used as a "complex structure";

(5) Electrical work performed by an electrician's helper under the direct supervision of a person who holds an appropriate license issued under this chapter;

(6) ~~Any electrical work in a building used for dwelling or residential purposes which contains no more than two dwelling units~~ Installation of solar electric modules and racking and erection of residential wind turbines and towers to the point of connection to field-fabricated wiring.

Second: In Sec. 19 (effective date), after the first sentence, by adding the following:

In order to provide time for the electrical licensing board to develop and conduct a test for a type-S journeyman's license for renewable energy installation and for renewable energy installers to complete the licensing requirements, a license under 26 V.S.A. § 904 shall not be required for renewable energy installations until 12 months after the electrical licensing board adopts this test and licensing procedure.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senators Flory and McCormack?, Senator Flory requested and was granted leave to withdraw the proposal of amendment.

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 follows:

By striking out Secs. 16 through 18 (consolidation of environmental appeals for renewable energy plants with public service board review) in their entirety and inserting in lieu thereof the following: Secs. 16 – 18. [Deleted]

Senator Shumlin Assumes the Chair

Which was disagreed to on a roll call, Yeas 5, Nays 23.

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: Hartwell, Kittell, Nitka, Sears, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Illuzzi, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Racine, Scott, Snelling, White.

Those Senators absent or not voting were: Kitchel, Shumlin (presiding).

Thereupon, pending the question, Shall the bill be read a third time?, Senator Illuzzi, moved to amend the Senate proposal of amendment as follows:

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

Sec. 18g. 26 V.S.A. § 910(7) is added to read:

(7) Installation of solar electric modules and racking on complex structures to the point of connection to field-fabricated wiring and erection of net metered wind turbines.

Which was agreed to on a roll call, Yeas 28, 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: 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, Snelling, Starr, White.

The Senator who voted in the negative was: Sears.

The Senator absent or not voting was: Shumlin (presiding).

President Assumes the Chair

Thereupon, the pending question, Shall the bill be read the third time?, was decided in the affirmative on a roll call, Yeas 30, Nays 0.

Senator Lyons 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.

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. 488.

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. 64, S. 218, S. 282.

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

H. 779.

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

An act relating to potable water supply and wastewater system permits.

Was taken up for immediate consideration.

Thereupon, pending third reading of the bill, Senators Mullin, Carris and Flory moved to amend the Senate proposal of amendment as follows:

By adding a new section to be numbered Sec. 1a to read as follows:

Sec. 1a. 18 V.S.A. chapter 85, subchapter 6 is added to read:

Subchapter 6. Temporary Outdoor Seating

§ 4465. LIMITED FOOD ESTABLISHMENTS; TEMPORARY OUTDOOR SEATING

A food establishment that prepares and serves food for off premises uses may provide temporary outdoor seating for up to 16 persons from May 1 to October 31 without providing patron toilet or handwashing facilities.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as moved by Senators Mullin, Carris and Flory?, Senator McCormack raised a point of order that the proposal of amendment was not germane. The President *overruled* the point of order, noting that both the amendment as moved by Senators Mullin, Carris and Flory and Sec 1a of the bill as passed by the House dealt with outdoor seating for customers of retail businesses. Therefore, the proposed amendment was germane.

Thereupon, the recurring question, Shall the Senate proposal of amendment be amended as moved by Senators Mullin, Carris and Flory?, was agreed to.

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

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

Adjournment

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

FRIDAY, MAY 7, 2010

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

Recess

On motion of Senator Racine the Senate recessed until Noon.

Called to Order

Pursuant to Rule 8 of the Senate Rules, in the absence of the President and the President pro tempore, the time for convening of the Senate having been set at Noon, the Senate was called to order by David A. Gibson, Secretary of the Senate.

Recess

On motion of Senator Campbell the Senate recessed until 1:00 P.M..

Called to Order

At 1 P.M. the Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 74

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

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 730. An act relating to employment.

H. 780. An act relating to approval of amendments to the charter of the city of St. Albans.

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. 262. An act relating to a study of coverage of appropriate services for children with autism spectrum disorders.

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

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

S. 90. An act relating to representative annual meetings.

And the House adheres to its proposal of amendment, and requests that the Senate recede from its proposal of amendment to the House proposal of amendment.

Message from the House No. 75

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

Mr. President:

I am directed to inform the Senate that:

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

S. 182. An act relating to determining unemployment compensation experience rating for successor businesses.

And has passed the same in concurrence.

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

S. 103. An act relating to the study and recommendation of ignition interlock device legislation.

And has adopted the same on its part.

The Governor has informed the House that on the May 5, 2010, he approved and signed bills originating in the House of the following titles:

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.

H. 774. An act relating to approval of amendments to the charter of the city of South Burlington.

The Governor has informed the House that on the May 6, 2010, he approved and signed a bill originating in the House of the following title:

H. 775. An act relating to technical changes to the records management authority of the Vermont state archives and records administration.

Pages Honored

In appreciation of their many services to the members of the General Assembly, the following-named pages, who are completing their services today, were presented with commemorative posters signed by the President of the Senate.

William Capitani of West Dover
Nathaniel Durfee of Shaftsbury
Kyle Gadapee of Danville
Brianna Grimm of Newport
Ethan Reichsman of Marlboro
Samantha Robertson of Pittsfield
Lillian Seibert of South Lincoln
Kelly Shaw of Eden
Aleksandra Stamper of Williston
Meaghan Williams of Bradford

Bills Referred

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

H. 730.

An act relating to employment.

To the Committee on Rules.

H. 780.

An act relating to approval of amendments to the charter of the city of St. Albans.

To the Committee on Government Operations.

President Assumes the Chair

Senate Resolution Ordered to Lie

S.R. 25.

Senate resolution entitled:

Senate resolution relating to the animal slaughtering and meat packaging operations of Bushway Packing, Inc. and Champlain Valley Meats, Inc.

Was taken up.

Thereupon, pending the question, Shall the Senate resolution be adopted?, on motion of Senator Shumlin, the Senate resolution was ordered to lie.

Senate Resolution Adopted

S.R. 26.

Senate resolution entitled:

Senate resolution urging Congress to enact H.R. 2754 that would amend the Public Health Service Act to establish the Nurse-Managed Health Clinic Investment Program.

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

Rules Suspended; House Proposal of Amendment Concurred In

S. 262.

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

An act relating to a study of coverage of appropriate services for children with autism spectrum disorders.

Was taken up for immediate consideration.

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

Sec. 1. FINDINGS

The general assembly finds that:

(1) Many individuals with an autism spectrum disorder require lifelong supports at an estimated cost of $3.2 million per person.

(2) A 2008 report to the Vermont general assembly estimated that Vermont spent $57 million on services for individuals with autism spectrum disorders during fiscal year 2007.

(3) Research strongly indicates that early detection, diagnosis, and treatment of children with autism spectrum disorders result in significant improvements in functioning for a substantial subset of young children from birth to age eight who receive intensive, early intervention and treatment. Examples from studies have found:

(A) For a group of children receiving 40 hours per week of intensive, early behavioral intervention for two or more years, 47 percent achieved successful first grade performance, only 40 percent were assigned to special classes, and only 10 percent required continued, ongoing support;

(B) When the children described in subdivision (A) of this subdivision (3) were followed up at the age of 11 and one-half years, only one child who had been in the 47 percent successful group in the first grade required more support; others were indistinguishable from their peers; and

(C) For a group of children in a separate study who received an average of 38 hours per week of intensive, early behavioral intervention for two years, 48 percent succeeded in regular first- and second-grade classes, demonstrated generally average academic abilities, spoke fluently, and had peers with whom they played regularly.

(4) A national survey of parents in 2005–2006 found that:

(A) 31 percent of children with an autism spectrum disorder had unmet needs for specific health care services;

(B) 14 percent of children with an autism spectrum disorder had forgone care;

(C) 31 percent of children with an autism spectrum disorder had difficulty receiving referrals;

(D) 38 percent of families of children with an autism spectrum disorder had financial problems caused by their child's health care;

(E) 35 percent of families of children with an autism spectrum disorder found that they needed additional income to cover their child's medical expenses;

(F) 57 percent of families of children with an autism spectrum disorder had a family member who needed to reduce or stop employment because of the child's condition;

(G) 27 percent of families of children with an autism spectrum disorder spent 10 or more hours per week providing or coordinating the child's care; and

(H) 31 percent of families of children with an autism spectrum disorder had paid at least $1,000.00 for their child's medical care during the preceding year.

(5) Information gathered through a 2008 online survey indicates similar challenges for families of children with autism spectrum disorders in Vermont, including high rates of stress, depression, economic hardship, social isolation, marital difficulties, sibling issues, impacts on extended family relationships, and job loss.

(6) Two studies in other states have documented cost savings associated with early intensive behavioral intervention, predicting savings near or above $200,000.00 per child over the course of the child's educational career.

(7) Special education information provided to the office of special education in the Vermont department of education in December 2009 included 94 early essential education students (ages three to five years) and 14 family, infant, and toddler children (ages birth to three years) with autism spectrum disorders. Using the predicted savings from the studies in other states, the projected savings in Vermont if those 108 children received early intensive behavioral intervention would be over $20 million.

(8) Special education directors currently report spending an average of $42,500.00 per child per year for students with an autism spectrum disorder, which would total $765,000.00 per child over 18 years of education.

Sec. 2. 8 V.S.A. § 4088i is added to read:

§ 4088i. COVERAGE FOR DIAGNOSIS AND TREATMENT OF AUTISM SPECTRUM DISORDERS

(a) A health insurance plan shall provide coverage for the diagnosis and treatment of autism spectrum disorders, including applied behavior analysis supervised by a nationally board-certified behavior analyst, for children, beginning at 18 months of age and continuing until the child reaches age six or enters the first grade, whichever occurs first.

(b) A health insurance plan shall not limit in any way the number of visits an individual eligible for coverage under subsection (a) of this section may have with an autism services provider.

(c) A health insurance plan shall not impose greater coinsurance, co-payment, deductible, or other cost-sharing requirements for coverage of the diagnosis or treatment of autism spectrum disorders than apply to the diagnosis and treatment of any other physical or mental health condition under the plan.

(d) As used in this section:

(1) "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences to produce socially significant improvement in human behavior. The term includes the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(2) "Autism services provider" means any licensed or certified person providing treatment of autism spectrum disorders.

(3) "Autism spectrum disorders" means one or more pervasive developmental disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including autistic disorder and Asperger's disorder.

(4) "Diagnosis of autism spectrum disorder" means medically necessary assessments; evaluations, including neuropsychological evaluations; genetic testing; or other testing to determine whether an individual has one or more autism spectrum disorders.

(5) "Habilitative care" or "rehabilitative care" means professional counseling, guidance, services, and treatment programs, including applied behavior analysis and other behavioral health treatments, in which the covered individual makes clear, measurable progress, as determined by an autism services provider, toward attaining goals the provider has identified.

(6) "Health insurance plan" means Medicaid, the Vermont health access plan, and any other public health care assistance program, any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this state by a health insurer, as defined in 18 V.S.A. § 9402. The term does not include benefit plans providing coverage for specific diseases or other limited benefit coverage.

(7) "Medically necessary" means any care, treatment, intervention, service, or item that is prescribed, provided, or ordered by a physician licensed pursuant to chapter 23 of Title 26 or by a psychologist licensed pursuant to chapter 55 of Title 26 if such treatment is consistent with the most recent relevant report or recommendations of the American Academy of Pediatrics,

the American Academy of Child and Adolescent Psychiatry, or another professional group of similar standing.

(8) "Therapeutic care" means services provided by licensed or certified speech language pathologists, occupational therapists, physical therapists, or social workers.

(9) "Treatment of autism spectrum disorders" means the following care prescribed, provided, or ordered for an individual diagnosed with one or more autism spectrum disorders by a physician licensed pursuant to chapter 23 of Title 26 or a psychologist licensed pursuant to chapter 55 of Title 26 if such physician or psychologist determines the care to be medically necessary:

(A) habilitative or rehabilitative care;

(B) pharmacy care;

(C) psychiatric care;

(D) psychological care; and

(E) therapeutic care.

(e) Nothing in this section shall be construed to affect any obligation to provide services to an individual under an individualized family service plan, individualized education program, or individualized service plan.

Sec. 3. APPLICABILITY AND EFFECTIVE DATE

(a) Sec. 2 of this act shall take effect on July 1, 2011, and shall apply to all health insurance plans on and after July 1, 2011, on such date as a health insurer offers, issues, or renews the health insurance plan, but in no event later than July 1, 2012.

(b) This section and Secs. 1 and 4 of this act shall take effect upon passage.

Sec. 4. EVALUATION OF COVERAGE FOR SCHOOL-AGE CHILDREN; IDENTIFICATION OF SAVINGS AND EFFICIENCIES

(a) The agencies of administration and of human services and the department of education shall evaluate the feasibility and budget impacts of requiring health insurance plans, including Medicaid and the Vermont health access plan, to provide coverage of autism spectrum disorders, including applied behavior analysis supervised by a nationally board-certified behavior analyst for children under the age of 18 who have been diagnosed with an autism spectrum disorder. The agencies and department shall also assess the availability of providers of services across Vermont for individuals with autism spectrum disorders. No later than January 15, 2011, the agencies and department shall report their findings and recommendations regarding expanding coverage of treatment for autism spectrum disorders to school-age

children and the availability of providers to the house committees on health care and on appropriations and the senate committees on health and welfare and on appropriations.

(b) In preparing their fiscal year 2012 budget proposals, the agencies of administration and of human services and the department of education shall collaborate to identify savings, reductions in spending trends, and avoided costs to be achieved by reducing duplications of effort and maximizing achievable efficiencies in the provision of services to children diagnosed with autism spectrum disorders. In addition, the agencies and the department shall estimate the amount of savings and avoided costs to be realized by the state over time as a result of the insurance coverage requirement in Sec. 2 of this act. The agencies and the department shall collaborate with the joint fiscal office and shall include in their fiscal year 2012 budget proposals all identified and projected savings, reductions in trend, and avoided costs that may be used to offset the state's share of expenditures resulting from the requirement that health insurance plans provide coverage for diagnosis and treatment of autism spectrum disorders.

(c) In order to permit the general assembly to assess the availability of sufficient funds to implement the coverage requirement established in Sec. 2 of this act in fiscal year 2012, no later than February 15, 2011, the agencies of administration and of human services and the department of education shall report to the house committees on health care and on appropriations and the senate committees on health and welfare and on appropriations the amount of savings, reductions in spending trends, and avoided costs they have identified pursuant to subsection (b) of this section that will offset the state's share of expenditures related to the coverage requirement.

(d) If the report required by subsection (c) of this section or the findings of the committees of jurisdiction indicate that sufficient funds will not be available to offset the state's share of expenditures related to the coverage requirement established in Sec. 2 of this act in fiscal year 2012, it is the intent of the general assembly to consider whether to proceed with implementation of such coverage requirement.

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

"An act relating to insurance coverage for autism diagnosis and treatment."

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

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

H. 590.

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

An act relating to mediation in foreclosure proceedings.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

H. 590. An act relating to mediation in foreclosure proceedings.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 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 mortgagee 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) Unless the parties agree otherwise, 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.

(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 under subsection (d) of section 4703 of this title 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 mortgagee or 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. The court may make such a determination without a hearing unless the court, in its discretion, determines that a hearing is necessary.

(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 except that the mortgagor shall be responsible for mortgagor's own costs, including the cost of mortgagor's attorney, if any, and travel costs.

(c) If the foreclosure action results in a sale with a surplus, the mortgagee may recover the full cost of mediation to the extent of the surplus. Otherwise,

the mortgagee may not shift to the mortgagor the costs of the mortgagee's or the servicing agent's attorney's fees or travel costs related to mediation but may shift up to one-half of the costs of the mediator.

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 known, 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 and shall relate back to the date on which the original lien was first recorded.

(c) Interest on a judgment lien shall accrue at the rate of 12 percent per annum.

~~(c)~~(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").

JOHN F. CAMPBELL
VINCENT ILLUZZI
ANN E. CUMMINGS

Committee on the Part of the Senate

THOMAS F. KOCH
WILLEM W. JEWETT
RICHARD J. MAREK

Committee on the Part of the House

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

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

H. 647.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to misclassification of employees to lower premiums for workers' compensation and unemployment compensation.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

H. 647. An act relating to misclassification of employees to lower premiums for workers' compensation and unemployment compensation.

Respectfully reports that it has met and considered the same and recommends that the House accede to the Senate Proposal of Amendment and that the bill be further amended as follows:

First: In Sec. 3, 21 V.S.A. § 692, by striking out subsections (a), (b), and (c) and inserting in lieu thereof the following:

(a) Failure to insure. If after a 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 first seven days the employer neglected to secure liability and not more than $150.00 for every day thereafter.

(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 after the commissioner issues an order to obtain insurance and may also be assessed an administrative penalty of not more than $250.00 for each employee for every day 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~~ work site 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 work site 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. An employer against whom a stop-work order has been issued is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for a period of up to three years following the date of the issuance of the stop-work order, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any contest of the prohibition of the employer from contracting with the state or its subdivisions.

(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. In addition to any other penalties, 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 180 days, or both.

Second: In Sec. 5, 21 V.S.A. § 708, by striking out subsection (a) and inserting in lieu thereof the following:

(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~~ $20,000.00, 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. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have made a false statement or misrepresentation of a material fact, as determined by the

commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any contest relating to the prohibition of the employer from contracting with the state or its subdivisions.

Third: by adding new Secs. 5a and 5b to read as follows:

Sec. 5a. 8 V.S.A. § 3661(c) is amended to read:

(c) An employer who makes a false statement or representation that results in a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner, may be assessed an administrative penalty of not more than $20,000.00 in addition to any other appropriate penalty. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have made a false statement or misrepresentation, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any appeal relating to prohibiting the employer from contracting with the state or its subdivisions.

Sec. 5b. 29 V.S.A. § 161 is amended to read:

§ 161. REQUIREMENTS ON STATE CONSTRUCTION PROJECTS

(a) Bids; selection.

* * *

(d) ~~This~~ Subsections (a) through (c) of this section shall not apply to maintenance or construction projects carried out by the agency of transportation and by the department of forests, parks and recreation.

(e) The agency of administration shall ensure that the state and any of its subdivisions do not contract, directly or indirectly, with employers who are prohibited from contracting by the commissioner of labor pursuant to 21 V.S.A. § § 692, 708, and 1314a or the commissioner of banking, insurance, securities, and health care administration pursuant to 8 V.S.A. § 3661.

(f) The agency of administration shall maintain a current list of employers that have been prohibited from contracting with the state or any of its subdivisions, and the agencies of administration and of transportation shall publish that list on their websites.

Fourth: In Sec. 7, by adding a final sentence to read as follows: The department shall keep the name of the complainant confidential.

Fifth: In Sec. 8, in 21 V.S.A. § 710, by striking out subsection (c) and inserting in lieu thereof the following:

(c) The department shall not include in any publication or public report the name or contact information of any individual who has alleged that an employer has made a false statement or misclassified any employees, unless it is required by law or necessary to enable enforcement of this chapter.

Sixth: In Sec. 9, 21 V.S.A. § 1314a, by striking out subsection (f) and inserting in lieu thereof the following:

(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. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have failed to properly classify, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any appeal relating to prohibiting the employer from contracting with the state or its subdivisions.

(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 or reduce the penalty.

Seventh: In Sec. 10, 21 V.S.A., § 1328, after the word "waive", by adding the words "or reduce"

Eighth: By striking out Sec. 13 and inserting in lieu thereof a new Sec. 13 to read:

Sec. 13. EMPLOYEE MISCLASSIFICATION; INVESTIGATION AND ENFORCEMENT; INTERAGENCY REPORT

(a) The agency of administration shall ensure that all state agencies and departments do the following:

(1) Coordinate to increase the efficiency and effectiveness of efforts to combat employee misclassification.

(2) Receive information concerning any employer determined to have misclassified one or more employees as independent contractors.

(b) 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.

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

Sec. 17. Sec. 32(b) of No. 54 of the Acts of 2009 is amended to read:

(b) The agencies shall ~~require by rule or by~~ develop a procedure to ensure that any contractor that ~~violates classification requirements shall be~~ has been prohibited or restricted from bidding on future state contracts for a period of time that corresponds to the seriousness of the classification violation by the commissioner of labor or the commissioner of banking, insurance, securities, or health care administration. ~~The rules or procedures shall also provide for an appeal process from any such prohibition or restriction consistent with existing law.~~

Tenth: In Sec. 18, 18 V.S.A. § 906(8), by striking out subdivisions (C) and (E) and inserting in lieu thereof the following:

(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. Written and practical examinations shall not be required for recertification; however, to maintain certification, all individuals shall complete a specified number of hours of continuing education as established by rule by the commissioner.

(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.

Eleventh: By striking out Secs. 19 and 20 in their entirety and inserting in lieu thereof the following:

Sec. 19. UPDATED RULES FOR ADVANCED EMERGENCY MEDICAL CARE

No later than March 1, 2011, the commissioner of health shall adopt, 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).

Sec. 20. 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. In addition, the commissioner, also in consultation with the entities referenced in this subsection, shall study whether an individual may provide emergency medical services that exceed the scope of practice for the license level of the service or department with which the individual is affiliated if the individual is licensed and certified at a more advanced level.

(b) The commissioner of health shall prepare a proposal on a statewide licensing mechanism in the form of draft legislation and shall submit that proposal along with findings and recommendations related to the other topics itemized in subsection (a) of this section 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.

(c) Pending the results of the study required under this section and any subsequent legislative action, an individual may provide emergency medical

services that exceed the scope of practice for the license level of the service or department with which the individual is affiliated if the individual is licensed and certified at a more advanced level provided the emergency medical services are in accordance with a protocol cooperatively developed by the individual and the district medical advisor.

Twelfth: By striking out Sec. 21 and inserting in lieu thereof the following:

Sec. 21. EFFECTIVE DATES

This act shall take effect on July 1, 2010, except for this section and Secs. 7, 8, 14, 18, 19, and 20, which shall take effect on passage.

VINCENT ILLUZZI
TIMOTHY R. ASHE
WILLIAM H. CARRIS

Committee on the part of the Senate

ERNEST W. SHAND
MICHAEL J. MARCOTTE
WARREN F. KITZMILLER

Committee on the part of the House

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

Rules Suspended; Bills Messaged

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

H. 590, H. 647.

Rules Suspended; Bill Delivered

On motion of Senator Shumlin, the rules were suspended, and the following bill was ordered delivered to the Governor forthwith:

S. 262.

Recess

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

Called to Order

Pursuant to Rule 8 of the Senate Rules, in the absence of the President and the President pro tempore, the time for convening of the Senate having been

set at 4 P.M., the Senate was called to order by David A. Gibson, Secretary of the Senate.

Recess

On motion of Senator Campbell the Senate recessed until 6:00 P.M..

Called to Order

At 6:00 P.M. the Senate was called to order by the President.

Message from the House No. 76

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

Mr. President:

I am directed to inform the Senate that:

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

S. 97. An act relating to a Vermont state employees' cost-savings incentive program.

And has adopted the same on its part.

Recess

On motion of Senator Mazza the Senate recessed until 7:30 P.M.

Called to Order

At 7:30 P.M. the Senate was called to order by the President.

Recess

On motion of Senator Campbell the Senate recessed until 8:30 P.M. on a roll call, Yeas 19, Nays 4.

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: Ashe, Ayer, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Kitchel, Lyons, Mazza, Nitka, Racine, Shumlin, Starr, White.

Those Senators who voted in the negative were: Flory, Kittell, McCormack, Scott.

Those Senators absent and not voting were: Bartlett, Illuzzi, MacDonald, Miller, Mullin, Sears, Snelling.

Called to Order

At 9:08 P.M. the Senate was called to order by the President.

Message from the House No. 77

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

Mr. President:

I am directed to inform the Senate that:

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

S. 295. An act relating to the creation of an agricultural development director.

And has adopted the same on its part.

Message from the House No. 78

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

Mr. President:

I am directed to inform the Senate that:

The House has adopted joint resolution of the following title:

J.R.H. 49. Joint resolution strongly criticizing the United States Department of Education for requiring the Vermont Department of Education to identify persistently low-achieving schools.

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. 57. Joint resolution authorizing the Commissioner of Forests, Parks and Recreation to proceed with an exchange of rights-of-way in Groton State Forest.

And has adopted the same in concurrence.

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

H. 470. An act relating to restructuring of the judiciary.

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. Lippert of Hinesburg
Rep. Koch of Barre Town
Rep. Jewett of Ripton

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

S. 280. An act relating to prohibiting texting while operating on a highway.

And has concurred therein.

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

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

And has concurred therein with further amendments in the passage of which the concurrence of the Senate is requested.

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

H. 488. An act relating to prohibiting the use of felt-soled boots and waders in the waters of Vermont.

H. 614. An act relating to the regulation of composting.

H. 769. An act relating to the licensing and inspection of plant and tree nurseries.

H. 779. An act relating to potable water supply and wastewater system permits.

And has severally concurred therein.

Adjournment

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

SATURDAY, MAY 8, 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 seventh day of May, 2010, he approved and signed bills originating in the Senate of the following titles:

S. 173. An act relating to technical corrections to the trust laws.

S. 237. An act relating to operational standards for salvage yards.

S. 239. An act relating to retiring outdoor wood-fired boilers that do not meet the 2008 emission standard for particulate matter.

Rules Suspended; Proposal of Amendment; Consideration Interrupted by Recess

H. 792.

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

An act relating to implementation of challenges for change.

Was taken up for immediate consideration.

President Assumes the Chair

Senator Bartlett, for the Committee on Appropriations, 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. LEGISLATIVE INTENT

(a) This act is intended to create the changes in Vermont law needed to implement the proposals which grew out of the Challenges for Change Act, in No. 68 of the Acts of the 2009 Adj. Sess. (2010).

(b) Vermont state government is faced with a substantial gap between available revenues and projected expenditures based on the current manner of providing services. This act is the next step in allowing the redesigning of how to provide government services. Policy makers, administrators, service providers, and school administrators will now proceed to create outcome-driven changes in service and performance, and to implement these changes with reduced state funding. At the same time, accountability for meeting specified goals will be maintained through clear measures of outcome

achievement, with quarterly reporting to, and oversight by, the general assembly, as provided in this act. The intent of the general assembly is to make the changes in law which will allow the creation of better methods for providing government services, while spending less money and still achieving the outcomes specified in the Challenges for Change Act.

(c) Changes to law in this act are arranged by Challenges topic, followed by general requirements for quarterly reporting and oversight.

*** * * A. Performance Contracts and Grants * * ***

Sec. A1. RESTATEMENT OF OUTCOMES FOR PERFORMANCE CONTRACTING AND GRANTS

Outcomes for performance contracting and grants:

(1) Increase the use of performance contracts with the goal of converting $70 million of contracts to performance-based contracts.

(2) Contractors and grantees meet performance targets specified in contracts.

Sec. A2. PERFORMANCE CONTRACTS AND GRANTS

The general assembly recommends that all branches, elected offices, and units of government participate in the performance contract and grant challenge, as defined in Sec. 3 of No. 68 of the Acts of the 2009 Adj. Sess. (2010), and it is the intent of the general assembly that, notwithstanding any other provision of law, memorandums of understanding be executed between the administration and all executive branch government units to achieve the desired outcomes and implementation of this initiative.

*** * * B. Charter Units Challenge * * ***

Sec. B1. RESTATEMENT OF OUTCOMES FOR CHARTER UNIT CHALLENGE

Outcomes for the charter unit challenge:

(1) Meet challenge target of reducing spending or generating entrepreneurial revenue of $2 million in general funds in FY2011 and $4.5 million in general funds in fiscal year 2012.

(2) Increase employees' engagement in their work.

(3) Produce outcomes for Vermonters that are the same as or better than outcomes delivered prior to redesign.

Sec. B2. SECRETARY OF ADMINISTRATION; CHALLENGES FOR CHANGE; INFORMATION TECHNOLOGY INVESTMENTS

The secretary shall not be required to obtain independent expert review pursuant to 3 V.S.A. § 2222(g) for information technology investments made in conjunction with the Challenges for Change initiatives, including investments for the purchase and implementation of components of the enterprise architecture, including Master Person Index, work flow engine, enterprise bus, and rules engine.

Sec. B3. SECRETARY OF ADMINISTRATION; EXCESS SAVINGS AND REVENUES

Notwithstanding any other provisions of law to the contrary, for a period of two years after the effective date of this section, the secretary of administration may grant to a designated charter unit the ability to retain and reinvest savings or revenues if the combined savings of the charter units is in excess of the $2 million savings or revenue target and may transfer appropriations or funds as deemed necessary to accomplish the results specified for the charter unit challenge and consistent with plans to improve business processes presented to the secretary.

Sec. B4. SECRETARY OF ADMINISTRATION; DEPARTMENT OF BUILDINGS AND GENERAL SERVICES; POSTAL SERVICES

The department of buildings and general services will increase participation in usage of their services through the elimination of redundant and duplicative processes and will maximize usage of electronic communications to create economies and standardize the quality of postal services in Central Vermont.

Sec. B5. TASK FORCES INVOLVING MORE THAN ONE AGENCY

The secretary of administration may authorize task forces that involve more than one agency, and existing positions may be assigned as required to implement the Challenges for Change tasks and outcomes.

Sec. B6. DEPARTMENT OF LIQUOR CONTROL

It is the goal of the general assembly to increase general fund revenues through innovative changes in the administration of sales of alcoholic beverages. The intent is not to increase consumption of alcoholic beverages, but, rather, to reclaim sales lost to neighboring states and to increase sales to out-of-state consumers who would otherwise make their purchases in other states, and to achieve this goal by creating new approaches for marketing and more flexible strategies in pricing and taxation. To achieve this goal, the department of liquor control shall take the following steps:

(1) Create its proposed gift card program, which is projected to be revenue-neutral in fiscal year 2011, and is expected to generate revenue in fiscal year 2012 and after.

(2) Take steps to create more flexibility in pricing, to the extent allowed by current law, which will help to reclaim the lost sales.

(3) Analyze how coordinated changes in taxation and pricing could lead to increased sales and increased revenue contribution to the state's general fund, while meeting the goals expressed in this section. The department shall consider whether reducing or eliminating the current 25 percent tax on gross revenues, and implementing flexibility in pricing, could lead to this increased sales and revenue. The department shall report its findings and recommendations to the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs by January 15, 2011.

(4) Report by January 15, 2011, to the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs a proposal on how to evaluate the effect of the department of liquor control's policies on substance abuse in this state.

* * * Department of Taxes * * *

* * * Electronic Filing of W-2 Data * * *

Sec. B7. 32 V.S.A. § 5842(c) is amended to read:

(c) Notwithstanding section 5867 of this title, the commissioner may, in his or her discretion, prescribe that one or more or all of the returns required by subsection (a) of this section are not required to be signed or verified by the taxpayer. The commissioner may require businesses and payroll service providers to file information under this section by electronic means.

* * * Compliance and Collection * * *

Sec. B8. COMPLIANCE AND COLLECTION

The department of taxes shall continue to investigate compliance and collection issues, including methods of addressing the disparities in the information regarding individual and business tax data. No later than January 15, 2011, the department shall report to the house committee on ways and means and the senate committee on finance detailed findings and recommendations on further enhancing the state's compliance and collection of taxes.

* * * Electronic Filing of Tax Returns; Report * * *

Sec. B9. ELECTRONIC FILING OF TAX RETURNS

No later than January 15, 2011, the department of taxes shall report to the house committee on ways and means and the senate committee on finance a report detailing the fees charged and expenses incurred in handling the electronic filing of personal and corporate income tax returns, the fees charged and expenses incurred in processing electronic payment of taxes, and the fees charged and expenses incurred in making refund payments electronically and by physical check. The report shall include specific recommendations to provide incentives for taxpayers and tax preparers to file returns and pay taxes or receive refunds electronically.

* * * Department of Fish and Wildlife * * *

* * * Point-of-Sale Agent * * *

Sec. B10. 10 V.S.A. § 4001(36) is added to read:

(36) Point-of-sale agent: an agent authorized by the commissioner to sell licenses and provide replacement licenses electronically through the state's point-of-sale license system.

* * * Licenses; Retained Fee * * *

Sec. B11. 10 V.S.A. § 4254 is amended to read:

§ 4254. FISHING AND HUNTING LICENSES; ELIGIBILITY, DESIGN, DISTRIBUTION, SALE, AND ISSUE

* * *

(e) The commissioner shall establish:

* * *

(9) That for each license ~~shall clearly state that,~~ $1.50 of the fee ~~for that license~~ is a filing fee that may be retained by the agent, except for the super sport license for which ~~shall state that~~ $5.00 of the ~~super sport license~~ fee is a filing fee that may be retained by the agent.

(10) That for licenses and tags issued where the department does not receive any part of the fee, $1.50 may be charged as a filing fee and retained by the agent.

* * *

(g) All operating license agents, including those in their first year of operation, ~~except~~ but not including town clerks ~~or,~~ other municipal or state employees who sell licenses as part of their official duties, and point-of-sale

agents, shall pay an annual agency operation fee of $35.00. ~~These fees~~ This fee shall be used for the administration of this section and to offset any losses incurred from sales of licenses, in lieu of individual bonding.

* * *

* * * Replacement and Free Licenses * * *

Sec. B12. 10 V.S.A. § 4261 is amended to read:

§ 4261. LOST, REPLACEMENT, OR FREE LICENSE~~;~~ CERTIFICATE

(a) A person who has lost a license other than a lifetime license may demand a lost license certificate from the agent of original issue. The fee shall be $5.00 which the agent may retain. If the agent of original issue is no longer selling licenses, the applicant may apply directly to the department. If available, replacement and free licenses may be obtained from a point-of-sale agent or online at the state's website. If requested from a point-of-sale agent, a $1.50 filing fee may be charged and retained by the agent.

(b) A person who has lost a lifetime license may obtain a new license upon application to the department, payment of a $5.00 fee and submission of proof of identification. If available, replacement and free licenses may be obtained from a point-of-sale agent or online at the state's website. If requested from a point-of-sale agent, a $1.50 filing fee may be charged and retained by the agent.

* * * Department of Forests, Parks and Recreation * * *

* * * Use of Special Funds * * *

Sec. B13. DEPARTMENT OF FORESTS, PARKS AND RECREATION USE OF SPECIAL FUND

Sec. B.704 of H.789 of 2010 (the "Big Bill"), as passed the house, provides for spending authority for the department of forests, parks and recreation from the lands and facilities special trust fund established pursuant to 3 V.S.A. § 2807. Under H.789 as passed the house, the department is authorized to spend $350,000.00 of the fund for general operating costs. In furtherance of the purposes of this act, the general assembly anticipates increasing that spending authority in H.789 to $525,000.00.

* * * Park Fees * * *

Sec. B14. 10 V.S.A. § 2603(c)(3) is amended to read:

(3) ~~The~~ Notwithstanding subdivision (1) of this subsection, the commissioner of forests, parks and recreation shall be permitted to develop state park ~~experimental~~ services, promotional programs, and vacation or

special event packages and adjust rates and fees for those services and packages to promote the park system ~~and~~ or increase campground occupancy.

* * * Receipt of Grants and Donations * * *

Sec. B15. 32 V.S.A. § 5(a)(3) is amended to read:

(3) This section shall not apply to the acceptance of grants, gifts, donations, loans, or other things of value with a value of $5,000.00 or less, or to the acceptance by the department of forests, parks and recreation of grants, gifts, donations, loans, or other things of value with a value of $15,000.00 or less, provided that such acceptance will not incur additional expense to the state or create an ongoing requirement for funds, services, or facilities. The secretary of administration and joint fiscal office shall be promptly notified of the source, value, and purpose of any items received under this subdivision. The joint fiscal office shall report all such items to the joint fiscal committee quarterly.

Sec. B16. 22 V.S.A. § 953(c) is amended to read:

(c) Any charges created or changed by the board shall be approved ~~by the joint fiscal committee before taking effect~~ as follows:

(1) All such charges shall be submitted to the governor who shall send a copy of the approval or rejection to the joint fiscal committee through the joint fiscal office together with the following information with respect to those items:

(A) the costs, direct and indirect, for the present and future years related to the charge;

(B) the department or program which will utilize the charge;

(C) a brief statement of purpose;

(D) the impact on existing programs if the charge is not accepted.

(2) The governor's approval shall be final unless within 30 days of receipt of the information a member of the joint fiscal committee requests the charge 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 charge shall not be accepted until approved by the joint fiscal committee or the legislature. During the legislative session, the joint fiscal committee shall file a notice with the house clerk and senate secretary for publication in the respective calendars of any charge approval requests that are submitted by the administration.

* * * Labor * * *

Sec. B17. 21 V.S.A. § 602 is amended to read:

§ 602. PROCESS AND PROCEDURE

(a) All process and procedure under the provisions of this chapter shall be as summary and simple as reasonably may be. The commissioner may make rules not inconsistent with such provisions for carrying out the same and shall cause to be printed and furnished, free of charge, to any employer or employee such forms as he or she deems necessary to facilitate or promote the efficient administration of such provisions.

(b) The commissioner shall determine the form in which reports are filed and what shall constitute a signature on the reports, including those filed in other than paper form, such as electronically or over telephone lines.

*** * * C. Human Services Challenge * * ***

Sec. C1. Sec. 3a of No. 68 of the Acts of the 2009 Adj. Sess. (2010) is added to read:

Sec. 3a. AGENCY OF HUMAN SERVICES; SAVINGS TARGETS

(a) The agency of human services shall set an agency-wide savings target of $23.8 million in general fund in fiscal year 2011 and $41.4 million in general fund in fiscal year 2012. As provided for in H.792 of 2010, the agency of human services shall achieve the same or better outcomes for clients and achieve the associated savings under this act without reducing government benefits, limiting benefit eligibility, or reducing personnel unless reduction is a direct consequence of achieving the required outcomes or specifically provided for under the Challenges legislation, such as in Sec. C25 of H.792 of 2010.

(b) As provided for in Sec. C3 of this act, the agency of human services shall engage the direct participation of service recipients, their families, service providers, and other stakeholders to develop additional Challenges that will meet in full the outcomes and fiscal goals of the Challenges for Change Act and this act. The agency of human services shall make available to community providers and organizations existing data on demographics and program outcomes and indicators to assist in the community planning.

Sec. C2. Sec. 4(a) of No. 68 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

(a) The client-centered, results-based, human services challenge to the state's human service administrators, employees, and service providers is to redesign delivery of the state's human services programs and health care system as a client-centered, integrated system that improves outcomes within

budget constraints. ~~There are four parts to this~~ This challenge~~:~~ focuses on maintaining or improving outcomes for populations served by the agency of human services, while spending less in fiscal year 2011 than in fiscal year 2010 and less in fiscal year 2012 than in 2011, by redesigning the delivery of services to be more efficient, interconnected, and targeted to achieve the essential outcomes. The populations focused on in this act are elders; individuals with disabilities, mental health needs, or substance abuse issues; families, including children, with multiple needs; and individuals involved with or at risk for significant involvement with the corrections system. The corrections challenge is further described in Sec. 5 of this act.

~~(1) Client-centered intake and client-centered coordinated and managed services. Improve the outcomes for individuals and families receiving services from the agency of human services, while spending five percent less in fiscal year 2011 than in fiscal year 2010 and in fiscal year 2012 spending 10 percent less than in fiscal year 2010, by redesigning the delivery of services to be more efficient, interconnected, and targeted to achieve the essential outcomes with less duplication of services.~~

~~(2) Support services promoting independence of elders and individuals with disabilities. Maintain or improve services for elders and individuals with disabilities by redesigning how support services are provided and by allowing family members who desire to be caregivers to provide part of the support services, while spending two percent less in fiscal year 2011 than in fiscal year 2010 and five percent less in fiscal year 2012 than in fiscal year 2010.~~

~~(3) Expand the policy of using payment methods based on outcome measures. Redesign grants and contracts made by the agency to service providers to use payment methods to achieve spending five percent less in fiscal year 2011 than in fiscal year 2010 and 10 percent less in fiscal year 2012 than in fiscal year 2010, while maintaining or improving service.~~

~~(4) Outcomes based contracts with Redesign of services provided by the designated agencies. Improve the outcomes of individuals and families served by the 17 agencies designated under 18 V.S.A. § 8905 to provide mental health services and services to individuals with a developmental disability, while spending five percent less in fiscal year 2011 than in fiscal year 2010 and 7.5 percent less in fiscal year 2012 than in fiscal year 2010, by enhancing collaboration among these agencies and by redesigning the contracts.~~

Sec. C3. STAKEHOLDER INVOLVEMENT

The agency of human services shall engage the direct participation of service recipients, their families, service providers, and other stakeholders in the identification and development of new proposals and the thorough evaluation and ongoing design and redesign of all of the proposals contained in

the agency of human services addendum to the Challenges for Change Progress Report dated March 30, 2010. The agency of human services shall make available to community providers and organizations existing community profile data on demographics and program outcomes and indicators to assist in the community planning.

* * * Elders * * *

Sec. C4. RESTATEMENT OF OUTCOMES FOR ELDERS

Outcomes for elders:

(1) Children, families, and individuals are engaged in and contribute to their community's decisions and activities.

(2) Elders, people with disabilities, and individuals with mental health conditions live with dignity and independence in settings they prefer.

(3) Families and individuals live in safe and supportive communities.

(4) Adults lead healthy and productive lives.

(5) Vermonters receive affordable and appropriate health care at the appropriate time, and health care costs are contained over time.

Sec. C5. INITIATIVES; ELDERS

(a) The general assembly is supportive of the following new proposals and existing proposals relating to elders in the agency of human services addendum to the Challenges for Change Progress Report dated March 30, 2010, and urges the agency to implement them, subject to other legislation enacted by the general assembly:

(1) establishment by the department of disabilities, aging, and independent living of a process to provide clinically eligible elders, who meet initial financial eligibility criteria prescribed by the department with Choices for Care, services while their eligibility for such services is being determined;

(2) expansion of opportunities for elders and adults with physical disabilities to benefit from a full-time service option similar to the concept of a developmental home; and

(3) decrease of nursing home utilization through earlier intervention, prevention, and increased use of home- and community-based services.

(b) The agency shall not expand the list of available providers of home- and community-based care services, not including case management or self-directed services, to include providers other than home care agencies certified by the Centers for Medicare and Medicaid Services

Sec. C6. SURVEYS; FORMER NURSING HOMES

Notwithstanding any provision of chapter 71 of Title 33 or any rule to the contrary, from July 1, 2010, to June 30, 2015, the division of licensing and protection in the department of disabilities, aging, and independent living shall inspect any facility that converts from a nursing home to an enhanced residential care facility during that period according to the same inspection schedule as applied when the facility operated as a licensed nursing home.

* * * Families with Children * * *

Sec. C7. RESTATEMENT OF OUTCOMES RELATING TO FAMILIES, INCLUDING CHILDREN, WITH MULTIPLE NEEDS

Outcomes for families with children:

(1) Children, families, and individuals are engaged in and contribute to their community's decisions and activities.

(2) Pregnant women and children thrive.

(3) Children are ready for school.

(4) Children succeed in school.

(5) Children live in safe, nurturing, stable, supported families.

(6) Youths choose healthy behaviors.

(7) Youths successfully transition to adulthood.

(8) Families and individuals live in safe and supportive communities.

(9) Adults lead healthy and productive lives.

(10) Vermonters receive affordable and appropriate health care at the appropriate time, and health care costs are contained over time.

(11) Families and individuals move out of poverty through education and advancement in employment.

Sec. C8. INITIATIVES; FAMILIES AND CHILDREN

The general assembly is supportive of the following new proposals and existing proposals relating to families, including children, with multiple needs in the agency of human services addendum to the Challenges for Change Progress Report dated March 30, 2010, and urges the agency to implement them, subject to other legislation enacted by the general assembly:

(1) modernizing the eligibility determination system in the department for children and families;

(2) pursuing a consolidated and coordinated approach to employment services under a single entity called "creative workforce solutions";

(3) pursuing savings in the budgets of multiple departments, including the department of Vermont health access, department of mental health, department of health, department of disabilities, aging, and independent living, and department for children and families, resulting from reduced lengths of stay in out-of-home placements of children accomplished through an increase in early intervention, family treatment, and other services designed to prevent or reduce the acuity of the situation resulting in the child's out-of-home placement. The agency shall redesign service delivery in order to provide intensive services to children and families before a child needs an out-of-home placement. "Out-of-home placements" includes inpatient hospitalizations, residential care, and foster care;

(4) reducing the length of time children are hospitalized through utilization reviews by the department of Vermont health access;

(5) reducing administrative burdens on providers of children's services by simplifying documentation and reporting requirements across departments, including the department for children and families, the department of mental health, the alcohol and drug abuse program, and the department of disabilities, aging, and independent living, including removing prior authorization requirements for Healthy Babies, Kids, and Families if feasible and allowable under federal law;

(6) establishing pilot programs for integrating children's services as provided for in Sec. C9 of this act;

(7) planning necessary to convert Woodside juvenile detention center into a treatment center which meets the requirements for Medicaid reimbursement as provided for in Sec. C10 of this act;

(8) creating specialized case management in Reach Up as provided for in Sec. C12 of this act;

(9) increasing enforcement of child support in order to increase the amount paid to families as provided for in Secs. C13 through C22 of this act; and

(10) integrating intake and program operations between the department of disabilities, aging, and independent living and the department of health for children's services.

Sec. C9. CHILDREN'S INTEGRATED SERVICES; PILOTS

(a) The agency of human services may establish pilot programs in no more than three service areas for single contracts for children's integrated services

(CIS) to be developed in collaboration with the regional CIS teams in the communities to be served. "Children's integrated services" includes nursing and family support, early intervention, early childhood and family mental health, and specialized child care services.

(b) By January 15, 2011, the agency of human services shall develop a plan for fully integrating child development services as described in the Challenges for Change agency of human services addendum dated March 30, 2010, on pages 34 to 36, and shall report its recommendations to the house committee on human services and the senate committee on health and welfare.

Sec. C10. WOODSIDE JUVENILE REHABILITATION CENTER

(a) The agency of human services shall develop a plan to provide secure stabilization services, assessment, and treatment at the Woodside juvenile rehabilitation center established in 33 V.S.A. § 5801, in order to secure reimbursement under the Global Commitment for Health Medicaid Section 1115 waiver, beginning April 1, 2011. The plan shall ensure that children in need of secure residential treatment, which is not reimbursable by Medicaid, may continue to be served at Woodside. The agency shall collaborate with the judicial branch on the redesign of Woodside.

(b) By January 15, 2011, the agency shall report its recommendations, including any statutory changes necessary to accomplish the recommendations, to the house committee on human services and the senate committee on health and welfare.

* * * Preventive Services to Children At Risk for Mental Health Needs * * *

Sec. C11. 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:

* * *

(14) plan and coordinate the development of community services which are needed to assist ~~mentally ill persons and~~ children and adolescents with or at risk for a severe emotional disturbance and individuals with mental illness 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) contract with community mental health centers to assure that ~~individuals who are mentally ill or~~ children and adolescents with or at risk for a severe emotional disturbance or individuals with mental illness can receive information, referral and assistance in obtaining those community services which they need and to which they are lawfully entitled;

(16) contract with accredited educational or health care institutions for psychiatric services at the Vermont State Hospital;

(17) ensure the provision of services to children and adolescents with or at risk for 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;

* * *

* * * Reach Up * * *

Sec. C12. 33 V.S.A. § 1106 is amended to read:

§ 1106. REQUIRED SERVICES TO PARTICIPATING FAMILIES

(a) The commissioner shall provide participating families case management services, periodic reassessment of service needs and the family development plan, and referral to any agencies or programs that provide the services needed by participating families to improve the family's prospects for job placement and job retention, including the following:

* * *

(b) The commissioner shall provide specialized case management services to families no later than four months after a family's financial assistance grant has been reduced as a result of a sanction under section 1116 of this title. The specialized case management shall be provided through a performance-based contract in order to intervene in the family's situation with the goal of compliance with an appropriate family development plan or work requirements as required under sections 1112 and 1113 of this title. The contract may be performed by another department within the agency or by a community-based organization. If, after two months, a family fails to participate in specialized case management, case management shall resume through Reach Up.

* * * Child Support Contempt Proceedings * * *

Sec. C13. 4 V.S.A. § 461(a)(1) is amended to read:

(a) The office of magistrate is created within the family court. Except as provided in section 463 of this title, the office of magistrate shall have jurisdiction concurrent with the family court to hear and dispose of the following cases:

(1) Proceedings for the establishment, modification and enforcement of child support, including contempt proceedings instituted against an obligated party for the limited purpose of enforcing a child support order.

Sec. C14. 4 V.S.A. § 462(a) is amended to read:

(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 court in the county 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.~~

Sec. C15. 15 V.S.A. § 603 is amended to read:

§ 603. CONTEMPT

(a) A person who disobeys a lawful order or decree of a court or judge, made under the provisions of this chapter, may be proceeded against for contempt as provided by ~~section~~ 12 V.S.A. § 122 ~~of Title 12~~. The department for children and families may institute such proceedings in all cases in which a party or dependent children of the parties are the recipients of financial assistance from the department. ~~The~~

(b) For contempt of an order or decree made under the provisions of this chapter, the court may:

(1) order restitution to the department~~, and that~~;

(2) order payments be made to the department for distribution~~,~~;

(3) order a party to serve not more than 30 days of preapproved furlough as provided in 28 V.S.A. § 808(a)(7); or

(4) make such other orders or conditions as it deems proper.

* * * Administrative Suspension of Licenses * * *

Sec. C16. 15 V.S.A. § 798 is amended to read:

§ 798. ENFORCEMENT OF CHILD SUPPORT ORDERS; SUSPENSION OF LICENSES

(a) Upon noncompliance with an order issued under section 606 of this title, a motion may be filed seeking an order for suspension of licenses under this section. The motion shall be scheduled for hearing in accordance with the Vermont Rules of Family Proceedings within 30 days of the filing of the motion. At a hearing under this subsection, the obligor shall have the opportunity to present evidence relating to the reasons for noncompliance. An inability to comply shall be a defense in an action brought under this

subsection. The noncomplying party shall have the burden of demonstrating inability to comply. An order issued under subsection ~~(b)~~(c) of this section is in addition to other remedies available at law.

(b) The office of child support may administratively suspend licenses under this section upon noncompliance with an order under section 606 of this title. Prior to suspending a license, the office of child support shall notify the obligor of the office's intent to suspend the obligor's license and shall provide the obligor with an opportunity to contest the action pursuant to 33 V.S.A. § 4108. If the obligor fails to either contest the claimed delinquency or request an opportunity to present evidence relating to the noncompliance within 21 days of notification, the office of child support may issue a license suspension order.

(c) Upon a finding of noncompliance with an order issued under section 606 of this title and a delinquency of at least one-quarter of the annual support obligation, the office of child support, a family court judge or magistrate, if assigned by the presiding family court judge, may order a civil suspension of a noncomplying party 's motor vehicle operator's license issued under chapter 9 of Title 23 or commercial driver license issued under chapter 39 of Title 23, recreational license, and any other license certification or registration issued by an agency to conduct a trade or business, including a license to practice a profession or occupation.

~~(c)~~(d) Upon receipt of a license suspension order issued under this section, the license issuing authority shall suspend the license according to the terms of the order. Prior to suspending the license, the license issuing authority shall notify the license holder of the pending suspension and provide the license holder with an opportunity to contest the suspension based solely on the grounds of mistaken identity or compliance with the underlying child support order. The license shall be reinstated within five days of a reinstatement order from the court or notification from the office of child support or the custodial parent, where the rights of that parent have not been assigned to the office of child support, that the parent is in compliance with the underlying child support order. The license issuing authority shall charge a reinstatement fee as provided for in ~~section~~ 23 V.S.A. § 675 ~~of Title 23~~, or as otherwise provided by law or rule.

~~(d)~~(e) The license issuing authority shall adopt procedural rules in accordance with the provisions of chapter 25 of Title 3 to implement the provisions of this section.

Sec. C17. 33 V.S.A. § 4108 is amended to read:

§ 4108. GRIEVANCE PROCEDURE

(a) The office of child support shall adopt rules in accordance with the procedures set forth in chapter 25 of Title 3, the Administrative Procedure Act, to establish and implement a grievance procedure to contest decisions of the office of child support.

(b) The office of child support shall make widely available to the public information about its grievance procedure, including grievance forms, pamphlets explaining the procedure, and explanations of grievance rights.

(c) Upon issuing a wage withholding order, the office of child support shall notify the obligor pursuant to ~~section 788 of Title 15~~ 15 V.S.A. § 788 of the amount of the past due child support, the consequences of failing to meet a court ordered child support obligation, and the procedure for contesting the office's action under this section.

(d) All final decisions of the office of child support are appealable de novo to the family court magistrate.

(e) If the obligor contests the withholding within ~~20~~ 21 days of the notice and is found not to be in arrears by more than one-twelfth of the annual support obligation on the date the notice is issued, the office, within two business days, shall notify the employer to cease withholding. In addition, the office shall pay to the obligor three times the amount erroneously withheld.

* * * Employer Obligation to Report New Hire Data * * *

Sec. C18. 33 V.S.A. § 4110 is amended to read:

§ 4110. EMPLOYER OBLIGATIONS

* * *

(b) Effective October 1, 1998, all employers in the state of Vermont shall report all new hires to the department of labor, and reported information will be shared with the office of child support for the purpose of expediting compliance with court ordered wage withholding orders, and location of payers or parents with an obligation to provide parental contact. The department of labor may use the information to assist with the administration of the unemployment insurance program.

(1) Employers shall report new hires within ~~20~~ 10 calendar days of ~~hiring~~ the first date of employment for a new employee.

(2) Employers shall report the following data elements to the department of labor: newly hired employee's name, address~~. and~~, first date of employment, Social Security number, and the employer's name, address, and federal identification number.

(3) Employers shall report the ~~specified new hire data by way of a W-4 form (copy), or a form of their own with the specified data elements. It~~ required new hire data elements electronically, when practicable, or on a form supplied or approved by the department of labor. Forms may be ~~reported~~ transmitted by fax transmission, first class mail, ~~by~~ magnetic tape, electronically, or ~~by~~ inputting data elements via the telephone.

(4) If the failure to report is the result of collusion between employer and employee, the employer shall be liable to the obligee in the amount of the wages required to be withheld but not more than $500.00.

(c) As used in this section:

* * *

(3) "First date of employment" is the first day services are performed for compensation.

(4) "New hire" means an employee for whom a W-4 filing is required and whose wages have not been reported by the filing employer to the department of labor during the last reporting quarter.

* * * Contracting with Sheriff for Enforcement of Child Support Orders * * *

Sec. C19. 15 V.S.A. § 800 is added to read:

§ 800. CONTRACT WITH SHERIFF FOR SERVICE OF CIVIL PROCESS

The office of child support may contract with a sheriff's department for the purpose of locating and investigating child support obligors and serving process, warrants, and mittimus in child support cases.

Sec. C20. 24 V.S.A. § 307 is amended to read:

§ 307. DEPUTY SHERIFFS; APPOINTMENTS AND REVOCATION

* * *

(b) A sheriff may appoint persons as deputy sheriffs to serve civil process, including child support enforcement as provided in 15 V.S.A. § 800, whom ~~he~~ the sheriff shall train and supervise. Such deputies need not be qualified law enforcement officers, but if not so qualified shall not have arrest powers, and shall not carry firearms in performance of their duties in serving civil process.

* * *

* * * Permit the Office of Child Support to Prosecute Nonsupport * * *

Sec. C21. 15 V.S.A. § 202 is amended to read:

§ 202. PENALTY FOR DESERTION OR NONSUPPORT

A married person who, without just cause, shall desert or wilfully neglect or refuse to provide for the support and maintenance of his or her spouse and children, leaving them in destitute or necessitous circumstances or a parent who, without lawful excuse, shall desert or wilfully neglect or refuse to provide for the support and maintenance of his or her child or an adult child possessed of sufficient pecuniary or physical ability to support ~~his~~ or her parents, who unreasonably neglects or refuses to provide such support when the parent is destitute, unable to support himself or herself and resident in this state, shall be imprisoned not more than two years or fined not more than $300.00, or both. Should a fine be imposed, the court may order the same to be paid in whole or in part to the needy spouse, parent or to the guardian, custodian, or trustee of the child. The office of child support attorneys, in addition to any other duly authorized person, may prosecute cases under this section in Vermont district court.

* * * Challenges for the Office of Child Support * * *

Sec. C22. CHALLENGES FOR THE OFFICE OF CHILD SUPPORT

(a) The office of child support shall:

(1) Reduce the administrative burden for employers who are required to withhold wages of an employee who is subject to a child support wage withholding order pursuant to subchapter 7 of chapter 11 of Title 15. The office shall review laws in other states to identify best practices in this area.

(2) Quantify the rate of compliance with child support orders, and categorize the noncompliant obligors in such a way as to enable a cost-benefit analysis of which enforcement strategies are most successful with the various categories of noncompliant obligors. Enforcement strategies shall be focused as much as practicable to collect from delinquent obligors without unnecessarily burdening obligees, compliant obligors, employers, and the courts.

(b) The office of child support shall report to the committees on judiciary and on appropriations no later than January 15, 2011, on its efforts to meet the challenges in subsection (a) of this section.

* * * Individuals with Disabilities, Mental Health Needs, or Substance Abuse Issues * * *

Sec. C23. *RESTATEMENT OF OUTCOMES FOR INDIVIDUALS WITH DISABILITIES, MENTAL HEALTH NEEDS, OR SUBSTANCE ABUSE ISSUES*

Outcomes for individuals with disabilities, mental health needs, or substance abuse issues:

(1) Elders, people with disabilities, and individuals with mental health conditions live with dignity and independence in settings they prefer.

(2) Families and individuals live in safe and supportive communities.

(3) Adults lead healthy and productive lives.

(4) Vermonters receive affordable and appropriate health care at the appropriate time, and health care costs are contained over time.

(5) Families and individuals move out of poverty through education and advancement in employment.

Sec. C24. INITIATIVES; INDIVIDUALS WITH DISABILITIES, MENTAL HEALTH NEEDS, OR SUBSTANCE ABUSE ISSUES

The general assembly is supportive of the following new proposals and the proposals relating to individuals with disabilities, mental health needs, or substance abuse issues in the agency of human services addendum to the Challenges for Change Progress Report dated March 30, 2010, and urges the agency to implement them, subject to other legislation enacted by the general assembly:

(1) creating of an interdepartmental team to serve clients of the department of disabilities, aging, and independent living with mental health needs;

(2) continuing to support improvements, currently supported by federal grant funds, for individuals with co-occurring mental health and substance abuse conditions;

(3) allowing psychiatric nurse practitioners to document and bill for mental health services, engage in mental health treatment planning, and approve mental health case management and treatment plans as provided for in Sec. C28 of this act;

(4) supporting collaboration between the designated agencies and federally qualified health centers, critical access hospitals, or sole community hospitals to enable expanded participation in the 340B drug pricing program;

(5) refraining from duplicating through state review those designated agency and specialized service agency quality assurance measures that have been evaluated and certified through a national quality review and accreditation process;

(6) pursuing a consolidated and coordinated approach to employment services under a single entity called "creative workforce solutions."

(7) integrating all substance abuse and mental health services through the simplification of funding and administrative processes;

(8) establishing by the department of disabilities, aging, and independent living a process to provide clinically eligible individuals who meet initial financial eligibility criteria prescribed by the department with Choices for Care services while their eligibility for such services is being determined;

(9) improving employment outcomes for clients of the designated agencies;

(10) exploring the integration of psychiatry and behavioral health services staff members of the designated agencies into a federally qualified health center;

(11) continuing to analyze, to estimate the projections for, and to pursue bulk purchasing by the designated agencies;

(12) reducing documentation and administrative requirements;

(13) allowing new residential options for individuals with developmental disabilities;

(14) reducing the length of inpatient psychiatric hospitalizations through utilization reviews by the department of mental health, contracting with the designated agencies;

(15) requesting proposals from the designated agencies for redesigning service delivery to the population as provided for in Sec. C26 of this act;

(16) analyzing the utilization of certain prescriptions and creating evidence-based best practice protocols as provided for in Sec. C29 of this act; and

(17) reducing expenditures in the designated agencies as provided for in Sec. C25 of this act.

Sec. C25. DESIGNATED AGENCIES; REDUCTION

(a)(1) The agency of human services and the agencies designated under chapter 207 of Title 18 shall reduce the fiscal year 2011 appropriation for mental health to the designated agencies by 2.5 percent and for developmental

services by a total of 2.5 percent which shall be split as follows: 1.5 percent from services to individuals in the custody of the commissioner of disabilities, aging and independent living under the public safety criteria and 1.0 percent from other developmental services. The designated agencies shall minimize service reductions to the extent possible.

(2) The agency of human services shall analyze new service models for clients with developmental disabilities whose services are high-cost and shall implement any cost-effective new service models as soon as practical. Any savings from new service models identified in fiscal year 2011 shall be reinvested to developmental services.

(b)(1) Each designated agency and specialized service agency shall work with each consumer and the consumer's guardian, if applicable, to review the individualized service plan.

(2) No later than July 1, 2011, every individual in the custody of the commissioner of disabilities, aging, and independent living under the public safety criteria who has not been assessed for a developmental disability within the past two years shall have his or her competency evaluated by a psychologist skilled in assessing developmental disabilities. The commissioner shall develop protocols for evaluating the appropriateness of less restrictive residential placements based on the results of the evaluation.

(c) Individuals may appeal to the human services board as provided for in 3 V.S.A. § 3091, except that the agency shall provide an expedited hearing as described in this subsection in lieu of the hearing provided for in 3 V.S.A. § 3091(b).

(1) An individual may appeal modifications to his or her individualized service plan and budget within the time frames specified in existing law. If the appeal is made within the time frame provided for in existing law, the individual may receive continuing benefits upon request until a decision has been rendered.

(2) An expedited hearing shall be held no later than 11 calendar days following the date of the request for an appeal. A special, independent hearing officer shall be appointed by the agency and assigned to hear the appeals provided for under this subdivision. The agency may contract with an attorney for its representation at these hearings.

(3) Hearings shall be conducted according to the human services board fair hearing rules, except to the extent that the rules conflict with the process provided for in this subsection.

Sec. C25a. 13 V.S.A. § 4816 is amended to read:

§ 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

(a) Examinations provided for in the preceding section shall have reference to:

(1) Mental competency of the person examined to stand trial for the alleged offense;

(2) Sanity of the person examined at the time of the alleged offense.

(b) A competency evaluation for an individual thought to have a developmental disability shall include a current evaluation by a psychologist skilled in assessing individuals with developmental disabilities.

(c) As soon as practicable after the examination has been completed, the examining psychiatrist shall prepare a report containing findings in regard to each of the matters listed in subsection (a). The report shall be transmitted to the court issuing the order for examination, and copies of the report sent to the state's attorney, and to the respondent's attorney if the respondent is represented by counsel.

~~(c)~~(d) No statement made in the course of the examination by the person examined, whether or not he or she has consented to the examination, shall be admitted as evidence in any criminal proceeding for the purpose of proving the commission of a criminal offense or for the purpose of impeaching testimony of the person examined.

~~(d)~~(e) The relevant portion of a psychiatrist's report shall be admitted into evidence as an exhibit on the issue of the person's mental competency to stand trial and the opinion therein shall be conclusive on the issue if agreed to by the parties and if found by the court to be relevant and probative on the issue.

~~(e)~~(f) Introduction of a report under subsection ~~(d)~~(e) of this section shall not preclude either party or the court from calling the psychiatrist who wrote the report as a witness or from calling witnesses or introducing other relevant evidence. Any witness called by either party on the issue of the defendant's competency shall be at the state's expense, or, if called by the court, at the court's expense.

Sec. C26. DESIGNATED AGENCIES; REQUEST FOR PROPOSALS

The agency of human services shall issue a request for proposals to designated agencies to provide a performance-based contract to serve individuals with serious functional impairments who are at risk of involvement or are involved with law enforcement, the criminal justice system, or the

department of corrections with a goal of reducing the involvement with law enforcement and incarceration.

Sec. C27. DESIGNATED AGENCIES; COMMUNITY ADULT SUPPORT AND TREATMENT PROGRAM

(a)(1) The department of mental health, the designated agencies, and the division of alcohol and drug abuse programs shall engage in a process to analyze and design the integration of some or all of the services provided in the adult outpatient program (AOP) and the community rehabilitation and treatment (CRT) program in order to ensure that adults with mental health conditions have access to a continuum of services.

(2) This initiative shall build on the following components for services: urgent and emergent short-term care for individuals at high risk; focused case management and support services to individuals over age 18 and under age 65 to facilitate timely discharge and transition services from inpatient psychiatric care; long-term, less intensive services for individuals with ongoing support and service needs; and ongoing services for individuals with enduring and complex mental health needs.

(b) Upon enactment, the department of mental health, the designated agencies, the division of alcohol and drug abuse programs, and consumer representatives shall analyze the programmatic and financial opportunities for redesigning and restructuring AOP and CRT services. This group shall develop a detailed work plan to include:

(1) an internal analysis of services and program trends in the monthly service reports, including identifying adults in both the adult outpatient program (AOP) and the community rehabilitation and treatment (CRT) program who might be served at a lower cost;

(2) a design for the new community adult support and treatment program;

(3) reimbursement methodology; and

(4) a plan for implementation by January 1, 2011, if feasible.

(c) The department of mental health shall report during the legislative interim to the mental health oversight committee on the progress of this initiative. By January 15, 2011, if implementation of the initiative described in this section is not feasible by January 1, 2011, the department, in collaboration with the designated agencies, shall provide a report to the house committee on human services and the senate committee on health and welfare containing an explanation of why implementation was not feasible and a revised implementation plan.

Sec. C28. ROLE OF PSYCHIATRIC NURSE PRACTITIONERS IN MENTAL HEALTH SERVICES

The department of mental health shall amend its Medicaid reimbursement procedures manual to allow psychiatric nurse practitioners to document and bill for mental health services, engage in treatment planning, and approve case management and treatment plans if such psychiatric nurse practitioner has received specialized training appropriate to the circumstances of the individual patient involved.

Sec. C29. VERMONT PRESCRIPTION MONITORING SYSTEM

(a) The department of mental health, in collaboration with the departments of health and of banking, insurance, securities, and health care administration, shall evaluate the feasibility of using the Vermont prescription monitoring system operated by the department of health pursuant to chapter 84A of Title 18 to monitor the prescription and use of multiple psychiatric drugs for adults and psychotropic drugs for children. No later than January 15, 2011, the departments shall report their findings and recommendations to the house committee on human services and the senate committee on health and welfare.

(b) The department of mental health, in collaboration with the drug utilization review board in the department of Vermont health access, shall develop evidence-based protocols representing best practices for prescribing multiple psychiatric drugs for adults and psychotropic drugs for children. If funding is available, the department may also collaborate with the University of Vermont. No later than January 15, 2011, the department shall report on its adoption of protocols to the house committee on human services and the senate committee on health and welfare.

* * * All Populations – Health * * *

Sec. C30. RESTATEMENT OF OUTCOMES FOR INDIVIDUALS RELATING TO HEALTH CARE

Outcomes for all individuals relating to health:

(1) Adults lead healthy and productive lives.

(2) Vermonters receive affordable and appropriate health care at the appropriate time, and health care costs are contained over time.

Sec. C31. INITIATIVES; HEALTH CARE

The general assembly is supportive of the following new proposals and the proposals in the agency of human services addendum to the Challenges for Change Progress Report dated March 30, 2010, relating to all individuals

receiving health care coverage, and urges the agency to implement them, subject to other legislation enacted by the general assembly:

(1) statewide expansion of the Blueprint for Health;

(2) removal of the requirement that a private entity administer the chronic care management program in the department of Vermont health access as provided for in Sec. C33 of this act;

(3) creation of a clinical utilization review board to make recommendations to the department of Vermont health access as provided for in Sec. C34 of this act; and

(4) expanded participation in the 340B drug pricing program by eligible disproportionate share hospitals, the critical access hospitals, or the sole community hospitals in order to reduce the cost of pharmaceuticals provided on an out-patient basis and ensure savings to Medicaid.

Sec. C32. EXPANSION OF HEALTH CLINICS; FQHCS

The department of Vermont health access shall collaborate with the federally qualified health centers and other interested parties to create urgent care clinics to ensure that nonemergency health services are available outside emergency departments in hospitals, especially during evenings and weekends. The department may apply or may assist the FQHCs in applying for federal grants funds available for clinics, including nurse-managed health clinics. By January 15, 2011, the department shall provide a progress report on this initiative, with any recommendations, to the house committees on health care and on human services and the senate committee on health and welfare.

Sec. C33. 33 V.S.A. § 1903a is amended to read:

§ 1903a. ~~CHRONIC CARE MANAGEMENT~~ CARE MANAGEMENT PROGRAM

(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~~ commissioner of Vermont health access shall coordinate with the director of the Blueprint for Health to provide chronic care management through the Blueprint and, as appropriate, create an additional level of care coordination 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 of Vermont health access.~~

(b) The ~~secretary~~ commissioner shall include individuals with a broad range of chronic conditions in the ~~chronic care management program~~ Blueprint for Health and the care management program.

~~(c) The chronic care management program shall be designed to include:~~

~~(1) a method involving the health care professional in identifying eligible patients, including the use of the chronic care information system established in section 702 of Title 18, an enrollment process which provides incentives and strategies for maximum patient participation, and a standard statewide health risk assessment for each individual;~~

~~(2) the process for coordinating care among health care professionals;~~

~~(3) the methods of increasing communications among health care professionals and patients, including patient education, self-management, and follow-up plans;~~

~~(4) the educational, wellness, and clinical management protocols and tools used by the care management organization, including management guideline materials for health care professionals to assist in patient-specific recommendations;~~

~~(5) process and outcome measures to provide performance feedback for health care professionals and information on the quality of care, including patient satisfaction and health status outcomes;~~

~~(6) payment methodologies to align reimbursements and create financial incentives and rewards for health care professionals to establish management systems for chronic conditions, to improve health outcomes, and to improve the quality of care, including case management fees, pay for performance, payment for technical support and data entry associated with patient registries, the cost of staff coordination within a medical practice, and any reduction in a health care professional's productivity;~~

~~(7) payment to the care management organization which would put all or a portion of the care management organization's fee at risk if the management is not successful in reducing costs to the state;~~

~~(8) a requirement that the data on enrollees be shared, to the extent allowable under federal law, with the secretary in order to inform the health care reform initiatives under section 2222a of Title 3;~~

~~(9) a method for the care management organization to participate closely in the blueprint for health and other health care reform initiatives; and~~

~~(10) participation in the pharmacy best practices and cost-control program under subchapter 5 of chapter 19 of this title, including the multi-state purchasing pool and the statewide preferred drug list.~~

~~(d) The secretary shall issue a request for proposals for the program established under this section and shall review the request for proposals with the commission on health care reform prior to issuance. The issuance of the request for proposals is conditioned on the approval of the commission in order to ensure that the request meets the intent of this section, section 702 of Title 18, and chapter 19 of this title. Any contract under this section may allow the entity to subcontract some services to other entities if it is cost-effective, efficient, or in the best interest of the individuals enrolled in the program.~~

~~(e) The secretary shall ensure that the chronic care management program is modified over time to comply with the Vermont blueprint for health strategic plan and to the extent feasible, collaborate in its initiatives.~~

~~(f) The terms used in this section shall have the meanings defined in section 701 of Title 18.~~

Sec. C34. 33 V.S.A. chapter 19, subchapter 6 is added to read:

Subchapter 6. Clinical Utilization Review Board

§ 2031. CREATION OF CLINICAL UTILIZATION REVIEW BOARD

(a) No later than May 15, 2010, the department of Vermont health access shall create a clinical utilization review board to examine existing medical services, emerging technologies, and relevant evidence-based clinical practice guidelines and make recommendations to the department regarding coverage, unit limitations, place of service, and appropriate medical necessity of services in the state's Medicaid programs.

(b) The board shall comprise 10 members with diverse medical experience, to be appointed by the governor upon recommendation of the commissioner of Vermont health access. The board shall solicit additional input as needed from individuals with expertise in areas of relevance to the board's deliberations. The medical director of the department of Vermont health access shall serve as the state's liaison to the board. Board member terms shall be staggered, but in no event longer than three years from the date of appointment. The board shall meet at least quarterly, provided that the board shall meet no less frequently than once per month for the first six months following its formation.

(c) The board shall have the following duties and responsibilities:

(1) Identify and recommend to the commissioner of Vermont health access opportunities to improve quality, efficiencies, and adherence to relevant evidence-based clinical practice guidelines in the department's medical programs by:

(A) examining high-cost and high-use services identified through the programs' current medical claims data;

(B) reviewing existing utilization controls to identify areas in which improved utilization review might be indicated, including use of elective, nonemergency, out-of-state outpatient and hospital services;

(C) reviewing medical literature on current best practices and areas in which services lack sufficient evidence to support their effectiveness;

(D) conferring with commissioners, directors, and councils within the agency of human services and the department of banking, insurance, securities, and health care administration, as appropriate, to identify specific opportunities for exploration and to solicit recommendations;

(E) identifying appropriate but underutilized services and recommending new services for addition to Medicaid coverage;

(F) determining whether it would be clinically and fiscally appropriate for the department of Vermont health access to contract with facilities that specialize in certain treatments and have been recognized by the medical community as having good clinical outcomes and low morbidity and mortality rates, such as transplant centers and pediatric oncology centers; and

(G) considering the possible administrative burdens or benefits of potential recommendations on providers, including examining the feasibility of exempting from prior authorization requirements those health care professionals whose prior authorization requests are routinely granted.

(2) Recommend to the commissioner of Vermont health access the most appropriate mechanisms to implement the recommended evidence-based clinical practice guidelines. Such mechanisms may include prior authorization, prepayment, postservice claim review, and frequency limits. Recommendations shall be consistent with the department's existing utilization processes, including those related to transparency, timeliness, and reporting. Prior to submitting final recommendations to the commissioner of Vermont health access, the board shall ensure time for public comment is available during the board's meeting and identify other methods for soliciting public input.

(d) The commissioner may adopt a mechanism recommended pursuant to subdivision (c)(2) of this section with or without amendment, provided that if

the commissioner proposes to amend the mechanism recommended by the board, he or she shall request the board to consider the amendment before the mechanism is implemented or is filed as a proposed administrative rule pursuant to 3 V.S.A. § 838.

§ 2032. ROLE OF DEPARTMENT OF VERMONT HEALTH ACCESS

(a) The department of Vermont health access shall provide the clinical utilization review board with data support to enable the board to conduct reviews.

(b) The department's program integrity unit shall inform the board of practices the unit has identified through its reviews in order to avoid duplication of efforts.

(c) The department shall provide members of the board with per diem compensation.

(d) The department shall have the final authority to evaluate and implement the board's recommendations.

(e) The department shall conduct comprehensive evaluations of the board's success in improving clinical and utilization outcomes using claims data and a survey of health care professional satisfaction. The department shall report annually by January 15 to the house committee on health care and the senate committee on health and welfare regarding the results of the most recent evaluation or evaluations and a summary of the board's activities and recommendations since the last report.

(f) The department shall adopt rules pursuant to chapter 25 of Title 3 as needed to implement specific recommendations.

* * * All Populations – Miscellaneous * * *

Sec. C35. AHS; REQUESTS FOR PROPOSALS

(a)(1) By June 15, 2010, the agency of human services shall issue an initial request for proposals from community-based service providers and other organizations to provide services to clients of the agency through a performance-based contract as provided for in this section. The proposals shall be due to the agency no later than August 15, 2010. The agency shall make decisions on the initial round of proposals no later than September 15, 2010.

(2) The proposals shall be designed to:

(A) meet the outcomes for clients provided for in Sec. 4 (agency of human services) or 5 (corrections) of No. 68 of the Acts of the 2009 Adj. Sess. (2010);

(B) provide for structural change in the method of service delivery by integrating services in the local community for clients of the agency with complicated social and medical issues in a client-centered manner; and

(C) demonstrate a strong commitment by a range of community-based service providers and other organizations, including by existing providers, agencies designated by law to provide services, and other organizations.

(3) Each request for proposal shall include one of the following populations, and additional requests may include other populations with complicated social and medical needs in the discretion of the secretary of human services:

(A) individuals with mental health conditions and individuals with disabilities who are at risk of involvement with law enforcement, the criminal judicial system, or the department of corrections with a goal of reducing the involvement with law enforcement and incarceration;

(B) families with multiple social needs and involvement with the agency of human services with the goal of improved outcomes in attaining and retaining employment, maintaining stable and safe housing, reducing involvement of the division of family services, and improved health;

(C) women involved or at risk of becoming involved with the department of corrections with the goal of reducing incarceration;

(D) individuals at risk of inpatient hospitalization for a psychiatric need; and

(E) in addition to the pilot projects provided for in Sec C9 of this act, families which include children with disabilities, including mental health conditions.

(b) The agency may invest up to $2 million from its appropriation in Sec. D.106 of H.789 of 2010, plus any available matching funds, in these proposals for the purpose of saving $2 million through changes which improve service delivery or client outcomes as described in Secs. 4 and 5 of No. 68 of the Acts of the 2009 Adj. Sess. (2010).

(c) The request for proposals shall provide for an ongoing application process in order to ensure an appropriate implementation of proposals over time. Community-based service providers and other organizations may apply jointly to provide multiple services across more than one organization. Prior to submitting a proposal, an interested organization or organizations shall attend a workshop offered by the agency of human services describing the goals and requirements for the proposals.

(d) After receiving requests for proposals and prior to approval, the agency shall submit the proposal to the Challenges for Change board, created in Sec. C36 of this act, for review and a recommendation. The agency shall issue performance-based contracts for proposals after receiving the board's recommendations on the proposals as provided for in Sec. C36 of this act.

(e) The agency shall require that any proposals funded under this section shall identify the following:

(1) the degree of community support and commitment;

(2) any redundant or unnecessary administration that will be eliminated;

(3) any systemic changes in the service delivery system;

(4) the estimated savings, reductions in trend, or avoided costs across the agency of human services, the department of education, or other state agencies in fiscal years 2011 and 2012; and

(5) how the program changes established in the proposal will remain sustainable in fiscal year 2012 and later.

(f) Nothing in this section shall be interpreted to waive or abrogate existing law.

Sec. C36. AGENCY OF HUMAN SERVICES; CHALLENGES FOR CHANGE BOARD

(a) Creation of board. There is created in the agency of human services a Challenges for Change board to review and make recommendations on proposals from community-based service providers and other organizations as provided for in Sec. C35 of this act.

(b) Membership. The Challenges for Change board shall be composed of seven members representing the agencies, consumers, and service providers of the populations described in the requests for proposals being considered. The members shall be as follows:

(1) the secretary of human services or designee;

(2) three consumer representatives, one each appointed by the governor, the speaker of the house, and the senate committee on committees; and

(3) three individuals with relevant professional experience who are no longer employed by an agency or organization serving the populations identified in the request for proposals, one each appointed by the governor, the speaker of the house, and the senate committee on committees.

(c) Powers and duties.

(1) The board shall review the proposals received in response to the request issued by the agency of human services under Sec. C35 of this act and make a recommendation to the secretary of human services on which proposals should be accepted by the secretary or designee.

(2) The board shall comply with the public information law in subchapter 2 of chapter 5 of Title 1, and the public records law in subchapter 3 of chapter 5 of Title 1. The board shall receive administrative and other support from the agency of human services secretary's office.

(d) Report. The board shall report on a quarterly basis as provided for in Sec. H4 of this act.

(e) Number of meetings; term of committee. The board may meet as needed and shall cease to exist on June 30, 2012.

(f) Reimbursement. For attendance at meetings, consumers or family members of consumers on the committee shall be reimbursed at the per diem rate set in 32 V.S.A. § 1010 plus mileage reimbursement consistent with that established for state employees.

Sec. C37. INTENT; SAVINGS TARGETS

It is the intent of the general assembly that the agency of human services, community organizations, and other stakeholders continue to work on initiatives contained in the Challenges for Change Progress Report dated March 30, 2010l; initiatives identified during the 2010 legislative session, which are contained in hard copy as the legislative record for this act; and new initiatives to achieve the savings targets identified in No. 38 of the Acts of the 2009 Adj. Sess. (2010).

Sec. C38. QUARTERLY REPORTS

As part of its quarterly reports pursuant to Sec. H4 of this act, the agency of human services shall provide an update regarding:

(1) its efforts to develop coordinated and streamlined quality review processes for all services provided by the designated agencies and specialized service agencies;

(2) the progress of the department's efforts to reduce utilization of nursing home beds;

(3) the progress in planning for the redesign of the Woodside juvenile detention center;

(4) an update on the specialized case management program established in Reach Up under Sec. C12 of this act.

(5) the progress on continued collaboration with community organizations and other stakeholders to develop existing or new proposals as described in Sec. C37 of this act.

Sec. C39. ALLOCATION OF ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGE; BUDGET DIFFERENTIAL

To the extent that the reductions in appropriations authorized by Sec. 9 of No. 68 of the Acts of the 2009 Adj. Sess. (2010) and this act consist of matching funds for Medicaid, and actions of the federal government result in the provisions of Sec. D.106(a) of H.789 of 2010 being unnecessary, then the amount of reduction that is attributable to the difference between the Federal Medical Assistance Percentage with and without the extension referenced in Sec. D.106(a) of H.789 of 2010 shall be from the balance in the human services caseload reserve prior to any allocation made subsequent to Sec. D.106(a) of H.789 of 2010.

Sec. C40. Sec. 5(a) of No. 68 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

(a) The corrections challenge is to the secretary of human services, commissioner of education, and administrative judge to collaborate to develop a plan which if implemented would reduce the number of people entering the corrections system, decrease the recidivism rate, improve community safety, and reduce the corrections budget ~~by $10 million~~ in fiscal year 2011 and ~~$10 million~~ in fiscal year 2012. ~~In fiscal year 2011, $3 million of the $10 million saved, and in fiscal year 2012, $2 million of the $10 million saved shall~~ Funds may be reinvested in programs and services which will reduce the number of people entering the criminal justice system and decrease the recidivism of those who do enter the system.

Sec. C41. Secs. 9(c)(3) and (4) of No. 68 of the Acts of the 2009 Adj. Sess.(2010) are amended to read:

(3) Human Services. In fiscal year 2011, the secretary shall reduce human services general fund appropriations or make transfers to the general fund, or both, by a total of at least ~~$16,816,000.00; and to achieve this reduction, the secretary may reduce total appropriations up to $46,040,000.00~~ $23,816,000.00. Reductions in federal fund appropriations may be made for any portion of the general fund reduction that is matched. The secretary may invest up to ~~$4,000,000.00~~ $7,000,000.00 as needed, including in request for proposals for performance contracts with agencies, to accomplish this challenge at any time during fiscal year 2011, so long as the general fund appropriation reductions under this subsection, by the end of fiscal year 2011, after this investment, equal or exceed ~~$16,816,000.00~~ $23,816,000.00. The

funds described in this section shall supplement and not supplant other funding in the agency of human services.

~~(4) Corrections. In fiscal year 2011, the secretary may reduce general fund appropriations in the department of corrections or other criminal justice system organization budgets by up to $10,000,000.00 and may reinvest up to $3,000,000.00 to accomplish this challenge; but shall r educe general fund appropriations by at least $7,000,000.00 plus the amount of reinvestment.~~

*** * * D. Individuals Involved With or At Risk For Involvement With Corrections * * ***

Sec. D1. RESTATEMENT OF OUTCOMES FOR INDIVIDUALS INVOLVED WITH OR AT RISK FOR INVOLVEMENT WITH CORRECTIONS

Outcomes:

(1) The number of people returned to prison for technical violation of probation and parole, while ensuring public safety, shall decrease.

(2) The number of people coming into the corrections system shall decrease.

(3) The number of nonviolent offenders diverted from prison into the community while ensuring public safety and providing effective consequences for criminal behavior shall increase.

(4) Recidivism shall decrease.

(5) A unified crime prevention and justice system shall be established.

(6) Revenues realized within the corrections system from programs designed to develop skills of offenders shall increase.

(7) Short-term lodgings in department of corrections facilities shall decrease.

Sec. D2. REDUCTION IN NUMBER OF PEOPLE INCARCERATED; GOAL

The general assembly has stated in both No. 179 of the Acts of the 2007 Adj. Sess. (2008), and No. 68 of the Acts of the 2009 Adj. Sess. (2010) that Vermont's incarcerated population is growing at an unsustainable rate and in both acts has directed the department of corrections to reinvest portions of its annual appropriation in programs and services which will have the effect of reducing that population. Therefore, the department of corrections shall strive to reduce the number of offenders incarcerated to 2,000 or less by July 1, 2012 and to 1,800 or less by July 1, 2014.

* * * Limit Use of Arrest Warrants for Failure to Pay Fines * * *

Sec. D3. 13 V.S.A. chapter 223, subchapter 2 is amended to read:

~~Subchapter 2. Imprisonment in Lieu of Payment of Fines and Costs~~

~~§ 7221. ALLOWANCES IN SENTENCES IN LIEU OF FINES~~

~~Any prisoner serving an alternative sentence of confinement in any penal institution which is in lieu of the payment of fine shall be released at the expiration of as many days as there are dollars, or fractional part thereof, in such fine and if such prisoner shall pay such fine during the time of his or her commitment he or she shall be given credit for time served at the rate of one dollar for each full day, or fractional part thereof, so served. All statutes inconsistent herewith are hereby amended to conform with the foregoing provisions.~~

~~§ 7222. SENTENCES TO IMPRISONMENT, OR TO FINE AND IMPRISONMENT~~

~~When a person over 16 years of age is convicted of an offense punishable by fine or imprisonment, or both, and is sentenced to imprisonment and also to pay a fine the court shall order that if such fine is not paid, he or she shall be imprisoned for as many days as the number of dollars or fractional part thereof to be paid by the sentence and such sentence shall take effect at the expiration of the term of imprisonment, and but one mittimus shall be required therefor.~~

~~§ 7223. SENTENCES TO PAY FINE~~

~~When a person over 16 years of age is convicted of an offense, except the offense of being found intoxicated, punishable by fine, or by fine or imprisonment and the court sentences such person to pay a fine and passes no other sentence, it shall further order that, if the sentence is not complied with within 24 hours, such person shall be imprisoned for as many days as the number of dollars or fractional part thereof to be paid by the sentence but not to exceed a maximum imprisonment of 60 days. The court in its discretion may issue a warrant of commitment forthwith.~~

~~§ 7224. EXECUTION OF WARRANT~~

~~An officer shall arrest and hold the respondent on such warrant for 24 hours. However, the respondent, at the time of his or her arrest upon the mittimus, may waive the provisions of this section.~~

~~§ 7225. DISCHARGE ON PAYING BALANCE OF FINE~~

~~A person so committed may be discharged on paying the balance of the fine after deducting one dollar for each day or fractional part thereof he or she has been committed for such default.~~

~~§ 7226.~~ § 7179. FINES NOT DISCHARGEABLE IN BANKRUPTCY

A criminal fine owed to the state shall be nondischargeable, to the maximum extent provided under 11 U.S.C. § 523, in the United States Bankruptcy Court and shall not be subject to a statute of limitations.

§ 7180. REMEDIES FOR FAILURE TO PAY FINES, COSTS, SURCHARGES, AND PENALTIES

(a) As used in this section:

(1) "Amount due" means all financial assessments, including penalties, fines, surcharges, court costs, and any other assessments imposed by statute as part of a sentence for a criminal conviction.

(2) "Designated collection agency" means a collection agency designated by the court administrator pursuant to subsection 7171(b) of this title.

(3) "Designated credit bureau" means a credit bureau designated by the court administrator or the court administrator's designee.

(b) Collection of amount due. If an amount due remains unpaid for 75 days after the court provides the defendant with a notice of judgment, the court may refer the matter to a designated collection agency or initiate civil contempt proceedings pursuant to this section.

(c) Civil contempt proceeding.

(1) Notice of hearing. The court shall provide notice by first class mail sent to the defendant's last known address that a contempt hearing will be held pursuant to this subsection, and that failure to appear at the contempt hearing may result in the sanctions listed in subdivision (2) of this subsection.

(2) Failure to appear. If the defendant fails to appear at the contempt hearing, the court may direct the clerk to:

(A) cause the matter to be reported to one or more designated credit bureaus;

(B) issue a judicial summons ordering the defendant to appear in district court; or

(C) issue an arrest warrant if the defendant fails to appear in response to the judicial summons. The arrest warrant shall be limited to arrest during court hours only and order that the defendant be brought immediately to court.

(3) Hearing. The hearing shall be conducted in a summary manner. The court shall examine the defendant and any other witnesses and may require the defendant to produce documents relevant to the defendant's ability to pay the

amount due. The state shall not be a party except with the permission of the court. The defendant may be represented by counsel at the defendant's own expense.

(4) Contempt.

(A) The court may conclude that the defendant is in contempt if the court finds that:

(i) the defendant knew or reasonably should have known that he or she owed the amount due;

(ii) the defendant had the ability to pay all or any portion of the amount due; and

(iii) the defendant failed to pay all or any portion of the amount due.

(B) If the court concludes that the defendant is in contempt, the court may:

(i) Order payment of the amount due on a specific date.

(ii) Assess an additional penalty not to exceed ten percent of the amount due.

(iii) Direct that the matter be reported to one or more designated credit bureaus. The court administrator or the court administrator's designee is authorized to contract with one or more credit bureaus for the purpose of reporting information about unpaid judicial bureau judgments.

(iv) Refer to small claims court for the purpose of issuing writs of attachment for property and trustee process pursuant to 12 V.S.A. § 5534. Filing fees shall be waived in such cases.

(v) Sentence the defendant to serve a term or imprisonment on furlough to participate in a program supervised by the department of corrections pursuant to 28 V.S.A. § 808(7) that provides reparation to the community in the form of supervised work activities. For each day the defendant participates in supervised work activities, the defendant shall be given credit against the amount owed at the hourly rate for minimum wage. A defendant who is determined by the department of corrections to be ineligible for the preapproved furlough supervised work program may be ordered by the court to serve a sentence in a correctional facility, in which event the defendant shall be given credit against the amount owed for every day served at a rate determined by the court.

(C) If the court concludes that the defendant is not in contempt because the defendant does not have the ability to pay the amount due, the court may:

(i) suspend all or any part of the amount due in the interest of justice, except that the court may not waive surcharges imposed pursuant to section 7282 of this title.

(ii) order the defendant to participate in the restorative justice program conducted by a community reparative board and direct the reparative board to determine an appropriate amount of community service to be performed in lieu of all or part of the amount due.

(d) For purposes of civil contempt proceedings, the venue shall be statewide.

(e) Notwithstanding 32 V.S.A. § 502, the court administrator is authorized to contract with a third party to collect fines, penalties, and fees by credit card, debit card, charge card, prepaid card, stored value card, and direct bank account withdrawals or transfers, as authorized by 32 V.S.A. § 583, and to add on and collect or charge against collections a processing charge in an amount approved by the court administrator.

* * * Establish Home Detention Program for Pretrial Detainees * * *

Sec. D4. 13 V.S.A. § 7554b is added to read:

§ 7554b. HOME DETENTION PROGRAM

(a) As used in this section, "home detention" means a program of confinement and supervision that restricts a defendant to a preapproved residence continuously, except for authorized absences, and is enforced by appropriate means of surveillance and electronic monitoring by the department of corrections. The court may authorize scheduled absences such as work, school, or treatment. Any changes in the schedule shall be solely at the discretion of the department of corrections. A defendant who is on home detention shall remain in the custody of the commissioner of the department of corrections with conditions set by the court.

(b) Procedure. The status of a defendant who is detained pretrial for more than seven days in a correctional facility for lack of bail may be reviewed by the court to determine whether the defendant is appropriate for home detention. The request for review may be made by either the department of corrections or the defendant. After a hearing, the court may order that the defendant be released to the home detention program, providing that the court finds placing the defendant on home detention will reasonably assure his or her appearance

in court when required and the proposed residence is appropriate for home detention. In making such a determination, the court shall consider:

(1) the nature of the offense with which the defendant is charged;

(2) the defendant's prior convictions, history of violence, medical and mental health needs, history of supervision, and risk of flight; and

(3) any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from such placement.

(c) Failure to comply. The department of corrections may revoke a defendant's home detention status for an unauthorized absence or failure to comply with any other condition of the program and shall return the defendant to a correctional facility.

* * * Establish Probation Term Limit for Nonviolent Felonies * * *

Sec. D5. 28 V.S.A. § 205 is amended to read:

§ 205. PROBATION

(a)(1) After passing sentence, a court may suspend all or part of the sentence and place the person so sentenced in the care and custody of the commissioner upon such conditions and for such time as it may prescribe in accordance with law or until further order of court.

(2) The term of probation for misdemeanors shall be for a specific term not to exceed two years unless the court, in its sole discretion, specifically finds that the interests of justice require a longer or an indefinite period of probation.

(3)(A) The term of probation for nonviolent felonies shall not exceed four years or the statutory maximum term of imprisonment for the offense, whichever is less, unless the court, in its sole discretion, specifically finds that the interests of justice require a longer or an indefinite period of probation.

* * *

* * * Expand Eligibility for Adult Court Diversion Program * * *

Sec. D6. 3 V.S.A. § 164 is amended to read:

§ 164. ADULT COURT DIVERSION PROJECT

(a) The attorney general shall develop and administer an adult court diversion project in all counties. The project shall be operated through the juvenile diversion project and shall be designed to assist ~~adult first-time offenders~~ adults who have been charged with a first or second misdemeanor or a first nonviolent felony. The attorney general shall adopt only such rules as

are necessary to establish an adult court diversion project for adults, in compliance with this section.

* * *

(c) All adult court diversion projects receiving financial assistance from the attorney general shall adhere to the following provisions:

* * *

(4) Each state's attorney, in cooperation with the adult court diversion project, shall develop clear criteria for deciding what types of offenses and offenders will be eligible for diversion; however, the state's attorney shall retain final discretion over the referral of each case for diversion.

* * *

Sec. D6.1. COURT DIVERSION PROJECT

The Vermont association of court diversion programs, the department of state's attorneys and sheriffs and the Vermont network against domestic and sexual violence shall jointly develop referral criteria to appropriately screen charges for the purpose of identifying those that have elements of underlying domestic violence, sexual violence, or stalking.

* * * Permit Earlier Reintegration Furlough for Nonviolent Offenders * * *

Sec. D7. 28 V.S.A. § 808(a)(8)(A) is amended to read:

(A) Any offender sentenced to incarceration may be furloughed to the community up to ~~90~~ 180 days prior to completion of the minimum sentence, at the commissioner's discretion and in accordance with rules adopted pursuant to subdivision (C) of this subdivision (8), provided that an offender sentenced to a minimum term of fewer than ~~180~~ 365 days shall not be eligible for furlough under this subdivision until the offender has served at least one-half of his or her minimum term of incarceration.

* * * Establish DOC Graduated Sanctions for Technical VOPs * * *

Sec. D8. 28 V.S.A. § 256 is added to read:

§ 256. GRADUATED SANCTIONS FOR TECHNICAL VIOLATIONS

(a) At any time before the discharge of the probationer or the termination of the period of probation if, in the judgment of the commissioner, the probationer has violated a condition or conditions of his or her probation, other than a condition that the probationer pay restitution to the department or a violation which constitutes a new crime, the commissioner may sanction the probationer in accordance with rules adopted pursuant to subsection (b) of this

section. However, no probationer shall be incarcerated except pursuant to the provisions of subchapter 3 of this chapter.

(b) The department of corrections shall adopt rules pursuant to chapter 25 of Title 3 that establish graduated sanction guidelines for probation violations as an alternative to arrest or citation under section 301 of this title.

* * * Reinvestment of Savings * * *

Sec. D9. BUDGETARY SAVINGS; ALLOCATIONS IN FISCAL YEAR 2011

(a) In FY 2011, a total of $6,350,200.00 in investments in communities and services are included in the department of corrections budget. In Sec. B338 of H.789 of 2010 (Appropriations Act), a total of $3,186,000.00 is allocated for investments, and a total of $3,164,500.00 is allocated in subsection (c) of this section. These investments are intended to result in reduced overall costs in the corrections budget by reducing the levels of incarceration and recidivism. A specific goal of these investments is to reduce the three-year recidivism rate from the current level of 53 percent to a level of 40 percent by fiscal year 2014. For each of these investments, the department shall develop benchmarks which can describe how well it is meeting the outcomes in No. 68 of the Acts of the 2009 Adj. Sess. (2010). Where appropriate, the department shall develop these benchmarks in consultation with the organizations with whom it enters into performance-based contracts to carry out these programs and services. The department shall present the benchmarks, and current baselines for each benchmark based on data currently collected to the corrections oversight committee at its meeting in October 2010.

(b) The department shall have the authority to transfer investment funds referred to in subsections (a) and (c) of this section, where appropriate, to the agency of human services central office to convert these funds to Global Commitment funds to be used for eligible investment expenditures.

(c) The general assembly recognizes that savings will be achieved in the department of corrections budget due to the provisions of this act and of S.292 of 2010 as enacted, and it is the intent of the general assembly that, in anticipation of these savings, the department will invest in programs and services which will further reduce incarceration and recidivism in future years. Therefore, upon passage of this act and prior to actually realizing the savings from the amounts appropriated to the department of corrections, the department shall expend $3,164,500.00 and report on its expenditures to the corrections oversight committee at each of its 2010 meetings. Expenditures shall be as follows:

(1) The amount of $1,324,000.00 shall be to provide grants to community providers for supportive and residential treatment services for transitional beds for offenders reentering the community.

(2) The amount of $80,000.00 shall be for prison treatment programs which will realize an increase in use due to a change in department policy to enable a person terminating a prison treatment program to reenter the program sooner.

(3) The amount of $650,000.00 shall be for grants to provide a continuum of services which aim to prevent people from entering the criminal justice system and to help offenders reentering the community. It is the intent of the general assembly that these funds shall be for community justice centers in counties where they are established, and for similar restorative justice programs in counties which do not have a community justice center.

(4) The amount of $200,000.00 shall be provided to the judiciary to increase the capacity of community service providers, such as providers of case management, substance abuse treatment, or diversion services.

(5) The amount of $910,500.00 shall be to purchase electronic monitoring equipment, including ignition interlock devices, and additional field services for supervision of offenders released to probation, parole, furlough, home confinement, and home incarceration.

Sec. D10. DEPARTMENT OF CORRECTIONS; FACILITIES CLOSING

In fiscal year 2011, the department of corrections shall not close or substantially reduce services at a correctional facility or field office.

* * * Reparative Board Sentence * * *

Sec. D11. 13 V.S.A. § 7030 is amended to read:

§ 7030. SENTENCING ALTERNATIVES

(a) In determining which of the following should be ordered, the court shall consider the nature and circumstances of the crime, the history and character of the defendant, the need for treatment, and the risk to self, others, and the community at large presented by the defendant:

(1) A deferred sentence pursuant to section 7041 of this title.

(2) Referral to a community reparative board pursuant to chapter 12 of Title 28 in the case of an offender who has pled guilty to a nonviolent felony, a nonviolent misdemeanor, or a misdemeanor that does not involve the subject areas prohibited for referral to a community justice center under 24 V.S.A. § 1967. Referral to a community reparative board pursuant to this subdivision does not require the court to place the offender on probation. The offender

shall return to court for further sentencing if the reparative board does not accept the case or if the offender fails to complete the reparative board program to the satisfaction of the board in a time deemed reasonable by the board.

(3) Probation pursuant to ~~section~~ 28 V.S.A. § 205 ~~of Title 28~~.

~~(3)~~(4) Supervised community sentence pursuant to ~~section~~ 28 V.S.A. § 352 ~~of Title 28~~.

~~(4)~~(5) Sentence of imprisonment.

(b) When ordering a sentence of probation, the court may require participation in the restorative justice program established by chapter 12 of Title 28 as a condition of the sentence.

Sec. D12. COMMISSIONER OF CORRECTIONS; AID TO COMMUNITIES WITH A HIGH NUMBER OF PEOPLE UNDER THE CUSTODY OF THE COMMISSIONER

The commissioner of corrections shall work with communities in which a high number of people are under his or her custody, including those living in the community and those who are incarcerated residents of the community, to help the community to reduce the number of people entering into custody. For expenditures from funds reinvested pursuant to Sec. D9 of this act and Sec. 338 of H.789 of 2010 (Appropriations Act), in community level services, the commissioner shall give priority to projects located in the four communities which have the highest number of people under his or her custody, including those living in the community and residents who are incarcerated.

*** * * E. Education Challenge * * ***

Sec. E1. RESTATEMENT OF OUTCOMES FOR EDUCATION CHALLENGE

The outcomes for education for the focus on learning and special education challenges, each of which outcomes is equally important, are:

(1) Increase electronic and distance learning opportunities that enhance learning, increase productivity, and promote creativity.

(2) Increase the secondary school graduation rates for all students.

(3) Increase the aspiration, continuation, and completion rates for all students in connection with postsecondary education and training.

(4) Increase administrative efficiencies within education governance in a manner that promotes student achievement.

(5) Increase cost-effectiveness in delivery of support services for students with individualized education plans.

(6) Increase the use of early intervention strategies that enable students to be successful in the general education environment and help avoid the later need for more expensive interventions.

Sec. E2. REDUCTION IN EDUCATION SPENDING; FISCAL YEAR 2012; TARGETED RECOMMENDATIONS

(a) The general assembly recognizes the excellent work performed by school boards to control the growth of education spending in fiscal years 2008 through 2011. Fiscal realities at the state, federal, and international levels demand that school districts continue to exercise fiscal restraint in FY 2012 and beyond.

(b) The Education Challenge is to reduce education spending in FY 2012 so that it is $23,200,000.00 less than in FY 2011, which is approximately a two-percent reduction in education spending statewide, while achieving the outcomes for education set forth in Sec. E1 of this act.

(c) In order to achieve a two-percent reduction in education spending statewide, the commissioner of education shall determine and allocate a recommended individualized amount of reductions in FY 2012 education spending to each supervisory union and to each technical center district, which in the aggregate shall total $23,200,000.00. When developing the recommended individualized education spending reductions, the commissioner shall consider factors in each supervisory union, each district within the supervisory union, and each regional technical center such as:

(1) demonstrated fiscal restraint;

(2) per-pupil administrative costs;

(3) student-to-staff ratios;

(4) the percentages of students from economically deprived backgrounds or for whom English is not the first language or both; and

(5) other unique circumstances that affect education spending.

(d) On or before August 1, 2010, the commissioner shall notify each supervisory union and technical center district of the recommended individualized amount by which FY 2012 education spending should be reduced below FY 2011 education spending.

(e) Within each supervisory union, school boards shall work jointly to attempt to achieve the recommended individualized education spending reduction through the combined budget reductions of the supervisory union, all

school districts within the supervisory union, and any technical center hosted by a school district. The boards of the supervisory union and each district within it shall notify the commissioner on or before January 15, 2011, whether their combined budgets will be able to meet recommended reductions. The commissioner shall transmit this information to the senate and house committees on appropriations and on education, the senate committee on finance, and the house committee on ways and means.

(f) Budget reductions shall be achieved through structural changes and administrative efficiencies.

*** * * F. Regulatory Challenge * * ***

Sec. F1. RESTATEMENT OF OUTCOMES FOR REGULATORY CHALLENGE

Outcomes for regulatory reform: The secretary of natural resources, the secretary of agriculture, food and markets, the chair of the public service board, the chair of the natural resources board, the commissioner of public service, and the administrative judge shall protect Vermont's natural resources and collaborate to develop a plan that when implemented will meet the following outcomes:

(1) The permitting and licensing processes achieve environmental standard, and are clear, timely, predictable, and coordinated between agencies and municipalities.

(2) The permitting process enables applicants to readily determine what permits and licenses are needed and what information must be submitted to apply for those permits and licenses.

(3) The permit and enforcement processes enable citizens and visitors to the state of Vermont to understand and comply with the laws protecting our natural and agricultural resources.

(4) Permitting, licensing, and environmental protective services are cost-effective and user friendly.

(5) The decision-making process is transparent, and citizens understand and participate in the process.

* * * Environmental and Energy Regulation * * *

Sec. F2. 3 V.S.A. § 839 is amended to read:

§ 839. PUBLICATION OF PROPOSED RULES

(a) ~~Upon receiving a proposed rule, the secretary of state shall arrange for two formal publications of information relating to the proposal.~~

~~(b) The first formal publication~~ The secretary of state shall publish online notice of a proposed rule ~~shall~~ within two weeks of receipt of the proposed rule. Notice shall include the following information ~~from the cover sheet~~:

* * *

~~(c) The second formal publication of a proposed rule shall include the following information from the sheet:~~

~~(1) the name of the agency;~~

~~(2) the title and subject of the rule; and~~

~~(3) the name, telephone number and address of an agency official able to answer questions and receive comments on the proposed rule.~~

~~(d) Formal publications shall be made on Thursdays in a consolidated advertisement in the newspapers of record. Annually on or before July 1, the secretary of state shall approve a number of newspapers having general circulation in different parts of the state as newspapers of record under this chapter.~~

~~(e) In addition to formal publication, the secretary of state shall also arrange for publication of an abbreviated notice of proposed rules on a weekly basis in selected newspapers in the state. These notices shall contain the subject of recently proposed rules, together with a brief statement by the secretary of state explaining where to write or telephone for more information on the rules.~~

~~(f)~~(b) The secretary of state may edit all ~~advertisements~~ notices for clarity, brevity, and format and shall include a brief statement explaining how members of the public can participate in the rulemaking process.

~~(g) The secretary of state shall be reimbursed by agencies making publication so that all costs are prorated among agencies publishing at the same time.~~

Sec. F3. 3 V.S.A. § 840 is amended to read:

§ 840. PUBLIC HEARING AND COMMENT

(a) The agency may hold one or more public hearings for each proposed rule. A public hearing shall be scheduled if so requested by 25 persons, by a governmental subdivision or agency, by the interagency committee on administrative rules, or by an association having 25 or more members. The first hearing shall not be held sooner than ~~10~~ 30 days following the ~~second formal publication~~ notice required by section 839 of this title.

* * *

(c) An agency shall afford all persons reasonable opportunity to submit data, views or arguments, orally or in writing, ~~in accordance with the terms of the notice given under section 839 of this title, but~~ at least through the seventh day following the last public hearing.

* * *

Sec. F4. SECRETARY OF STATE; PUBLICATION OF PROPOSED RULES

(a) The secretary of state shall arrange for one formal publication, in a consolidated advertisement in newspapers having general circulation in different parts of the state as newspapers of record approved by the secretary of state, of information relating to all proposed rules that includes the following information:

(1) the name of the agency and its Internet address;

(2) the title or subject of the rule; and

(3) the office name, office telephone number, and office mailing address of an agency official able to answer questions and receive comments on the proposal.

(b) The secretary of state shall be reimbursed by agencies making publication so that all costs are prorated among agencies publishing at the same time.

Sec. F5. SECRETARY OF STATE REPORT ON NOTIFICATION OF RULEMAKING

On or before January 15, 2011, the secretary of state shall report to the senate and house committees on government operations with a recommendation for publishing notification of proposed rulemaking in newspapers in a different method or format, at a reduced frequency, or in newspapers of limited geographic circulation in order to reduce the costs to the state of providing notice while also ensuring the citizens of Vermont adequate notice and necessary due process.

Sec. F6. FINDINGS

The general assembly finds and declares that the regulatory reform component of "Challenges for Change" as set forth in Secs. F7–F33 of this act is intended to create administrative and permitting efficiencies at the agency of natural resources, the natural resources board, and the agency of agriculture, food and markets in order to increase staff time devoted to educational, compliance, and enforcement activities. It is the intent of the general assembly that permitting and administrative efficiencies created by regulatory reform

component of "Challenges for Change" shall not be used to reduce staffing or resources at the agency of natural resources, the natural resources board, or the agency of agriculture, food and markets.

* * * Agency of Agriculture, Food and Markets Provisions * * *

Sec. F7. 6 V.S.A. § 1(a) is amended to read:

(a) The agency of agriculture, food and markets shall be administered by a secretary of agriculture, food and markets. The secretary shall supervise and be responsible for the execution and enforcement of all laws relating to agriculture and standards of weight and measure. The secretary may:

* * *

(12) exercise any other power or authority granted by common law or statute;

(13) notwithstanding any law to the contrary in this title or Title 9 or 20, issue all licenses, permits, registrations, or certificates under a program administered by the secretary for a term of up to three years; renew and issue such licenses permits, registrations, and certificates on any calendar cycle; collect any annual fee set by law for such multiyear licensure, permit, registration, or certificate on a pro-rated basis which shall not exceed 150 percent of the annual fee for an 18-month cycle, 200 percent of the annual fee for a two-year cycle, or 300 percent of the annual fee for a three-year cycle; and conduct inspections at regulated premises at least once every three years when inspection is otherwise required by law. The authority to mandate licenses, permits, registrations, or certificates for more than one year shall not extend to any program administered by the secretary where the annual fee is more than $125.00.

(14) require any person or entity regulated by the secretary under this title or Title 9 or 20 to file an affidavit under oath or affirmation that the person or entity or their regulated premises is in compliance with an assurance of discontinuance or other order or the terms and conditions of a license, permit, registration, certificate, or approval issued by or under the statutory authority of the secretary or rules adopted under such statutory authority. The secretary's request for an affidavit of compliance under this subdivision may be delivered by hand or by certified mail. Failure to file such affidavit when requested or the material misrepresentation of a fact in the affidavit shall constitute a violation of the underlying regulatory program and grounds for revocation or assessment of administrative penalties or both under section 15 of this title.

* * * Agency of Natural Resources Permitting * * *

Sec. F8. 10 V.S.A. § 556 is amended to read:

§ 556. PERMITS FOR THE CONSTRUCTION OR MODIFICATION OF AIR CONTAMINANT SOURCES

* * *

(b) The secretary may require an applicant to submit any additional information which the secretary considers necessary to make the completeness determination required in subsection (a) of this section and shall not grant a permit until the information is furnished and evaluated. For air contaminant sources that have allowable emissions of more than ten tons per year of all contaminants, excluding greenhouse gases, upon making a determination ~~that an application is complete~~ to issue a draft permit, the secretary shall ~~cause~~ issue a notice~~, including~~ that includes a brief description of the source and the address where a complete permit application and draft permit may be reviewed, ~~to be published in a newspaper having general circulation in the area affected by the source,~~ shall provide a ~~30-day~~ public comment period on all draft permits, and shall hold a public informational meeting, if requested. The public comment period on a draft permit for a source that has allowable emissions of more than 10 tons per year, excluding greenhouse gases, shall be 30 days if the source constitutes a major stationary source or major modification under the rules of the secretary and shall otherwise be 10 days. For air contaminant sources that have allowable emissions of less than ten tons per year of all contaminants, the secretary may provide an opportunity for public comment or a public informational hearing, or both, before ruling on a proposed permit. In determining whether to provide for comment or a meeting, the secretary shall consider the degree of toxicity of the air contaminant and the emission rate, the proximity of the source to residences, population centers and other sensitive human receptors, and emission dispersion characteristics at or near the source. The secretary shall fully consider all written and oral submissions concerning proposed permits prior to taking final action on those proposed permits.

* * *

Sec. F9. 10 V.S.A. § 556a is amended to read:

§ 556a. OPERATING PERMITS

(a) Upon a date specified in the rules adopted by the secretary to implement this section, it shall be unlawful for any person to operate an air contaminant source that has allowable emissions of more than ten tons per year of all contaminants, excluding greenhouse gases, except in compliance with a permit issued by the secretary under this section. The secretary may require that air

contaminant sources with allowable emissions of ten tons or less per year obtain such a permit, upon determining that the toxicity and quantity of hazardous air contaminants emitted may adversely affect susceptible populations, or if deemed appropriate based on an evaluation of the requirements of the federal Clean Air Act.

* * *

(c) For air contaminant sources that have allowable emissions of more than ten tons per year of all contaminants, excluding greenhouse gases, upon making a determination ~~that an application is complete~~ to issue a draft permit, the secretary shall ~~cause~~ issue a notice~~, including~~ that includes a brief description of the source and the address where a complete permit application and a draft permit may be reviewed, ~~to be published in a newspaper having general circulation in the area affected by the source,~~ shall provide a ~~30-day~~ public comment period on all draft permits, and shall hold a public informational meeting, if requested. The public comment period on a draft permit for a source that has allowable emissions of more than 10 tons per year, excluding greenhouse gases, shall be 30 days if the source is subject to subchapter V (permits) of 42 U.S.C. chapter 85 (air pollution prevention and control) and shall otherwise be 10 days. For air contaminant sources that have allowable emissions of less than ten tons per year of all contaminants, the secretary may provide an opportunity for public comment or a public informational hearing, or both, before ruling on a proposed permit. In determining whether to provide for comment or a meeting, the secretary shall consider the degree of toxicity of the air contaminant and the emission rate, the proximity of the source to residences, population centers and other sensitive human receptors, and emission dispersion characteristics at or near the source. The secretary shall fully consider all written and oral submissions concerning proposed permits prior to taking final action on those proposed permits.

* * *

(e) A permit issued under this section may be renewed upon application to the secretary for a fixed period of time, not to exceed five years.

(1) A permit being renewed shall be subject to the same procedural requirements, including those for public participation, that apply to initial permit issuance, except that a permit being renewed shall not be subject to the public notice and comment requirements of this chapter if all of the following apply:

(A) The secretary determines that no substantive changes have occurred at the air contaminant source that would affect emissions or require changes to the permit.

(B) The secretary determines no new statutory or regulatory requirements need to be added to the permit.

(C) The air contaminant source does not require a permit under subchapter V (permits) of 42 U.S.C. chapter 85 (air pollution prevention and control).

(2) The secretary shall not issue a permit renewal unless the applicant first demonstrates that the emissions from the subject source meet all applicable emission control requirements or are subject to, and in compliance with, an appropriate schedule of compliance.

* * *

(j) Except in compliance with a permit issued by the secretary under this section, it shall be unlawful for a person to operate an air contaminant source that has allowable emissions of greenhouse gases that equal or exceed any threshold established by the U.S. Environmental Protection Agency at or above which such emissions are subject to the requirements of subchapter V (permits) of 42 U.S.C. chapter 85 (air pollution prevention and control). Based on available emission control technologies or energy efficiency measures, or as otherwise appropriate to implement the provisions of this chapter, the secretary may adopt rules to require air contaminant sources with allowable emissions below such threshold to obtain a permit under this section.

Sec. F10. 10 V.S.A. § 6602 is amended to read:

§ 6602. DEFINITIONS

For the purposes of this chapter:

* * *

(26) "Household hazardous waste" means any waste from households that would be subject to regulation as hazardous wastes if it were not from households.

Sec. F11. 10 V.S.A. § 6605 is amended to read:

§ 6605. SOLID WASTE MANAGEMENT FACILITY CERTIFICATION

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

* * *

(2) Certification shall be valid for a period not to exceed ~~five~~ ten years, except that a certification issued to a sanitary landfill or a household hazardous waste facility under this section shall be for a period not to exceed five years.

(b) Certification for a solid waste management facility, where appropriate, shall:

* * *

(5) Contain provisions for air, groundwater and surface water monitoring throughout the life of the facility ~~and for a reasonable time after closure of the facility,~~ and provisions for erosion control, capping, landscaping, drainage systems, and monitoring systems for leachate and gas control;

* * *

(i) In lieu of obtaining a certification for the long-term maintenance and postclosure care of the facility the secretary shall adopt rules to ensure the proper maintenance and postclosure care of facilities that disposed of municipal solid waste and any other waste stream designated by the secretary. These rules shall require that the facility owner and operator maintain financial responsibility as required under section 6611 of this title for the period of time determined necessary to protect public health and the environment. These rules may include requirements for monitoring at a facility, monitoring requirements for surface water or groundwater in the vicinity of the facility, monitoring of leachate and gas control, physical maintenance of the facility, and corrective action for any release of a solid waste from the facility.

Sec. F12. 10 V.S.A. § 6606 is amended to read:

§ 6606. HAZARDOUS WASTE CERTIFICATION

(a) No person shall store, treat, or dispose of any hazardous waste without first obtaining certification from the secretary for such facility, site or activity. Certification shall be valid for a period not to exceed ~~five~~ ten years.

* * *

Sec. F13. 10 V.S.A. § 7501 is amended to read:

§ 7501. GENERAL PERMITS

(a) The purpose of this chapter is to authorize the secretary of natural resources to issue general permits for the implementation of permit programs where such authority would establish permitting efficiencies while simultaneously maintaining necessary protection of public health and the environment. It is the intent of the general assembly that the general permitting authority granted to the agency of natural resources under this chapter be used only for classes or categories of similar discharges, emissions,

disposal, facilities, or activities that present low risk to the environment and public health.

(b) When the secretary deems it to be appropriate and consistent with the purpose of this chapter, the secretary may issue a general permit under the following chapters of this title: chapter 23 (air pollution control) for stationary source construction permits; chapter 37 (water resources management) for aquatic nuisance control permits authorizing chemical treatment by the agency of natural resources, a department within that agency, or an appropriate federal agency; ~~chapter 56 (public water supply) for construction permits;~~ and chapter 159 (waste management) for solid waste transfer station and recycling certifications and categorical certifications.

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

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

Sec. F14. 10 V.S.A. § 8003 is amended to read:

§ 8003. APPLICABILITY

(a) The secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes:

* * *

Sec. F15. 10 V.S.A. § 8504(j) is amended to read:

(j) Appeals ~~to discharge~~ of authorizations or coverage under a general permit. Any appeal of an authorization ~~to discharge~~ or coverage under the terms of a general permit shall be limited in scope to whether the permitted activity complies with the terms and conditions of the general permit.

* * * Environmental Enforcement * * *

Sec. F16. 10 V.S.A. § 8005 is amended to read:

§ 8005. INVESTIGATIONS ~~AND~~; INSPECTIONS; AFFIDAVIT OF COMPLIANCE

* * *

(c) At any time, the secretary, the land use panel, or a district commission created pursuant to subsection 6026(b) of this title may require a permittee to file an affidavit under oath or affirmation that a facility, project, development, subdivision, or activity of the permittee is in compliance with an assurance of discontinuance or order issued under this chapter or a permit issued under a statute identified under subsection 8003(a) of this title or under a rule enforceable under authority set forth under a statute identified under subsection 8003(a) of this title. A request for an affidavit of compliance under this subdivision may be delivered by hand or by certified mail. Failure to file an affidavit within the period prescribed by the secretary, land use panel, or district commission or the material misrepresentation of fact in the affidavit shall be a violation and shall also constitute grounds for revocation of the permit to which the affidavit requirement, assurance of discontinuance, or order under this chapter applies.

Sec. F17. 10 V.S.A. § 8007(b)(3) is amended and (4) is added to read:

(3) for a violation that does not affect the natural environment or cause any environmental harm, contribution toward public educational projects, administered by the agency of natural resource or the natural resources board, that will enhance the public's awareness and compliance with statutes identified in subsection 8003(a) of this title and with any related rules or permits or related assurances of discontinuance or orders issued under this chapter. Contributions under this subdivision shall be used for the purpose stated in this subdivision and shall be deposited as follows:

(A) into the Act 250 permit fund established under section 6029 of this title for the portion of a settlement attributable to the resolution of a violation under authority that the natural resources board enforces under subsection 8003(a) of this title; or

(B) into the treasury for the portion of a settlement attributable to the resolution of a violation under authority that the secretary enforces under subsection 8003(a) of this title, for use by the secretary;

(4) payment of monetary penalties, including stipulated penalties for violation of the assurance.

* * *

Sec. F18. 10 V.S.A. § 8008(a) is amended to read:

(a) The secretary may issue an administrative order when the secretary determines that a violation exists. The order shall be served ~~on the respondent in person or by acceptance of service, in accordance with court rules, by a person designated by the respondent~~ as provided for under the Vermont Rules of Civil Procedure. A copy of the order also shall be delivered to the attorney general. An order shall be effective on receipt unless stayed under subsection 8012(e) of this title.

* * * Agency of Natural Resources; Cost Reimbursement * * *

Sec. F19. 3 V.S.A. § 2809 is added to read:

§ 2809. REIMBURSEMENT OF AGENCY COSTS

(a)(1) The secretary may require an applicant for a permit, license, certification, or order issued under a program that the secretary enforces under 10 V.S.A. § 8003(a) to pay for the cost of research, scientific, or engineering expertise or services that the agency of natural resources does not have when such expertise or services are required for the processing of the application for the permit, license, certification, or order.

(2) The secretary may require an applicant under chapter 151 of Title 10 to pay for the time of agency of natural resources personnel providing research, scientific, or engineering services or for the cost of expert witnesses when agency personnel or expert witnesses are required for the processing of the permit application.

(3) Except as set forth under chapters 59 and 159 of Title 10 and 10 V.S.A. § 1283, the secretary may require a potentially responsible person or a person in violation of a permit, license, certification, or order issued by the secretary to pay for the time of agency personnel or the cost of other research, scientific, or engineering services incurred by the agency in response to a threat to public health or the environment presented by an emergency or exigent circumstance.

(b) Prior to commencing or contracting for research, scientific, or engineering expertise or services or contracting for expert witnesses for which the secretary intends to seek cost reimbursement under subdivisions (a)(1) and (2) of this section, the secretary shall notify the applicant for a permit, license, certification, or order of the secretary's authority to assess costs under this section.

(c)(1) Within 15 days of issuance of notice under subsection (b) of this section, an applicant for a permit, license, certification, or order may request a meeting with the secretary to identify and review the proposed agency services or contracting services that may be assessed to the applicant.

(2) The secretary may enter into agreements with an applicant for a permit, license, certification, or order under which either the applicant or the agency of natural resources shall provide or pay for the necessary research, scientific, or engineering expertise or services or expert witnesses.

(3) When the secretary meets with an applicant under this subsection, the secretary shall provide the applicant in writing a preliminary estimate of the costs to be assessed and the purpose of the funds.

(d) The following apply to the authority established under subsection (a) of this section:

(1) The secretary may assess costs under subdivisions (a)(1) and (2) of this section to the applicant or applicants for the permit only with the approval of the governor. Costs assessed under subdivision (a)(3) shall not require approval of the governor.

(2) The secretary may require reimbursement only of costs in excess of $3,000.00.

(3) The secretary may revise estimates previously noticed as necessary from time to time during the progress of the work and shall notify the applicant in writing of any revision.

(4) The secretary shall provide the applicant with a detailed statement of a final assessment under this section showing the total amount of money expended or contracted for in the work and directing the manner and timing of payment by the applicant.

(5) All funds collected from applicants shall be paid into the state treasury.

(e) The secretary may withhold a permit approval or suspend the processing of a permit application for failure to pay reasonable costs imposed under this subsection.

(f) An action or determination of the secretary under this section shall constitute an act or decision of the secretary that may be appealed in accordance with 10 V.S.A. § 8504.

Sec. F20. 10 V.S.A. § 6027 is amended to read:

§ 6027. POWERS

* * *

(m) After notice and opportunity for hearing, a district commission may withhold a permit or suspend the processing of a permit application for failure of the applicant to pay costs assessed under 3 V.S.A. § 2809 related to the participation of the agency of natural resources in the review of the permit or permit application.

Sec. F21. 10 V.S.A. § 6083(a) is amended to read:

(a) An application for a permit shall be filed with the district commissioner as prescribed by the rules of the board and shall contain at least the following documents and information:

(1) The applicant's name, address, and the address of each of the applicant's offices in this state, and, where the applicant is not an individual, municipality or state agency, the form, date and place of formation of the applicant.

(2) ~~Five~~ Four copies of a plan of the proposed development or subdivision showing the intended use of the land, the proposed improvements, the details of the project, and any other information required by this chapter, or the rules adopted under this chapter.

(3) The fee prescribed by section 6083a of this title.

(4) Certification of filing of notice as set forth in 6084 of this title.

Sec. F22. 10 V.S.A. § 6084(a) is amended to read:

(a) On or before the date of filing of an application with the district commission, the applicant shall send notice and a copy of the initial application to the owner of the land if the applicant is not the owner; the municipality in which the land is located; the municipal and regional planning commissions for the municipality in which the land is located; the Vermont agency of natural resources; any adjacent Vermont municipality and municipal and regional planning commission if the land is located on a municipal or regional boundary. The applicant shall furnish to the district commission the names of those furnished notice by affidavit, and shall post a copy of the notice in the town clerk's office of the town or towns wherein the project lies. The applicant shall also provide a list of adjoining landowners to the district commission. Upon request and for good cause, the district commission may authorize the applicant to provide a partial list of adjoining landowners in accordance with board rules.

Sec. F23. 10 V.S.A. § 8010(e) is amended to read:

(e) Penalties assessed under this section shall be deposited in the general fund, except for:

(1) those penalties which are assessed as a result of a municipality's enforcement action under chapter 64 of this title, in which case the municipality involved shall receive the penalty monies; and

(2) those penalties that are assessed as a result of the state's actual cost of enforcement in accordance with subdivision (b)(7) of this section, in which case the penalties shall be paid directly to the agency of natural resources.

Sec. F24. 10 V.S.A. § 8504(o) is added to read:

(o) With respect to review of an act or decision of the secretary pursuant to 3 V.S.A. § 2809, the court may reverse the act or decision or amend an allocation of costs to an applicant only if the court determines that the act, decision, or allocation was arbitrary, capricious, or an abuse of discretion. In the absence of such a determination, the court shall require the applicant to pay the secretary all costs assessed pursuant to 3 V.S.A. § 2809.

Sec. F25. 30 V.S.A. § 20 is amended to read:

§ 20. PARTICULAR PROCEEDINGS; PERSONNEL

(a)(1) The board or department may authorize or retain legal counsel, official stenographers, expert witnesses, advisors, temporary employees, and other research services:

* * *

(2) The agency of natural resources may authorize or retain legal counsel, official stenographers, expert witnesses, advisors, temporary employees, other research, scientific or engineering services to:

(A) assist the agency of natural resources in any proceeding under section 248 of this title;

(B) monitor compliance with an order issued under section 248 of this title;

(C) assist the board or department in any proceedings described in subdivisions (b)(9) (Federal Energy Regulatory Commission) and (11) (Nuclear Regulatory Commission) of this section. Allocation of agency of natural resources costs under this subdivision (C) shall be in the same manner as provided under subdivisions (b)(9) and (11) of this section. The agency of natural resources shall report annually to the joint fiscal committee all costs incurred and expenditures charged under the authority of this subsection with respect to proceedings under subdivision (b)(9) of this section and the purpose for which such costs were incurred and expenditures made; and

(3) The personnel authorized by this section shall be in addition to the regular personnel of the board or department or other state agencies; and in the

case of the department or other state agencies may be retained only with the approval of the governor and after notice to the applicant or the public service company or companies. The board or department shall fix the amount of compensation and expenses to be paid such additional personnel, except that the agency of natural resources shall fix the amount of compensation and expenses to be paid to additional personnel that it retains under subdivision (2) of this subsection.

* * *

Sec. F26. 30 V.S.A. § 21 is amended to read:

§ 21. PARTICULAR PROCEEDINGS; ASSESSMENT OF COSTS

(a) The board ~~or,~~ the department, or the agency of natural resources may allocate the portion of the expense incurred or authorized by it in retaining additional personnel for the particular proceedings authorized in section 20 of this title to the applicant or the public service company or companies involved in those proceedings. The board shall upon petition of an applicant or public service company to which costs are proposed to be allocated, review and determine, after opportunity for hearing, having due regard for the size and complexity of the project, the necessity and reasonableness of such costs, and may amend or revise such allocations. Prior to allocating costs, the board shall make a determination of the purpose and use of the funds to be raised hereunder, identify the recipient of the funds, provide for allocation of costs among companies to be assessed, indicate an estimated duration of the proceedings, and estimate the total costs to be imposed. With the approval of the board, such estimates may be revised as necessary. From time to time during the progress of the work of such additional personnel, the board ~~or,~~ the department, or the agency of natural resources shall render to the company detailed statements showing the amount of money expended or contracted for in the work of such personnel, which statements shall be paid by the applicant or the public service company into the state treasury at such time and in such manner as the board ~~or,~~ the department, or the agency of natural resources may reasonably direct.

(b) When regular employees of the board ~~or,~~ the department, or the agency of natural resources are employed in the particular proceedings described in section 20 of this title, the board ~~or,~~ the department, or the agency of natural resources may also allocate the portion of their costs and expenses to the applicant or the public service company or companies involved in the proceedings. The costs of regular employees shall be computed on the basis of working days within the salary period. The manner of assessment and of making payments shall otherwise be as provided for additional personnel in subsection (a) of this section.

* * *

(d) The agency of natural resources may allocate expenses under this section only for costs in excess of the amount specified in 3 V.S.A. § 2809(d)(2).

(e) On or before January 15, 2011, and annually thereafter, the agency of natural resources shall report to the senate and house committees on natural resources and energy, the senate committee on finance, and the house committee on ways and means the total amount of expenses allocated under this section during the previous fiscal year. The report shall include the name of each applicant or public service company to whom expenses were allocated and the amount allocated to each applicant or company.

* * * Municipal Bylaw Provisions * * *

Sec. F27. 24 V.S.A. § 4449(e) is added to read:

(e) Beginning October 1, 2010, any application for an approval or permit and any approval or permit issued under this section shall include a statement, in content and form approved by the secretary of natural resources, that state permits may be required and that the permittee should contact state agencies to determine what permits must be obtained before any construction may commence.

Sec. F28. 24 V.S.A. § 4463(d) is added to read:

(d) Beginning October 1, 2010, any application for an approval and any approval issued under this section shall include a statement, in content and form approved by the secretary of natural resources, that state permits may be required and that the permittee should contact state agencies to determine what permits must be obtained before any construction may commence.

* * * Public Service Board Provisions * * *

Sec. F29. 30 V.S.A. § 30 is amended to read:

§ 30. PENALTIES; AFFIDAVIT OF COMPLIANCE

* * *

(g) At any time, the board may require a person, company, or corporation to file an affidavit under oath or affirmation that the person, company, or corporation or any facility or plant thereof is in compliance with the terms and conditions of an order, approval, certificate, or authorization issued under this title or rules adopted under this title. A request for an affidavit of compliance under this subdivision may be delivered by hand or by certified mail. Failure to file such an affidavit within the period prescribed by the board or the material misrepresentation of a fact in an affidavit shall be a violation subject

to civil penalty under subdivision (a)(1) of this section and shall also be grounds for revocation or rescission of the order, approval, certificate, or authorization as to which the board required the affidavit.

Sec. F30. 30 V.S.A. § 248 is amended to read:

§ 248. NEW GAS AND ELECTRIC PURCHASES, INVESTMENTS, AND FACILITIES; CERTIFICATE OF PUBLIC GOOD

(a)(1) No company, as defined in section 201 of this title, may:

* * *

(4)(A) With respect to a facility located in the state, the public service board shall hold a nontechnical public hearing on each petition for such finding and certificate in at least one county in which any portion of the construction of the facility is proposed to be located.

* * *

(D) Notice of the public hearing shall be published ~~in a newspaper of general circulation in the county or counties in which the proposed facility will be located two weeks successively, the last publication to be~~ and maintained on the board's website for at least 12 days before the day appointed for the hearing. Notice of the public hearing shall be published once in a newspaper of general circulation in the county or counties in which the proposed facility will be located, and the notice shall include an Internet address where more information regarding the proposed facility may be reviewed.

* * *

(j)(1) The board may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings otherwise required by this chapter if the board finds that:

* * *

(2) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its petition. The board shall give written notice of the proposed certificate to the parties specified in subdivision (a)(4)(C) of this section, to any public interest organization that has in writing requested notice of applications to proceed under this subsection and to any other person found by the board to have a substantial interest in the matter. Such notice shall be published on ~~two occasions at least one week apart. Such notice shall request comment~~ the board's website and shall request comment within ~~21~~ 28 days of the ~~last~~ initial publication on the question of whether the petition raises a

significant issue with respect to the substantive criteria of this section. If the board finds that the petition raises a significant issue with respect to the substantive criteria of this section, the board shall hear evidence on any such issue.

* * *

Sec. F31. PUBLIC SERVICE BOARD RULES FOR NOTICE OF INTERESTED PARTIES

On or before January 15, 2011, the public service board shall review and, if appropriate, amend its rules regarding how notice is provided to interested parties when the applicant submits an application for a certificate of public good under 24 V.S.A. § 219a or 248. The board shall review how to provide direct notice of an application for a certificate of public good to interested parties that are not property owners adjoining the land on which the proposed facility is located.

Sec. F32. QUARTERLY MEETINGS OF CHALLENGES FOR CHANGE COMMITTEES OF JURISDICTION

(a) The proposed system of accountability for measuring the successes of "Challenges for Change" shall, as set forth under Sec. 7 of No. 68 of the Acts of the 2009 Adj. Sess. (2010), provide for quarterly meetings of the chairs of the house and senate committees of jurisdiction, and the quarterly meetings of the chairs of the committees of jurisdiction related to this Environmental and Energy Regulatory Challenge shall be held each year in January, April, July, and October.

(b) At the October 2010 quarterly "Challenges for Change" meeting, the secretary of natural resources shall report to the chairs of the house and senate committees of jurisdiction for this challenge with a plan of how the agency of natural resources shall reallocate staffing and resources in response to any administrative or permitting efficiencies created under authority granted to the secretary under this act.

Sec. F33. 10 V.S.A. § 4277(b) is amended to read:

(b) Waterfowl stamp required. No person 16 years of age or older shall attempt to take or take any migratory waterfowl in this state without first obtaining a state migratory waterfowl stamp for the current year in addition to a regular hunting license as provided by section 4251 of this title. ~~Each stamp shall be validated by the signature of the licensee written in ink across the face of the stamp and~~ A stamp shall not be transferable. The stamp year shall run from ~~July 1 to June 30~~ January 1 to December 31.

Sec. F34. ANR REPORT ON ANTI-DEGRADATION IMPLEMENTATION RULES

On or after January 15, 2011, and at least 30 days prior to prefiling the draft anti-degradation policy implementation rules with the interagency committee on administrative rules under 3 V.S.A. § 837, the secretary of natural resources shall submit for review a copy of the draft anti-degradation policy implementation rules to the senate committee on natural resources and energy and the house committee on fish, wildlife and water resources.

*** * * G. Economic Development Challenge * * ***

Sec. G1. RESTATEMENT OF OUTCOMES FOR ECONOMIC DEVELOPMENT CHALLENGE

Outcomes for economic development:

(1) Vermont achieves a sustainable annual increase in nonpublic sector employment and in median household income.

(2) Vermont attains a statewide, state-of-the-art telecommunications infrastructure.

Sec. 64. LEGISLATIVE FINDINGS AND INTENT

(a)(1) The economic development challenge as specified in No. 68 of the Acts of the 2009 Adj. Sess. (2010) (Act 68) is to improve economic development results while spending less in fiscal years 2011 and 2012 on programs identified in the unified economic development budget (UEDB). This reduction in expenditures is only one part of Act 68's overall mandate to achieve $38 million in savings. The act also specifies that Vermont's economic development programs and policies shall strive to achieve a sustainable annual increase in nonpublic sector employment and in median household income, as well as a statewide, state-of-the-art telecommunications infrastructure.

(2) At present, there are many regional entities supported by the state through the UEDB. Those entities include:

(A) 12 regional development corporations;

(B) 11 regional planning commissions;

(C) 14 regional state employment offices;

(D) five regional micro-business development programs;

(E) eight regionally deployed small business development center councilors; and

(F) four statewide and simultaneous employer outreach programs for employee training.

(b) Pursuant to the directive contained in Act 68, it is the intent of the general assembly:

(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.

(4) Using objective data-based indicators to measure performance of these strategies.

(c) As part of the transition toward a comprehensive redesign of the regional services delivery system, this act provides for continued funding for every existing regional planning commission and regional development corporation from July 1, 2010, through January 31, 2011, at a rate equal to 90 percent of fiscal year 2010 general fund levels for that period.

(d) Implementation of performance-based contracting for regional economic development and planning services will begin February 1, 2011.

(e) In addition, to the state funds available under subsection (c) of this section, there are newly created funding sources available to regional planning and economic development entities. For example, through the sustainable communities planning grant program offered by the United States Department of Housing and Urban Development, competitive matching funds are available to support multijurisdictional regional planning efforts that integrate housing, economic development, and transportation decision-making in a manner that empowers jurisdictions to consider simultaneously the interdependent challenges of economic growth, social equity, and environmental impact.

* * * Regional Economic Development * * *

Sec. 64a. 24 V.S.A. chapter 76 is amended to read:

CHAPTER 76. ECONOMIC DEVELOPMENT ~~GRANTS~~ PERFORMANCE CONTRACTS

~~§ 2780. POLICY AND PURPOSE~~

~~The general assembly finds that good jobs for Vermonters are an essential social and economic need for the state. The regional development corporations assist in job development in Vermont, through the provision of technical assistance to Vermont communities in planning for economic growth and stability; through the support of existing business and industry; through the~~

~~encouragement of business start-ups; and through the recruitment of businesses to the state. A strong and stable Vermont economy is best promoted through these development corporations.~~ [Deleted].

* * *

§ 2782. ~~APPLICATIONS FOR GRANTS~~ PROPOSALS FOR PERFORMANCE CONTRACTS FOR ECONOMIC DEVELOPMENT

(a) ~~A~~ The secretary shall annually award performance contracts to qualified regional development ~~corporation~~ corporations, regional planning commissions, or both in the case of a joint proposal, ~~or a regional~~ planning ~~commission in the absence of a qualified development corporation may apply to the secretary, on a form provided by the secretary, for a grant~~ to provide economic development services under this chapter.

(b) A proposal shall be submitted in response to a request for proposals issued by the secretary.

(c) The secretary may require that ~~an applicant~~ a service provider submit with ~~an application~~ a proposal, or subsequent to the filing of ~~an application whatever~~ a proposal, additional supportive data or information that he or she considers necessary to make a decision to award or to assess the effectiveness of ~~the grant~~ a performance contract.

§ 2783. ~~DETERMINATION OF ELIGIBILITY FOR GRANT~~ ELIGIBILITY FOR PERFORMANCE CONTRACTS

~~(a)~~ Upon receipt of ~~an application~~ a proposal for a ~~grant~~ performance contract, the secretary shall within 60 days determine whether or not the ~~applicant is eligible for a subsidy~~ service provider may be awarded a performance contract under this chapter. ~~An applicant shall be eligible for a subsidy~~ The secretary shall enter into a performance contract with a service provider if the secretary finds:

(1) the ~~applicant~~ service provider serves an economic region generally consistent with one or more of the state's regional planning commission ~~district~~ regions;

(2) the ~~applicant~~ service provider demonstrates the ability and willingness to provide planning and resource development services to local communities and to assist communities in evaluating economic conditions and prepare for economic growth and stability;

(3) the ~~applicant~~ service provider demonstrates an ability to gather economic and ~~sociological~~ demographic information concerning the area served;

(4) the ~~applicant~~ service provider has, or demonstrates it will be able to secure, letters of support from the legislative bodies of the affected municipalities;

(5) the ~~applicant~~ service provider demonstrates a capability and willingness to assist existing business and industry, to encourage the development and growth of small business, and to attract industry and commerce;

(6) the ~~applicant~~ service provider appears to be the best qualified applicant from the region to accomplish and promote economic development;

(7) the ~~applicant~~ service provider needs the ~~grant~~ performance contract award and that the ~~grant~~ performance contract award will be used for the employment of professional persons ~~on a full-time basis~~ or expenses consistent with performance contract provisions, or both;

(8) the ~~applicant~~ service provider presents an operating budget and has adequate funds available to match the ~~requested grant~~ performance contract award;

(9) the ~~applicant~~ service provider demonstrates a willingness to involve the public of the region in its policy-making process by offering membership to representatives of all municipalities in the economic region which shall elect the directors of the governing board;

(10) the ~~applicant~~ service provider demonstrates a willingness to coordinate its activities with the planning functions of any regional planning commission located in the same geographic area as the applicant~~;~~

~~(11) the applicant has hired or contracted the services of a small business development specialist and a manufacturing extension service specialist or, in the alternative has demonstrated a commitment to use the services of small business development specialists and manufacturing extension service specialists who are located in other regions of the state~~.

~~(b) If the secretary finds that applicant is ineligible for a grant under this chapter the secretary shall notify the applicant by certified mail.~~

~~(c) If the secretary finds that an applicant is eligible for a grant under this chapter the secretary shall determine the amount of the grant due that applicant under section 2784 of this title.~~

§ 2784. ~~DETERMINATION OF THE AMOUNT OF THE~~ ~~GRANT~~ TERMS OF PERFORMANCE CONTRACTS

(a)(1) ~~The amount of the~~ ~~grant~~ Funds available under a performance contract may only be used by an applicant to~~:~~ perform the duties or provide the services set forth in the performance contract

~~(A) employ professional personnel to direct a program of regional economic development;~~

~~(B) pay the operating expenses associated with professional personnel included in the grant;~~

~~(C) employ or contract for the services of a small business development specialist, or a manufacturing extension service specialist~~.

(2) ~~To the extent that funds are available, the~~ The amount and terms of the ~~grant~~ performance contract award shall be determined by the ~~secretary~~ parties to the contract. ~~Funds may be provided for the purpose of implementing a job development zone designated under 10 V.S.A. chapter 29, subchapter 2.~~

(b) ~~The grant~~ A performance contract shall be made for a period ~~not to exceed one year under such terms and conditions as the secretary prescribes~~ agreed to by the parties. ~~However, at the end of a grant period the applicant may reapply for another grant in the same manner as an original application~~.

(c) Payments ~~of the amounts granted~~ to a service provider shall be made ~~at a time specified by the secretary~~ pursuant to the terms of the performance contract. ~~On the direction of the secretary, the commissioner of finance and management shall issue his warrant and the state treasurer shall pay the amounts granted.~~

§ 2784a. PLANS

~~A recipient of a grant~~ A service provider awarded a performance contract under this chapter shall conduct its activities under ~~section~~ subdivision 2784(a)(1) of this title consistent with local and regional plans.

§ 2785. RULES

The secretary may issue rules necessary to carry out his or her duties and the purposes of this chapter under the provisions of chapter 25 of Title 3.

§ 2786. APPLICABILITY OF STATE LAWS

(a) ~~A regional development corporation approved~~ A service provider awarded a performance contract by the ~~commissioner~~ secretary under this chapter shall be subject to subchapter 2 (open meetings), and subchapter 3 (public records) of chapter 5 of Title 1, except that in addition to any limitation provided in subchapter 2 or ~~subchapter~~ 3:

(1) no person shall disclose any information relating to a proposed transaction or agreement between the ~~corporation~~ service provider and another person, in furtherance of the ~~corporation's~~ service provider's public purposes under the law, prior to final execution of such transaction or agreement; and

(2) meetings of the ~~corporation's~~ service provider's board to consider such proposed transactions or agreements may be held in executive session under ~~section~~ 1 V.S.A. § 313 ~~of Title 1~~.

(b) Nothing in this section shall be construed to limit the exchange of information between or among regional development corporations ~~and one~~ or ~~more~~ regional planning commissions ~~located in the same region~~ concerning any activity of the corporations and the commissions, provided that such information shall be subject to the provisions of subsection (a) of this section.

(c) The provisions of chapter 11 of Title 2 (lobbyist disclosure) shall apply to regional development corporations and regional planning commissions.

* * * Municipal and Regional Planning Fund * * *

Sec. 64b. 24 V.S.A. chapter 117, subchapter 1 is amended to read:

Subchapter 1. General Provisions; Definitions

* * *

§ 4305. [Repealed.]

§ 4306. MUNICIPAL AND REGIONAL PLANNING FUND

(a)(1) A municipal and regional planning fund for the purpose of assisting municipal and regional planning commissions to carry out the intent of this chapter is hereby created in the state treasury.

(2) The fund shall be comprised of 17 percent of the revenue from the property transfer tax under chapter 231 of Title 32 and any moneys from time to time appropriated to the fund by the general assembly or received from any other source, private or public. All balances at the end of any fiscal year shall be carried forward and remain in the fund. Interest earned by the fund shall be deposited in the fund.

(3) Of the revenues in the fund, each year:

(A) 10 percent shall be disbursed to the Vermont center for geographic information;

(B) 70 percent shall be disbursed to the secretary of the agency of commerce and community development for performance contracts with regional planning commissions to provide regional planning services pursuant to section 4341 of this title; and

(C) 20 percent shall be disbursed to municipalities.

(b)(1) ~~Disbursement~~ Allocations for performance contract funding to regional planning commissions shall be determined according to a formula to be adopted by rule under chapter 25 of Title 3 by the department for the assistance of the regional planning commissions. ~~The rules shall give due consideration to the region's progress in adopting a regional plan.~~ Disbursement of funding to regional planning commissions shall be predicated upon meeting performance outcomes and measures pursuant to the terms of the performance contract.

(2) Disbursement to municipalities shall be awarded annually on or before December 31 through a competitive program administered by the department providing the opportunity for any eligible municipality or municipalities to compete regardless of size, provided that to receive funds, a municipality:

* * *

* * * Regional Planning * * *

Sec. 64c. 24 V.S.A. chapter 117, subchapter 3 is amended to read:

Subchapter 3. Regional Planning Commissions

§ 4341. CREATION OF REGIONAL PLANNING COMMISSIONS

(a) A regional planning commission may be created at any time by the act of the voters or the legislative body of each of a number of contiguous municipalities, upon the written approval of the agency of commerce and community development. Approval of a designated region shall be based on ~~the results of studies jointly carried out by representatives of the municipalities and the agency of commerce and community development to determine~~ whether the municipalities involved constitute a logical geographic and a coherent socio-economic planning area. ~~Evidence must be shown that local, state, and federal funding will be adequate to satisfy current requirements and to provide a continuing planning program of a scope sufficient for comprehensive and functional area wide planning~~. All municipalities within a designated region shall be considered members of the regional planning commission. ~~Such area shall be referred to herein as a region, and may include municipalities located in a neighboring state~~.

(b) Two or more existing regional planning commissions may be merged to form a single commission by act of the ~~voters~~ legislative bodies in a majority of the municipalities in each of the merging regions.

(c) A municipality may withdraw from a regional planning commission on terms and conditions approved by the secretary of the agency of commerce and community development.

§ 4341a. PERFORMANCE CONTRACTS FOR REGIONAL PLANNING SERVICES

(a) The secretary of the agency of commerce and community development shall annually negotiate and enter into performance contracts with regional planning commissions, or with regional planning commissions and regional development corporations in the case of a joint contract, to provide regional planning services.

(b) A performance contract shall address how the regional planning commission, or regional planning commission and regional development corporation jointly, will improve outcomes and achieve savings compared with the current regional service delivery system, which may include:

(1) a proposal without change in the makeup or change of the area served;

(2) a joint proposal to provide different services under one contract with one or more regional service providers;

(3) co-location with other local, regional, or state service providers;

(4) merger with one or more regional service providers;

(5) consolidation of administrative functions and additional operational efficiencies within the region; or

(6) such other cost-saving mechanisms as may be available.

§ 4342. REGIONAL PLANNING COMMISSIONS; MEMBERSHIP

A regional planning commission shall contain at least one representative appointed from each member municipality. All representatives may be compensated and reimbursed by their respective municipalities for necessary and reasonable expenses.

§ 4343. APPOINTMENT, TERM AND VACANCY; RULES

(a) Representatives to a regional planning commission representing each participating municipality shall be appointed for a term and any vacancy filled by the legislative body of such municipality in the manner provided and for the terms established by the charter and bylaws of the regional planning commission. Regardless of regional planning commission bylaws, representatives to the commission shall serve at the pleasure of the legislative body. The legislative body may, by majority vote of the entire body, revoke a commission member's appointment at any time.

(b) A regional planning commission ~~shall~~ may elect an executive board, consisting of not less than five nor more than nine members, to oversee the operations of the commission and implement the policies of the commission, and shall elect a ~~chairman~~ chair, and a secretary, and, at its organization meeting shall adopt, by a two-thirds vote of those representatives present and voting at such meeting, such rules and create and fill such other offices as it deems necessary or appropriate for the performance of its functions, including, without limitation, the number and qualification of members, terms of office, and provisions for municipal representation and voting.

(c) A regional planning commission may also have such other members, who may be elected or appointed in such manner as the regional planning commission may prescribe by its rules adopted pursuant to this section.

§ 4344. EXISTING COMMISSIONS

~~The representatives of any existing regional planning or regional development commission or bodies having similar powers and functions established under sections 2771 through 2779 and sections 2923 through 2931 of this title shall continue in office until the end of their term so established. New representatives shall be appointed and vacancies filled only under this chapter. Such commissions shall have on March 23, 1968, all of the powers and duties of a regional planning commission created under this chapter.~~

§ 4345. OPTIONAL POWERS AND DUTIES OF REGIONAL PLANNING COMMISSIONS

Any regional planning commission created under this chapter may:

* * *

(10) Retain staff and consultant assistance in carrying out its duties and powers, and contract with one or more persons to provide administrative, clerical, information technology, human resources, or related functions.

* * *

(13) provide planning, training, and development services to local and regional communities and assist communities in evaluating economic conditions and prepare for economic growth and stability;

(14) gather economic and demographic information concerning the area served; and

(15) assist existing business and industry, encourage the development and growth of small business, and to attract industry and commerce.

(16) ~~Perform~~ perform such other acts or functions as it may deem necessary or appropriate to fulfill the duties and obligations imposed by, and the intent and purposes of, this chapter.

§ 4345a. DUTIES OF REGIONAL PLANNING COMMISSIONS

A regional planning commission created under this chapter shall:

* * *

(5) Prepare a regional plan and amendments that are consistent with the goals established in section 4302 of this title, and compatible with approved municipal and adjoining regional plans. When preparing a regional plan, the regional planning commission shall:

* * *

(F) consider the probable social and economic benefits and consequences of the proposed plan; and

* * *

(7) Prepare, in conjunction with the commissioner of the department of economic, housing and community ~~affairs~~ development, guidelines for the provision of affordable housing in the region, share information developed with respect to affordable housing with the municipalities in the region and with the commissioner of the department of economic, housing and community ~~affairs~~ development, and consult with the commissioner when developing the housing element of the regional plan.

(8) Confirm municipal planning efforts, where warranted, as required under section 4350 of this title and provide town clerks of the region with notice of confirmation.

(9) At least every five ~~ten~~ years, review the compatibility of municipal plans, and if the regional planning commission finds that growth in a municipality without an approved plan is adversely affecting an adjoining municipality, it shall notify the legislative body of both municipalities of that fact and shall urge that the municipal planning be undertaken to mitigate those adverse effects. If, within six months of receipt of this notice, the municipality creating the adverse effects does not have an approved municipal plan, the regional commission shall adopt appropriate amendments to the regional plan as it may deem appropriate to mitigate those adverse effects.

* * *

(16) Before requesting ~~review by the council of regional commissioners or~~ the services of a mediator ~~pursuant to section 4305 of this title,~~ with respect to a conflict that has arisen between adopted or proposed plans of two or more

regions or two or more municipalities located in different regions, appoint a joint interregional commission, in cooperation with other affected regional commissions for the purpose of negotiating differences.

§ 4346. APPROPRIATIONS

~~(a)~~ Regional planning commissions may receive and expend monies from any source, including, without limitation, funds made available by the participating municipalities, and by the agency of commerce and community development, out of state funds appropriated to that agency for this purpose. Notwithstanding the provisions of any municipal charter, any municipality may appropriate and expend funds to and for regional planning commissions either by the authorization of its voters or by incorporating such amount as a line item in their administrative budget.

~~(b) In order to qualify for financial aid from the agency of commerce and community development, a regional planning commission shall have been created in accordance with section 4341 of this title, shall represent a region as therein defined, and shall comply with rules and standards prescribed by the agency of commerce and community development for determination of eligibility for the assistance.~~

* * *

§ 4348. ADOPTION AND AMENDMENT OF REGIONAL PLAN

* * *

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

* * *

(3) the department of economic, housing and community ~~affairs~~ development within the agency of commerce and community development;

(4) ~~the council of regional commissions; and~~

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

* * *

(f) A regional plan or amendment shall be adopted by not less than a 60 percent vote of the commissioners representing municipalities, in accordance

with the bylaws of the regional planning commission, and immediately submitted to the legislative bodies of the municipalities that comprise the region. The plan or amendment shall be considered duly adopted and shall take effect 35 days after the date of adoption, unless, within 35 days of the date of adoption, the regional planning commission receives certification from the legislative bodies of a majority of the municipalities in the region vetoing the proposed plan or amendment. In case of such a veto, the plan or amendment shall be deemed rejected. ~~A plan or amendment that has become effective or has been rejected shall be transmitted promptly to the council of regional commissions.~~

* * *

~~(i) By December 31, 1992 and at least every five years thereafter, all regional planning commissions shall submit regional plans adopted under this section to the council of regional commissions for review. The council shall make recommendations to the regional planning commissions with respect to appropriate amendments for consideration by the commissions.~~

* * *

§ 4348b. READOPTION OF REGIONAL PLANS

(a) Unless they are readopted, all regional plans, including all prior amendments, shall expire every ~~five~~ eight years.

(b) A regional plan that has expired or is about to expire may be readopted as provided under section 4348 of this title for the adoption of a regional plan or amendment. Prior to any readoption, the regional planning commission shall review and update the information on which the plan is based, and shall consider this information in evaluating the continuing applicability of the regional plan. The readopted plan shall remain in effect for the ensuing ~~five~~ ten years unless earlier readopted.

(c) Upon the expiration of a regional plan under this section, the regional plan shall be of no further effect in any other proceeding.

(d) All regional plans that expire after July 1, 1991 shall be readopted to be consistent with planning goals and shall follow the review process referred to in Act No. 200 of the Acts of 1987, Adjourned Session.

* * *

§ 4350. REVIEW AND CONSULTATION REGARDING MUNICIPAL PLANNING EFFORT

(a) A regional planning commission shall consult with its municipalities with respect to the municipalities' planning efforts, ascertaining the

municipalities' needs as individual municipalities and as neighbors in a region, and identifying the assistance that ought to be provided by the regional planning commission. As a part of this consultation, the regional planning commission, after public notice, shall review the planning process of its member municipalities at least twice during a ~~five-year~~ eight-year period, or more frequently on request of the municipality, and shall so confirm when a municipality:

* * *

(d) The commission shall file any adopted plan or amendment with the department of economic, housing and community ~~affairs~~ development within two weeks of receipt from the municipality. Failure on the part of the commission to file the plan shall not invalidate the plan.

(e) During the period of time when a municipal planning process is confirmed:

(1) The municipality's plan will not be subject to review by the commissioner of department of economic, housing and community ~~affairs~~ development under section 4351 of this title.

(2) State agency plans adopted under ~~3 V.S.A.~~ chapter 67 of Title 3 shall be compatible with the municipality's approved plan. This provision shall not apply to plans that are conditionally approved under this chapter.

(3) The municipality may levy impact fees on new development within its borders, according to the provisions of chapter 131 of this title.

(4) The municipality shall be eligible to receive additional funds from the municipal and regional planning fund.

(f) Confirmation and approval decisions under this section shall be made by majority vote of the commissioners representing municipalities, in accordance with the bylaws of the regional planning commission.

§ 4351. REVIEW BY COMMISSIONER OF ECONOMIC, HOUSING AND COMMUNITY ~~AFFAIRS~~ DEVELOPMENT

(a) The commissioner of the department of economic, housing and community ~~affairs~~ development shall establish guidelines for the provision of affordable housing by municipalities with plans that have not been approved under this chapter. These guidelines shall be consistent with goals established in section 4302 of this title.

(b) On a periodic basis, commencing in 1996, the commissioner of the department of economic, housing and community ~~affairs~~ development, or a designee, shall review the planning process of municipalities that do not have

approved plans, for compliance with the affordable housing criteria established under this section and shall issue a report to the municipality and to the regional planning commission. Each review shall include a public hearing which is noticed at least 15 days in advance by posting in the office of the municipal clerk and at least one public place within the municipality and by publication in a newspaper or newspapers of general publication in the region affected.

* * * Regional Economic Development and Planning Oversight Panel * * *

Sec. 64d. STATE AND REGIONAL ECONOMIC DEVELOPMENT AND PLANNING SERVICES; OVERSIGHT PANEL

(a) Oversight panel.

(1) There is created an oversight panel consisting of eight members who shall be appointed by June 1, 2010 as follows:

(A) Two members appointed by the speaker of the house who shall be representatives of business or employers.

(B) Two members appointed by the president pro tempore of the senate who shall be representatives of business or employers.

(C) Two members appointed by the governor.

(D) Two members, appointed jointly by the governor, the speaker of the house, and the president pro tempore of the senate, who have a background in municipal planning and do not currently serve on the board of a regional development corporation or a regional planning commission.

(2)(A) Notwithstanding any other provision of law to the contrary, the secretary of commerce and community development shall consult with the oversight panel in the development of requests for proposals to provide regional economic development services pursuant to chapter 76 of Title 24, and in the review of performance contract proposals.

(B) The secretary of commerce and community development shall not award or otherwise enter into a performance contract until approved by the oversight panel.

(3) The oversight panel shall work with the secretary to develop outcomes and performance measures for the agency of commerce and community development, and to identify the functions appropriate to the agency and how they relate to regional development and planning services.

(4) The oversight panel shall study and identify a process for developing a comprehensive statewide economic development plan and shall report its findings to the senate committee on economic development, housing and

general affairs and the house committee on commerce and economic development on or before January 15, 2011.

* * * Performance Contracts; Regional Economic Development * * *

Sec. 64e. REGIONAL DEVELOPMENT CORPORATIONS; REQUEST FOR PROPOSALS; PERFORMANCE CONTRACTS

(a) Request for proposals to provide regional economic development services. The secretary of commerce and community development, in consultation with the oversight panel pursuant to Sec. 64d of this act, shall issue to all existing regional development corporations and regional planning commissions a request for proposals for a performance contract to provide regional economic development services.

(b) Proposals for regional economic development performance contracts.

(1) A proposal for a regional economic development performance contract shall identify the region to be served, and shall address those infrastructure components, demographics, economic and planning elements, and any other factors that led the service provider to define the region as identified, which may include :

(A) transportation corridors;

(B) predominant industries in the region;

(C) population and commerce centers;

(D) opportunities for cluster development, including optical, electronics, machine tool, natural resources-based industries, composites, or agriculture.

(2) A proposal shall address the services to be provided, and shall include consideration of:

(A) actions to contribute to business recruitment and retention;

(B) business assistance with site selection;

(C) business assistance and facilitation with securing financing and alternative financing through available funding sources, including the Vermont economic development authority, the small business administration, revolving loan funds, and others.

(D) facilitating access to business support programs such as the procurement assistance technical center, the Vermont global trade partnership, the Vermont employment growth incentive program, and the small business development center.

(c) Performance outcomes for regional economic development performance contracts.

(1) A proposal for a regional economic development contract shall identify specific outcomes and benchmarks to measure regional economic development performance.

(2) The secretary shall ensure that, as a condition of any state funding, a regional service provider shall demonstrate its ability to improve regional economic performance relative to region-specific measures established pursuant to this act.

(d) Timeline.

(1) The request for proposals for regional economic development performance contracts shall be issued by July 1, 2010.

(2) Each existing regional planning commission or regional development corporation shall notify the secretary whether it intends to submit a proposal for a regional economic development performance contract by August 1, 2010, and shall indicate whether it intends to submit a proposal individually or jointly with another service provider.

(3) Proposals shall be submitted to the secretary by October 1, 2010. A single regional service provider, or combination of regional service providers, may submit a proposal for both regional economic development and regional planning performance contracts.

(4) The secretary shall review, negotiate, and enter into performance contracts by November 1, 2010.

(5) Notwithstanding subdivisions (1)–(4) of this subsection, if for any reason regional economic development services will not be provided to one or more areas of the state pursuant to performance contracts secured as of November 1, 2010, the secretary, in consultation with the oversight panel, may reopen contract negotiations with service providers, may issue a new request for proposals, and may negotiate additional contracts with any interested person until the secretary has secured performance contracts to provide services to the entire state.

(6) All performance contracts between the secretary and regional service providers pursuant to this section shall take effect February 1, 2011, unless terminated by act of the general assembly prior to the effective date.

(e) Performance-based appropriations.

(1) In fiscal year 2011, the secretary of commerce and community development shall reduce the appropriation to each regional development corporation by 10 percent, except that:

(A) the secretary shall not reduce total funding to any combined regional planning and regional economic development entity by more than 10 percent of the entity's appropriation for regional planning services.

(B) no regional development corporation shall sustain a reduction in state funds that amounts to more than five percent of its fiscal year 2010 overall operating budget, less any one-time supplemental funding awarded by the secretary in fiscal year 2010.

(2) Notwithstanding any other provision of law to the contrary, funding provided by the secretary to the regional development corporations in fiscal year 2011 shall be consistent with the following:

(A) On or before July 15, 2010, the secretary shall disburse three months of funding to each regional development corporation in an amount equal to the amount received in the first quarter of fiscal year 2010, less the reductions implemented by this act, and less any one-time supplemental funding awarded by the secretary in fiscal year 2010.

(B) On or before October 15, 2010, the secretary shall disburse four months of funding to each regional development corporation in an amount equal to the amount received in the same period for fiscal year 2010, less the reductions implemented by this act, and less any one-time supplemental funding awarded by the secretary in fiscal year 2010.

(C) Beginning February 1, 2011, all funding for regional development corporations shall be made pursuant to performance-based contracts consistent with this act. A regional development corporation that is not awarded a performance contract shall receive no further funding.

(3) The secretary and the regional service provider shall negotiate terms for frequency and method of assessing performance, and for establishing incentives and holdbacks based on achievement of identified outcomes, which shall be included in the performance contract.

(f) Duration of performance contracts.

(1) The contract period for the first performance contracts between the secretary and regional service providers pursuant to this section shall be from February 1, 2011, to June 30, 2012. This initial contract period will provide a sufficient time frame for evaluating performance relative to the outcomes and measures identified in the performance contracts, and will offer a secure revenue stream for service providers who are awarded contracts,

notwithstanding any further reductions in overall state appropriations necessitated by revenue shortfalls.

(2) The duration of any subsequent performance contracts shall be for a term agreed upon by the parties.

* * * Performance Contracts; Regional Planning * * *

Sec. 64f. REGIONAL PLANNING COMMISSIONS; PERFORMANCE CONTRACTS

(a) Performance contracts to provide regional planning services.

(1) The secretary of commerce and community development, in consultation with the oversight panel pursuant to Sec. 64d of this act, shall issue regional planning commissions a request for a performance contract to provide regional planning services pursuant to 24 V.S.A. § 4341a.

(2) A regional planning performance contract shall identify the region to be served, and shall address those infrastructure components, demographics, economic and planning elements, and any other factors that led the service provider to define the region as identified, including:

(A) transportation corridors;

(B) predominant industries in the region;

(C) population and commerce centers; and

(D) predominant natural resource features and land use patterns that constitute a region for planning purposes.

(3) A performance contract shall address the services to be provided, including:

(A) a process for ensuring that all statutorily required services will be met or exceeded; and

(B) assistance for other planning activities as appropriate and as requested by the region that will advance the goals of the region.

(4) A performance contract shall identify specific outcomes and benchmarks to measure regional planning performance.

(d) Regional planning performance audit

(1) At the request and expense of a regional planning commission, the National Association of Development Organizations or similarly qualified organization, in consultation with the Vermont state auditor, may perform a review of each regional planning commission's financial and management structures to improve performance and attain improved outcomes. A product

shall include a written evaluation of each regional planning commission with suggestions for service delivery improvements, efficiencies and savings. The evaluation shall include guidelines for future peer review in subsequent years. The first report and subsequent annual peer reviews shall be presented to each regional planning commission board and the agency of commerce and community development.

(2) An annual performance audit may include a certified financial audit, an annual report on achievements on outcomes and measures as identified in the performance contract, and a report on progress in achieving organizational outcomes as identified in the peer review.

(c) Incentives and holdbacks; achievement of outcomes.

(1) In fiscal year 2011, the secretary of commerce and community development shall reduce the appropriation to each regional planning commission by 10 percent, except that the secretary shall not reduce total funding to any combined regional planning and regional economic development entity by more than 10 percent of the entity's appropriation for regional planning services.

(2) Notwithstanding any other provision of law to the contrary, funding provided by the secretary to the regional planning commissions in fiscal year 2011 shall be consistent with the following:

(A) On or before July 15, 2010, the secretary shall disburse three months of funding to each regional planning commission in an amount equal to the amount received in the first quarter of fiscal year 2010, less the reductions implemented by this act, and less any one-time supplemental funding awarded by the secretary in fiscal year 2010.

(B) On or before October 15, 2010, the secretary shall disburse four months of funding to each regional planning commission in an amount equal to the amount received in the same period for fiscal year 2010, less the reductions implemented by this act, and less any one-time supplemental funding awarded by the secretary in fiscal year 2010.

(3) Beginning February 1, 2011, funding allocations and disbursements to regional planning commissions shall be determined ~~by formula~~ pursuant to 24 V.S.A. § 4306.

(4) The secretary and the regional planning commission shall negotiate terms for frequency and method of assessing performance, and for establishing incentives and holdbacks based on achievement of identified outcomes, which shall be included in the performance contract.

(d) Duration of performance contracts.

(1) The contract period for the first performance contracts between the secretary and regional service providers pursuant to this section shall be from February 1, 2011, to June 30, 2012. This initial contract period will provide a sufficient time frame for evaluating performance relative to the outcomes and measures identified in the performance contracts, and will offer a secure revenue stream for service providers who are awarded contracts, notwithstanding any further reductions in overall state appropriations necessitated by revenue shortfalls.

(2) The duration of any subsequent performance contracts shall be for a term agreed upon by the parties.

* * * Regional Measures of Job Creation and Retention * * *

Sec. 64g. ECONOMIC MEASURES FOR REGIONAL JOB CREATION AND RETENTION

On or before August 1, 2010, with updates as frequently thereafter as is necessary, the agency of commerce and community development shall develop region-specific measures that will generate information necessary for the general assembly, the administration, and the regional economic development service providers to evaluate economic growth, wage and benefit levels, job creation, and job retention in each economic development region of the state. The regional planning commissions and regional development corporations shall provide information to the agency as is necessary to complete the work required under this section.

Sec. 64h. RESERVED.

* * * Study: Merger of Chittenden County Metropolitan Planning Organization into the Chittenden County Regional Planning Commission * * *

Sec. 64i. MERGER OF CHITTENDEN COUNTY METROPOLITAN PLANNING ORGANIZATION

(a) The boards of directors of the Chittenden County metropolitan planning organization and the Chittenden County regional planning commission shall collaboratively develop a plan for action steps and timeline for the merger of the organizations.

(b) On or before January 15, 2011, the executive directors of each organization shall jointly report its results to the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development.

* * * Workforce Education and Training * * *

* * * Workforce Training and Adult Technical Education Challenge * * *

Sec. 64j. WORKFORCE TRAINING AND ADULT TECHNICAL EDUCATION CHALLENGE

(a) In collaboration with designees of the regional technical centers directors' association and the assistant directors of adult education, the commissioner of labor and the commissioner of education shall jointly prepare performance-based criteria and accountability measures for all next generation fund grants for adult technical education offered at regional technical centers.

(b) The criteria shall address, and performance grants shall be based upon, the following:

(1) innovative delivery systems designed to optimize participation rates of adults within the region, including how the center can use information technology, broadband communications, and virtual learning methods to address the needs of rural students;

(2) aligning programming to the regions to match each region's high-skill, high-wage, high-demand occupational needs;

(3) work readiness for adults in poverty and adults with disabilities;

(4) standard annual reporting framework to the department of education to demonstrate return on investment of funds; and

(5) any additional criteria consistent with Sec. 8 of No. 68 of the Acts of the 2009 Adj. Sess. (2010).

* * * Vermont Training Program * * *

Sec. 64k. 10 V.S.A. § 531(i) is added to read:

(i) Consistent with the training program's goal of providing specialized training and increased employment opportunities for Vermonters, and notwithstanding provisions of this section to the contrary, the secretary shall canvas apprenticeship sponsors to determine demand for various levels of training and classes and shall transfer up to $250,000.00 annually to the regional technical centers to fund or provide supplemental funding for apprenticeship training programs leading up to certification or licensing as journeyman or master electricians or plumbers. The secretary shall seek to provide these funds equitably throughout Vermont; however, the secretary shall give priority to regions not currently served by apprenticeship programs offered through the Vermont department of labor pursuant to chapter 13 of Title 21.

* * * Workforce Development Council; WIBS * * *

Sec. 64l. 10 V.S.A. chapter 22A is amended to read:

CHAPTER 22A. WORKFORCE EDUCATION AND TRAINING

§ 541. WORKFORCE DEVELOPMENT COUNCIL; STATE WORKFORCE INVESTMENT BOARD; MEMBERS, TERMS

(a) The workforce development council is created as the successor to and the continuation of the governor's human resources investment council and shall be the state workforce investment board under Public Law 105-220, the Workforce Investment Act of 1998, and any reauthorization of that act. The council shall consist of the members required under the federal act and the following: the president of the University of Vermont or designee; the chancellor of the Vermont state colleges or designee; the president of the Vermont student assistance corporation or designee; the president of the Association of Vermont Independent Colleges or designee; a representative of the Abenaki Self Help Organization; at least two representatives of labor appointed by the governor in addition to the two required under the federal act, who shall be chosen from a list of names submitted by Vermont AFL-CIO, Vermont NEA, and the Vermont state employees association; one representative of the low income community appointed by the governor; two members of the senate appointed by the senate committee on committees; and two members of the house appointed by the speaker. In addition, the governor shall appoint enough other members who are representatives of business or employers so that one-half plus one of the members of the council are representatives of business or employers. At least one-third of those appointed by the governor as representatives of business or employers shall be chosen from a list of names submitted by the regional ~~workforce investment boards~~ technical centers. For the purposes of this section, "representative of business" means a business owner, a chief executive operating officer, or other business executive, and "employer" means an individual with policy-making or hiring authority, including a public school superintendent or school board member and representatives from the nonprofit, social services, and health sectors of the economy. If there is a dispute as to who is to represent an interest as required under the federal law, the governor shall decide who shall be the member of the council.

* * *

(h) ~~The~~ Notwithstanding any other provision of law to the contrary, the commissioner of labor, in consultation with the chair of the workforce development council, shall appoint an executive director who ~~shall~~ may be an exempt employee or may provide services by contract. The executive director shall be appointed every two years effective March 1, 2011.

(i) The workforce development council shall:

(1) Advise the governor on the establishment of an integrated network of workforce education and training for Vermont.

(2) Coordinate planning and services for an integrated network of workforce education and training and oversee its implementation at state and regional levels.

(3) ~~Establish and oversee workforce investment boards as provided in section 542 of this title~~

~~(4)~~ Establish goals for and coordinate the state's workforce education and training policies.

~~(5)~~(4) Speak for the workforce needs of employers.

~~(6) [Deleted.]~~

~~(7) Annually review and comment on workforce education and training revenues and expenditures of member agencies and institutions.~~

~~(8)~~(5) Negotiate memoranda of understanding between the council and agencies and institutions involved in Vermont's integrated network of workforce education and training in order to ensure that each is working to achieve annual objectives developed by the council.

~~(9)~~(6) Carry out the duties assigned to the state workforce investment board, as required for a single-service delivery state, under P.L. 105-220, the Workforce Investment Act of 1998, and any amendments that may be made to it.

~~(10) [Deleted.]~~

§ 542. REGIONAL WORKFORCE ~~INVESTMENT BOARDS~~ DEVELOPMENT

(a) ~~At the request of a regional group recognized by the council as interested in workforce training, the workforce development council shall establish a regional workforce investment board in the region. Regional workforce investment boards shall act with oversight from the workforce development council.~~ Each regional technical center, as defined in 16 V.S.A. § 1522, shall:

(1) identify and respond to the workforce development needs of employers in its region; and

(2) coordinate a delivery system of workforce education and training services that is responsive to the needs of employers, employees, and individuals interested in receiving workforce training and is consistent with

policies established by the workforce development council. The system shall avoid duplication of services among workforce education and training programs and service providers.

~~(b) Members of each regional workforce investment board shall include individuals or representatives of employers and employees from large and small businesses, secondary and post-secondary educational institutions, regional technical centers, economic development organizations or chambers of commerce, or both, workforce education and training organizations, and public agencies with work force education and training responsibilities. The workforce development council shall review the regional workforce investment board membership to ensure a balance between employers, employees and workforce program providers with 51 percent of membership representing employers. Members shall not receive compensation or reimbursement for expenses.~~

(b) Notwithstanding subsection (a) of this section, the workforce development council may authorize a regional workforce investment board that existed on May 1, 2010 to carry out the duties which would otherwise be assigned to a regional technical center pursuant to this section.

(c)–(d) Repealed.

§ 543. WORKFORCE EDUCATION AND TRAINING FUND; GRANT PROGRAMS

* * *

(e) Award Criteria and Process. The workforce development council, in consultation with the commissioners of labor, education, and of economic, housing and community development, shall develop criteria consistent with subsection (d) of this section for making awards under this section. The commissioners of labor, of education, and of economic, housing and community development shall develop a process for making awards ~~that includes both the following:~~

~~(1) applications shall be submitted to and reviewed by the local workforce investment board. Within seven business days, the board shall forward them to the commissioner of labor, unless this time requirement is waived by the applicant; and~~

~~(2) if review by the local workforce investment board as required by subdivision (1) of this subsection is not completed within seven business days, the applicant may file the application directly with the commissioner of labor without further review by the local workforce investment board~~.

(f) Awards. Based on guidelines set by the council, the ~~commissioner~~ commissioners of labor and of education shall jointly make awards to the following:

(1) Training Programs. Public, private, and nonprofit entities for existing or new innovative training programs. ~~There shall be a preference for programs that include training for newly created or vacant positions.~~ Awards may be made to programs that retrain incumbent workers. Awards under this subdivision shall be made to programs or projects that do all the following:

(A) offer innovative programs of intensive, student-centric, competency-based education, training, apprenticeship, mentoring, or any combination of these;

(B) address the needs of workers who are unemployed, underemployed, or are at risk of becoming unemployed due to changing workplace demands by increasing productivity and developing new skills for incumbent workers;

(C) train workers for trades or occupations that are expected to lead to jobs paying at least 200 percent of the current minimum wage or at least 150 percent if benefits are included; this requirement may be waived when warranted based on regional or occupational wages or economic reality;

~~(D)~~ require a measurable investment from involved employers;

~~(E)~~(D) do not duplicate, supplant, or replace other available programs funded with public money;

~~(F)~~(E) articulate clear goals and demonstrate readily accountable, reportable, and measurable results;

~~(G)~~(F) demonstrate an integrated connection between training and specific employment opportunities, including an effort and consideration by participating employers to hire those who successfully complete a training program.

* * *

(3) Apprenticeship Program. The Vermont apprenticeship program established under chapter 13 of Title 21. Awards under this subdivision may be used to fund the cost of apprenticeship-related instruction provided by the department of labor.

* * *

* * * DOL Apprenticeship program; Electrical and plumbing trades * * *

Sec. 64m. 21 V.S.A. § 1103(a) is amended to read:

(a) The department of labor shall provide for related and supplementary instruction for apprentices employed under apprenticeship programs registered and approved by the council, and for all on-the-job trainees. To make certain there is statewide access to training opportunities, the department shall ensure that instruction in the electrical and plumbing trades is offered at each regional technical center, as defined by 16 V.S.A. § 1522(4). If the department enters into a single-source contract with an entity to provide apprenticeship training, the contract shall specify that access to programs must be available to all Vermont residents, at least through online courses.

* * * Study; Regional workforce investment boards * * *

Sec. 64n. STUDY; REGIONAL WORKFORCE INVESTMENT BOARDS

Regional workforce development study.

(1) The workforce development council, in consultation with the Boston regional office of the United States Department of Labor, representatives of the business and economic development community, the department of education, regional technical centers, the Lake Champlain workforce investment board, and a designee from each regional workforce investment board that chooses to so participate, shall have the authority to undertake a study of Vermont's regional workforce development service delivery system.

(2) The study may address:

(A) the original intent and purpose of the Workforce Development Act to ensure close collaboration and communication between business, workforce development, and education;

(B) how other state structures have been developed or modified to create a system that fosters this type of collaboration; and

(C) how such a system can be effectively and most efficiently implemented in Vermont, including examination of co-location with chambers of commerce, regional planning commissions, regional technical centers, regional development corporations, or other regional service providers.

(3) Results of a study undertaken pursuant to this section should be reported 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.

* * * Sustainable Jobs Fund Program * * *

Sec. 64o. REPEAL

Secs. 800 and 800.1 (board of directors of Vermont sustainable jobs fund program) of H.789 of the 2009 Adj. Sess. (2010), as enacted, are repealed.

Sec. 64p. 10 V.S.A. § 328 is amended to read:

§ 328. CREATION OF THE SUSTAINABLE JOBS FUND PROGRAM

* * *

(c) Notwithstanding the provisions of ~~section~~ subdivision 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.~~ [Repealed.]

* * *

Sec. 64q. SUSTAINABLE JOBS FUND; TRANSITION

(a) 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 upon the effective date of this section. Any vacancy on the board of directors shall be filled by a majority vote of the remaining directors.

(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 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.

Sec. 64r. RESERVED

Sec. 64s. RESERVED

* * * Partnerships in Tourism and Marketing * * *

Sec. 64t. 3 V.S.A. § 2476(e) and (f) are added to read:

(e) The department of tourism and marketing may conduct direct marketing activities pursuant to this chapter or chapter 27 of Title 10, but shall make best reasonable efforts to increase marketing activities conducted in partnership with one or more private sector persons to maximize state marketing resources.

(f) Building on established, successful collaboration with private partners in travel and tourism, agriculture, and other industry sectors, the department should undertake reasonable efforts to extend its marketing and promotional resources to include partners in the arts and humanities, as well as other partners that depend on tourism for a significant part of their annual revenue.

* * * ACCD Brownfield Project Challenge * * *

Sec. 64u. THE BROWNFIELD PROJECT CHALLENGE

(a) Challenge. The agency of commerce and community development and the department of environmental conservation, in cooperation with the appropriate regional planning commissions and regional development corporations for the region in which a project is located, may annually identify two or more commercial brownfield sites for remediation and eventual sale to generate $1 million in general fund revenues.

(b) Projects shall meet the following minimum criteria:

(1) The site is undervalued as a result of environmental contamination.

(2) There is a substantial likelihood that site mitigation and institutional controls can lead to a cost-effective and timely completion date at a reasonable cost.

(3) The value of the property will substantially increase as a result of mitigation.

(4) The regional planning commission and regional development corporation in the region, as applicable, have the capacity and desire to acquire the property, undertake site mitigation, and resell the property.

(c) For projects that meet the criteria under subsection (b) of this section, the regional planning commission and the regional development corporation for the area, as appropriate, the department of environmental conservation, and the agency of commerce and community development working as a project

team shall utilize brownfield remediation funds available from the U.S. Environmental Protection Agency to test and remediate the site.

(d) The remediated site shall be sold to a commercial enterprise that will create jobs at the site.

(e) Profits from the sale of the site shall be divided based on amount, as follows:

(1) The regional planning commission and regional development corporation, as appropriate, shall receive a percentage of profits pursuant to guidelines established by the secretary for each project, not to exceed 150 percent of the amount of the performance contract award to the regional planning commission or regional development corporation.

(2) Any profits remaining following distribution to the regional planning commission and regional development corporation shall be deposited into the brownfields revitalization fund created in 10 V.S.A. § 6654.

Sec. 64v. ECONOMIC DEVELOPMENT REDUCTIONS

(a) A total $834,000 in reduced state funds in fiscal year 2011, reflects a 5% reduction to all the state funded programs in the Unified Economic Development Budget excluding the Clean Energy Development Fund and the Vermont Telecommunications Authority plus the state funds for administration in the Agency of Commerce and Community Development including the central office and the department of tourism and marketing.

(b) A total of $131,600 in state funds for the regional planning commissions in fiscal year 2011 reflecting a 5% reduction.

* * * Challenges for Change Investments * * *

Sec. 64w. CHALLENGES FOR CHANGE INVESTMENTS

The secretary of administration is authorized to invest $XXX,000.00 of funds pursuant to Sec. 9(c)(8) of No. 68 of the Acts of the 2009 Adj. Sess. (2010) to implement the economic development components of the Challenges for Change as set forth in this act, which may include the following activities:

(1) Funding to the regional planning commissions and regional development corporations to facilitate reorganization pursuant to this act.

(2) Funding for the services of one or more economists or fiscal analysts to assist the agency of commerce and community development in the preparation of economic measures for regional job creation and retention.

(3) Funding for the implementation of the brownfield project challenge.

* * * Limits on the Printing of Bills, Calendars, and Journals * * *

Sec. 64x. 2 V.S.A. § 16 is amended to read:

§ 16. PRINTING~~,~~ AND DISTRIBUTION ~~AND SALE~~ OF DAILY CALENDAR, JOURNAL, AND BILLS

Copies of ~~such~~ the daily calendar and journal shall be immediately furnished to the printer designated by the commissioner of buildings and general services. The printing of ~~such~~ the calendar and journal shall be under the supervision of ~~such~~ the secretary and clerk, and the required number of printed copies ~~of same~~ shall be delivered to the offices of the legislative council before the opening of the morning session of the following legislative day. A sufficient number of copies of all the bills shall also be delivered to the offices of the legislative council. Staff of the legislative council shall distribute the daily calendar and journal and the bills as follows:

(1) Calendars. One copy of the daily house calendar shall be placed on the desk of each member of the house and one copy of the daily senate calendar shall be placed on the desk of each member of the senate. An additional number of copies of both the daily house and senate calendars shall be made available to house and senate members in their respective chambers~~, and to the public in the legislative council offices~~ upon the request of a member. Calendars shall also be published on the state legislative webpage. The number of ~~such~~ copies required shall be determined by staff of the legislative council based on their demand.

(2) Journals and bills. ~~Copies of both the~~ The daily house and senate journals~~,~~ and ~~of the~~ bills~~, shall be made available to both house and senate members in their respective chambers, and to the public in the legislative council offices. The number of such copies required shall be determined by staff of the legislative council based on their demand~~ shall be published on the state legislative webpage. Copies of bills shall be made upon request to house and senate members~~, and upon request to members of the public at no cost, subject to reasonable limitations established by the legislative council~~.

~~(3) Copies of the daily House and Senate calendars, the daily House and Senate journals, and of the bills, shall be made available to department heads of state government at no cost, upon request to the legislative council offices. Additional copies of such daily calendars, journals and bills shall be made available for sale to the public at the legislative council offices and from the state librarian, at a price to be fixed by the legislative council. The number of such copies required shall be determined by staff of the legislative council based on their demand.~~

Sec. 64y. RESERVED

* * * Effective Dates * * *

Sec. 64z. EFFECTIVE DATES

(a) Secs. 64 through 64z of this act (economic development) shall take effect upon passage, except that:

(A) Sec. 64o (repeal of Vermont sustainable jobs fund provisions in H.789 as enacted) shall take effect upon passage and, notwithstanding any other provision of law to the contrary, shall apply retroactively to the effective date of H.789 of 2010 as enacted.

(B) Secs. 64p and 64q (Vermont sustainable jobs fund program) shall take effect upon the cessation of state funding to the program from the general fund.

*** * * H. Accountability, Oversight and General Provisions * * ***

Sec. H1. 2 V.S.A. chapter 28A is added to read:

CHAPTER 28A. VERMONT PERFORMANCE REVIEW BOARD

§ 980. VERMONT PERFORMANCE REVIEW BOARD

There is established a Vermont performance review board. The purpose of the board shall be to report to the governor and general assembly on progress made in achieving the outcomes created in No. 68 of the Acts of the 2009 Adj. Sess. (2010), as measured by application of the data-based performance measures identified for each of the Challenges in No. 68.

(1) Members. The board shall consist of seven members, as follows:

(A) Four ex officio members: the chairs of the house and senate committees on appropriations, the commissioner of finance and management, and the assistant secretary of the agency of human services.

(B) Three at-large members: one member appointed by the speaker of the house who shall not be a member of the general assembly, one member appointed by the senate committee on committees who shall not be a member of the general assembly, and one member appointed by the governor who shall not be an employee of the state of Vermont.

(2) Member terms. Ex officio member terms shall be coincident with their terms of office. Initial at-large member terms shall be from the date of appointment through June 30, 2013; and at-large members appointed thereafter shall serve for three-year terms.

(3) Vacancies. A replacement for an at-large member vacancy prior to expiration of the member's term shall be appointed by the original appointing authority for the balance of that term.

(4) Voting. All members shall be voting members, and the board shall elect its chair.

(5) Compensation. For attendance at meetings, at-large board members who are not state employees shall be entitled to per diem and expenses as provided in 32 V.S.A. § 1010, and legislative members shall be entitled to payments for per diem and expenses as provided in 2 V.S.A. § 406(a).

(6) Staff support. The department of finance and management shall provide staff support to the board.

(7) Duties of the board. The board shall:

(A) determine that data-based performance measures have been adopted for each agency and department;

(B) determine whether each agency and department is taking actions to achieve the required outcomes, as shown by application of the data-based performance measures; and

(C) ensure that outcomes, measures, performance data, and descriptions of actions taken, or proposed to be taken, are transparent and readily accessible to the public via electronic publication;

(D) assess the effectiveness of the performance measures for measuring progress in achieving outcomes; and

(E) recommend the addition, amendment, or elimination of any performance measures; and

(F) by November 1 each year report to the general assembly its findings.

Sec. H2. 2 V.S.A. chapter 28 is added to read:

CHAPTER 28. GOVERNMENT ACCOUNTABILITY COMMITTEE

§ 970. GOVERNMENT ACCOUNTABILITY COMMITTEE

(a) There is created a joint legislative government accountability committee. The committee shall recommend mechanisms for state government to be more forward-thinking, strategic, and responsive to the long-term needs of Vermonters. In pursuit of this goal, the committee shall:

(1) Propose areas for the review of statutory mandates for public services that may result in service duplication and to review the alignment of financial and staff resources required to carry out those mandates.

(2) Review the legislative process for the creation and elimination of positions and programs and make recommendations for enhancements to the process that support greater long-range planning and responsiveness to the needs of Vermonters.

(3) Recommend strategies and tools which permit all branches of state government to prioritize the investment of federal, state, and local resources in programs that respond to the needs of the citizens of Vermont in a collaborative, cost-effective, and efficient manner. Pursuant to those strategies and tools, functions which are not critical to an agency or department mission may be recommended for combination or elimination, while other functions may be optimized.

(4) Review strategies with similar aims in other jurisdictions in the context of federal, state, and local relationships.

(b) The membership of the committee shall be appointed each biennial session of the general assembly. The committee shall be comprised of ten members: five members of the house of representatives who shall not all be from the same party: one from the committee on government operations, one from the committee on human services, one from the committee on appropriations, one from the committee on ways and means, and one from the committee on corrections and institutions, appointed by the speaker of the house; and five members of the senate who shall not all be from the same party: one from the committee on government operations, one from the committee on health and welfare, one from the committee on appropriations, one from the committee on finance, and one from the committee on institutions, appointed by the committee on committees. The governor shall appoint one person to serve as a nonvoting liaison to the committee.

(c) The committee shall elect a chair, vice chair, and clerk from among its members and shall adopt rules of procedure. The chair shall alternate biennially between the house and the senate members. The committee shall keep minutes of its meetings and maintain a file thereof. A quorum shall consist of six members.

(d) During the legislative session, the committee shall meet at least once a month, at the call of the chair; and when the legislature is not in session, the committee may meet monthly, at the call of the chair. The committee may meet more often subject to the approval of the speaker of the house and the president pro tempore of the senate.

(e) For attendance at a meeting when the general assembly is not in session, legislative members of the committee shall be entitled to compensation for services and reimbursement of expenses as provided under subsection 406(a) of this title; and nonlegislative members who are not full-time state employees shall be entitled to per diem and expenses as provided in 32 V.S.A. § 1010.

(f) The professional and clerical services of the joint fiscal office and the legislative council shall be available to the committee.

(g) At least annually, by January 15, the committee shall report its activities, together with recommendations, if any, to the general assembly. The report shall be in brief summary form.

Sec. H3. Sec. 10(a) of No. 206 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

(a) Sec. 5 of this act shall be repealed on July 1, ~~2013~~ 2010.

Sec. H4. QUARTERLY REPORTING AND IMPLEMENTATION

(a) On a quarterly basis, beginning with July 1, 2010, the administration shall report to the chairs of the house and senate committees of jurisdiction, the joint legislative government accountability committee, and the joint fiscal committee. Each report shall include a statement of the measures and milestones summarized by the government accountability committee for that Challenge, a brief summary of milestones met and progress made in that Challenge, and the data collected to measure that progress. Reports shall also include any modifications or additions proposed for the plan of implementation, and how these modifications or additions are designed to achieve the outcomes for that Challenge.

(b) The committees of jurisdiction may meet during the interim at the call of the chair to receive and discuss the reports required under this section, and may report each quarter to the government accountability committee as to whether satisfactory progress is being made on each Challenge, and whether any proposed changes in the plan of implementation appear designed to achieve the required outcomes.

(c) The redesign of how to provide government services shall be achieved through innovative, outcome-driven changes in service delivery and performance which create better methods for providing government services, while spending less money and achieving the outcomes specified in the Challenges for Change Act.

(d) The governor, in achieving the outcomes and associated savings under this act and the Challenges for Change Act, may not reduce government benefits or limit benefit eligibility; and may not reduce personnel unless the

personnel reduction is a direct consequence of achieving the required outcomes under the Challenges plan. The administration shall engage the direct participation of service recipients, their families, service providers, and other stakeholders to develop additional Challenges that will meet in full the outcomes and fiscal goals of the Challenges for Change Act and this act, and include a report of these additional Challenges in its July 2010 quarterly report.

Sec. H5. EFFECTIVE DATES; APPLICATION; REPEALS

This act shall take effect July 1, 2010, except as follows:

(1) This section and Secs. 1 (legislative intent), C34 (creation of clinical utilization review board), G1– (economic development), and H4 (quarterly reporting) shall take effect upon passage.

(2) Sec. F33 (waterfowl stamp) shall take effect January 1, 2011.

(3) Sec. B3 (charter units; no required independent expert review for information technology investments) shall be repealed on July 1, 2013.

(4) Secs. F2–F5 (notice of rulemaking) shall take effect on July 1, 2010, and shall apply to all proposed rules filed on or after that date.

(5) The amendments to 10 V.S.A. § 6605(b)(5) in Sec. F11 (ANR monitoring in postclosure solid waste certifications) shall take effect on 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 pending the question, Shall the Senate propose to the House to amend the bill as recommended by Committee on Appropriations?, on motion of Senator Shumlin, the Senate recessed until the fall of the gavel.

Called to Order

At 12:30 P.M. the Senate was called to order by the President *pro tempore*.

Message from the House No. 79

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

Mr. President:

I am directed to inform the Senate that:

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

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.

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

Consideration Resumed; Proposal of Amendment; Third Reading Ordered

H. 792.

Consideration was resumed on House bill entitled:

An act relating to implementation of challenges for change.

Thereupon, the pending question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Appropriations?, was decided in the affirmative.

President Assumes the Chair

Thereupon, third reading of the bill was ordered on a roll call, Yeas 24, Nays 5.

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: Ashe, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Illuzzi, Kitchel, Lyons, Mazza, Miller, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr, White.

Those Senators who voted in the negative were: Flory, Hartwell, Kittell, MacDonald, McCormack.

The Senator absent or not voting was: Mullin.

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:

Lawyer, Tonya of Bristol - Member of the Children and Family Council for Prevention Programs, - from April 28, 2010, to February 28, 2011.

To the Committee on Health and Welfare.

Loner, Michael of Hinesburg - Member of the Children and Family Council for Prevention Programs, - from April 28, 2010, to February 28, 2013.

To the Committee on Health and Welfare.

Villars, Allyson of Brattleboro - Member of the Children and Family Council for Prevention Programs, - from April 28, 2010, to February 29, 2012.

To the Committee on Health and Welfare.

Baisley, Adam of Johnson - Member of the Children and Family Council for Prevention Programs, - from April 28, 2010, to February 29, 2012.

To the Committee on Health and Welfare.

Hayden, Mary H. of Barre - Member of the Children and Family Council for Prevention Programs, - from April 28, 2010, to February 28, 2011.

To the Committee on Health and Welfare.

Hammond, Evan of Lunenburg - Member of the Connecticut River Valley Flood Control Commission, - from April 28, 2010, to February 29, 2016.

To the Committee on Natural Resources and Energy.

Sylvester, Harlan of Burlington - Member of the Vermont Racing Commission, - from May 3, 2010, to January 31, 2013.

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

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. 66.

An act relating to including secondary students with disabilities in senior year activities and ceremonies.

Joint Resolution Referred

J.R.H. 49.

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution strongly criticizing the United States Department of Education for requiring the Vermont Department of Education to identify persistently low-achieving schools.

Whereas, on August 26, 2009, the United States Department of Education published and proposed and has since finalized federal regulations directing each state to identify the 10 "persistently low-achieving schools," and

Whereas, this identification process was part of a broader report required from each state categorizing school achievement in all of its public schools, and

Whereas, in accordance with the federal regulations, in order for the 10 "persistently low-achieving schools" to receive federal school improvement funds included in the American Recovery and Reinvestment Act of 2009 (ARRA), they are required to embrace one of four specific courses of action: (i) replace the principal and at least 50 percent of the school's staff, adopt a new governance structure, and implement a revised educational program; (ii) close the school and reopen it under the management of a charter school operator; (iii) close the school and send the students to another school; or (iv) adopt a transformation model that addresses four specific areas critical to transforming the school, and

Whereas, in March, the Vermont Department of Education released its list, which included Mount Abraham Union High School, Wheeler Elementary School (Integrated Arts Academy), Johnson Elementary School, Rutland High School, Northfield Elementary School, Winooski High School, St. Johnsbury School, Windsor High School, Fair Haven Union High School, and Lamoille Union High School, and

Whereas, the designation of these schools will severely damage their reputations and hamper their ability to receive much-needed federal financial assistance, and

Whereas, to stigmatize schools and impose these major changes on Vermont schools that have worked under often difficult circumstances to improve their quantifiable measurements of achievement is extremely inequitable and unfair, and

Whereas, the United States Department of Education is punishing vulnerable schools that it should be nurturing instead of impeding, and

Whereas, Vermont's education system should not be held hostage to unreasonable federal demands that are all but impossible to implement, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly strongly criticizes the United States Department of Education for its mischaracterization of designated Vermont schools as

"persistently low-achieving schools" and the extensive prerequisites required for these schools to receive federal financial aid, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to United States Secretary of Education Arne Duncan, to Vermont Education Commissioner Armando Vilaseca, to each school listed in this resolution, and to 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 Education.

Senate Concurrent Resolution Adopted

Senate concurrent resolution of the following title was offered, read and adopted on the part of the Senate:

By Senators Kitchel and Choate,

By Representatives Reis of St. Johnsbury, South of St. Johnsbury, Crawford of Burke, Lawrence of Lyndon and Till of Jericho.

S.C.R. 53. Senate concurrent resolution congratulating Gregory MacDonald on being named the Northeast Kingdom Chamber of Commerce 2010 Citizen of the Year.

Whereas, the Northeast Kingdom Chamber of Commerce annually presents the Citizen of the Year Award to an individual who has improved the quality of life in the Northeast Kingdom in a way that is of enduring value, and

Whereas, recipients of this award have represented diverse fields of endeavor and uniquely contributed to the region's societal well-being, and

Whereas, the 2010 Citizen of the Year honoree is Gregory MacDonald, field service district manager for the Vermont Agency of Human Services, and

Whereas, his correctional policy activities have emphasized compassion whenever possible and have focused on rehabilitation programs that enable those who were formerly incarcerated to lead productive lives upon returning to their communities, and

Whereas, Gregory MacDonald grew up in the Boston area, graduated with a degree in criminal justice from Northeastern University, and is a military veteran who served in Vietnam, and

Whereas, his love of the country and farming, gained while working summers on a relative's Nova Scotia dairy farm, brought him to Vermont where he worked on a friend's dairy farm in East Calais, and

Whereas, learning that a new prison, the Northeast Regional Correctional Facility, was opening in St. Johnsbury, he applied for work and was hired as a temporary correctional officer, and

Whereas, Gregory MacDonald proved well-suited for the field of corrections and was promoted first to the position of case worker, then case worker supervisor, and was later appointed as the district manager for Vermont Probation and Parole, a job that ideally matched his academic and professional background and which he held with distinction for 17 years, and

Whereas, most recently, he has served as the Agency of Human Services' regional field director with supervisory responsibility for all of its departments' and offices' activities in the Northeast Kingdom, and

Whereas, outside his official roles, Gregory MacDonald has been a key volunteer in area human service programs, including serving as a cofounder of the local Drug Assistance Resistance Team (DART), and an early participant of both the Aerie Project (a transitional house for women recovering from substance abuse), and the St. Johnsbury Community Justice Center, and

Whereas, Gregory MacDonald contributed his professional expertise to Kingdom County Production's documentary film "Here Today" which examined heroin addiction in the Northeast Kingdom, and

Whereas, he has belonged to the local chapter of the White Ribbon Campaign, an organization dedicated to eradicating men's violence against women and children, and

Whereas, Gregory MacDonald's exemplary community contributions have extended beyond the human services field as he has been a member and chair of the St. Johnsbury school board, served on the boards of various nonprofit organizations, and coached youth hockey and baseball, and

Whereas, in 2001, he was presented the Domestic Violence Service Award from the Umbrella organization, and he is the 2010 recipient of the Vermont Network Against Domestic Violence & Sexual Abuse's Social Change Award, and

Whereas, the Northeast Kingdom Chamber of Commerce could not have selected a more worthy individual to honor for extraordinary regional community leadership and service, and

Whereas, the award will be presented on May 22, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly congratulates Gregory MacDonald on being named the 2010 Northeast Kingdom Chamber of Commerce Citizen of the Year, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to Gregory MacDonald.

Bill Passed in Concurrence with Proposals of Amendment

H. 781.

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

An act relating to renewable energy.

Committee of Conference Appointed

H. 470.

An act relating to restructuring of the judiciary.

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

Senator Sears
Senator Campbell
Senator Nitka

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

Rules Suspended; Bill Messaged

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

H. 781.

Rules Suspended; Senate Concurrent Resolution Messaged

On motion of Senator Shumlin, the rules were suspended, and the following Senate concurrent resolution was ordered messaged to the House forthwith:

S.C.R. 53.

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. 470.

Adjournment

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

Afternoon

The Senate was called to order by the President.

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

H. 780.

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

An act relating to approval of amendments to the charter of the city of St. Albans.

Was taken up for immediate consideration.

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

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

Thereupon, on motion of Senator Campbell, 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.

House Proposal of Amendment Concurred In

S. 90.

House proposal of amendment to Senate bill entitled:

An act relating to representative annual meetings.

Was taken up.

The House has considered the Senate proposal of amendment to the House proposal of amendment and the House adheres to its proposal of amendment, and requests that the Senate recede from its proposal of amendment to the House proposal of amendment.

Thereupon, on motion of Senator White, the Senate receded from its proposal of amendment to the House proposal of amendment and thereby concurred in the House proposal of amendment.

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

S. 97.

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

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

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

S. 97. An act relating to a Vermont state employees' cost-savings incentive program.

Respectfully reports that it has met and considered the same and recommends that the House recede from its proposals of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 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 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, other administrative unit of the state, or the judiciary 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, other administrative unit of the state, or the judiciary 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 each of the criteria set forth in subsections (d) and (e) of this section is met, the agency, department, board, bureau, commission, other administrative unit of the state, or the judiciary 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 $25,000.00 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 appropriate. 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, other administrative unit of the state, or the judiciary, 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.

(h) 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 his or her full award.

(i)(1) If the agency, department, board, bureau, commission, other administrative unit of the state, or the judiciary, that receives a suggestion rejects the suggestion, the employee may file a written request to review the suggestion with a copy of the form and the assessment to the appropriate review panel. The review panel shall then recommend to the secretary of administration or the court administrator, as appropriate, whether to affirm or overrule the decision of the agency, department, board, bureau, commission, other administrative unit of the state, or the judiciary, and the secretary's or court administrator's decision shall be final.

(2) If a suggestion is made by an employee of an agency, department, board, bureau, commission, or other administrative unit of the state, the appropriate review panel shall consist of two members of the Vermont State Employees' Association, Inc., appointed by the executive director of that association and three members from the agency of administration appointed by the secretary of administration.

(3) If a suggestion is made by an employee of the judiciary, the appropriate review panel shall consist of two members of the Vermont State Employees' Association, Inc., appointed by the executive director of that association and three members from the judiciary, appointed by the court administrator.

(4) The appropriate review panel shall meet within 30 days of receiving a written request and shall make a recommendation to the secretary of administration or court administrator, as appropriate, within 15 days of the meeting.

(j) If an employee believes that the agency, department, board, bureau, commission, other administrative unit of the state, or the judiciary has erroneously calculated or underestimated the savings realized by the suggestion, the employee may submit a written request to the secretary of administration or the court administrator, as appropriate, that explains the employee's objection to the amount awarded in writing, within 30 days of the award. The secretary of administration or the court administrator shall review the amount awarded and may increase the amount of an award or affirm the award. The decision of the secretary or 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.

(l) 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, 2012.

WILLIAM T. DOYLE
RANDOLPH D. BROCK
CLAIRE D. AYER

Committee on the part of the Senate

DEBBIE G. EVANS
LINDA J. MARTIN
PATRICIA A. MCDONALD

Committee on the part of the House

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

Rules Suspended; Report of Committee of Conference Not Accepted by the Senate

S. 295.

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

An act relating to the creation of an agricultural development director.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

An act relating to the creation of an agricultural development director.

Respectfully reports that it has met and considered the same and recommends that the Senate accede to the House proposal of amendment, and that the bill be further amended as follows:

First: In Sec. 1, by striking out the following: "The general assembly finds" where it appears and inserting in lieu thereof the following: For purposes of Secs. 2, 3, and 4 of this act, the general assembly finds

Second: In Sec. 2, by adding subsection (c) to read as follows:

(c) Any change in employment titles or responsibilities resulting from the creation of the position of director of agricultural development shall be accomplished without increasing the overall salary expenditures of the agency of agriculture, food and markets.

Third: In Sec. 4, 6 V.S.A. § 2966, subdivision (a)(2), in subdivision (A), by striking out the following: ", implement," where it appears and in subdivision (D), by striking out the following: "balancing" where it appears and inserting in lieu thereof the following: balance

Fourth: In Sec. 4, 6 V.S.A. § 2966, by striking out subsection (c) in its entirety and inserting in lieu thereof the following:

(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;

(4) request services from state economists, state administrative agencies, and state programs;

(5) obtain information from other planning entities, including the farm-to-plate investment program;

(6) 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; and

(7) develop an annual operating budget, and

(A) solicit any grants, gifts, or appropriations necessary to implement the budget pursuant to 32 V.S.A. § 5;

(B) expend any monies necessary to carry out the purposes of this section.

Fifth: In Sec. 4, 6 V.S.A. § 2966, in subsection (f), by striking out subdivisions (3) and (4) in their entirety and inserting in lieu thereof the following:

(3) The secretary of agriculture, food and markets or his or her designee shall be a nonvoting, ex officio member. The secretary may provide staff support from the agency of agriculture, food and markets as resources permit.

(4) The secretary of commerce and community development or his or her designee shall be a nonvoting, ex officio member.

Sixth: In Sec. 4, 6 V.S.A. § 2966, in subsection (g), by striking out subdivision (1) in its entirety; in subdivision (2), by striking out "Unless a higher threshold is established by the board's rules, seven" where it appears and inserting in lieu thereof Eight; in subdivision (3)(A), by striking out "board shall be led by a chair who" where it appears and inserting in lieu thereof chair of the board; and by renumbering the subdivisions accordingly

Seventh: By striking out Secs. 5 and 6 in their entirety and inserting in lieu thereof the following:

Sec. 5. FINDINGS

For purposes of Secs. 6, 7, 8, and 9 of this act, the general assembly finds:

(1) Livestock is the core of dairy and livestock farming. The care of and management of livestock are important to the profitability of Vermont farms and the maintenance of Vermont's working landscape.

(2) The general public is increasingly interested in locally produced food, and local Vermont meat has an excellent reputation for quality and flavor.

(3) Livestock raised on Vermont farms offers profit potential and economic opportunity for Vermont producers.

(4) The state would benefit from a body charged with making policy recommendations regarding livestock care.

(5) It is the intent of this legislation to assure the continued success of livestock and dairy farming in Vermont and the continuance of a safe, local food supply.

Sec. 6. 6 V.S.A. chapter 64 is added to read:

CHAPTER 64. LIVESTOCK CARE STANDARDS ADVISORY COUNCIL

§ 792. 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 six members appointed by the governor:

(A) A person with knowledge of food safety and food safety regulation in the state.

(B) A person from a statewide organization that represents the beef industry.

(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 three 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.

(C) A professional in the care and management of equines and equine facilities.

(5) The following three 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.

(C) A person with experience investigating charges of animal cruelty involving livestock, provided that no such person who has received or is receiving compensation from a national humane society or organization may be appointed under this subdivision.

(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. Eight 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.

§ 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;

(F) the protection of local and affordable food supplies for consumers; 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.

(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. 7. 6 V.S.A. § 3306 is amended to read:

§ 3306. LICENSING

* * *

(e) The secretary may, after notice and opportunity for hearing, refuse to grant, suspend, or revoke a license, may impose terms or conditions for operation under a license, including video monitoring, or may take any other action which he or she deems appropriate concerning any license, if he or she determines that any false statement was made in the application or if he or she finds that there is any failure to comply with this chapter or the rules made under it.

* * *

(h) The secretary may deny a commercial slaughter license or the renewal of a commercial slaughter license under this chapter to a person who has been convicted of a felony, convicted of a misdemeanor involving cruelty to animals, or has been found in violation of section 3132 of this title more than once. The secretary may deny a commercial slaughter license or renewal of a commercial slaughter license under this chapter if a person responsibly connected to the applicant has been convicted of a felony, convicted of a misdemeanor involving cruelty to animals, or has been found in violation of section 3132 of this title more than once. For purposes of this subdivision, a "person responsibly connected to an applicant" is a partner, officer, director, holder, or owner of 10 percent or more of the voting stock of the applicant's business or is an employee in a managerial or executive capacity at the applicant's business.

(i) All applicants for licensure or relicensure as a commercial slaughter facility shall submit a written humane livestock handling plan for review and approval by the secretary of agriculture, food and markets or designee. The secretary may suspend, revoke, or condition any commercial slaughter facility license, after notice and opportunity for hearing, for a licensee's failure to adhere to the written plan.

(j) Commercial slaughter facilities issued a license by the agency of agriculture, food and markets shall submit to the secretary or designee within five days of receipt any documentation received from the U.S. Department of Agriculture (USDA) related to violations of the Federal Humane Slaughter Act and rules adopted thereunder. The secretary shall review the documentation submitted under this subdivision for potential action under this chapter or chapter 201 of this title. A failure to submit documentation required under this subdivision shall be a violation of this chapter subject to an administrative penalty under chapter 15 of this title.

Sec. 8. 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.

Sec. 9. 6 V.S.A. § 3134 is amended to read:

§ 3134. PENALTY

(a) A person who violates ~~this chapter~~ section 3132 of this title shall be guilty of a misdemeanor and shall be fined upon conviction not more than ~~$100.00~~ $1,000.00 for the first violation, not more than $5,000.00 for the second violation, and not more than $10,000.00 per violation for the third and any subsequent violations, or imprisoned not more than ~~90 days~~ two years, or both. In addition to the penalties provided ~~above~~ in this subsection, 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 refer a violation of section 3132 of this title to the attorney general or the state's attorney for criminal prosecution. The secretary may also take any action authorized under chapter 1 of this title.

Sec. 10. 20 V.S.A. § 3901 is amended to read:

§ 3901. DEFINITIONS

As used in this chapter, unless the context clearly requires otherwise:

* * *

(4) "Animal" means any dog or cat, rabbit, rodent, ~~nonhuman primate,~~ bird, or other warm-blooded vertebrate but shall not include horses, cattle, sheep, goats, swine, and domestic fowl.

* * *

(16) "Rescue organization" means any organization that accepts more than five animals in a calendar year for the purpose of finding adoptive homes for the animals, and that:

(A) holds a license as a pet shop;

(B) is recognized and approved as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, but is not registered as an animal shelter; or

(C) is registered as an animal shelter with the agency of agriculture, food and markets under section 3903 of this title.

Sec. 11. 20 V.S.A. § 3903 is amended to read:

§ 3903. REGISTRATION OF ANIMAL SHELTERS AND RESCUE ORGANIZATIONS

(a) No person may operate an animal shelter ~~after the expiration of six months following the effective date of this chapter~~ or rescue organization unless a certificate of registration for the animal shelter or rescue organization has been granted by the secretary. Application for the certificate shall be made in the manner provided by the secretary. No fee shall be required for the certificate. Certificates of registration shall be valid for a period of one year or until revoked, and may be renewed for like periods upon application in the manner provided.

(b) An animal shelter or rescue organization registered under this chapter shall not accept an animal unless the ~~donor~~ person transferring the animal to the shelter provides the following information: the name and address of the ~~donor~~ person transferring the animal and, if known, the name of the animal, its vaccination history, and other information concerning the background, temperament, and health of the animal.

Sec. 12. 20 V.S.A. § 3907 is amended to read:

§ 3907. DENIAL OR REVOCATION OF REGISTRATION OR LICENSE

Issuance of a certificate of registration may be denied to any animal shelter, rescue organization, or fair, or a license denied to any public auction, or pet merchants, or any certificate or license previously granted under this chapter, may be revoked by the secretary if, after public hearing, it is determined that the housing facilities or primary enclosures are inadequate for the purposes of this chapter, or if the feeding, watering, sanitizing, and housing practices of the animal shelter, rescue organization, fair, public auction, pet merchant as the case may be, are not consistent with this chapter or with rules adopted under this chapter.

Sec. 13. 20 V.S.A. § 3908 is amended to read:

§ 3908. ADOPTION OF REGULATIONS

The secretary may as he or she deems necessary adopt, amend, revise, and repeal rules consistent with this chapter for the purpose of carrying out its purposes. The rules may include, but need not be limited to, provisions relating to humane transportation to and from registered or licensed premises, records of purchase and sale, identification of animals, primary enclosures, housing facilities, sanitation, euthanasia, ambient temperatures, feeding, watering, and adequate veterinary medical care, with respect to animals kept or cared for at premises licensed or registered under this chapter. The secretary

may at his or her discretion, adopt in whole or in part those portions of the rules of the secretary of agriculture under Public Law 89-544, commonly known as the Laboratory Animal Welfare Act, which are consistent with the purposes of this chapter.

Sec. 14. 20 V.S.A. § 3911(b) is amended to read:

(b) Any person who operates a fair~~,~~ or public auction, or who transacts business as a pet merchant, animal shelter, or rescue organization without being duly licensed or without possessing a proper certificate of registration, as the case may be, as required under this chapter, or who violates any provision of this chapter or of any rule lawfully adopted under its authority for which no other penalty is provided, shall be fined not more than $300.00 or imprisoned for not more than six months, or both.

Sec. 15. 20 V.S.A. § 3915 is added to read:

§ 3915. HEALTH CERTIFICATE FOR TRANSPORT INTO STATE

(a) A dog, cat, ferret, or wolf-hybrid imported into the state for sale, resale, exchange, or donation shall be accompanied by an official health certificate or similar certificate of inspection for the dog, cat, ferret, or wolf-hybrid issued by a veterinarian licensed in the state or country of origin. The certificate shall certify that:

(1) the dog, cat, ferret, or wolf-hybrid has been inspected and is free of visible signs of infections or contagious or communicable disease; and

(2) if the dog, cat, ferret, or wolf-hybrid is more than three months of age, the dog, cat, ferret, or wolf-hybrid has a current rabies vaccination or is a specific breed for which a rabies vaccination is not age-appropriate.

(b) The agency of agriculture, food and markets may adopt rules regarding the issuance and contents of any certificate required under subsection (a) of this section.

Sec. 16. EFFECTIVE DATES

(a) Secs. 1 (agricultural development findings), 2 (agricultural development director), 3 (elimination of references to commissioner of agricultural development), 4 (agricultural development board), 10 (rescue organization), 11 (registration of rescue organizations), 12 (denial or revocation of animal shelter or rescue organization license), 13 (adoption of animal importation regulations), 14 (animal importation penalties), and 15 (health certificate) of this act shall take effect on July 1, 2010.

(b) This section and Secs. 5 (livestock findings), 6 (livestock care standards advisory council), 7 (commercial slaughter facility licensing), 8 (training), and 9 (humane slaughter) shall take effect upon passage.

and that the title of the bill be amended to read: "An act relating to miscellaneous agricultural subjects"

SARA BRANON KITTELL
MATTHEW A. CHOATE
ROBERT A. STARR

Committee on the part of the Senate

WILLIAM C. STEVENS
JOHN W. MALCOLM
THERESE M. TAYLOR

Committee on the part of the House

Thereupon, pending the question, Shall the Senate accept and adopt the report of the Committee of Conference?, Senator Campbell raised a point of order on the ground that the Committee of Conference had not confined itself to reconciling the differences between the versions of the bill as passed by the Senate and the House in violation of *Mason's Manual of Legislative Procedure* Sec. 770.2, and therefore that the report could not be considered by the Senate. The President sustained the point of order and ruled that the report of the Committee of Conference could not be considered by the Senate.

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

H. 759.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to executive branch fees.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

H. 759. An act relating to executive branch fees.

Respectfully reports that it has met and considered the same and recommends recommend that the Senate recede from its proposals of amendment and that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Department of Public Safety * * *

* * * Fire prevention and building code fees * * *

Sec. 1. 20 V.S.A. § 2731(c) is amended to read:

(c) The following fire prevention and building code fees are established:

(1) The permit application fee for a construction plan approval shall be~~:~~

~~(A) based on $4.50 per each $1,000.00 of the total valuation of the construction work proposed to be done for renovation to buildings constructed before 1983, but in no event shall the permit application fee exceed $135,000.00;~~

~~(B)~~ based on $5.50 per each $1,000.00 of the total valuation of the construction work proposed to be done for all ~~other~~ buildings, but in no event shall the permit application fee exceed ~~$135,000.00~~ $185,000.00 nor be less than $50.00.

(2) When an inspection is required due to the change in use or ownership of a public building, the fee shall be ~~$25.00~~ $125.00.

(3) The proof of inspection fee for fire suppression, alarm, detection, and any other fire protection systems shall be ~~$10.00~~ $30.00.

(4) Three-year initial certificate of fitness and renewal fees for individuals performing activities related to fire or life safety established under subsection (a) of this section shall be:

(A) Water-based fire protection system design:

(i) Initial certification: $150.00.

(ii) Renewal: $50.00.

(B) Water-based fire protection system installation, maintenance, repair, and testing:

(i) Initial certification: $115.00.

(ii) Renewal: $50.00.

(C) Gas appliance installation, inspection, and service, $60.00.

(D) Oil burning equipment installation, inspection, and service, $60.00.

(E) Fire alarm system inspection and testing, $90.00.

(F) Limited oil burning equipment installation, inspection, and service, $60.00.

(G) Domestic water-based fire protection system installation, maintenance, repair, and testing:

(i) Initial certification: $60.00.

(ii) Renewal: $20.00.

(H) Fixed fire extinguishing system design, installation, inspection, servicing, and recharging:

(i) Initial certification: $60.00.

(ii) Renewal: $20.00.

(I) Emergency generator installation, maintenance, repair, and testing, $30.00;

(J) Chimney and solid fuel burning appliance cleaning, maintenance, and evaluation, $30.00.

Sec. 2. 20 V.S.A. § 2738 is amended to read:

§ 2738. FIRE ~~SAFETY~~ PREVENTION AND BUILDING INSPECTION SPECIAL FUND

(a) The fire ~~safety~~ prevention and building inspection special fund revenues shall be from the following sources:

(1) fees relating to construction and inspection of public building and fire prevention inspections under section 2731 of this title;

(2) fees relating to boilers and pressure vessels under section 2883 of this title; ~~and~~

(3) fees relating to electrical installations and inspections and the licensing of electricians under ~~sections~~ 26 V.S.A. §§ 891-915 ~~of Title 26~~;

(4) fees relating to cigarette certification under section 2757 of this title; and

(5) fees relating to plumbing installations and inspections and the licensing of plumbers under 26 V.S.A. §§ 2171–2199.

(b) Fees collected under subsection (a) of this section shall be available to the department of public safety to offset the costs of the division of fire safety ~~program~~.

* * *

* * * Cigarette certification fee * * *

Sec. 3. 20 V.S.A. § 2757(c) is amended to read:

(c) Each manufacturer shall submit to the commissioner written certification attesting that each cigarette has been tested in accordance with and has met the performance standard required under subsection (b) of this section. The description of each cigarette listed in the certification shall include the brand; style; length in millimeters; circumference in millimeters; flavor, if applicable; filter or nonfilter; package description, such as a soft pack or box; and the mark approved pursuant to subsection (d) of this section. Upon request, this certification shall be made available to the attorney general and department of liquor control. Each cigarette certified under this subsection shall be recertified every three years. For the certification or recertification of each brand style, the fee shall be $1,000.00. The fees shall be paid into the fire prevention and building inspection special fund established in 20 V.S.A. § 2738.

* * * Boiler inspection * * *

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.

* * * Electrical work * * *

Sec. 5. 26 V.S.A. § 893(a) is amended to read:

(a) Electrical work in a complex structure shall not commence until a work notice accompanied by the required fee is submitted to the department and the work notice is validated by the department. There shall be a base fee of ~~$30.00~~ $40.00 for each work notice, except for electrical work done in one and two family residential dwellings. In addition to the base fee, the following fees shall be charged:

* * *

(4) Other electrical work

(A) Each panel and feeder after the main disconnect–~~$10.00~~ $35.00.

(B) Outlets for receptacles, switches, fixtures, electric baseboard (per 50 units or portion thereof)–$20.00.

(C) Yard lights signs–$5.00 each.

(D) Fuel oil, kerosene, LP, natural gas, and gasoline pumps–$15.00 each.

(E) Boilers, furnaces and other stationary appliances–$10.00 each.

(F) Elevators–$75.00 each.

(G) Platform lifts–$40.00 each.

(H) Fire alarm initiating, signaling, and associated devices (per 50 units or portions thereof)–$30.00.

(I) Fire alarm main panel and annunciator panels–$50.00 each.

(J) Fire pumps–$50.00.

(5) Reinspection fee. For each reinspection for code violations, there will be a fee of ~~$35.00~~ $125.00.

* * * Electrician license fees * * *

Sec. 6. 26 V.S.A. § 905 is amended to read:

§ 905. APPLICATION; EXAMINATIONS AND FEES

* * *

(d) Three-year electrical license fees shall be:

For a masters license (initial and renewal)	~~$120.00~~ $150.00;
For a journeyman's license (initial and renewal)	~~$ 90.00~~ $115.00;

For a type-S journeyman's license (initial and renewal) per field ~~$ 90.00~~ $115.00;

~~For~~ The fee for a certificate for framing shall be: $ 10.00.

(e) 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) The fee for replacement of a lost or damaged license shall be: $20.00.

* * * Plumbing work notice fees * * *

Sec. 7. 26 V.S.A. § 2175(a) is amended to read:

(a) Work in installations subject to the rules of the board shall not commence until a work notice has been received and validated by the department of public safety. The following schedule of work notice fees shall be paid to the commissioner or a designated representative prior to the validation of a work notice.

(1) For all plumbing work, identified as a priority for inspection and review under subsection 2173(b) of this title, the fee shall be:

(A) ~~$7.00~~ $10.00 for each plumbing fixture described as a washing machine, dishwasher, grease trap, oil interceptor, sand interceptor, sewage ejector pump, water closet, urinal, bidet, disposal, drinking fountain, water cooler, lavatory, bathtub, shower, sink, hose bib, floor drain, or similar device. The total shall not be less than ~~$20.00~~ $50.00.

(B) ~~$10.00~~ $15.00 for each plumbing fixture described as a water heater, hydronic heating unit, domestic hot water coil, or water treatment device.

(2) For all plumbing work, not identified as a priority for inspection and review under subsection 2173(b) of this title, the fee shall be~~:~~

~~(A) $20.00 for all plumbing work.~~

~~(B) $10.00 for all plumbing work involving a water heater, hydronic heating unit, domestic hot water coil or water treatment device~~ $50.00.

* * *

* * * Plumber license fees * * *

Sec. 8. 26 V.S.A. § 2193(c) is amended to read:

(c) License and renewal fees are as follows:

(1) Master plumber license	~~$ 100.00~~	$120.00
(2) Journeyman plumber license	~~$ 70.00~~	$90.00

(3) Specialist license	~~$ 40.00~~	$50.00
(4) Master renewal fee	~~$ 100.00~~	$120.00
(5) Journeyman renewal fee	~~$ 70.00~~	$90.00
(6) Specialist renewal fee	~~$ 40.00~~	$50.00
(7) License certificate	$ 10.00	

* * * Repeals * * *

Sec. 9. REPEALS

(a) Sec. 9(b) of No. 165 of the Acts of the 2007 Adj. Sess. (2008) (repeal of criminal history record check fees and the criminal history record check fund) is repealed.

(b) 20 V.S.A. § 2739 (inspection and licensing special fund) is repealed.

* * * 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.

* * * 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.

* * * Agency of Agriculture, Food and Markets * * *

* * * Commercial feed registration * * *

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.

Sec. 11. 6 V.S.A. § 918(b) is amended to read:

(b) The registrant shall pay an annual fee of ~~$92.00~~ $100.00 for each product registered, and that amount shall be deposited in the special fund created in section 929 of this title, of which $5.00 from each product registration shall be used for an educational program related to the proper purchase, application, and disposal of household pesticides, and $5.00 from each product registration shall be used to collect and dispose of obsolete and unwanted pesticides. The annual registration year shall be from December 1 to November 30 of the following year.

* * * Pesticide dealer license* * *

Sec. 12. 6 V.S.A. § 1112(a) is amended to read:

(a) The secretary may adopt regulations requiring persons selling Class A and B pesticides to be licensed under this chapter. In addition, the secretary may adopt regulations requiring companies which hire applicators or conduct pesticide applications to be licensed, and applicators who use pesticides to be certified under this chapter. The secretary may establish reasonable requirements for obtaining licenses and certificates. The fees for dealers, licensed companies and applicator certificates under this chapter shall be as follows:

(1) Class A Dealer License-~~$25.00~~ $30.00;

(2) Class B Dealer License-~~$25.00~~ $30.00;

(3) Pesticide Company License-~~$50.00~~ $60.00;

(4) Commercial and Noncommercial Applicator Certification fee-$25.00 per category or subcategory with a maximum of $100.00;

(5) Second and third time examination fee for dealer licenses and applicator certification-$25.00.

* * * Bison and cervidae meat inspections * * *

Sec. 13. 6 V.S.A. § 3305(15) is amended to read:

(15) establish by rule the method for providing voluntary inspection, and withdrawal of inspection, of exotic animals, wild game, red deer, and cervidae. These rules may also provide for the inspection of meat and meat food products derived from those animals. The secretary shall provide voluntary inspection of bison~~,~~ and cervidae~~, and ratite~~ produced in Vermont, including the inspection of meat and meat food products processed in Vermont derived from bison~~,~~ and cervidae, ~~and ratite, for which~~ wherever produced. For such inspection the secretary shall charge a fee ~~of $5.00 per hour. The secretary shall charge $20.00 per hour per inspection of meat and meat food products processed in Vermont but derived from bison, cervidae, and ratite produced outside Vermont~~ equal to the rate for reimbursable inspection services provided under the Vermont meat and poultry inspection program;

* * * Meat cutting vendors * * *

Sec. 14. 6 V.S.A. § 3306(d) is amended to read:

(d) The annual fee for a license for a retail vendor is $15.00 ~~and~~ for vendors without meat cutting operations, $30.00 for vendors with meat cutting space of less than 300 square feet or meat display space of less than 20 linear feet, and $60.00 for vendors with 300 or more square feet of meat cutting space and 20 or more linear feet of meat display space. Fees collected under this section shall be deposited in a special fund managed pursuant to subchapter 5 of chapter 7 of Title 32, and shall be available to the agency to offset the cost of administering chapter 204 of this title. For all other plants, establishments, and related businesses listed under subsection (a) of this section, the annual license fee shall be $50.00. ~~All licenses issued under this section shall take effect January 1 and expire on December 31 of the same year.~~

* * * Dealers of weighing and measuring devices * * *

Sec. 15. 9 V.S.A. § 2721 is amended to read:

§ 2721. LICENSED PUBLIC WEIGHMASTER-LICENSE

Any person, who is 18 years of age or older, wishing to be a licensed public weighmaster shall apply to the secretary upon forms provided by the agency, and remit a fee of ~~$12.00~~ $15.00. Upon approval, the secretary shall issue to the applicant a license certificate which shall expire on June 30 unless sooner suspended or revoked under section 2723 of this title. Renewal applications shall be in such form as the secretary shall prescribe.

Sec. 16. 9 V.S.A. § 2725(a) is amended to read:

(a) Any person wishing to be registered as a dealer or service person shall apply to the secretary upon forms provided by the agency and each application shall be accompanied by a fee of ~~$25.00~~ $50.00. Upon approval, the secretary shall issue to the applicant a registration certificate which shall expire on June 30th unless sooner suspended or revoked under section 2726 of this title. Any service person who applies for such a registration certificate must have obtained a hand seal which has a number registered with the secretary. Any service person who has been granted a registration certificate shall, with such hand seal, seal all meters with a lead and wire seal at such time as he or she installs, repairs, or adjusts said meters.

* * * License to operate weighing and measuring devices * * *

Sec. 17. 9 V.S.A. § 2730(f)(1) is amended to read:

(f)(1) The secretary shall charge, per unit, the following annual license fees:

(A) Retail motor fuel dispenser meter: $15.00.

(B) Vehicle tank meter: $50.00.

(C) Scales: $10.00.

(D) Vehicle and heavy duty scales: $150.00.

(E) Taxi meter: $10.00.

(F) Meter: $5.00.

(G) Bulk plant meter: $100.00.

(H) Truck mounted propane meter: $150.00.

(I) Hopper scales: ~~$75.00~~ $100.00.

(J) Propane fill station: $50.00.

(K) Medium duty scales:
portable platform scales: $10.00.
all others: $30.00.

* * * Point-of-sale laser scanning licenses * * *

Sec. 18. 9 V.S.A. § 2643 is amended to read:

§ 2643. LICENSES; INSPECTIONS; PENALTIES

(a) No person shall operate a retail point-of-sale laser scanning check-out system with more than three point-of-sale scanning points without first obtaining a license from the secretary.

(1) The secretary may issue a license without first testing the accuracy and use of the point-of-sale laser scanning check-out system pursuant to subsection (b) of this section.

(2) The annual license fee shall be $10.00 per individual point-of-sale scanning point within a store. All single retail units that have three or fewer scanning points shall be exempt from this fee.

(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 license denial, revocation, suspension or the ~~following~~ 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 more than two percent 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.~~

* * *Department of Banking, Insurance, Securities,

and Health Care Administration * * *

Sec. 19. 8 V.S.A. § 2208a is added to read:

§ 2208a. MORTGAGE LOAN ORIGINATOR CHANGE OF EMPLOYER OR SPONSOR

(a) No mortgage loan originator may be employed, supervised, and sponsored by more than one licensed lender or licensed mortgage broker operating in this state. Alternatively, a mortgage loan originator may be an individual sole proprietor who is also licensed as a lender or mortgage broker in this state.

(b) A mortgage loan originator shall notify the commissioner and update its status on the National Mortgage Licensing System and Registry within 15 days of any change in the employer and sponsor of the mortgage loan originator subsequent to the initial employer and sponsor. A fee of $50.00 payable to the commissioner shall accompany notice of such change of employer and sponsor.

* * * Money transmission services; licensees * * *

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.

* * *

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.

Sec. 22. 8 V.S.A. § 2525(h) is added to read:

(h) A person may not be an authorized delegate of another authorized delegate. An authorized delegate must enter into a contract directly with a licensee.

Sec. 23. 8 V.S.A. § 2532(b) is amended to read:

(b) A licensee shall ~~file with~~ notify the commissioner in writing within ~~60~~ 30 days of any change in the list of ~~authorized delegates,~~ executive officers, managers, directors, individuals in control, or responsible individuals~~, 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~~.

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.

* * * 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

* * *

* * * Captive insurance fees * * *

Sec. 25. 8 V.S.A. § 6002(d) is amended to read:

(d) Each captive insurance company shall pay to the commissioner a nonrefundable fee of ~~$200.00~~ $500.00 for examining, investigating, and processing its application for license, and for issuing same, and the commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged against the applicant. The provisions of section 3576 of this title shall apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license ~~fee for the year of registration and a~~ renewal fee for each year thereafter of ~~$300.00~~ $500.00.

* * * Department of Health * * *

* * * Hospital license fees * * *

Sec. 26. 18 V.S.A. § 1904(b) is amended to read:

(b) ~~License~~ Annual license fees.

(1) Base fee of $7,667.00 ~~in calendar years 2007, 2008, 2009, and 2010~~.

(2) Per-bed fee of $25.00 ~~in calendar years 2007, 2008, 2009, and 2010~~.

(3) The base fee for applicants presenting evidence of current accreditation by the Joint Commission on Accreditation of Health Care Organizations shall be reduced by $2,750.00 ~~in calendar years 2007, 2008, 2009, and 2010~~.

* * * X-ray equipment fees * * *

Sec. 27. 18 V.S.A. § 1652(e) is amended to read:

(e) Applicants for registration of X-ray equipment shall pay ~~a triannual~~ an annual registration fee of ~~$300.00~~ $30.00 per piece of equipment.

* * * Department of Labor * * *

* * * Workers' compensation fund * * *

Sec. 28. 21 V.S.A. § 711(a) is amended to read:

(a) A workers' compensation administration fund is created pursuant to subchapter 5 of chapter 7 of Title 32 to be expended by the commissioner for the administration of the worker's compensation and occupational disease programs. The fund shall consist of contributions from employers made at a rate of ~~0.96~~ 1.37 percent of the direct calendar year premium for workers' compensation insurance, one percent of self-insured workers' compensation losses, and one percent of worker's compensation losses of corporations approved under ~~the chapter 9 of~~ this ~~title~~ chapter. Disbursements from the fund shall be on warrants drawn by the commissioner of finance and management in anticipation of receipts authorized by this section.

* * * Department of Fish and Wildlife * * *

* * * Hunting and fishing licenses * * *

Sec. 29. 10 V.S.A. § 4255 is amended to read:

§ 4255. LICENSE FEES

(a) Vermont residents may apply for licenses on forms provided by the commissioner. Fees for each license shall be:

(1) Fishing license	~~$20.00~~	$22.00
(2) Hunting license	~~$20.00~~	$22.00
(3) Combination hunting and fishing license	~~$32.00~~	$35.00
(4) Big game licenses (all require a hunting license)		
(A) archery license	~~$17.00~~	$20.00
(B) muzzle loader license	~~$17.00~~	$20.00
(C) turkey license	~~$17.00~~	$20.00
(D) second muzzle loader license	$17.00	
(E) second archery license	$17.00	
(F) moose license	$100.00	

(5) Trapping license	$20.00	
(6) Hunting license for persons under 18 years of age	$8.00	
(7) Trapping license for persons under 18 years of age	$10.00	
(8) Fishing license for persons aged 15 through 17	$8.00	
(9) Super sport license	$150.00	
(10) Three-day fishing license	$10.00	
(11) Combination hunting and fishing license for persons under 18 years of age	$12.00	

(b) Nonresidents may apply for licenses on forms provided by the commissioner. Fees for each license shall be:

(1) Fishing license	~~$41.00~~	$45.00
(2) One-day fishing license	~~$15.00~~	$20.00
(3) [Deleted.]		
(4) Hunting license	~~$90.00~~	$100.00
(5) Combination hunting and fishing license	~~$120.00~~	$130.00
(6) Big game licenses (all require a hunting license)		
(A) archery license	~~$25.00~~	$35.00
(B) muzzle loader license	~~$25.00~~	$40.00
(C) turkey license	~~$25.00~~	$35.00
(D) second muzzle loader license	$25.00	
(E) second archery license	$25.00	
(F) moose license	$350.00	
(7) Small game licenses		
(A) all season	~~$40.00~~	$50.00
(B) [Deleted.]		
(8) Trapping license	$300.00	
(9) Hunting licenses for persons under 18 years of age	$25.00	

(10) Three-day fishing license	~~$20.00~~	$22.00
(11) Seven-day fishing license	$30.00	
(12) Archery-only license (does not require hunting license)	~~$60.00~~	$75.00
(13) Fishing license for persons aged 15 through 17	$15.00	
(14) Super sport license	$250.00	
(15) Combination hunting and fishing license for persons under 18 years of age	$30.00	

* * *

(j) If the board determines that a moose season will be held in accordance with the rules adopted under sections 4082 and 4084 of this title, the commissioner annually may issue ~~one~~ three no-cost moose ~~license~~ licenses to a child or young adult age 21 years or under who has a life threatening disease or illness and who is sponsored by a qualified charitable organization. The child or young adult must comply with all other requirements of this chapter and the rules of the board. The commissioner shall adopt rules in accordance with chapter 25 of Title 3 to implement this subsection. The rules shall define the child or young adult qualified to receive the no-cost license, shall define a qualified sponsoring charitable organization, and shall provide the application process and criteria for issuing the no-cost moose license.

* * *

* * * Department of Environmental Conservation * * *

* * * Air contaminant permits; stormwater permits; groundwater extraction * * *

Sec. 30. 3 V.S.A. § 2822 is amended to read:

§ 2822. BUDGET AND REPORT; POWERS

* * *

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

(1) For air pollution control permits or registrations issued under ~~10 V.S.A.~~ chapter 23 of Title 10:

(A) Any persons subject to the provisions of ~~section~~ 10 V.S.A. § 556 ~~of Title 10~~ shall submit with each permit application or with each request for a

permit amendment, a base service fee in accordance with the base fee schedule in subdivision (i) of this subdivision (1)(A). Prior to taking final action under ~~section~~ 10 V.S.A. § 556 ~~of Title 10~~ on any application for a permit for a nonmajor stationary source or on any request for an amendment of a permit for such a source, the secretary shall assess each applicant for any additional fees due to the agency, assessed in accordance with the base fee schedule and the supplementary fee schedule in subdivision (ii) of this subdivision (1)(A). The applicant shall submit any fees so assessed to the secretary prior to issuance of the final permit, notwithstanding the provisions of subsection (i) of this section. The base fee schedule and the supplementary fee schedule are applicable to all applications on which the secretary makes a final decision on or after the date on which this section is operative.

(i) Base fee schedule

(I) Application for permit to construct or modify source

(aa) Major stationary source	~~$11,500.00~~	$12,500.00
(bb) Nonmajor stationary source	~~$750.00~~	$1,000.00
~~(cc) Indirect source~~	~~$4,000.00~~	

(II) Amendments

~~(aa)~~ Change in business name, division name or plant name; mailing address; or company stack designation; or other administrative amendments	$100.00	
~~(bb) Technical amendments~~	~~$500.00~~	

(ii) Supplementary fee schedule for nonmajor stationary sources

(I) Engineering review	~~$1,460.00~~	$1,750.00
(II) Air quality impact analysis		
~~(aa) Review screening modeling~~	~~$600.00~~	
~~(bb)~~ Review refined modeling	~~$1,170.00~~	$1,250.00

* * *

(B) Any person required to register an air contaminant source under ~~subsection~~ 10 V.S.A. § 555(c) ~~of Title 10~~ shall submit an annual registration fee in accordance with the following registration fee schedule, where the sum of a source's emissions of the following air contaminants is greater than five tons per year: sulfur dioxide, particulate matter, carbon monoxide, nitrogen oxides, and hydrocarbons:

Registration: ~~$0.021~~ $0.024 per pound of emissions of any of these contaminants. Where the sum of a source's emission of these contaminants is greater than ten tons per year:

Base registration fee ~~$924.00~~ $1,000.00; and ~~$0.021~~ $0.024 per pound of emissions of any of these contaminants.

(2) For discharge permits issued under ~~10 V.S.A.~~ chapter 47 of Title 10 and orders issued under 10 V.S.A. § 1272, an administrative processing fee of $100.00 shall be paid at the time of application for a discharge permit in addition to any application review fee and any annual operating fee, except for permit applications under subdivisions (2)(A)(iii)(III) ~~and~~, (IV), and (V) of this subsection:

(A) Application review fee.

(i) Municipal, industrial, noncontact cooling water and thermal discharges.	

* * *

(iii) Stormwater discharges.	
(I) Individual operating permit or application to operate under general operating permit for collected stormwater runoff which is discharged to Class B waters: original application; amendment for increased flows; amendment for change in treatment process.	~~$300.00~~ $360.00 per acre impervious area; minimum ~~$150.00~~ $180.00 per application.

* * *

(III) Individual permit or application to operate under general permit for construction activities; original application; amendment for increased acreage.	
(aa) Projects with low risk to waters of the state.	~~$30.00~~ $36.00 per project; original application.

(bb) Projects with moderate risk to waters of the state.	~~$250.00~~ $300.00 per project; original application.
(cc) Projects that require an individual permit.	~~$500.00~~ $600.00 per project; original application.
(IV) Individual permit or application to operate under under general permit for stormwater runoff associated with industrial activities with specified SIC codes; original application; amendment for change in activities.	~~$150.00~~ $180.00 per facility.
(V) Individual permit or application to operate under general permit for stormwater runoff associated with municipal separate storm sewer systems; original application; amendment for change in activities.	$1,000.00 per system
(VI) Renewal, transfer, or minor amendment of individual permit or approval under general permit.	$0.00

* * *

(B) Annual operating fee.

(i) Industrial, noncontact cooling water and thermal discharges.	~~$0.0009~~ $0.001 per gallon design capacity. ~~$100.00~~ $150.00 minimum; maximum ~~$27,500.00~~ $105,000.00.

(ii) Municipal.	~~$0.0027~~ $0.003 per gallon of actual flows. ~~$100.00~~ $150.00 minimum; maximum ~~$11,000.00~~ $12,500.00.
(iii) Pretreatment discharges.	~~$0.0315~~ $0.0385 per gallon design capacity. ~~$100.00~~ $150.00 minimum; maximum $27,500.00.
(iv) Stormwater	
* * *	
(II) Individual operating permit or approval under general operating permit for collected stormwater runoff which is discharged to Class B waters.	~~$55.00~~ $66.00 per acre impervious area; ~~$50.00~~ $60.00 minimum.
(III) Individual permit or approval under general permit for stormwater runoff from industrial facilities with specified SIC codes.	~~$55.00~~ $66.00 per facility.
(IV) Individual permit or application to operate under general permit for stormwater runoff associated with municipal separate storm sewer systems.	$66.00 per system.
(v) Indirect discharge or underground injection control, excluding stormwater discharges:	
(I) Sewage	

(aa) Individual permit.	~~$385.00~~ $400.00 plus ~~$0.0317~~ $0.035 per gallon of design capacity above 6,500 gpd. ~~$350.00 minimum;~~ maximum $27,500.00.
(bb) Approval under general permit.	$220.00.

* * *

(7) For public water supply and bottled water permits and approvals issued under ~~10 V.S.A.~~ chapter 56 of Title 10 and interim groundwater withdrawal permits and approvals issued under ~~10 V.S.A.~~ chapter 48 of Title 10:

* * *

(C) For source permit applications ~~for community~~:

(i) Community water systems:	$615.00 per source.
(ii) Transient noncommunity:	$250.00 per source.
(iii) Nontransient, noncommunity:	$500.00 per source.
(iv) Amendments.	$110.00 per application.

(D) For public water supplies and bottled water facilities, annually:

* * *

(iv) Bottled water:	~~$550.00~~ $900.00 per permitted facility.

* * *

(F) ~~For permit applications for interim groundwater withdrawal permits: $960.00 per facility. Amendments $110.00 per application.~~ For facilities permitted to withdraw groundwater pursuant to 10 V.S.A. § 1418: $1,500.00 annually per facility.

* * *

(10) For management of lakes and ponds permits issued under ~~29 V.S.A.~~ chapter 11 of Title 29:

(A) Nonstructural erosion control:	$155.00 per application.
(B) Structural erosion control:	~~$155.00~~ $250.00 per application.

(C) All other encroachments:	~~$155.00~~ $300.00 per application plus ~~0.5~~ one percent of construction costs.

(11) For stream alteration permits issued under ~~10 V.S.A.~~ chapter 41 of Title 10: ~~$105.00~~ $225.00 per application.

* * *

(15) For sludge or septage facility certifications issued under ~~10 V.S.A.~~ chapter 159 of Title 10:

(A) land application sites; facilities that further reduce pathogens; disposal facilities.	~~$840.00~~ $950.00 per application.
(B) all other types of facilities.	~~$95.00~~ $110.00 per application.

* * *

(26) For individual conditional use determinations, for individual 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~~ $0.12 per square foot of proposed impact to Class I or II wetlands;

(B) ~~$0.05~~ $0.09 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.

* * *

(29) For salvage yards permitted under subchapter 10 of chapter 61 of Title 24:

(A) facilities that crush or shred junk motor vehicles.	$1,250.00 per facility.

(B) facilities that accept or dismantle junk motor vehicles.	$750.00 per facility.
(C) facilities that manage junk on site excluding junk motor vehicles.	$350.00 per facility.
(D) facilities the primary activity of which is handling total-loss vehicles from insurance companies.	$300.00 per facility.

* * *

(l) Commencing with registration year 1993 and for each year thereafter, any person required to pay a fee to register an air contaminant source under 10 V.S.A. § 555(c) in addition shall pay the following fees for emissions of hazardous air contaminants resulting from the combustion of any of the following fuels in fuel burning or manufacturing process equipment.

(1) Coal-$0.43 per ton burned;

(2)(A) Wood-$0.103 per ton burned; or

(B) Wood burned with an operational electrostatic precipitator and NOx reduction technologies-$0.025 per ton burned;

(3) No. 6 grade fuel oil-$0.0005 per gallon burned;

(4) No. 4 grade fuel oil-$0.0004 per gallon burned;

(5) No. 2 grade fuel oil-$0.0002 per gallon burned;

(6) Liquid propane gas-$0.0002 per gallon burned;

(7) Natural gas-$0.87 per million cubic feet burned.

* * *

* * * Brownfields oversight fee; innocent current owners * * *

Sec. 31. 10 V.S.A. § 6644 is amended to read:

§ 6644. GENERAL OBLIGATIONS

Any person participating in the program shall do all the following:

* * *

(5) If an innocent current owner, ~~pay the secretary an oversight fee of $5,000.00. Upon depletion of this $5,000.00 fee, the applicant shall~~ pay any additional costs of the secretary's review and oversight of the site investigation or corrective action plan, or both. ~~Upon completion of the secretary's review and oversight, any funds remaining shall be returned to the applicant, as determined by the commissioner.~~

* * *

* * * Repeals * * *

Sec. 32. REPEAL

(a) Sec. 4 of No. 135 of the Acts of the 2005 Adj. Sess. (2006) (sunset on pass through of solid waste funds and ability to transfer solid waste funds to the contingency fund) is repealed.

(b) Sec. 299(h) of No. 65 of the Acts of 2007 (sunset on the authority of the state to spend contingency funds at the Pownal Tannery Superfund Site) is repealed.

(c) 24 V.S.A. § 2263 (annual salvage yard licensing fee) is repealed.

* * * Natural Resources Board * * *

* * * Act 250 fees * * *

Sec. 33. 10 V.S.A. § 6083a(a) is amended to read:

(a) All applicants for a land use permit under section 6086 of this title shall be directly responsible for the costs involved in the publication of notice in a newspaper of general circulation in the area of the proposed development or subdivision and the costs incurred in recording any permit or permit amendment in the land records. In addition, applicants shall be subject to the following fees for the purpose of compensating the state of Vermont for the direct and indirect costs incurred with respect to the administration of the Act 250 program:

(1) For projects involving construction, ~~$4.75~~ $5.40 for each $1,000.00 of the first $15,000,000.00 of construction costs, and ~~$2.25~~ $2.50 for each $1,000.00 of construction costs above $15,000,000.00.

* * *

(4) For projects involving the extraction of earth resources, including but not limited to sand, gravel, peat, topsoil, crushed stone, or quarried material, a fee as determined under subdivision (1) of this subsection or a fee equivalent to the rate of ~~$0.10~~ $0.20 per cubic yard of maximum estimated annual extraction, whichever is greater.

* * *

(6) In no event shall a permit application fee exceed ~~$135,000.00~~ $150,000.00.

Sec. 34. 32 V.S.A. § 605 is amended to read:

§ 605. CONSOLIDATED EXECUTIVE BRANCH ANNUAL FEE REPORT AND REQUEST

* * *

(b) Fee reports shall be made 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.

(2) A report covering all fees in existence on the prior July 1 within the "human services" and "natural resources" areas of government shall be submitted ~~no later than~~ by the third Tuesday of the legislative session of ~~1998~~ 2012 and every three years thereafter.

(3) A report covering all fees in existence on the prior July 1 within the "protection to persons and property" area of government shall be submitted ~~no later than~~ by the third Tuesday of the legislative session of ~~1999~~ 2013 and every three years thereafter.

* * *

* * * Bill-back report * * *

Sec. 35. BILL-BACK REPORT

No later than January 15, 2011, the commissioner of finance and management shall provide to the house committee on ways and means and the senate committee on finance a detailed report concerning the use of bill-backs in general and in addition to or in lieu of fees. The report shall provide the committees with a working definition of a bill-back for services provided by the legislative, executive, and judicial branches of state government and shall address in specific detail each of the following issues:

(1) The appropriateness of using bill-backs in providing governmental services.

(2) The relationship between fees and bill-backs.

(3) The prevalence of the bill-back practice in Vermont state government.

(4) The statutory authority that exists for each bill-back program and whether the authority provides for maximum use of the bill-back process.

(5) Whether bill-back rates for various services adequately cover the costs of the governmental services being performed.

(6) Whether there should be limitations on amounts that may be subject to bill-back; and, if so, whether those limitations are adequate.

(7) Whether there ought to be oversight and reporting of bill-back programs and, if so, at what level.

(8) How bill-backs are categorized and accounted for in agency and departmental budgets.

* * * Legislative intent * * *

Sec. 36. CIGARETTE CERTIFICATION FEE; STATEMENT OF INTENT

It is the intent of the General Assembly that the fees collected under 20 V.S.A. § 2757 in excess of the amount needed by the department of public safety to administer the fire prevention and building inspection special fund be paid into the tobacco trust fund established in 18 V.S.A. § 9502 for the purpose of smoking prevention and cessation. This statement of intent shall be placed in the annotations to 20 V.S.A. § 2757 in the Vermont Statutes Annotated.

Sec. 37. LONG-TERM MONITORING OF WASTEWATER DISCHARGE

Pursuant to 3 V.S.A. § 2822(j)(2)(B)(i), the agency of natural resources charges an annual fee for the monitoring of certain wastewater discharges. It is the intent of the general assembly to create a special fund that will be used to cover the continuing costs of monitoring in the event that the facilities monitored cease discharging wastewater. The general assembly anticipates that the special fund will be financed by a fee assessment on the facilities that are monitored prior to any cessation of their business.

* * * Effective dates * * *

Sec. 38. EFFECTIVE DATES

This section shall take effect on passage. Sec. 29 shall take effect on January 1, 2011 . Sec. 30 shall take effect July 1, 2010, except that subdivision (j)(29) (relating to salvage yard fees) shall take effect on passage. Sec. 32 shall take effect on July 1, 2010, except that subsection (c) (relating to repeal of annual salvage yard licensing fee) shall take effect on passage.

WILLIAM H. CARRIS
CLAIRE D. AYER
RICHARD J. MCCORMACK

Committee on the part of the Senate

CAROLYN W. BRANAGAN
JAMES W. MASLAND

Committee on the part of the House

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

Appointments Confirmed

The following Gubernatorial appointments were confirmed separately by the Senate, upon full reports given by the Committees to which they were referred:

Brooks, Tayt of St. Albans - Commissioner of the Department of Economic, Housing and Community Development, - from October 5, 2009, to February 28, 2011.

Dorn, Kevin of Essex Junction – Secretary, Agency of Commerce and Community Development, - from March 1, 2009, to February 28, 2011.

Gibbs, Jason of Cambridge - Commissioner of the Department of Forests, Parks & Recreation, - from November 24, 2008, to February 28, 2009.

Gibbs, Jason of Cambridge - Commissioner of the Department of Forests, Parks & Recreation, - from March 1, 2009, to February 28, 2011.

Hyde, Bruce of Granville - Commissioner, Department of Tourism and Marketing, - from March 1, 2009, to February 28, 2011.

Johnson, Justin of Barre - Commissioner of the Department of Environmental Conservation, - from July 16, 2009, to February 28, 2011.

Laroche, Wayne Allen of Franklin - Commissioner of the Department of Fish and Wildlife, - from March 1, 2009, to February 28, 2011.

Westman, Richard A. of Cambridge - Commissioner of the Department of Taxes, - from August 24, 2009, to February 28, 2011.

Wood, Jonathan of Cambridge - Secretary of the Agency of Natural Resources, - from November 7, 2008, to February 28, 2009.

Wood, Jonathan of Cambridge - Secretary of the Agency of Natural Resources, - from March 1, 2009, to February 28, 2011.

Thomas, Brian of Shrewsbury – Member, Plumbers' Examining Board – March 2, 2009, to February 28, 2012.

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

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

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

Goodrich, Steven V. of North Bennington – Member, Plumbers' Examining Board – May 15, 2008, to February 28, 2011.

Cioffi, Frank of St. Albans – Member, Vermont Lottery Commission and to serve as Chairman of the Commission – January 22, 2010, to February 28, 2011.

Ozarowski, Peter C. of South Burlington – Member, Parole Board – March 17, 2010, to February 28, 2013.

Blair, Susan K. of Colchester – Member, Parole Board – March 17, 2010, to February 28, 2013.

Pettengill, William J. of Guilford – Member, Parole Board – March 17, 2010, to February 28, 2013.

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. 759.

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. 90, S. 97, S. 182; S. 280.

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

H. 470.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to restructuring of the judiciary.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

H. 470. An act relating to restructuring of the judiciary.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal and amendment and that the bill be amended 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

(a) ~~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 clerk 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~~,~~ OR 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.

~~(c)~~(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. 17a. 4 V.S.A. § 278 is added to read:

§ 278. AUTHORIZATION OF ASSISTANT JUDGES

(a) An assistant judge or a candidate for the office of assistant judge may also seek election to the office of probate judge, and, if otherwise qualified and elected to both offices, may serve both as an assistant judge and as probate judge.

(b) In the event a probate matter arises in the superior court over which an assistant judge is also the probate judge that presides, or has presided, over the same or related probate matter in the probate court, the assistant judge shall be disqualified from hearing and deciding the probate matter in the superior court.

(c) In the event a probate matter arises in the probate court over which a probate judge is also an assistant judge that presides, or has presided, over the same or related probate matter in the superior court, the probate judge shall be disqualified from hearing and deciding the probate matter in the probate court.

Sec. 18. DELETED

Sec. 18a. 4 V.S.A. § 311a is amended to read:

§ 311a. VENUE GENERALLY

For proceedings authorized to the probate ~~courts~~ division of superior court, venue shall lie as provided in Title 14A for the administration of trusts, and otherwise in a probate 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 division 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 ~~county~~ 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 clerical 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~~ court administrator, in consultation with the probate judge, 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 probate 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~~ The probate division of the superior 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 ~~court~~ division 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 or her death, the judge ~~of probate so appointing~~ who issued the appointment shall forthwith notify ~~in writing forthwith~~ the commissioner of taxes in writing of ~~such~~ the appointment, giving the name and residence of ~~such~~ the deceased person at the time of his or her death, the name and residence of the executor or administrator, the date of his or her appointment, and ~~identifying~~ the ~~probate~~ court making ~~such~~ the appointment.

(b) The commissioner shall keep a full record in each case and upon inquiry made of him or her by any savings bank or savings institution in the state shall at once notify ~~such~~ the bank or institution whether, as shown by his or her 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 ~~such~~ the inquiry. If there has been such an appointment, the commissioner shall furnish the above information to ~~such~~ 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 the probate division of the superior court pursuant to chapter 111, subchapter 2, article 1 of Title 14 and any adoption action filed in the probate ~~court~~ division pursuant to Title 15A may be transferred to the family division of the superior court as provided in this section.

(b) The family ~~court~~ division 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 the family ~~court~~ division that transfer of the probate action to the family ~~court~~ division 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 division of the superior court. Except as provided in section 463 of this title, the office of magistrate shall have nonexclusive jurisdiction ~~concurrent with the family court~~ to hear and dispose of the following cases and proceedings:

(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.~~

(1) Terms of office of magistrates, except in the case of an appointment to fill a vacancy or unexpired term, shall be for a term of six years from and including April 1 in the year of the magistrate's appointment or retention. A magistrate shall remain in office until a successor is appointed and qualified, unless sooner removed for cause or unless he or she resigns.

(2) A magistrate may file in the office of the secretary of state, on or before September 1 of the year preceding the expiration of the term for which

he or she was appointed or retained, a declaration that he or she will be a candidate to succeed himself or herself. However, a magistrate appointed and having taken the oath of office after September 1 of the year preceding the expiration of the term of office shall automatically be a candidate for retention without filing notice. When a magistrate files such a declaration, his or her name shall be submitted to the general assembly for a vote on retention. The general assembly shall vote upon one ballot on the question: "Shall the following magistrates be retained in office?" The names of the magistrates shall be listed followed by "Yes__ No__." If a majority of those voting on the question vote against retaining a magistrate in office, upon the expiration of the term, a vacancy shall exist which shall be filled in accordance with the constitution and chapter 15 of this title. If the majority vote is in favor of retention, the magistrate shall, unless removed for cause, remain in office for another term, and at its end, shall be eligible for retention in office in the manner herein prescribed.

(3) The court administrator shall notify the secretary of state whenever a magistrate is appointed and takes the oath of office after September 1 of the year preceding the expiration of the term of office to which the magistrate has succeeded, thereby resulting in automatic notification of an intention to continue in office. Whenever a magistrate files a declaration under subsection (a) of this section or when notification occurs automatically, the secretary of state shall notify the president of the senate, the speaker of the house, and the legislative council forthwith.

(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. 29a. 4 V.S.A. § 461a is amended to read:

§ 461a. ESSEX COUNTY; POWERS OF ASSISTANT JUDGES AND MAGISTRATES IN FAMILY COURT PROCEEDINGS

(a) Notwithstanding any other provision of law to the contrary, an assistant judge of Essex County who has satisfactorily completed the training provided by the Vermont supreme court pursuant to Sec. 20 of Act No. 221 of the 1990 adjourned session, or a similar course of training that has been approved by the supreme court, shall act as a magistrate and hear and dispose of proceedings

for the establishment, modification and enforcement of child support and establishment of parentage in all cases filed or pending in the family division of the superior court in Essex County.

(b) The administrative judge may appoint and may specially assign ~~the~~ a magistrate ~~assigned to Essex County~~ to serve as the presiding ~~family court~~ judge in the family division of the superior court in Essex County. ~~The magistrate assigned shall not hear and dispose of proceedings assigned to the assistant judges in subsection (a) of this section, unless authorized by section 463 of this title.~~

(c) No Vermont family court action filed or pending in Essex County, except for temporary abuse prevention ~~orders that are sought as emergency relief pursuant to V.R.F.P. 9(c) after regular court hours~~ proceedings and juvenile proceedings under Title 33, shall be heard at or transferred to ~~any other location, except Guildhall~~ the family division in another unit of the superior court.

Sec. 29b. 4 V.S.A. § 461c is amended to read:

§ 461c. POWERS OF ASSISTANT JUDGES IN DIVORCE PROCEEDINGS

(a) Notwithstanding any other provision of law to the contrary, an assistant judge ~~who has served in that office for a minimum of two years~~ may elect to hear and determine a complaint or action which seeks a divorce, legal separation, or civil union dissolution in cases where a final stipulation of the parties has been ~~reached~~ filed with the court.

(b) When an assistant judge elects to hear such cases, the clerk shall set it for hearing before the assistant judge if available. ~~In the event both assistant judges elect to hear such cases, the senior assistant judge shall make case assignments.~~

(c) ~~Assistant judges~~ Prior to hearing an uncontested domestic matter, an assistant judge shall sit with a superior judge on domestic proceedings for a minimum of 100 hours, satisfactorily complete a minimum of 30 hours of training ~~on the subjects of child support and divorce, which shall be provided by the office of child support, and in order to hear and determine complaints under this section upon completion of the training, assistant judges not already conducting hearings under this section as of July 1, 1995, shall~~ on subjects relevant to domestic proceedings and the code of judicial conduct, and conduct a minimum of three uncontested ~~divorce~~ domestic hearings with a ~~family court~~ superior judge who shall, in his or her sole discretion, certify to the ~~supreme court~~ administrative judge that the assistant judge is qualified to preside over matters under this section. Upon application of an assistant judge, some or all of these requirements may be waived by the administrative judge based on

equivalent experience. The requirements set forth herein shall only apply to assistant judges who elect to conduct uncontested final hearings in domestic cases after July 1, 2010. An assistant judge already conducting hearings under this section as of July 1, 2010, shall be deemed to have complied with these requirements.

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 division of the superior 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 DIVISION OF SUPERIOR 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 qualified candidates for justices of the supreme court, superior judges ~~and district judges~~, magistrates, the chair of the public service board, and members of the public service board 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 ~~he~~ the administrator 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 OF JUSTICES, JUDGES, MAGISTRATES, PUBLIC SERVICE BOARD CHAIRS, AND MEMBERS

Whenever the governor appoints a supreme court justice ~~or,~~ a superior ~~or 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, 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~~ magistrate under subsection 461(c) 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,~~ the justice, or the magistrate seeking retention. In the case of a ~~district or~~ superior court judge or magistrate, 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, superior judges, and ~~district judges~~ magistrates 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~~, a justice, or a magistrate 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~~, the justice, or the magistrate. A judge ~~or~~, a justice, or a magistrate 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), 71(b), and ~~604(a)~~ 461(c) 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, or magistrate 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 superior court clerk, with the approval of the court administrator, ~~with the advice of the district judge concerned,~~ may ~~appoint~~ hire and remove ~~clerks and assistant clerks~~ staff for the ~~district~~ superior 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~~ Upon request of a probate judge, the superior court clerk shall appoint and assign a ~~stenographic reporter~~ staff member 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 or sound and video recording equipment may be used for the recording of any ~~civil, criminal, or probate proceedings~~ superior court or judicial bureau proceeding, 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~~ clerk, 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 ~~jury commission~~ clerk 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~~

~~clerk~~ 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 ~~court~~ 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 ~~court~~ division and proceedings in ~~the court~~ it. 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 ~~court~~ division 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 ~~court~~ division 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~~

~~violations~~ matters within the jurisdiction of the judicial bureau under 4 V.S.A. § 1102 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 traffic violations~~ matters in the judicial bureau 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~~ court administrator; and

(C) annually complete eight hours of continuing education ~~every year relating to jurisdiction exercised under this section~~ supervised by the court administrator.

(2) ~~Training shall be paid for by the county, which expenditure is hereby authorized.~~ The training and education required by this subsection shall be developed by the court administrator in consultation with the association of administrative judges. 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 violation case~~ matters in the judicial bureau 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 violations under this section~~ such matters.

Sec. 55b. 4 V.S.A. § 1106(d) is amended to read:

(d) ~~With approval of his or her supervisor, a~~ A law enforcement officer may void or amend a complaint issued by that officer by so marking the complaint and returning it to the bureau, regardless of whether the amended complaint is a lesser included violation. At the hearing, a law enforcement officer may void or amend a complaint issued by that officer ~~subject to the approval of the hearing~~ in the discretion of that officer.

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 or her 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~~ The 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 civil, criminal, or environmental division of the 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 or family case records ~~or family court case records~~. 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 ~~district or family~~ superior court, or opinions of the ~~district~~ criminal division of the superior 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~~,~~ OR SUPERIOR COURT ~~AND DISTRICT COURT~~

When a party violates an order made against him or her 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 or her 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 forthwith 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, VENUE 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 or she 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. 72. 12 V.S.A. § 2136 is amended to read:

§ 2136. COSTS IN SUPREME~~, COUNTY,~~ AND ~~DISTRICT~~ SUPERIOR 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~~ IN PROBATE PROCEEDINGS–FRAUD, ACCIDENT, OR MISTAKE

When the petitioner has been prevented from taking or entering an appeal in a probate proceeding 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 ~~a~~ the probate division of the superior 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 superior court appealed to ~~and the register of the probate court~~ within ~~thirty~~ 30 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 or she 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~~,~~ or superior~~, or district~~ 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 ~~such~~ the court ~~or with the judge of such district court~~:

* * *

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~~ 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 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. This subdivision shall apply only to assistant judges holding office on July 1, 2010.

(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~~ the court administrator in consultation with the association of assistant judges. An assistant judge who hears cases under this section shall annually complete 16 hours of continuing education ~~every year,~~ established by the court administrator in consultation with the association of assistant judges, 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 ~~court~~ judges shall be available to the assistant judges.

* * *

(e) Subdivision (a)(2) of this section shall be repealed effective on ~~July 1, 2012~~ January 31, 2011.

Sec. 84b. INTENT; REPORT

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; and

(2) 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 in small claims cases 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 ~~district~~ superior 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 division of the superior 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 division of the superior 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 any division of the ~~family or probate~~ superior 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 criminal division of the superior court in the ~~county or in the district court in the territorial~~ 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 criminal division of the superior court in the ~~county or in the district court in the territorial~~ 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~~ For 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 criminal division of the superior 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 criminal division of the 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~~ superior court, whose death results therefrom in another ~~county or territorial~~ unit, may be tried in the criminal division of the 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 carry 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 indorsed 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 civil or criminal division of the 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 division of the superior court, or by appeal in the superior or supreme court.

Sec. 121. 14 V.S.A. § 203 is amended to read:

§ 203. PROBATE PROCEEDINGS ~~WITHIN THE EXCLUSIVE JURISDICTION OF PROBATE COURT~~; SERVICE; JURISDICTION OVER PERSONS

In proceedings within the exclusive jurisdiction of the probate division of the superior 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 division of the superior court and shall be specified in the decree assigning the estate. The final decree of the probate ~~court~~ division, or of the ~~superior or~~ 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 division of the superior 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 division of the superior 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 division of the superior court in the district in which the permanent guardian resides. Jurisdiction shall continue to lie in the probate ~~court~~ division. Appeal of any decision by the probate division of the superior court shall be de novo to the family ~~court~~ 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 division of the superior court shall have exclusive original jurisdiction over all proceedings brought under the authority of this chapter or pursuant to ~~section~~ 18 V.S.A. § 9718 ~~of Title 18~~.

(b) The probate division of the superior 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 division of the superior 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 ~~family court rules~~ Vermont Rules for Family Proceedings 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 civil division of 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 civil division of the superior court, Washington ~~county~~ County. 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 or she 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 or she shall petition the ~~presiding judge~~ civil or criminal division 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 or she 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, a magistrate, 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 civil division of the 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 division of the superior 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 family division of the 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 or she is confined pursuant to conviction of any felony or misdemeanor, or if he or she 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 family division of the superior 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 ~~district~~ superior 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 ~~district~~ criminal division of the superior court in the unit in 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 or she 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 ~~district~~ superior court of the ~~district~~ unit of original commitment.

Sec. 154. 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 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 division of the superior 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 division of the superior 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 the family division of the superior court for appointment under this chapter and for modification or termination of the probate ~~court~~ division 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 division of the superior 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 division 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 ~~district~~ superior court of the ~~district~~ unit in which the person subpoenaed resides in accordance with the Vermont ~~District Court Civil~~ 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 ~~district~~ superior 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 ~~district~~ superior 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 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 ~~district~~ criminal division of the

superior 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 ~~district~~ superior court, you must mail or deliver your request for a hearing within seven (7) days after (date of notice).

* * *

(f) Review by ~~district~~ superior 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 ~~district~~ superior 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 ~~district~~ criminal division of the superior 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 ~~district~~ superior court where the offense is alleged to have occurred. Hearings under this section shall be summary proceedings conducted by the ~~district~~ criminal division of the superior court without a jury and shall be subject to the ~~District Court Civil Rules~~ Vermont Rules of Civil Procedure 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~~ all judicial operations in a county are contained in one court building owned by the state, the county clerk and assistant judges may also be located in the same building. The ~~assistant judges, 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 ~~district court and the~~ superior court presiding ~~judges~~ judge and the ~~probate judge if housed in the building~~ assistant judges. 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~~ may 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 or her office during the pleasure of such judges and until his or her 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 or her 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 assistant judges, 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 assistant judges, conditioned for the faithful performance of his or her 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 criminals 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 or her 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 assistant judges, 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 assistant judges, conditioned for the faithful performance of his or her duties. ~~Such~~ The recognizance or bond shall be lodged with and recorded by the county clerk~~. Such bond shall be~~ and 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 or her 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 or her 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 or her functions as sheriff shall be suspended. When ~~he~~ the sheriff is released from imprisonment during his or her term of office, he or she shall file a certificate of his or her 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 or she 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 or her county, and all matters and causes cognizable by the supreme~~,~~ and 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 assistant judges ~~of the superior court~~ may appoint as many notaries public for the county as the public good requires~~, to hold~~. Notaries public so appointed shall hold office until ten days after the expiration of the term of office of such judges, ~~whose~~ and their 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 county clerk ~~of the superior court~~ stating that the applicant is a resident of the county and has reached the age of majority, giving his or her 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 or 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 assistant 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 assistant 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 or her appointment to be filed and recorded in the office of the county clerk where issued. Before entering upon the duties of ~~his~~ office, he or she, as well

as an ex officio notary, shall take the oath prescribed by the constitution, and shall duly subscribe the same with his or her 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 VERMONT, ss.

_____ County

This is to certify that A.B. of _____ in such county, was, on the _____ day of _____, 20 _____, appointed by the assistant judges ~~of the superior court~~ for such county a notary public for the term ending on February 10, 20 _____.

_____ Assistant Judges ~~of the~~
_____ ~~superior court~~.
_____

And at _____ in such county, on this _____ day of _____, 20 _____ personally appeared A.B. _____ and 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~~ 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, and fines and the amount of bonds and recognizances to the state taken in any county, shall be paid to the ~~county~~ superior 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~~ SUPERIOR COURT CLERK TO PAY OVER

If a ~~county~~ superior court 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 ~~county~~ superior court clerks and ~~district~~ superior 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. AUDITING OF COURT CLERK ACCOUNTS AND OF PROBATE JUDGES

The auditor shall examine the accounts of the judges of probate and superior court clerks 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 ~~probate~~ superior 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 ~~judges of~~ probate judges 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~~	
(1) Addison	~~$59,321~~	$48,439
(2) Bennington	~~59,321~~	61,235
(3) Caledonia	~~59,321~~	42,956
(4) Chittenden	~~91,402~~	91,395
(5) Essex	~~28,853~~	12,000
(6) ~~Fair Haven~~	~~43,594~~	
~~(7)~~ Franklin	~~59,321~~	48,439
~~(8)~~(7) Grand Isle	~~28,853~~	12,000
~~(9) Hartford~~	~~59,321~~	
~~(10)~~(8) Lamoille	~~53,594~~	33,816
~~(11) Marlboro~~	~~51,559~~	
~~(12)~~(9) Orange	~~51,559~~	40,214
~~(13)~~(10) Orleans	~~51,559~~	39,300
~~(14)~~(11) Rutland	~~75,859~~	86,825
~~(15)~~(12) Washington	~~75,859~~	66,718
~~(16)~~(13) ~~Westminster~~ Windham	~~43,594~~	53,923
~~(17)~~(14) Windsor	~~51,559~~	73,116

(b) ~~Judges of probate~~ Probate judges shall be paid by the state their actual and necessary expenses under the rules and regulations pertaining to classified

state employees. The compensation for the probate judge of the Chittenden district shall be for full-time service.

(c) A probate judge whose salary is less than $45,701.00 shall be eligible only for the least expensive medical benefit plan option available to state employees or may apply the state share of a single-person premium for the least expensive benefit plan option toward the purchase of another state or private health insurance plan. A probate judge whose salary is less than $45,701.00 may participate in other state employee benefit plans.

Sec. 200. 32 V.S.A. § 1143 is amended to read:

§ 1143. –COMPENSATION OF APPOINTEES

Persons acting under the authority of the probate division of the superior 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 division of the superior 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~~,~~ AND SUPERIOR~~, DISTRICT, FAMILY, AND~~ E~~NVIRONMENTAL~~ 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) All fees paid to the clerk pursuant to this subsection shall be for the benefit of the county, except that such fees shall be for the benefit of the state in a county where court facilities are provided by the state.

* * *

Sec. 203b. 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 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 a fee of $50.00. The fee for every counterclaim in small claims proceedings shall be $25.00, payable to the clerk, if the counterclaim is for more than $500.00, and $15.00 if the counterclaim is for $500.00 or less.

(2) ~~All fees paid to the clerk pursuant to this subsection shall be for the benefit of the county, except that such fees shall be for the benefit of the state in a county where court facilities are provided by the state.~~

(A) Except as provided in subdivision (B) of this subdivision (2), 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 division of the superior 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~~	$85.00
(15) Guardianships for adults	~~$50.00~~	$100.00

(16) Petitions for change of name	~~$75.00~~ $125.00

* * *

(23) Petitions for partial decree	$100.00
(24) Petitions for license to sell real estate	$50.00

* * *

(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. 204a. 32 V.S.A. § 1434a is added to read:

§ 1434a. SURCHARGE ON FEES

(a) A surcharge of five percent shall be added to all fees paid under sections 1431 and 1434 of this title except for fees paid with respect to adoptions under subdivision 1434(13). A surcharge required by this section shall be paid to the clerk in the same manner as the fee.

(b) This section shall be repealed on July 1, 2014.

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~~ $30.00, of which ~~$5.00~~ $15.00 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~~,~~ and superior~~, family, district, or environmental~~ 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 civil division of the superior court of the ~~county~~ unit in which the taxpayer resides, except that if the claimant agency is the office of child support the appeal shall be to the family division of the superior 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 ~~criminal 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 ~~criminal 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 division of the superior 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 ~~court~~ 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 division of the superior 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 the family division of the superior 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~~ CRIMINAL DIVISION OF SUPERIOR 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 ~~court~~ division granting the motion for youthful offender status.

(d)(1) If the family ~~court~~ division denies the motion for youthful offender treatment pursuant to subsection 5284 of this title, the case shall be returned to the ~~district court~~ criminal division, and the youth shall be permitted to withdraw the plea. The conditions of release imposed by the ~~district court~~ criminal division 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 the family ~~court~~ division, unless the court extends the period for good cause shown, the department shall file a report with the family division of the superior 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 ~~district court~~ criminal division under subdivision (c)(2) of this section, the ~~district~~ 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 ~~court~~ 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 ~~court~~ division 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 ~~court~~ 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 division of the superior 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 Rules for Family ~~Court Rules~~ Proceedings 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:

(a) 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.

(i) The establishment of six new exempt positions for the superior court with position titles to be assigned by the court administrator is authorized in FY 2011.

(j) Notwithstanding any other provision of law, the terms of office of magistrates holding office on the effective date of this act shall be extended as follows:

(1) The term of office for the magistrate whose term is scheduled to expire on September 1, 2010, shall be extended until April 1, 2012.

(2) The term of office for the magistrate whose term is scheduled to expire on September 1, 2012, shall be extended until April 1, 2013.

(3) The terms of office for magistrates whose terms are scheduled to expire on September 1, 2014, shall be extended until April 1, 2015.

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), 4 V.S.A. § 461b (powers of assistant judges in Essex and Orleans Counties in parentage proceedings), 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 ACCREDITATION

It is the intent of the general assembly that the Vermont crime laboratory remain continuously accredited by an accreditation organization. As used in this section, "accreditation organization" means a nonprofit professional association of persons who are actively involved in forensic science and who have substantial expertise in accrediting forensic laboratories.

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) maiming 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, 203b, 204, and 238a.

(d) Secs. 17a, 237(f), 238b, 238c, 238d, 238e, and 238f of this act and this subsection shall take effect on passage.

RICHARD W. SEARS
JOHN F. CAMPBELL
ALICE W. NITKA

Committee on the part of the Senate

WILLIAM J. LIPPERT
THOMAS F. KOCH
WILLEM W. JEWETT

Committee on the part of the House

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative on a roll call, Yeas 29, 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, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr, White.

Those Senators who voted in the negative were: None.

The Senator absent and not voting was: Mullin.

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. 295, H. 470, H. 780.

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

S. 103.

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

An act relating to the study and recommendation of ignition interlock device legislation.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

S. 103. An act relating to the study and recommendation of ignition interlock device legislation.

Respectfully reports that it has met and considered the same and recommends that the House recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 23 V.S.A. § 674 is amended to read:

§ 674. OPERATING AFTER SUSPENSION OR REVOCATION OF LICENSE; PENALTY; REMOVAL OF REGISTRATION PLATES; TOWING

* * *

(b) ~~A~~ Except as authorized in section 1213 of this title, a person whose license or privilege to operate a motor vehicle has been suspended or revoked for a violation of section 1201 of this title or has been suspended under section 1205 of this title and who operates or attempts to operate a motor vehicle upon a public highway before reinstatement of the license shall be imprisoned not more than two years or fined not more than $5,000.00, or both. The sentence shall be subject to the following mandatory minimum terms:

* * *

Sec. 2. 23 V.S.A. § 1130 is amended to read:

§ 1130. ~~PERMITTING~~ EMPLOYING AN UNLICENSED PERSON ~~TO OPERATE~~; PERMITTING UNAUTHORIZED OPERATION

No person shall knowingly employ, as operator of a motor vehicle, a person not licensed as provided in this title. No person shall knowingly permit a motor vehicle owned by him or her or under his or her control to be operated by a person who has no legal right to do so, or in violation of a provision of this title.

Sec. 3. 23 V.S.A. § 1200 is amended to read:

§ 1200. DEFINITIONS

As used in this subchapter:

* * *

(8) "Ignition interlock device" means a device that is capable of measuring a person's alcohol concentration and that prevents a motor vehicle from being started by a person whose alcohol concentration is 0.02 or greater.

(9) "Ignition interlock restricted driver's license" or "ignition interlock RDL" or "RDL" means a restricted license or privilege to operate a motor vehicle issued by the commissioner allowing a person whose license or privilege to operate has been suspended or revoked for operating under the influence of intoxicating liquor or in excess of legal limits of alcohol concentration to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, installed with an approved ignition interlock device.

Sec. 4. 23 V.S.A. § 1205 is amended to read:

§ 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

(a) Refusal; alcohol concentration of 0.08 or more; suspension periods.

For a first suspension under this subchapter:

(1) Upon affidavit of a law enforcement officer that the officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person refused to submit to a test, the commissioner shall suspend the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle for a period of six months and until the person complies with section 1209a of this title.

(2) Upon affidavit of a law enforcement officer that the officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person submitted to a test and the test results indicated that the person's alcohol concentration was 0.08 or more at the time of operating, attempting to operate or being in actual physical control, the commissioner shall suspend the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle for a period of 90 days and until the person complies with section 1209a of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 30 days of this 90-day period unless the alleged offense involved a collision resulting in serious bodily injury or death to another.

* * *

(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 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 district court where the person must appear for a preliminary hearing. The notice shall also contain, in boldface print, the following:

(1) You have the right to ask for a hearing to contest the suspension of your operator's license.

(2) This notice shall serve as a temporary operator's license and is valid until 12:01 a.m. of the date of suspension. If this is your first violation of section 1201 of this title and if you do not request a hearing, your license will be suspended as provided in this notice. If this is your second or subsequent violation of section 1201 of this title, your license will be suspended on the 11th day after you receive this notice. It is a crime to drive while your license is suspended unless you have been issued an ignition interlock restricted driver's license.

* * *

(m) Second and subsequent suspensions. For a second suspension under this ~~section~~ subchapter, the period of suspension shall be 18 months and until the person complies with section 1209a of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 90 days of this 18-month period unless the alleged offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another. For a third or subsequent suspension under this ~~section~~ subchapter, the period of suspension shall be life. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after one year of this lifetime suspension unless the alleged offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

* * *

Sec. 5. 23 V.S.A. § 1206 is amended to read:

§ 1206. SUSPENSION OF LICENSE FOR DRIVING WHILE UNDER INFLUENCE~~, REINSTATEMENT~~; FIRST CONVICTIONS

(a) ~~First conviction~~ First conviction—generally. Except as otherwise provided, upon conviction of a person for violating a provision of section 1201 of this title, or upon final determination of an appeal, the court shall forward the conviction report forthwith to the commissioner of motor vehicles. The

commissioner shall immediately suspend the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle for a period of 90 days and until the defendant complies with section 1209a of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 30 days of this 90-day period unless the offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

(b) ~~Extended suspension~~ Extended suspension—fatality. In cases resulting in a fatality, the period of suspension shall be one year and until the defendant complies with section 1209a of this title.

(c) Extended suspension—refusal; serious bodily injury. Upon conviction of a person for violating a provision of subsection 1201~~(b) or~~ (c) of this title involving a collision in which serious bodily injury resulted, or upon final determination of an appeal, the court shall forward the conviction report forthwith to the commissioner of motor vehicles. The commissioner shall immediately suspend the person's operating license or nonresident operating privilege or the privilege of an unlicensed operator to operate a vehicle for a period of six months, and until the defendant complies with section 1209a of this title.

Sec. 6. 23 V.S.A. § 1208 is amended to read:

§ 1208. SUSPENSIONS FOR SUBSEQUENT CONVICTIONS

(a) Second conviction. Upon a second conviction of a person violating a provision of section 1201 of this title and upon final determination of an appeal, the court shall forward the conviction report forthwith to the commissioner of motor vehicles. The commissioner shall immediately suspend the person's operating license, or nonresident operating privilege or the privilege of an unlicensed operator to operate a vehicle for 18 months and until the defendant complies with section 1209a of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 90 days of this 18-month period unless the offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

(b) Third conviction. Upon a third or subsequent conviction of a person violating a provision of section 1201 of this title and upon final determination of any appeal, the court shall forward the conviction report forthwith to the commissioner of motor vehicles. The commissioner shall immediately revoke the person's operating license, or nonresident operating privilege or the privilege of an unlicensed operator to operate a motor vehicle for life.

However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after one year of this lifetime suspension unless the offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

Sec. 7. 23 V.S.A. § 1209a is amended to read:

§ 1209a. CONDITIONS OF REINSTATEMENT; ALCOHOL AND DRIVING EDUCATION; SCREENING; THERAPY PROGRAMS

(a) Conditions of reinstatement. No license suspended or revoked under this subchapter, except a license suspended under section 1216 of this title, shall be reinstated except as follows:

(1) In the case of a first suspension, a license shall ~~not~~ be reinstated ~~until the person has~~ only:

(A) after the person has successfully completed an alcohol and driving education program, at the person's own expense, followed by an assessment of the need for further treatment by a state designated counselor, at the person's own expense, to determine whether reinstatement should be further conditioned on satisfactory completion of a therapy program agreed to by the person and the drinking driver rehabilitation program director; ~~and~~

(B) if the screening indicates that therapy is needed, after the person has satisfactorily completed or shown substantial progress in completing a therapy program at the person's own expense agreed to by the person and the driver rehabilitation program director;

(C) if electing to operate under an ignition interlock RDL, after the person has operated under a valid RDL for a period of six months, or if the RDL is permanently revoked, after one year from the date of suspension; and

(D) if the person has no pending criminal charges, civil citations, or unpaid fines or penalties for a violation under this chapter.

(2) In the case of a second suspension, a license shall not be reinstated until the person has successfully completed an alcohol and driving rehabilitation program ~~and~~; has completed or shown substantial progress in completing a therapy program at the person's own expense agreed to by the person and the driver rehabilitation program director; if electing to operate under an ignition interlock RDL, has operated under the terms of a valid ignition interlock RDL for 18 months; and has no pending criminal charges, civil citations, or unpaid fines or penalties for a violation under this chapter. However, if the RDL is permanently revoked, the person shall not be eligible for license reinstatement until two years from the date of suspension.

(3) In the case of a third or subsequent suspension or a revocation, a license shall not be reinstated until the person has successfully completed an alcohol and driving rehabilitation program; has completed or shown substantial progress in completing a therapy program at the person's own expense agreed to by the person and the driver rehabilitation program director; has satisfied the requirements of subsection (b) of this section; if electing to operate under an ignition interlock RDL, has operated under the terms of a valid ignition interlock RDL for a period of three years; and has no pending criminal charges, civil citations, or unpaid fines or penalties for a violation under this chapter. However, if the RDL is permanently revoked, the person shall not be eligible for license reinstatement until four years from the date of suspension.

* * *

Sec. 8. 23 V.S.A. § 1212 is amended to read:

§ 1212. CONDITIONS OF RELEASE; ARREST UPON VIOLATION

(a) At the first appearance before a judicial officer of a person charged with violation of section 1201 of this title, the court, upon a plea of not guilty, shall consider whether to establish conditions of release. Those conditions may include a requirement that the defendant not operate a motor vehicle if there is a likelihood that the defendant will operate a motor vehicle in violation of section 1201 or section 1213 of this title. The court may consider all relevant evidence, including whether the defendant has a motor vehicle or criminal record indicating prior convictions for one or more alcohol-related offenses. Prior convictions may be established for this purpose by a noncertified photocopy of a motor vehicle record, a computer printout or an affidavit. Nothing in this section limits the authority of a judicial officer to impose other conditions of release, nor does it limit or modify other statutory provisions concerning license suspension or revocation or the right of a person to operate a motor vehicle.

* * *

Sec. 9. 23 V.S.A. § 1213 is amended to read:

§ 1213. ~~[RESERVED FOR FUTURE USE.]~~ IGNITION INTERLOCK RESTRICTED DRIVER'S LICENSE; PENALTIES

(a) First offense. A person whose license or privilege to operate is suspended for a first offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under sections 1205(a)(2), 1206(a), or 1216(a)(1) of this title and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor

vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving education program. The RDL shall be valid after expiration of the applicable shortened period specified in subsection 1205(a)(2), 1206(a), or 1216(a)(1) of this title. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL.

(b) Second offense. A person whose license or privilege to operate is suspended for a second offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under subsection 1205(m), 1208(a), or 1216(a)(2) of this title and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving rehabilitation program. The RDL shall be valid after expiration of the applicable shortened period specified in subsection 1205(m), 1208(a), or 1216(a)(2) of this title. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL.

(c) Third or subsequent offense. A person whose license or privilege to operate is suspended or revoked for a third or subsequent offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under subsection 1205(m), 1208(b), or 1216(a)(2) of this title and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving rehabilitation program. The RDL shall be valid after expiration of the applicable shortened period specified in subsection 1205(m), 1208(b), or 1216(a)(2) of this title. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal

is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL.

(d) If a fine is to be imposed for a conviction of a violation of section 1201 of this title, upon receipt of proof of installation of an approved ignition interlock device, the court may order that the fine of an indigent person conditionally be reduced by one half to defray the costs of the ignition interlock device, subject to the person's ongoing operation under, and compliance with the terms of, a valid ignition interlock RDL as set forth in this section.

(e) The holder of an ignition interlock RDL shall pay the costs of installing, purchasing or leasing, and removing the ignition interlock device as well as calibrating the device and retrieving data from it periodically as may be specified by the commissioner. The holder of an ignition interlock RDL shall notify the commissioner and the department of corrections in writing if the device is removed or if the vehicle in which the device is installed is sold, repossessed, or otherwise conveyed. Notice shall be provided within 10 days of such removal or conveyance, and the commissioner shall cancel the person's ignition interlock RDL upon receipt of notice under this subsection.

(f) The holder of an ignition interlock RDL shall operate only motor vehicles equipped with an ignition interlock device until his or her license or privilege to operate is reinstated, shall not attempt or take any action to tamper with or otherwise circumvent the holder's ignition interlock device, and shall not continue to drive after failing a retest.

(g) A person who violates any provision of subsection (f) of this section before reinstatement of a license or privilege to operate suspended under this subchapter commits a criminal offense, shall be subject to the sanctions and procedures provided for in subsections 674(b)–(i) of this title, and upon conviction shall have his or her ignition interlock RDL permanently revoked. A person convicted of a separate criminal offense under this title also shall have his or her ignition interlock RDL permanently revoked.

(h) A person who violates a rule adopted by the commissioner pursuant to subsection (l) of this section commits a civil traffic violation subject to the jurisdiction of the judicial bureau and shall be subject to a civil penalty of up to $500.00 and up to a one-year recall of the person's ignition interlock RDL.

(i) Upon receipt of notice that the holder of an ignition interlock RDL has been adjudicated of a separate civil offense under this title that would result in suspension, revocation, or recall of a license or privilege to operate, the commissioner shall recall the person's ignition interlock RDL for the same period that the license or privilege to operate would have been suspended, revoked, or recalled.

(j) Upon expiration of a recall imposed under subsection (h) or (i) of this section and receipt of satisfactory proof of installation of an approved ignition interlock device, financial responsibility as provided in section 801 of this title, and enrollment in or completion of an alcohol and driving education or rehabilitation program, the commissioner shall reinstate the ignition interlock RDL. The commissioner may charge a fee for reinstatement in the amount specified in section 675 of this title.

(k) A person shall not knowingly and voluntarily tamper with an ignition interlock device on behalf of another person or otherwise assist another person to circumvent an ignition interlock device. A person adjudicated of a violation of this subsection shall be subject to a civil penalty of $500.00.

(l)(1) The commissioner, in consultation with the commissioner of corrections and any individuals or entities the commissioner deems appropriate, shall adopt rules and may enter into agreements to implement the provisions of this section.

(2) The commissioner shall establish uniform performance standards for ignition interlock devices including required levels of accuracy in measuring blood alcohol concentration, efficacy in distinguishing valid breath samples, the occurrence of random retests while the vehicle is running, and automatic signaling by the vehicle if the operator fails such a retest. The commissioner shall certify devices that meet these standards, specify any periodic calibration that may be required to ensure accuracy of the devices, and specify the means and frequency of the retrieval and sharing of data collected by ignition interlock devices.

Sec. 10. 23 V.S.A. § 1216 is amended to read:

§ 1216. PERSONS UNDER 21; ALCOHOL CONCENTRATION OF 0.02 OR MORE

(a) A person under the age of 21 who operates, attempts to operate or is in actual physical control of a vehicle on a highway when the person's alcohol concentration is 0.02 or more, commits a civil traffic violation subject to the jurisdiction of the judicial bureau and subject to the following sanctions:

(1) For a first violation, the person's license or privilege to operate shall be suspended for six months and until the person complies with subdivision 1209a(a)(1) of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 30 days of this six-month period unless the offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

(2) For a second or subsequent violation, the person's license or privilege to operate shall be suspended until the person reaches the age of 21 or for one year, whichever is longer, and complies with ~~section~~ subdivision 1209a(a)(2) of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 90 days of the applicable suspension period unless the offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

(b) ~~Notwithstanding the provisions in subsection (a) of this section to the contrary, a~~ A person's license or privilege to operate that has been suspended under this section shall not be reinstated until:

(1) the commissioner has received satisfactory evidence that the person has complied with section 1209a of this title and the provider of the therapy program has been paid in full;

(2) the person has no pending criminal charges, civil citations, or unpaid fines or penalties for a violation under this chapter; and

(3)(A) a person operating under an ignition interlock RDL for a first offense has operated under a valid RDL for a period of nine months or, if the RDL is permanently revoked, after one year from the date of suspension; or

(B) a person operating under an ignition interlock RDL for a second or subsequent offense has operated under a valid RDL for a period of 18 months or until the person is 21, whichever is longer, or if the RDL is permanently revoked, after two years from the date of suspension or until the person is 21, whichever is longer.

* * *

Sec. 11. TRANSITION RULE

On July 1, 2011, ignition interlock restricted driver's licenses shall be available to persons suspended for a violation of 23 V.S.A. § 1201 or 1216 or pursuant to 23 V.S.A. § 1205 prior to July 1, 2011, if such persons otherwise would be eligible for an ignition interlock RDL under this act. Persons who elect to obtain an ignition interlock RDL pursuant to this section shall be subject to all of the provisions of this act but shall not be eligible for the reduced fine specified in subsection (d) of Sec. 9, and shall be so notified by the commissioner in advance of obtaining an ignition interlock RDL.

Sec. 12. STUDY, IMPLEMENTATION PLANNING, REPORTING, AND RECOMMENDATIONS

(a) The commissioner of motor vehicles, in consultation with the commissioner of corrections and other any individuals or entities the commissioner deems appropriate, shall study:

(1) whether creation of a fund to assist indigent persons in defraying the costs associated with ignition interlock devices is likely to promote the use of ignition interlock devices, as well as potential funding sources and mechanisms;

(2) 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;

(3) the factors that have contributed to the varying success of states in promoting use of ignition interlock devices and reducing DUI recidivism; and

(4) any other issues pertaining to ignition interlock devices and restricted drivers' licenses that the commissioner deems relevant to successful implementation of ignition interlock legislation in Vermont.

(b) The commissioner also shall study the costs associated with issuing and renewing ignition interlock RDLs and the minimum fees that will be required to defray the costs of issuing and renewing ignition interlock RDLs.

(c) In studying these issues, the commissioner shall review ignition interlock laws and regulations as well as administrative practices in other states.

(d) The commissioner shall provide a report of the findings of the studies conducted pursuant to subsections (a), (b) and (c) of this section to the senate and house committees on judiciary and on transportation by January 15, 2011.

(e) The commissioner shall formulate an implementation plan that shall include a timeline and steps that the department of motor vehicles will undertake prior to July 1, 2011, to prepare for issuance of ignition interlock restricted drivers' licenses in accordance with this act. The commissioner shall provide a copy of this implementation plan and any recommendations concerning additional legislation needed for effective implementation of ignition interlock restricted drivers' licenses in Vermont to the senate and house committees on judiciary and on transportation by January 15, 2011.

Sec. 13. PILOT PROJECT

(a) Pilot project established. The commissioner of corrections and the commissioner of motor vehicles shall conduct an ignition interlock device pilot project as provided in this section to inform the process of ignition interlock program implementation. The pilot project shall commence no later than January 1, 2011, and continue until July 1, 2011.

(b) Device certification. The commissioner of motor vehicles shall determine appropriate ignition interlock device performance standards and certify ignition interlock devices for the pilot project. Only devices certified by the commissioner of motor vehicles shall be used in the pilot project.

(c) Restricted driver's license eligibility; issuance. Persons under the supervision of the department of corrections through the Intensive Substance Abuse Program whose license or privilege to operate has been suspended or revoked for operating under the influence of intoxicating liquor or in excess of legal limits of alcohol concentration are eligible for an ignition interlock restricted driver's license under the pilot project established by this section unless the suspension or revocation arises from an offense involving refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or an offense involving a collision resulting in serious bodily injury or death to another. The commissioner of motor vehicles may issue an ignition interlock RDL to an eligible person upon the approval of the commissioner of corrections and receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated and of financial responsibility as provided in section 801 of this title. The privilege to operate a motor vehicle by persons issued an RDL under this section may be restricted by the department of corrections.

(d) A person eligible for an ignition interlock RDL under this section whose modified adjusted gross income as defined in 32 V.S.A. § 6061(5) for the preceding taxable year was less than 150 percent of the official poverty line established by the federal Department of Health and Human Services for a family of two published as of October 1, 2010, shall be eligible for subsidies from the department of corrections to defray the costs of installing, calibrating, or leasing an approved ignition interlock device. By October 1, 2010, the commissioner of corrections shall submit for approval by the joint legislative corrections oversight committee recommendations concerning the levels of such subsidies.

(e) By October 1, 2010, the commissioners of corrections and of motor vehicles may submit for approval by the joint legislative corrections oversight committee and the joint transportation oversight committee additional

guidelines for participation in the pilot project and the terms of operation under an ignition interlock RDL under the pilot project.

(f) The holder of an ignition interlock RDL under the pilot project shall operate only motor vehicles equipped with an approved ignition interlock device, shall not attempt or take any action to tamper with or otherwise circumvent the holder's ignition interlock device, and shall not continue to drive after failing a retest. A person who violates any of these provisions commits a criminal offense, shall be subject to the sanctions and procedures provided for in subsections 674(b)–(i) of this title, and upon conviction shall have his or her ignition interlock RDL permanently revoked. A person convicted of a separate criminal offense under this title also shall have his or her ignition interlock RDL permanently revoked.

(g) The commissioners of corrections and of motor vehicles shall submit a report by January 15, 2012, to the senate and house committees on judiciary and on transportation evaluating the pilot project established by this section, including information on program costs, savings generated by reduced recidivism, and any recommendations concerning the design and implementation of ignition interlock program legislation.

Sec. 14. EFFECTIVENESS STUDY

The commissioner of motor vehicles shall monitor and calculate the rate of use of ignition interlock devices in Vermont after July 1, 2011, by different classes of offenders suspended for a violation of 23 V.S.A. § 1201 or 1216 or pursuant to 23 V.S.A. § 1205. The commissioner, in consultation with the commissioner of corrections and any other individuals or entities the commissioner deems appropriate, shall study whether changes to this act, including mandating installation of ignition interlock devices and reducing the 30-day period of hard suspension for first offenders, are likely to promote usage. The commissioner shall report the findings of this study and any recommendations to the senate and house committees on judiciary and on transportation by January 15, 2013.

Sec. 15. EFFECTIVE DATES

(a) This section, Sec. 12, Sec. 13, and subsection 1213(l) of Sec. 9 (ignition interlock rulemaking) shall take effect on passage.

(b) All other sections of this act shall take effect on July 1, 2011.

M. JANE KITCHEL
PHILIP B. SCOTT
RICHARD W. SEARS

Committee on the part of the Senate

MAXINE JO GRAD
ELDRED M. FRENCH
RICHARD J. MAREK

Committee on the part of the House

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

House Proposal of Amendment; Proposals of Amendment; Consideration Postponed

S. 292.

House proposal of amendment to Senate bill entitled:

An act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees.

Was taken up.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Sears moved that the Senate concur in the House proposal of amendment with the following amendments thereto:

First: After Sec. 17, by inserting an internal caption and four new sections to be Secs. 17a through 17d to read:

* * * Employment History * * *

Sec. 17a. 16 V.S.A. § 1699a is added to read:

(a) If the commissioner for children and families receives a report of suspected child abuse pursuant to subchapter 2 of chapter 49 of Title 33 concerning a licensed educator and determines that the report merits investigation, then the commissioner shall forward to the commissioner of education a copy of the report.

(b) The commissioner of education shall ensure that the report and all related information remain confidential while the commissioner for children and families investigates the complaint.

(c) When the commissioner for children and families issues a determination that the report is substantiated or not substantiated, a copy of the determination shall be simultaneously forwarded to the commissioner of education.

(d) Upon receiving notification that a report is not substantiated, the commissioner of education shall destroy and expunge the report and all related documents and information in the department of education's files.

Sec. 17b. 21 V.S.A. § 306 is added to read:

§ 306. PUBLIC POLICY OF THE STATE OF VERMONT; EMPLOYMENT SEPARATION AGREEMENTS

In support of the state's fundamental interest in protecting the safety of minors and vulnerable adults, as defined in 33 V.S.A. § 6902, it is the policy of the state of Vermont that no confidential employment separation agreement shall inhibit the disclosure to prospective employers of factual information about a prospective employee's background that would lead a reasonable person to conclude that the prospective employee has engaged in conduct jeopardizing the safety of a minor or vulnerable adult. Any provision in an agreement entered into on or after the effective date of this section that attempts to do so is void and unenforceable.

Sec. 17c. 21 V.S.A. § 307 is added to read:

§ 307. DISCLOSURE OF INFORMATION; WAIVER

(a) Each prospective employee whose duties may place that person in a position of power, authority, or supervision over or permit unsupervised contact with a minor or vulnerable adult shall sign a waiver prior to employment authorizing:

(1) the prospective employer to request information about the prospective employee from current employers and former employers who employed the person within the previous ten years regarding conduct jeopardizing the safety of a minor or vulnerable adult; and

(2) the current and former employers to disclose the requested information as provided in subsection (c) of this section.

(b) The prospective employer of a prospective employee described in subsection (a) of this section shall request in writing that the current and former employers disclose all factual information that would lead a reasonable person to conclude that the prospective employee engaged in conduct jeopardizing the safety of a minor or vulnerable adult.

(c) Upon receiving an inquiry from a prospective employer pursuant to subsection (b) of this section, a current or former employer promptly shall disclose in writing all factual information in its possession that is responsive to that inquiry; provided that the affected employee shall have had the opportunity to review and respond to the information and the employee's response, if any, shall be included with the disclosure. Current and former employers shall provide a copy of the disclosure, or a statement that there is nothing to disclose, to both the prospective employer and the prospective employee.

Sec. 17d. REPORT

Legislative counsel shall review the potential impacts on hiring practices in Vermont if the state were to grant civil immunity for prospective, current, and former employers in connection with the disclosure of information concerning conduct jeopardizing the safety of a minor or vulnerable adult contained in a prospective employee's personnel file from the previous ten years, including the manner in which these matters are addressed in other jurisdictions. On or before January 15, 2011, the legislative counsel shall submit a report regarding the review to the general assembly.

Second: By striking Sec. 18 in its entirety and inserting in lieu thereof a new Sec. 18 to read:

Sec. 18. EFFECTIVE DATES

(a) Sec. 17c of this act shall take effect on April 1, 2011.

(b) Secs. 17a, 17b, and 17d of this act shall take effect on passage.

(c) This section and Secs. 1-17 of this act shall take effect on July 1, 2010

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment with proposals of amendment?, Senator Sears moved that the Senate concur in the House proposal of amendment with the following amendments thereto:

First: In Sec. 3, 13 V.S.A. § 5411(l), in the last sentence by striking out the following: "rule 75 of the Vermont rules of civil procedure" and inserting in lieu thereof the following Rule 75 of the Vermont Rules of Civil Procedure

Second: In Sec. 10(a)(2), following "13 V.S.A. § 5301(7)" by inserting the following; , or

Third: In Sec. 12, at the end of the Sec. by adding a new subdivision (b)(4) to read as follows:

(4) a plan to improve and increase restorative justice, diversion, and other innovative municipal programs in each county so that the need for correctional services shall be reduced. The plan shall show how recommended strategies could lead to an increase in use of restorative justice programs, diversion, and innovative municipal programs and at least a ten-percent decrease in nonviolent offenders entering the corrections system.

Fourth: By striking out Sec. 17 in its entirety and by renumbering the remaining sections to be numerically correct.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment with proposals of amendment?, Senator Sears moved that the Senate concur in the House proposal of amendment with the following amendment thereto:

By striking out Sec. 15 in its entirety and inserting in lieu thereof a new Sec. 15 to read as follows:

Sec. 15. 24 V.S.A. § 1940(c) is amended to read:

(c) A specialized investigative unit grants board is created which shall be comprised of the attorney general, the secretary of administration, the executive director of the department of state's attorneys, the commissioner of the department of public safety, a representative of the Vermont sheriffs' association, a representative of the Vermont association of chiefs of police, the executive director of the center for crime victim services, and the executive director of the Vermont League of Cities and Towns~~, Inc~~. Specialized investigative units organized and operating under this section for the investigation of sex crimes, child abuse, elder abuse, domestic violence, or crimes against those with physical or developmental disabilities may apply to the board for a grant or grants covering the costs of salaries and employee benefits to be expended during a given year for the performance of unit duties as well as unit operating costs for rent, utilities, equipment, training, and supplies. Grants under this section shall be approved by a majority of the entire board and shall not exceed 50 percent of the yearly salary and employee benefit costs of the unit. Preference shall be given to grant applications which include the participation of the department of public safety, the department for children and families, sheriffs' departments, community victims' advocacy organizations, and municipalities within the region. However, a sheriff's department in a county with a population of less than 8,000 residents may receive a grant of up to $20,000.00 to support one part-time specialized investigative unit investigator, provided that the department matches the amount of the grant with in-kind service.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment with further proposals of amendment?, on motion of Senator Sears, consideration of the bill was postponed to the next legislative day.

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

H. 792.

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

An act relating to implementation of challenges for change.

Was taken up for immediate consideration.

Thereupon, pending third reading of the bill, Senator Bartlett moved to amend the Senate proposal of amendment as follows:

First: In Sec. C8, in subdivision (7), by striking out the word "detention" following "juvenile" and inserting in lieu thereof the word "rehabilitation"

Second: In Sec. C24, in subdivision (1), following "creating", by striking out the word "of", and in subdivision (8), by striking out the word "establishing" and inserting in lieu thereof the words "establishment of"

Third: In Sec. C24, in subdivision (16), by striking out "and" at the end of the sentence; in subdivision (17) by striking out the period at the end of the sentence and inserting in lieu thereof "; and" and by adding a new subdivision (18) to read:

(18) redesigning service delivery to individuals in the custody of the commissioner of disabilities, aging, and independent living under the public safety criteria.

Fourth: In Sec. C25, by striking out subdivision (a)(1) and inserting a new subdivision (a)(1) in lieu thereof to read:

(a)(1) The agency of human services and the agencies designated under chapter 207 of Title 18 shall reduce the fiscal year 2011 appropriation for mental health to the designated agencies by 2.0 percent and for developmental services by a total of 1.0 percent. The designated agencies shall minimize service reductions. The commissioner of finance and management and the secretary of human services are authorized to use available funding to minimize negative impacts on the designated agencies' cash flow, including by providing a higher proportion of funding in the first two quarters of the fiscal year.

Fifth: In Sec. C27, in subsection (b), following "Upon enactment", by inserting the words "of this act"

Sixth: In Sec. C35, in subsection (d), following "After receiving", by striking out the words "requests for"

Seventh: In Sec. C37, by striking out "March 30, 2010l" and inserting in lieu thereof "March 30, 2010" and by striking out "No. 38" and inserting in lieu thereof "No. 68"

Eighth: In Sec. C38, in subdivision (2), by striking out "of the department's" and inserting in lieu thereof "by the department of disabilities, aging, and independent living"; in subdivision (3), by striking out the word

"detention" following "juvenile" and inserting in lieu thereof the word "rehabilitation"; and in subdivision (4), by striking out the words "an update on" and inserting in lieu thereof "the implementation of"

Ninth: In Sec. D9(a), in the first sentence, by striking "$6,350,200.00" and inserting in lieu there of "$6,350,500.00"

Tenth: In Sec. E2, subsection (e), in the second sentence, by striking out the date "January 15, 2011" and inserting in lieu thereof the date "December 15, 2010"

Eleventh: In Sec. E2, subsection (e), after the second sentence, by inserting a new sentence to read: "Also on December 15, 2010, each technical center district shall notify the commissioner of its ability to meet the recommended reduction allocated to it under subsection (c) of this section."

Twelfth: In Sec. E2, subsection (e), after the final sentence, by inserting two new sentences to read: "On or before January 15, 2011, the commissioner shall report to these committees with the total projected amount by which FY 2012 budgets will fail to meet the necessary reductions, together with a detailed proposal by which the legislature can ensure that the targets will be met in FY 2012. In addition, the commissioner shall post the recommended individual spending amounts and actual approved budgets for each supervisory union, with a breakdown for each budgeting entity within it, and technical center district on the department of education's website on or before July 1, 2011."

Thirteenth: In Sec. F19, 3 V.S.A. § 2809, in subdivision (a)(3), by striking "potentially responsible person" where it appears and inserting in lieu thereof "person who caused the agency to incur expenditures"

Fourteenth: By striking Sec. F31 (public service board rules for notice of interested parties) and renumbering the remaining sections of "F. Regulatory Challenge" to be numerically correct

Fifteenth: By striking out Sec. H1 in its entirety and inserting in lieu thereof "[DELETED]"

Sixteenth: In Sec. H2, 2 V.S.A. § 970, in subsection (a), by inserting new subdivisions (5) through (10) to read:

(5) Determine that data-based performance measures have been adopted for each agency and department.

(6) Determine whether each agency and department is taking actions to achieve the required outcomes, as shown by application of the data-based performance measures.

(7) Ensure that outcomes, measures, performance data, and descriptions of actions taken, or proposed to be taken, are transparent and readily accessible to the public via electronic publication.

(8) Assess the effectiveness of the performance measures for measuring progress in achieving outcomes.

(9) Recommend the addition, amendment, or elimination of any performance measures.

(10) By November 1 of each year, report to the general assembly its findings.

Seventeenth: By inserting a Sec. H4a to read:

Sec. H4a. REVIEW BY JOINT FISCAL COMMITTEE

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 No. 68 of the Acts of the 2009 Adj. Sess. (2010), 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, or service as a part of its plan of implementation of Challenges for Change, and will include in the report an analysis of how the reduction is designed to achieve the outcomes expressed in the Challenges for Change, 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.

Eighteenth: In Sec. H5, by inserting a subdivision (6) to read:

(6) Sec. H4a (review by joint fiscal committee) shall take effect upon passage.

And by renumbering the sections and internal cross-references to be alphanumerically correct

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Illuzzi moved to amend the Senate proposal of amendment as follows:

* * * RPC/RDC: Reduction in General Funds * * *

First: In Sec. 64, subsection (c), by striking out "90" and by inserting in lieu thereof "95"

Second: In 64e, by striking out subdivision (e)(1) in its entirety and by inserting in lieu thereof the following:

(1) In fiscal year 2011, the secretary of commerce and community development shall reduce the appropriation to each regional development corporation by 5 percent, except that:

(A) the secretary shall not reduce total funding to any combined regional planning and regional economic development entity by more than 2.5 percent of the entity's appropriation for regional planning services.

(B) no regional development corporation shall sustain a reduction in state funds that amounts to more than five percent of its fiscal year 2010 overall operating budget, less any one-time supplemental funding awarded by the secretary in fiscal year 2010.

Third: In Sec. 64f, by striking out subdivision (c)(1) in its entirety and by inserting in lieu thereof the following:

(1) In fiscal year 2011, the secretary of commerce and community development shall reduce the appropriation to each regional planning commission by 5 percent, except that the secretary shall not reduce total funding to any combined regional planning and regional economic development entity by more than 2.5 percent of the entity's appropriation for regional planning services.

* * * RPCs: Eight-Year Regional Plans * * *

Fourth: In Sec. 64c, 24 V.S.A. § 4345a(9), by striking out "five ~~ten~~" and by inserting in lieu thereof "eight"

Fifth: In Sec. 64c, 24 V.S.A. § 4348b(b), in the last sentence, by striking out "~~five~~ ten" and by inserting in lieu thereof "eight"

* * * Frequency of Performance Contract Negotiations * * *

Sixth: In Sec. 64c, 24 V.S.A. § 4341a(a), by striking out the word "annually"

* * * Economic and Outcome Measures * * *

Seventh: In Sec. 64h, by striking out "RESERVED." and by inserting in lieu thereof a new Sec. 64h to read:

Sec. 64h. ECONOMIC OUTCOME AND PERFORMANCE MEASURES

(a) Purpose. The purpose of establishing outcome and performance measures is to provide the GAC and the committees of jurisdiction, in particular, and the general assembly, as a whole, with a means of tracking the achievements of Vermont's economic development programs so that the state can better target its limited financial resources; maintain a focus on outcomes; and promote transparency and accountability.

(b) Outcome and Performance Measures. By September 1, 2010, for each economic development outcome identified in Sec. 8(b) of No. 68 of the acts of 2010 (an act relating to challenges for change), the executive economist or analyst and the joint fiscal office shall jointly submit to the government accountability committee (GAC) program-specific outcome and performance measures for all economic development programs identified in the unified economic development budget (UEDB) established under 10 V.S.A. § 2, as well as economic development-related tax expenditures, incentives, and subsidies identified in the UEDB, and in telecommunications. In addition, the economists shall submit, for each such program, the following:

(1) program outcomes achieved in fiscal year 2010;

(2) outcome and performance-measure projections for fiscal year 2011 based on program funding and design prior to challenges for change implementation; and

(3) outcome and performance-measure projections for fiscal year 2011 based on program funding and design subsequent to challenges for change implementation.

(c) Review and Approval of Initial Measures. The GAC, upon recommendation from the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs, shall vote whether the proposed outcome and performance measures are sufficient and should be accepted, in whole or in part. For any proposed measure not accepted, the GAC may request the economists to revise and resubmit a new measure to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs for their review and recommendation to the GAC, followed by the GAC's vote for acceptance or further request to the economists for revision and resubmission.

(d) Review and Approval of Measures for New Programs. Upon request by the GAC, the economists shall establish outcome and performance measures for any new economic development program created by the general assembly, and shall revise existing outcome and performance measures, as

necessary. Before implementation, however, all outcome and performance measures shall be accepted by the GAC pursuant to the process described in subsection (c) of this section.

(e) Guiding Principles for Measures Developed. The outcome and performance measures developed for any purpose set forth in subsections (b) or (c) of this section shall:

(1) be connected to outcomes and activities over which the agency of commerce and community development (ACCD) and its subcontractors have some influence;

(2) take note of business cycles and other external economic events over which the ACCD and its subcontractors have no control;

(3) be appropriately scaled and adjusted to reflect regional differentials within the state;

(4) be calibrated to time periods that are consistent with expected results from the efforts expended; and

(5) include a subjective component to reflect aspects of these activities that may be difficult or impossible to quantify in an objective measure.

(f) Considerations to be Included. For purposes of this section, employment growth outcome and performance measures shall take into consideration, as appropriate, the following:

(1) total net annual private sector employment change by state or region, expressed relative to national growth, regional growth, expected growth, and historical trends.

(2) median household income at state and regional levels, relative to national growth, regional growth, growth expectations, and age-adjusted growth, and assessed over a multi-year period (at least three to five years) and adjusted for cyclical variation in the economy.

(3) cost per job created.

(g) New Programs or Initiatives. The secretary of commerce and community development shall provide the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs a detailed rationale for any economic development program or initiative creation, elimination, or reorganization proposed under challenges for change, with specific reference to the relevant, accepted, program-specific outcome and performance measures.

(h) Review and Changes to the UEDB. The executive economist or analyst and the joint fiscal office shall review the UEDB for completeness and

accuracy, with particular emphasis on the state's return on investment. The economists shall review existing measures of economic achievement, data sources, and methodologies and shall make proposals for improving their usefulness, as appropriate. The executive economist or analyst and the joint fiscal office shall submit their findings and recommendations to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs by September 1, 2010.

* * * Economic Development Reductions ($834k) * * *

Eighth: By striking out Sec. 64v in its entirety and by inserting in lieu thereof a new Sec. 64v to read:

Sec. 64v. ECONOMIC DEVELOPMENT REDUCTIONS

Except as otherwise provided in Sec. 64e(e) and 64f(c):

(1) A total of $834,000.00 in reduced state funds in fiscal year 2011, reflects a 5 percent reduction to all the state funded programs in the unified economic development budget and the state funds for administration in the agency of commerce and community development, including the central office and the department of tourism and marketing, but excluding the clean energy development fund and the Vermont telecommunications authority.

(2) A total of $131,600.00 in reduced state funds for the regional planning commissions in fiscal year 2011 reflects a 5 percent reduction.

(3) Nothwithstanding any other provision of law to the contrary, the secretary of administration shall have the authority to reduce appropriations or transfer funds as is necessary to reduce by 5% the state funding to each grant-funded program in the unified economic development budget, including state grants to the regional planning commissions, and excluding the clean energy development fund and the Vermont telecommunications authority. The remainder of the savings for the Economic Development challenge shall be achieved by the secretary through reductions from non-grant funded sources, including administrative costs.

(4) From the Challenges for Change reinvestment funds that are appropriated to the secretary to implement the economic development components of this act, the secretary of administration shall reimburse the joint fiscal office for costs incurred to implement Sec. 64h (economic performance measures) of this act.

Ninth: By adding a in Sec. 64l, in § 542(b) after the period in the first sentence the following: The amount of funding to each WIB so authorized shall be based on the performance contract entered into between the council and the WIB.

* * * Challenges for Change Investments * * *

Tenth: By striking out Sec. 64w in its entirety and by inserting in lieu thereof a new Sec. 64w to read as follows:

Sec. 64w. CHALLENGES FOR CHANGE INVESTMENTS

(a) The secretary of administration is authorized to expend any Challenges for Change reinvestment funds that are appropriated to the secretary for that purpose to implement the economic development components of this act, which may include the following activities:

(1) Funding to the regional planning commissions and regional development corporations to facilitate reorganization pursuant to this act.

(2) Funding for the services of one or more economists or fiscal analysts to assist the agency of commerce and community development in the preparation of economic measures for regional job creation and retention.

(3) Funding for the implementation of the brownfield project challenge.

* * * Effective Dates * * *

Eleventh: By striking out Sec. 64z in its entirety and by inserting in lieu thereof a new Sec. 64z to read:

Sec. 64z. EFFECTIVE DATES

(a) Secs. 64 through 64z of this act (economic development) shall take effect upon passage, except that:

(A) Sec. 64o (repeal of Vermont sustainable jobs fund provisions in H.789 as enacted) shall take effect upon passage and, notwithstanding any other provision of law to the contrary, shall apply retroactively to the effective date of H.789 of 2010 as enacted.

(B) Secs. 64p and 64q (Vermont sustainable jobs fund program) shall take effect upon the cessation of state funding to the program from the general fund.

And by renumbering the bill and any internal cross-references to be numerically correct.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Ashe moved to amend the Senate proposal of amendment by adding a new section to be numbered Sec. 64k1 to read as follows:

Sec. 64k1. 10 V.S.A. § 531(c)(4) is added to read:

(4) contribute at least 50 percent of the cost of training, which for purposes of this subdivision shall not include any subsidy of the salary or benefits of participating workers or any overhead costs incurred by the employer in the normal course of business, but may include the cost of the training course, course materials, an instructor who is not an employee of the employer at the time of instruction, and any costs incurred from the use of an offsite training facility.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Ashe?, Senator Ashe requested and was granted leave to withdraw the proposal of amendment.

Thereupon, pending third reading of the bill, Senator Miller moved to amend the Senate proposal of amendment in Sec. E2 as follows:

First: In the section title, by striking out the words "Targeted Recommendations" and inserting in lieu thereof the words Targeted Reductions

Second: In subsection (c), in the first sentence, by striking out the words "a recommended" and inserting in lieu thereof the word an and in the second sentence by striking out the word "recommended"

Third: In subsections (d) and (e), by striking out the word "recommended" wherever it appears

Fourth: By adding a new subsection to be subsection (g) to read as follows:

(g) For any district that is unable to meet the targeted reduction, the district spending adjustment for that district under 32 V.S.A. § 5401(13) shall be calculated as the fraction in which the numerator is the district's education spending plus the amount by which the district failed to meet the targeted reduction and the denominator is the base education amount for the school year.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Miller?, Senator Miller requested and was granted leave to withdraw the proposal of amendment.

Thereupon, pending third reading of the bill Senators Lyons, Doyle, Ayer, Flory, Hartwell, MacDonald, McCormack, Racine, and White moved that the Senate proposal of amendment be amended as follows:

First: By striking out Secs. 64 through 64f in their entirety and inserting in lieu thereof the following:

Sec. 64. REGIONAL PLANNING CHALLENGE

(a) Challenge.

Each regional planning commission shall improve regional planning outcomes through performance contracts and regional coordination with regional development corporations, while achieving a five percent savings in fiscal year 2011 and a ten percent savings in fiscal year 2012.

(b) Performance contracts for regional planning commissions.

Notwithstanding any other provision of law to the contrary:

(1) Beginning July 1, 2010, the secretary of the agency of commerce and community development shall annually enter into a performance contract with each current regional planning commission to provide regional planning services in its region.

(2) A performance contract shall identify specific outcomes and benchmarks to measure regional planning performance.

(3) Base funding to regional planning commissions shall be determined formula pursuant to 24 V.S.A. § 4306.

(4) The secretary and the regional planning commission shall negotiate terms for frequency and method of assessing performance, and for establishing incentives and holdbacks based on achievement of identified outcomes.

(c) Regional coordination.

On or before July 1, 2010, each regional planning commission shall evaluate efficiencies, and as appropriate enter into one or more memoranda of understanding, to improve outcomes and achieve savings through improved coordination with regional development corporations and other regional service providers, including:

(1) Regular joint meetings of staff and board leadership.

(2) Regional work plans.

(3) Consolidation of administrative or related functions.

(4) Joint performance contracts.

(5) Co-location or merger with other local, regional, or state service providers.

Sec. 64a. REGIONAL ECONOMIC DEVELOPMENT CHALLENGE

(a) Challenge.

Each regional development corporation shall improve regional economic development outcomes through performance contracts and regional coordination with regional planning commissions, while achieving a five percent savings in fiscal year 2011 and a five percent savings in fiscal year 2012.

(b) Performance contracts for regional development corporations.

Notwithstanding any provision of law to the contrary:

(1) Beginning July 1, 2010, the secretary of the agency of commerce and community development shall annually negotiate and enter into a performance contract with each current regional development corporation to provide regional economic development services in its region.

(2) A performance contract shall identify specific outcomes and benchmarks to measure regional economic development performance.

(3) Base funding allocations to regional development corporations shall be made in the same proportions as in fiscal year 2010.

(4) The secretary and the regional development corporation shall negotiate terms for frequency and method of assessing performance, and for establishing incentives and holdbacks based on achievement of identified outcomes.

(c) Regional coordination.

On or before July 1, 2010, each regional development corporation shall evaluate efficiencies, and as appropriate enter into one or more memoranda of understanding, to improve outcomes and achieve savings through improved coordination with regional planning commissions and other regional service providers, including:

(1) Regular joint meetings of staff and board leadership.

(2) Regional work plans.

(3) Consolidation of administrative or related functions.

(4) Joint performance contracts.

(5) Co-location or merger with other local, regional, or state service providers.

Sec. 64b. DELIVERY OF ECONOMIC AND WORKFORCE DEVELOPMENT SERVICES; REORGANIZATION

(a) Committee created.

(1) There is created a committee to design a proposal for reorganizing the state and regional delivery of economic development and workforce development services to improve the economic development outcomes identified in Sec. 8 of No. 68 of the Acts of 2010 (2009 Adj. Sess.) while also achieving cost savings.

(2) The committee shall consist of five members drawn from the business community who represent a diversity of business sectors and geographic areas of the state. Members shall be appointed as follows:

(A) One member by the speaker of the house.

(B) One member by the senate committee on committees.

(C) One member by the governor.

(D) Two at-large members appointed unanimously by the speaker of the house, the senate committee on committees, and the governor.

(3) Notwithstanding subdivision (2) of this subsection, if a member vacancy remains as of June 15, 2010, either because one of the three appointing authorities fails to appoint its member, or one of the three appointing authorities fails to agree to the appointment of any at-large member that has been approved by the other two appointing authorities, then the other two appointing authorities may proceed to unanimously fill such vacancy.

(b) Duties of committee.

(1) The committee shall perform a comprehensive assessment of the state and regional delivery systems of economic development and workforce development services, including:

(A) The appropriate balance of what functions are performed at the state level and the regional level.

(B) The appropriate configuration of economic development regions of the state.

(C) The potential for improved outcomes and efficiencies between and among regional economic and workforce development service providers through:

(i) Regular joint meetings of staff and board leadership.

(ii) Regional work plans.

(iii) Consolidation of administrative or related functions.

(iv) Joint performance contracts.

(v) Co-location or merger with other local, regional, or state service providers.

(D) The most effective organization of regional workforce investment boards.

(E) How regional development corporations can work more effectively in coordination with regional planning commissions.

(2) The committee shall address additional opportunities to improve outcomes and achieve savings through specific programs and expenditures identified in the unified economic development budget.

(3) On or before September 15, 2010, the committee shall submit its findings and proposal to the governor, the joint fiscal committee, the joint government accountability committee, the secretary of commerce and community development, the senate committee on economic development, housing and general affairs, the house committee on commerce and community development, the house and senate committees on natural resources and energy, and the house committee on fish, wildlife and water resources.

Second: In Sec. 64h, by striking out "RESERVED." and inserting in lieu thereof a new Sec. 64h to read as follows:

Sec. 64h. ECONOMIC OUTCOME AND PERFORMANCE MEASURES

(a) Purpose. The purpose of establishing outcome and performance measures is to provide the GAC and the committees of jurisdiction, in particular, and the general assembly, as a whole, with a means of tracking the achievements of Vermont's economic development programs so that the state can better target its limited financial resources; maintain a focus on outcomes; and promote transparency and accountability.

(b) Outcome and Performance Measures. By September 1, 2010, for each economic development outcome identified in Sec. 8(b) of No. 68 of the acts of 2010 (an act relating to challenges for change), the executive economist or analyst and the joint fiscal office shall jointly submit to the government accountability committee (GAC) program-specific outcome and performance measures for all economic development programs identified in the unified economic development budget (UEDB) established under 10 V.S.A. § 2, as well as economic development-related tax expenditures, incentives, and subsidies identified in the UEDB, and in telecommunications. In addition, the economists shall submit, for each such program, the following:

(1) program outcomes achieved in fiscal year 2010;

(2) outcome and performance-measure projections for fiscal year 2011 based on program funding and design prior to challenges for change implementation; and

(3) outcome and performance-measure projections for fiscal year 2011 based on program funding and design subsequent to challenges for change implementation.

(c) Review and Approval of Initial Measures. The GAC, upon recommendation from the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs, shall vote whether the proposed outcome and performance measures are sufficient and should be accepted, in whole or in part. For any proposed measure not accepted, the GAC may request the economists to revise and resubmit a new measure to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs for their review and recommendation to the GAC, followed by the GAC's vote for acceptance or further request to the economists for revision and resubmission.

(d) Review and Approval of Measures for New Programs. Upon request by the GAC, the economists shall establish outcome and performance measures for any new economic development program created by the general assembly, and shall revise existing outcome and performance measures, as necessary. Before implementation, however, all outcome and performance measures shall be accepted by the GAC pursuant to the process described in subsection (c) of this section.

(e) Guiding Principles for Measures Developed. The outcome and performance measures developed for any purpose set forth in subsections (b) or (c) of this section shall:

(1) be connected to outcomes and activities over which the agency of commerce and community development (ACCD) and its subcontractors have some influence;

(2) take note of business cycles and other external economic events over which the ACCD and its subcontractors have no control;

(3) be appropriately scaled and adjusted to reflect regional differentials within the state;

(4) be calibrated to time periods that are consistent with expected results from the efforts expended; and

(5) include a subjective component to reflect aspects of these activities that may be difficult or impossible to quantify in an objective measure.

(f) Considerations to be Included. For purposes of this section, employment growth outcome and performance measures shall take into consideration, as appropriate, the following:

(1) total net annual private sector employment change by state or region, expressed relative to national growth, regional growth, expected growth, and historical trends.

(2) median household income at state and regional levels, relative to national growth, regional growth, growth expectations, and age-adjusted growth, and assessed over a multi-year period (at least three to five years) and adjusted for cyclical variation in the economy.

(3) cost per job created.

(g) New Programs or Initiatives. The secretary of commerce and community development shall provide the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs a detailed rationale for any economic development program or initiative creation, elimination, or reorganization proposed under challenges for change, with specific reference to the relevant, accepted, program-specific outcome and performance measures.

(h) Review and Changes to the UEDB. The executive economist or analyst and the joint fiscal office shall review the UEDB for completeness and accuracy, with particular emphasis on the state's return on investment. The economists shall review existing measures of economic achievement, data sources, and methodologies and shall make proposals for improving their usefulness, as appropriate. The executive economist or analyst and the joint fiscal office shall submit their findings and recommendations to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs by September 1, 2010.

Third: In Sec. 64i(b) by adding before the period at the end of the last sentence after the word "development" the following: , House and Senate natural resources committees, and House and Senate government operations committees

Fourth: By striking out Sec. 64v in its entirety and inserting in lieu thereof a new Sec. 64v. to read as follows:

Sec. 64v. ECONOMIC DEVELOPMENT REDUCTIONS

(a) A total of $834,000 in reduced state funds in fiscal year 2011, reflects a 5% reduction to all the state funded programs in the unified economic development budget and the state funds for administration in the agency of commerce and community development, including the central office and the

department of tourism and marketing, but excluding the clean energy development fund and the Vermont telecommunications authority.

(b) A total of $131,600 in reduced state funds for the regional planning commissions in fiscal year 2011 reflects a 5% reduction.

(c) Nothwithstanding any other provision of law to the contrary, the secretary of administration shall have the authority to reduce appropriations or transfer funds as is necessary to reduce by 5% the state funding to each grant-funded program in the unified economic development budget, including state grants to the regional planning commissions, and excluding the clean energy development fund and the Vermont telecommunications authority. The remainder of the savings for the Economic Development challenge shall be achieved by the secretary through reductions from non-grant funded sources, including administrative costs.

Fifth: By striking out 64w in its entirety and inserting in lieu thereof a new Sec. 64w to read as follows:

Sec. 64w. CHALLENGES FOR CHANGE INVESTMENTS

(a) The secretary of administration is authorized to expend any Challenges for Change reinvestment funds that are appropriated to the secretary for that purpose to implement the economic development components of act, which may include the following activities:

(1) Funding to the regional planning commissions and regional development corporations to facilitate reorganization pursuant to this act.

(2) Funding for the services of one or more economists or fiscal analysts to assist the agency of commerce and community development in the preparation of economic measures for regional job creation and retention.

(3) Funding for the implementation of the brownfield project challenge.

(b) From the Challenges for Change reinvestment funds that are appropriated to the secretary to implement the economic development components of this act, the secretary of administration shall reimburse the joint fiscal office for costs incurred to implement Sec. 64h (economic performance measures) of this act.

Sixth: By striking out Sec. 64z in its entirety and inserting in lieu thereof a new Sec. 64z to read as follows:

Sec. 64z. EFFECTIVE DATES

(a) Secs. 64 through 64z of this act (economic development) shall take effect upon passage, except that:

(A) Sec. 64o (repeal of Vermont sustainable jobs fund provisions in H.789 as enacted) shall take effect upon passage and, notwithstanding any other provision of law to the contrary, shall apply retroactively to the effective date of H.789 of 2010 as enacted.

(B) Secs. 64p and 64q (Vermont sustainable jobs fund program) shall take effect upon the cessation of state funding to the program from the general fund.

And by renumbering the bill and any internal cross-references to be numerically correct.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senators Lyons, Doyle, Ayer, Flory, Hartwell, MacDonald, McCormack, Racine, and White?, Senator Illuzzi raised a point of order that the *first* amendment would substantially negate the amendment previously adopted and therefore could not be considered by the Senate pursuant to Senate Rule 61. The President sustained the point of order and ruled that the Senate could not consider the *first* amendment offered by Senator Lyons and the other senators.

In addition, the President ruled that the amendments set forth as the *second*, *fourth*, *fifth* and *sixth* ones contained provisions that were identical to the wording of other proposals of amendment theretofore adopted and, therefore, were unnecessary for consideration by the Senate.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended by Senators Lyons, Doyle, Ayer, Flory, Hartwell, MacDonald, McCormack, Racine, and White?, in the *third* proposal of amendment?, was agreed to.

Thereupon, Senator Lyons moved to suspend the rules to consider the *first* proposal of amendment, which was disagreed to on a division of the Senate, Yeas 12 Nays 15.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment on a roll call, Yeas 24, Nays 3.

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: Ashe, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Illuzzi, Kitchel, Kittell, Lyons, Mazza, Miller, Nitka, Racine, Scott, Shumlin, Snelling, Starr, White.

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

Those Senators absent and not voting were: Hartwell, Mullin, Sears.

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

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eleven o'clock and thirty minutes in the forenoon on Tuesday, May 11, 2010.

TUESDAY, MAY 11, 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. 80

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

Mr. President:

I am directed to inform the Senate that:

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

S. 296. An act relating to sale or lease of the John H. Boylan state airport.

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

S. 207. An act relating to handling of milk samples.

And has adopted the same on its part.

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

S. 264. An act relating to stop and hauling charges.

And has adopted the same on its part.

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

J.R.S. 54. Joint resolution related to the payment of dairy hauling costs.

And has adopted the same on its part.

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 tenth day of May, 2010, he approved and signed bills originating in the Senate of the following titles were severally:

S. 122. An act relating to recounts in elections for statewide offices.

S. 165. An act relating to waiver of the statute of limitations in criminal prosecutions.

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 eighth day of May, 2010, he approved and signed bills originating in the Senate of the following titles were severally:

S. 187. An act relating to municipal financial audits.

S. 287. An act relating to the licensing and regulation of loan servicers.

Joint Resolution Referred

J.R.S. 65.

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

By Senator Illuzzi,

J.R.S. 65. Joint resolution relating to Challenges for Change and the legislative branch of state government.

Whereas, the General Assembly finds the Challenges for Change extends to all branches of government, including the legislative branch which includes the General Assembly, the Office of Legislative Council, and the Joint Fiscal Office, and

Whereas, the Office of Legislative Council and the Joint Fiscal Office will continue to work to make the delivery of services more effective, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the Office of Legislative Council will continue to review its own outcomes and measures of effectiveness to ensure that the distribution of staff resources is appropriate and cost-effective, *and be it further*

Resolved: That until the 2011 biennial session is convened, the director of the Office of Legislative Council and the director of the Joint Fiscal Office shall continue to consider alternatives to achieve outcomes in a more efficient manner, *and be it further*

Resolved: That in order to enable the Office of Legislative Council to structure its staffing to meet its outcomes, the General Assembly will remain sensitive to evolving staffing patterns and not require staffing of interim committees, except as the speaker of the house and the president pro tempore shall jointly approve in advance, but ongoing committees and standing committees will continue to receive staffing when the general assembly is not in session, *and be it further*

Resolved: That the director of the Office of Legislative Council and the chief legislative fiscal officer shall continue to implement strategies to maximize the efficient delivery of services and report on the implementation of these strategies to the house and senate committees on appropriations on or before January 15, 2011, *and be it further*

Resolved: That the director of the Office of Legislative Council and the chief legislative fiscal officer shall continue to develop budgets that are designed to deliver desired outcomes, *and be it further*

Resolved: That the director of the Office of Legislative Council and the chief legislative officer shall, in consultation with the National Conference of State Legislatures, the Council of State Governments, and other organizations and individuals who have expertise relative to the staff structuring and operations of part-time state citizen state legislatures, develop two proposals for legislative staffing, one of which shall be based on the staffing model that the offices of the Clerk of the House, the Secretary of the Senate, and the Sergeant at Arms have used successfully, *and be it further*

Resolved: That the director of the Office of Legislative Council and the director of information technology shall, under the direction of the joint legislative information technology committee established under 2 V.S.A. § 751, develop proposals to achieve improvements in efficiency and productivity through the use of technology in the committee rooms and in the senate and house chambers, and the committee shall provide a report with recommendations on or before January 15, 2011, to the house and senate committees on government operations, *and be it further*

Resolved: That with respect to the printing of bills, calendars and journals: the Office of Legislative Council shall continue to develop alternatives that reduce the number of copies printed; the Office of Legislative Council, the Secretary of the Senate, the Clerk of the House, and the director of information technology shall continue to develop alternative methods and formats by which members of the General Assembly and the public shall have access to the information contained in those documents; the Secretary of the Senate and the Clerk of the House shall, in consultation with their respective committees on rules and chamber's membership, draft proposed rules relative to legislative document printing that shall be considered for adoption prior to January 15, 2011, *and be it further*

Resolved: That printed bills, calendars and journals shall be available to members of the General Assembly and staff at no charge and that other entities of government shall be permitted at no charge to review bills, calendars and journals on public workstations provided in the state house, and that printed copies shall be printed on demand.

Thereupon, the President *pro tempore*, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Rules.

President Assumes the Chair

Senate Resolution Referred

S.R. 27.

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

Senate resolution amending the Rules of the Senate relating to the introduction of bills.

By Senator Illuzzi,

S.R. 27. Senate resolution amending the Rules of the Senate relating to the introduction of bills.

Whereas, in order to clarify the rule pertaining to introduction of bills in the second year of the biennium, and to improve the efficiency of the bill drafting process prior to the second year of the biennium by allowing short-form bills, there is a need to amend the Rules of the Senate, *now therefore be it*

Resolved by the Senate:

That the Rules of the Senate are amended to read:

First: By amending Rule 39 to read:

39. During the regular session held in the first year of the biennium, standard and short-form bills may be introduced by a senator or a standing committee at any time.

During any adjourned session of the biennium (excluding the customary weekend adjournments), ~~no~~ a member or committee may not introduce a bill ~~may be introduced~~ in standard form unless ~~it has previously been filed with the Legislative Council and approved~~ the request is submitted to the Legislative Council at least six weeks prior to the opening of the session with sufficient detail to create the draft, and the sponsor approves the bill for printing ~~by the sponsor no less than twenty-five calendar days preceding~~ at least four weeks prior to the opening of the session ~~or~~, unless it is introduced by or with the consent of the Rules Committee. During the adjourned session, a member may request or introduce a bill in short form at any time.

Second: By amending Rule 41 to read:

41. (a) Each bill intended for ~~presentation by any member of the Senate~~ introduction into the Senate shall be presented ~~first~~ to the Legislative Council with sufficient detail to create the draft. The Legislative Council shall examine and revise it as to form and expression, so far as may be required. After certifying to the revision and after ~~approval by~~ the sponsor approves, the Legislative Council shall forward the ~~bills~~ bill to the printer ~~designated by the Purchasing Director~~.

(b) Each request for a bill drafted in short form shall consist only of the name of the introducer, the subject, the title, and a general statement of purpose. All short-form bills shall be presented to the Secretary for introduction in the manner of bills drafted in standard form.

Third: By amending Rule 44 to read:

44. (a) The Secretary shall submit the original bill to the President for examination, after which it shall be read the first time and referred to an appropriate committee by the President.

(b) The Legislative Council shall draft short-form bills in standard form only if the committee, to which the bill has been referred, so requests. A committee request to draft a short-form bill in standard form may be for any reason it deems appropriate, and shall not, in itself, indicate an approval of the bill or an intention to act favorably on it.

(c) When a committee reports a short-form bill which it was requested to change to standard form, the bill shall appear on the Notice Calendar for two legislative days before being placed in the Orders of the Day. Also, when a committee is relieved of a short-form bill for Senate consideration, the Legislative Council shall, within five legislative days, draft it in standard form and present it to the Secretary who shall place it on the Notice Calendar for two legislative days before placing it in the Orders of the Day.

Thereupon, the President, in his discretion, treated the resolution as a bill and referred it to the Committee on Rules.

Rules Suspended; Proposal of Amendment; Third Reading Ordered

H. 542.

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

An act relating to transfers of mobile homes and rent-to-own transactions.

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. 9 V.S.A. § 2602 is amended to read:

§ 2602. SALE OR TRANSFER; PRICE DISCLOSURE; ~~UNIFORM~~ MOBILE HOME UNIFORM BILL OF SALE

* * *

(b) ~~No mobile home may be sold unless a mobile home uniform bill of sale as described in subsection (c) is completed and furnished by the seller to the buyer. The mobile home uniform bill of sale must be filed with the town clerk of the town in which the mobile home is to be located. Prior to resale, a mobile home uniform bill of sale must be endorsed by the town clerk of the town in which the mobile home is located and a copy sent to the town clerk where the mobile home will be located.~~ Sale or transfer of all mobile homes.

(1) Prior to the sale or transfer of ownership of a mobile home, the seller or transferor shall provide a copy of a completed, unexecuted, mobile home bill of sale:

(A) to the town clerk in which the mobile home is located for his or her endorsement; and

(B) in the case of a mobile home being sold or transferred separately from the real property on which it is located, to the record owner of the real property on which the mobile home is located by certified mail, return receipt requested, at least 21 days prior to the transfer or sale.

(2) A clerk shall not endorse a mobile home uniform bill of sale unless:

(A) all property taxes due and payable on the mobile home, but not the real property on which the mobile home is located if separately owned, have been paid in full as of the most recent assessment, or if the town collects taxes in installments pursuant to 32 V.S.A. § 4872, as of the most recent installment; or

(B) in the case of removal of a mobile home from the municipality, or of a sale, trade, or transfer that will result in the removal of the mobile home from the municipality, all property taxes assessed with regard to the mobile home, but not the mobile home site, have been paid.

(3) The seller or transferor shall execute and provide the endorsed bill of sale to the buyer or transferee at the time of sale or transfer.

(4) The buyer or transferee shall execute and file the bill of sale with the clerk of the town in which the mobile home will be located within 10 days of receipt from the seller or transferor. A clerk shall not accept a mobile home uniform bill of sale for filing that is not completed, executed, and endorsed as required by this subsection. Upon filing the clerk shall note the transfer on the mobile home uniform bill of sale whereby the seller acquired ownership of the mobile home, if available.

(5) If the mobile home will be relocated to real property that is not owned by the buyer or transferee, the buyer or transferee shall provide a copy of the mobile home uniform bill of sale to the record owner of the real property on which the mobile home will be located.

(6) Within 14 days of the filing of the bill of sale, the town clerk shall mail a copy of the bill of sale to each buyer, seller, and owner of real property for whom a mailing address is provided.

(7) The requirements of this subsection shall apply to a mobile home that is physically relocated by its owner to another town.

(8) This subsection shall not apply to:

(A) the valid transfer of a mobile home by deed when financed as residential real estate pursuant to this chapter;

(B) the valid transfer of a mobile home by a mobile home uniform bill of sale issued by the court pursuant to the abandonment process set forth in 10 V.S.A. § 6249;

(C) the physical relocation of a mobile home that is held as inventory by a manufacturer, distributor, or dealer, is stored or displayed on a sales lot, and is not connected to utilities.

~~(c) No mobile home shall be moved over the highways of this state unless the operator of the vehicle hauling such mobile home has in his or her possession a copy of the mobile home uniform bill of sale endorsed pursuant to 32 V.S.A. § 5079 by the town clerk of the town in which the mobile home was last listed and by the clerk of the town in which the mobile home was last located. The mobile home uniform bill of sale shall contain the make, model, serial, size, year manufactured and location of each mobile home. It shall give the name and address of the owner of the property and whether the property is subject to a security interest and shall be substantially in the following form:~~

~~VERMONT MOBILE HOME UNIFORM BILL OF SALE KNOW ALL PEOPLE BY THESE PRESENTS THAT ....., Seller(s), of ..... County of ..... and State of ....., in consideration of ..... Dollars ($) paid by ....., Buyer(s), of ..... County of ..... and State of ..... the receipt and sufficiency whereof is hereby acknowledged, do hereby grant, sell, transfer and deliver unto said Buyer(s) the following goods and chattels, namely:~~

~~Mobile Home Make: ..... Model: ..... Year: ..... Serial Number: ..... Size: ..... Color: ..... presently located at ..... in the Town of .....~~

~~[ ] Mobile Home will remain at above location.~~

~~[ ] Mobile Home will be located at ..... in Town of .....~~

~~TO HAVE AND TO HOLD all and singular the goods and chattels to the said Buyer(s) ..... and Buyer(s) executors, administrators, and assigns, to Buyer(s) own use and behoof forever. And the Seller(s) hereby~~

~~covenant(s) with the said Buyer(s) that Seller(s) is/are the lawful owner(s) of said goods and chattels, that they are free from all encumbrances, that Seller(s) has/have good right to sell the same as aforesaid, and that Seller(s) will warrant and defend the same against the lawful claims and demands of all persons.~~

~~IN WITNESS WHEREOF, the Seller(s) hereto set(s) his/her/their hand(s), this ..... day of ..... A.D. 20 .....~~

~~..... .....~~

~~Witness Seller~~

~~..... .....~~

~~Witness Seller~~

~~NOTICE: Title 32 V.S.A. § 5079 requires that this Mobile Home Uniform Bill of Sale be signed by Sellers, Town Clerk of the Town where the Mobile Home is located prior to sale, and filed by Buyer with the Town Clerk of the Town where the Mobile Home will be located after the sale.~~

~~SECURITY INTEREST~~

~~This property is subject to the following security interest or interests of record:~~

~~Secured Party Date Discharged Town Record Number~~

~~TO BE COMPLETED BY TOWN CLERK WHERE MOBILE HOME IS PRESENTLY LOCATED.~~

~~I hereby acknowledge that:~~

~~1. Notation of above transfer has been made on the margin of the retained copy of the Mobile Home Uniform Bill of Sale whereby Seller(s) herein acquired title.~~

~~2. Copy of this bill of sale has been forwarded to Town Clerk of Town where above Mobile Home will be located.~~

~~3. Notation of security interest has been made.~~

~~DATED: ..... ATTEST: ..... TOWN CLERK~~

(c) Mobile home uniform bill of sale.

(1) A mobile home uniform bill of sale shall contain the following information regarding each mobile home being transferred:

(A) the name and address of each seller or transferor;

(B) the name and address of each buyer or transferee, and if more than one buyer or transferee, the estate under which the buyers or transferees will hold title to the mobile home;

(C) the make, model, serial number, size, and year manufactured;

(D) the current address or location of the mobile home;

(E) whether the mobile home will be moved following the sale or transfer, and if so, the future address of the mobile home;

(F) the name and address of the owner of the real property on which the mobile home is located;

(G) the name and address of the owner of the real property on which the mobile home will be located following the sale or transfer;

(H) the sale constitutes a "retail installment transaction" as defined in 9 V.S.A. § 2351(4) and is subject to 9 V.S.A. Chapter 59 (motor vehicle and mobile home retail installment sales financing);

(I) an itemized list of the mobile home's deficiencies known to the seller at the time of the sale, if the mobile home is sold "as is;" and

(J) an itemized list of known liens on the mobile home.

(2) A mobile home uniform bill of sale shall be substantially in the following form:

VERMONT MOBILE HOME UNIFORM BILL OF SALE
NOTICE

Vermont statute requires that this Mobile Home Uniform Bill of Sale be signed by each Buyer and Seller, endorsed by the Town Clerk of the Town where the Mobile Home is located at the time of sale, and filed by Buyer with the Town Clerk of the Town where the Mobile Home will be located after the sale. A financing statement evidencing a security interest in the Mobile Home must be filed with the Secretary of State.

Seller or Transferor ("Seller"):

Name:.....

Street:.....

Town/State/ZIP:.....

County:.....

Mailing Address (if different):

Street:.....

Town/State/ZIP:.....

Buyer or Transferee ("Buyer"):

Name:.....

Street:.....

Town/State/ZIP:.....

County:.....

Mailing Address (if different):

Street:.....

Town/State/ZIP:.....

If more than one Buyer, Buyers take title as:

[ ] Joint tenants (co-owners with right of survivorship).

[ ] Tenants by the entirety (joint tenancy of persons who are married).

[ ] Tenants in common (individual interests without right of survivorship).

[ ].....

Mobile Home Being Sold or Transferred ("Mobile Home")

Specifications:

Make: .....

Model:…….....

Year:.....

Serial Number: …….....

Size:.....

Color:…….....

Current Location:

Street:.....

Town/State/ZIP:.....

County:.....

Owner of Real Property on which Mobile Home is Located:

Name:.....

Street:.....

Town/State/ZIP:.....

Mailing Address (if different):

Street:.....

Town/State/ZIP:.....

Location of Mobile Home Following Sale

[ ] Mobile Home will remain at current location.

[ ] Mobile Home will be relocated to the following address:

Street:.....

Town/State/ZIP:.....

County:.....

Owner of Real Property on which Mobile Home will be Located:

Name:.....

Street:.....

Town/State/ZIP:.....

Mailing Address (if different):

Street:.....

Town/State/ZIP:.....

Retail Installment Transaction

This sale constitutes a "retail installment transaction" as defined in 9 V.S.A. § 4451(8) and is subject to 9 V.S.A. Chapter 59 (motor vehicle and mobile home retail installment sales financing).

KNOWN DEFICIENCIES IN "AS IS" SALES

In the case of an "as is" sale, the Seller is aware of the following deficiencies and defects of the Mobile Home:

.....

.....

.....

KNOWN LIENS

The Seller is aware of the following liens on the Mobile Home:

.....

.....

.....

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, Seller hereby transfers to the Buyer the Mobile Home identified in this Bill of Sale, and Seller covenants with Buyer that Seller is the lawful owner of the Mobile Home, that it is free from all encumbrances, that Seller has good right to sell the Mobile Home, and that Seller will warrant and defend the same against the lawful claims and demands of all persons.

Seller Signature.....Date.....

Witness Signature.....Date.....

Buyer Signature.....Date.....

Witness Signature.....Date.....

TOWN CLERK ENDORSEMENT

TO BE COMPLETED BY TOWN CLERK WHERE MOBILE HOME IS CURRENTLY LOCATED PRIOR TO EXECUTION BY THE BUYER AND SELLER.

I hereby acknowledge that:

[ ] all property taxes due and payable on the mobile home, but not the real property on which the mobile home is located if separately owned, have been paid in full as of the most recent assessment, or if the town collects taxes in installments pursuant to 32 V.S.A. § 4872, as of the most recent installment; or

[ ] in the case of removal of a mobile home from the municipality, or of a sale, trade, or transfer that will result in the removal of the mobile home from the municipality, all property taxes assessed with regard to the mobile home, but not the mobile home site, have been paid.

Town Clerk Signature:.....Date:.....

(d) Relocation of mobile home.

Unless excluded under subdivision (b)(8) of this section, a mobile home shall not be moved over the highways of this state unless the operator of the vehicle hauling the mobile home has in his or her possession a copy of the mobile home uniform bill of sale endorsed pursuant to subsection (b) of this section. In addition to any penalty or remedy imposed under section 2607 of this title, a violation of this subsection shall be subject to the collection and enforcement provisions set forth in 32 V.S.A. § 5079.

(e) Mobile home rent to own agreements.

(1) Definition of rent to own agreements for mobile homes.

For purposes of this subsection, "an agreement to purchase a mobile home on a rent-to-own, lease-purchase, or similar basis" means any agreement, other than an agreement to purchase a mobile home, that will be financed as residential real estate, under which:

(A) a buyer or lessee, however named, agrees to pay consideration in one or more installments to the owner of a mobile home, or to a third party designated by the owner of the mobile home to receive payment on behalf of the owner, for the right to use or occupy the mobile home; and

(B) upon full compliance with the terms of the agreement, the buyer or lessee, however named, is bound to become, or for no further or a merely nominal additional consideration, has the option of becoming, the owner of the mobile home.

(2) Requirements to consummate sale under rent to own agreements. An agreement to purchase a mobile home on a rent-to-own, lease-purchase, or similar basis shall not transfer ownership of the mobile home, or the rights, duties, and liabilities arising from ownership of the mobile home, unless and until:

(A) the buyer and seller execute a written retail installment contract complying with the requirements set forth in chapter 59 of this title; and

(B) a mobile home uniform bill of sale transferring the mobile home from the seller to the buyer is completed, endorsed, executed, and filed pursuant to subsection (b) of this section.

(3) Compliance; sale. Notwithstanding any provision of 9A V.S.A. Article 2 (uniform commercial code; sale of goods) to the contrary, an agreement to purchase a mobile home on a rent-to-own, lease-purchase, or similar basis that meets the requirements of subdivision (2) of this subsection shall constitute a "retail installment transaction" as defined in subdivision 2351(4) of this title, is subject to 9 V.S.A. Chapter 59, and shall not be subject to chapter 137 of this title relating to residential rental agreements.

(4) Failure to comply; lease. Notwithstanding any provision of 9A V.S.A. Article 2A (uniform commercial code; leases) to the contrary, an agreement to purchase a mobile home on a rent-to-own, lease-purchase, or similar basis that does not meet the requirements of subdivision (2) of this subsection shall constitute a residential rental agreement as defined in subdivision 4451(8) of this title, and shall be governed by chapter 137 of this title relating to residential rental agreements.

(f) Sale of mobile homes in non-rent to own transactions.

(1) The sale of a mobile home under subsection (b) of this section, is a sale of goods under 9A V.S.A. Article 2 (uniform commercial code; sale of goods), except to the extent of a direct conflict with this section.

(2) The sale of a mobile home under this section is subject to the provisions governing express and implied warranties on the sale of goods set forth in 9A V.S.A. Article 2, Part 3, with the following modifications:

(A) the warranty of title in a contract of sale under 9A V.S.A. § 2-312 may be excluded or modified only by a written agreement that is executed by the buyer and seller prior to sale and clearly states any deficiency or limitation on the seller's title, as well as any security interest, lien, or encumbrance on the mobile home that excludes or modifies the warranty of title;

(B) in the case of a new mobile home, the implied warranty of merchantability under 9A V.S.A. § 2-314 and the implied warranty of fitness for a particular purpose under 9A V.S.A. § 2-315 may not be waived if the seller has notice that the mobile home will be used by the buyer as his or her primary residence; and

(C) in the case of a used mobile home, the implied warranty of merchantability under 9A V.S.A. § 2-314 and the implied warranty of fitness for a particular purpose under 9A V.S.A. § 2-315 may be waived only if the seller notifies the buyer in writing that the mobile home is being offered for sale "as is."

Sec. 2. 32 V.S.A. § 5079 is amended to read:

§ 5079. SALE OR TRANSFER OF MOBILE HOMES; COLLECTION OF TAXES

(a) ~~Within 10 days of acquiring ownership by sale, trade, transfer, or other means, an owner of a mobile home as defined in 9 V.S.A. § 2601 or 10 V.S.A. § 6201 shall file with the clerk of the municipality in which the mobile home is located a mobile home uniform bill of sale, containing the make, model, serial number, size, year manufactured, and location of the mobile home. It shall give the name and address of the owner of the property, and whether the property is subject to a security interest, and shall be substantially in the form prescribed in 9 V.S.A. § 2602(c). This subsection shall not apply to mobile homes held solely for sale by a manufacturer, distributor, or dealer that are stored or displayed on a sales lot and are not connected to utilities.~~ A transfer of ownership of a mobile home shall be made pursuant to the requirements set forth in chapter 72 of Title 9.

(b) Repealed.

(c) Repealed.

(d) A mobile home removed from a town without a mobile home uniform bill of sale endorsed by the clerk of the municipality where the mobile home was located as required by ~~subsection (b) of this section~~ 9 V.S.A. § 2602 may be taken into possession by any sheriff, deputy sheriff, constable, or police officer, or by the treasurer or tax collector of the town in which the mobile home was last listed if known, or by the commissioner of taxes if that town is unknown. A mobile home taken into possession under this section ~~by an officer other than the collector of taxes~~ shall be ~~delivered promptly to the collector of taxes of the town in which the mobile home was last listed~~ in the constructive custody of the official, who shall control the use and movement of the mobile home. In taking possession, the authorized officer may proceed without judicial process only in the event that the taking of possession can be done without breach of the peace. Proceedings for collection of the taxes assessed against and due with respect to the mobile home shall then be conducted in accordance with subchapter 9 of chapter 133 of this title.

(e) Taxes assessed against a mobile home shall be considered due for purposes of this section as of the date of removal of the mobile home from the town in which the mobile home was last listed, and the owner shall be liable for fees provided for in section 1674 of this title from the date of removal.

(f) The treasurer or tax collector of any town from which a mobile home is removed~~,~~ without an endorsed mobile home uniform bill of sale as required by ~~subsection (b) of this section~~ 9 V.S.A. § 2602(b) may notify the director of the division of property valuation and review of the removal giving a description of the mobile home by serial or other number if known. If the director is notified of the seizure of a mobile home as provided in subsection (d) of this section, he or she shall immediately notify the treasurer or tax collector of the town, if known, in which the mobile home was last listed on the grand list.

(g) Taxes lawfully assessed upon a mobile home shall attach as a lien on the mobile home as provided in section 5061 of this title.

Sec. 3. 10 V.S.A. § 6204(d) is amended to read:

(d) A mobile home occupied on the basis of a lease-purchase or ~~"rent to own"~~ rent-to-own contract, however named, shall be subject to the provisions of 9 V.S.A. ~~chapter 59~~ § 2602(e).

Sec. 4. AVAILABILITY OF MOBILE HOME UNIFORM BILL OF SALE

The agency of commerce and community development shall make publicly available on its website:

(a) a mobile home uniform bill of sale in a format substantially similar to the form set forth in 9 V.S.A. § 2602(c); and

(b) a copy of this act.

Sec. 5. EFFECTIVE DATE

This act shall take effect on September 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.

Rules Suspended; Bills on Notice Calendar Taken Up for Immediate Consideration

On motion of Senator Shumlin, the rules were suspended, and the following bills and Joint resolution, appearing on the Calendar for notice, were ordered to be brought up for immediate consideration:

S. 207, S. 264; J.R.S. 54.

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

S. 207.

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

To the Senate and House of Representatives:

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

An act relating to handling of milk samples.

Respectfully reports that it has met and considered the same and recommends that the House recede from its proposal of amendment, and that the bill be further amended as follows:

First: By striking out Sec. 3 in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

Sec. 3. REPORT ON RAW MILK QUALITY PROBLEMS

(a) By September 30, 2010, the agency of agriculture, food and markets shall study raw milk quality problems, including PI count and the handling of raw milk samples.

(b) On or before January 15, 2011, the agency shall report to the house and senate committees on agriculture the extent to which milk quality problems, including PI count, exist in Vermont's milk supply and advise the committees regarding potential regulatory and legislative solutions to address these problems.

Second: By striking out Sec. 4 in its entirety and inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. 13 V.S.A. §§ 3601–3604 are added to read:

§ 3601. DEFINITIONS

As used in this chapter:

(1) "Diameter breast height" or "DBH" means the diameter of a standing tree at four and one-half feet from the ground.

(2) "Harvest" means the cutting, felling, or removal of timber.

(3) "Harvest unit" means the area of land from which timber will be harvested or the area of land on which timber stand improvement will occur.

(4) "Harvester" means a person, firm, company, corporation, or other legal entity that harvests timber.

(5) "Landowner" means the person, firm, company, corporation, or other legal entity that owns or controls the land or owns or controls the right to harvest timber on the land.

(6) "Landowner's agent" means a person, firm, company, corporation, or other legal entity representing the landowner in a timber sale, timber harvest, or land management.

(7) "Stump diameter" means the diameter of a tree stump remaining after cutting, felling, or destruction.

§ 3602. UNLAWFUL CUTTING OF TREES

(a) Any person who cuts, fells, destroys to the point of no value, or substantially damages the potential value of a tree without the consent of the owner of the property on which the tree stands shall be assessed a civil penalty in the following amounts for each tree over two inches in diameter that is cut, felled, or destroyed:

(1) if the tree is no more than six inches in stump diameter or DBH, not more than $25.00;

(2) if the tree is more than six inches and not more than ten inches in stump diameter or DBH, not more than $50.00;

(3) if the tree is more than 10 inches and not more than 14 inches in stump diameter or DBH, not more than $150.00;

(4) if the tree is more than 14 inches and not more than 18 inches in stump diameter or DBH, not more than $500.00;

(5) if the tree is more than 18 inches and not more than 22 inches in stump diameter or DBH, not more than $1,000.00;

(6) if the tree is greater than 22 inches in stump diameter or DBH, not more than $1,500.00.

(b) In calculating the diameter and number of trees cut, felled, or destroyed under this section, a law enforcement officer may rely on a written damage assessment completed by a professional arborist or forester.

§ 3603. MARKING HARVEST UNITS

A landowner who authorizes timber harvesting or who in fact harvests timber shall clearly and accurately mark with flagging or other temporary and visible means the harvest unit. Each mark of a harvest unit shall be visible from the next and shall not exceed 100 feet apart. The marking of a harvest unit shall be completed prior to commencement of a timber harvest. If a violation as described in section 3602 of this title occurs due to the failure of a landowner to mark a harvest unit, the landowner who failed to mark a harvest unit in accordance with the requirements of this subsection shall be assessed a civil penalty of not less than $250.00 and not more than $1,000.00.

§ 3604. EXEMPTIONS

The cutting, felling, or destruction of a tree or the harvest of timber by the following is exempt from the requirements of sections 3602, 3603, and 3606 of this title:

(1) the agency of transportation conducting brush removal on state highways or agency-maintained trails;

(2) a municipality conducting brush removal subject to the requirements of 19 V.S.A. § 904;

(3) a utility conducting vegetation maintenance within the boundaries of the utility's established right-of-way;

(4) a harvester harvesting timber that a landowner has authorized for harvest within a harvest unit that has been marked by a landowner under section 3603 of this title. A landowner who harvests timber on his or her own property shall not be a "harvester" for the purposes of this subdivision;

(5) a railroad conducting vegetation maintenance or brush removal in the railroad right-of-way;

(6) a licensed surveyor establishing boundaries between abutting parcels under 27 V.S.A. § 4.

Third: By adding a new section to be numbered Sec. 5 to read as follows:

Sec. 5. 13 V.S.A. § 3606 is amended to read:

§ 3606. TREBLE DAMAGES FOR CONVERSION OF TREES OR DEFACING MARKS ON LOGS

If a person cuts down, destroys, or carries away any tree or trees placed or growing for any use or purpose whatsoever, or timber, wood, or underwood standing, lying, or growing belonging to another person, without leave from the owner of such trees, timber, wood, or underwood, or cuts out, alters, or defaces the mark of a log or other valuable timber, in a river or other place, the party injured may recover of such person, in an action on this statute, treble damages ~~in an action on this statute~~ or for each tree the same amount that would be assessed as a civil penalty under section 3602 of this title, whichever is greater. However, if it appears on trial that the defendant acted through mistake, or had good reason to believe that the trees, timber, wood, or underwood belonged to him or her, or that he or she had a legal right to perform the acts complained of, the plaintiff shall recover single damages only, with costs. For purposes of this section, "damages" shall include any damage caused to the land or improvements thereon as a result of a person cutting, felling, destroying to the point of no value, substantially reducing the potential value, or carrying away a tree, timber, wood, or underwood without the consent of the owner of the property on which the tree stands. If a person cuts down, destroys, or carries away a tree or trees placed or growing for any use or purpose whatsoever or timber, wood, or underwood standing, lying, or growing belonging to another person due to the failure of the landowner or the landowner's agent to mark the harvest unit properly, as required under section 3603 of this title, a cause of action for damages may be brought against the landowner.

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

Sec. 6. 4 V.S.A. § 1102(b) is amended to read:

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

* * *

(18) Violations of 23 V.S.A. § 3327(d), relating to obeying a law enforcement officer while operating a vessel.

(19) Violations of 13 V.S.A. §§ 3602 and 3603, relating to the unlawful cutting of trees and the marking of harvest units.

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

Sec. 7. EFFECTIVE DATES

(a) This section and Secs. 1 and 3 shall take effect upon passage.

(b) Sec. 2 of this act shall take effect on July 1, 2011.

(c) Secs. 4 (unlawful cutting of trees), 5 (damages for unlawful cutting of trees), and 6 (judicial bureau offenses) of this act shall take effect July 1, 2010.

MATTHEW A. CHOATE
M. JANE KITCHEL
ROBERT A. STARR

Committee on the part of the Senate

DAVID M. AINSWORTH
JAMES L. MCNEIL
CATHERINE B. TOLL

Committee on the part of the House

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

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

S. 264.

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

To the Senate and House of Representatives:

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

An act relating to stop and hauling charges.

Respectfully reports that it has met and considered the same and recommends that the House recede from its proposal of amendment.

SARA BRANON KITTELL
ROBERT A. STARR
HAROLD W. GIARD

Committee on the part of the Senate

JOHN W. MALCOLM
DAVID M. AINSWORTH
NORMAN H. MCALLISTER

Committee on the part of the House

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

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

J.R.S. 54.

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

To the Senate and House of Representatives:

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

Joint resolution related to the payment of dairy hauling costs.

Respectfully reports that it has met and considered the same and recommends that the House recede from its proposal of amendment and that the resolution be further amended by striking out all after the title and inserting in lieu thereof the following:

Whereas, the Vermont secretary of agriculture, food and markets recently has warned that there is a grave possibility that Vermont could lose up to 20 percent of its dairy farms in 2010, and

Whereas, in virtually every other nonagricultural industry, the purchaser of goods pays the costs of transporting the goods from the place of manufacture to the purchaser, and

Whereas, in the past three years, the Vermont General Assembly has carefully considered the issue of dairy hauling costs and the impact upon Vermont dairy farmers, and

Whereas, in New England, dairy farmers typically are responsible for the majority of the costs of hauling milk from the farm to a buyer's processing plant or similar facility, and

Whereas, dairy hauling costs are incurred by dairy farmers, regardless of the price of milk, and

Whereas, the average dairy hauling costs for a Vermont farm milking approximately 200 cows can exceed $20,000.00 per year, and

Whereas, according to a recent New York study of dairy hauling costs, hauling charges paid by dairy producers range from an annual average of $0.50 to $0.57 per hundredweight of milk for all size farms, and the average hauling charge, including transportation credits, ranges from 3.1 to 4.4 percent of the gross value of the farm milk, and

Whereas, pursuant to Vermont's Act 50 (2007), the Vermont Milk Commission carefully considered the potential economic impacts of shifting responsibility for dairy hauling costs from the producer to the purchaser of milk, and

Whereas, the Vermont Milk Commission has concluded, and legislative testimony received from the Vermont agency of agriculture, food and markets, industry representatives, and dairy farmers has confirmed that shifting the payment of dairy hauling costs from producer to purchaser will result in Vermont milk being more expensive than milk produced in neighboring states, thereby making Vermont milk less competitive in the northeastern dairy market, and

Whereas, Vermont, or any other state which unilaterally mandates a shift in the cost of dairy hauling from producer to purchaser, will suffer a competitive disadvantage relative to neighboring producer states due to the increased cost of its milk, and

Whereas, given this reality and the economic crisis facing dairy farmers throughout New England, it is extremely unlikely that any state will elect to be the first to mandate this shift in dairy hauling costs, therefore requiring a solution that is national in scope, and

Whereas, in November 2009, United States Representatives Michael Arcuri and Chris Lee of New York introduced federal legislation (H.R. 4117) to eliminate all hauling costs for milk producers, and

Whereas, United States Secretary of Agriculture Thomas Vilsack has convened a 17-member United States Department of Agriculture Dairy Industry Advisory Committee to review the issues of farm milk price volatility and dairy farmer profitability, and to offer suggestions and ideas on how the United States Department of Agriculture can best address these issues to meet the dairy industry's needs, now therefore be it

Resolved by the Senate and House of Representatives:

That the Vermont General Assembly urges United States Secretary of Agriculture Thomas Vilsack and the United States Department of Agriculture Dairy Industry Advisory Committee to pursue a national policy requiring that dairy hauling costs be borne by the marketplace rather than dairy producers as a means to address dairy farmer profitability, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to United States Secretary of Agriculture Thomas Vilsack, the Vermont congressional delegation, and the members of the United States Department of Agriculture Dairy Industry Advisory Committee.

SARA BRANON KITTELL
HAROLD W. GIARD
ROBERT A. STARR

Committee on the part of the Senate

CHRISTOPHER A. BRAY
CHARLES W. CONQUEST
NORMAN H. MCALLISTER

Committee on the part of the House

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

Rules Suspended; Bills Delivered

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

S. 207, S. 264.

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,

By All Members of the House,

S.C.R. 52.

Senate concurrent resolution honoring Green Up Day on its 40th anniversary.

Adjournment

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

Afternoon

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

Senate Concurrent Resolution Adopted

Senate concurrent resolution of the following title was offered, read and adopted in concurrence:

By Senators Doyle, Cummings and Scott,

By Representatives Kitzmiller and Hooper of Montpelier,

S.C.R. 54. Senate concurrent resolution in memory of Baseball Hall of Famer and Vermont Mountaineers' board member Robin Roberts.

Whereas, major league baseball Hall of Famer and all-star pitcher Robin Roberts was a special human being whose loyalty to his baseball family in both Philadelphia and in Montpelier was extraordinary, and

Whereas, from 1948 to 1961, his accomplishments on the pitcher's mound at Shibe Park (Connie Mack Stadium) are now inscribed as legendary on the history pages of the Philadelphia Phillies, and

Whereas, Robin Roberts pitched six consecutive 20-win seasons starting in 1950 when, as one of the Phillies "Whiz Kids," he played a leading role in the team's clinching its first National League pennant in 35 years, and

Whereas, as a Philly ace pitcher, he was the National League hurler with the most victories for the 1952–1956 seasons, and his overall major league career highlights featured 286 wins, 45 shutouts, 2,357 strikeouts, and an earned run average of 3.41, and

Whereas, in 1976, Robin Roberts was awarded the national pastime's ultimate honor when he was inducted into the Baseball Hall of Fame in Cooperstown, New York, and

Whereas, before Robin Roberts threw his first pitch as a major leaguer, central Vermont baseball fans had come to know and root for this Michigan State University pitching sensation, and

Whereas, during the summers of 1946 and 1947, Robin Roberts pitched for the Northern League's Twin City Trojans, whose home park was the Montpelier Recreation Field where the Vermont Mountaineers now play, and

Whereas, in 1946, Robin Roberts pitched an 11–8 season including a no-hitter against the Keene, New Hampshire, Blue Jays, and in 1947, he overwhelmed the opposing teams as he compiled a nearly astonishing 18–3 record, which enabled the Trojans to win that season's Northern League championship, and

Whereas, Robin Robert's loyalty to Montpelier baseball fans proved amazingly enduring as he had a wonderful contemporary association with summertime collegiate baseball in Vermont's capital city, and

Whereas, in 2003, when the Vermont Mountaineers were established in the New England Collegiate Baseball League, the team held a Robin Roberts Day to honor its home field's most illustrious player, and

Whereas, not only did Robin Roberts travel to Montpelier for this special commemorative occasion, he became an enthusiastic member of the team's board of directors and was participating this spring in Mountaineer fund-raising, and

Whereas, baseball fans in both Vermont and Philadelphia were saddened to learn that Robin Roberts, the great baseball player and loving father, grandfather and great-grandfather died this past week at his home in Temple Terrace, Florida, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly expresses its condolences to the family of Robin Roberts and fondly remembers his great contributions, both recent and long ago, to summertime baseball in the Green Mountain State, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to Vermont Mountaineers' General Manager Brian Gallagher, to Philadelphia Phillies Vice President for Alumni Relations Larry Shenk, and to each of Robin Roberts's sons.

Consideration Resumed; House Proposal of Amendment Concurred In with Amendment; Rules Suspended; Bill Messaged

S. 292.

Consideration was resumed on House proposal of amendment to Senate bill entitled:

An act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees.

Thereupon, Senator Sears requested and was granted leave to withdraw the proposals of amendment as moved by him on the next previous legislative day.

Senator Sears on behalf of the Committee on Judiciary moved that the Senate concur with the House proposals of amendment and that the bill be further amended as follows:

First: In Sec. 3, 13 V.S.A. § 5411(l), in the last sentence by striking out the following: "rule 75 of the Vermont rules of civil procedure" and inserting in lieu thereof the following: Rule 75 of the Vermont Rules of Civil Procedure

Second: In Sec. 10(a)(2), following "13 V.S.A. § 5301(7)" by inserting the following: , or

Third: In Sec. 12, at the end of the section by adding a new subdivision (b)(4) to read as follows:

(4) a plan to improve and increase restorative justice, diversion, and other innovative municipal programs in each county so that the need for correctional services shall be reduced. The plan shall show how recommended strategies could lead to an increase in use of restorative justice programs, diversion, and innovative municipal programs and at least a ten-percent decrease in nonviolent offenders entering the corrections system.

Fourth: By striking out Secs. 17 and 18 in their entirety and inserting in lieu thereof six new sections to be Secs. 17 through 22 to read as follows:

Sec. 17. 21 V.S.A. § 306 is added to read:

§ 306. PUBLIC POLICY OF THE STATE OF VERMONT; EMPLOYMENT SEPARATION AGREEMENTS

In support of the state's fundamental interest in protecting the safety of minors and vulnerable adults, as defined in 33 V.S.A. § 6902, it is the policy of the state of Vermont that no confidential employment separation agreement shall inhibit the disclosure to prospective employers of factual information about a prospective employee's background that would lead a reasonable person to conclude that the prospective employee has engaged in conduct jeopardizing the safety of a minor or vulnerable adult. Any provision in an agreement entered into on or after the effective date of this section that attempts to do so is void and unenforceable.

Sec. 18. 21 V.S.A. § 307 is added to read:

§ 307. DISCLOSURE OF INFORMATION; WAIVER

(a) Each prospective employee whose duties may place that person in a position of power, authority, or supervision over or permit unsupervised contact with a minor or vulnerable adult shall sign a waiver prior to employment authorizing:

(1) the prospective employer to request information about the prospective employee from current employers and former employers who employed the person within the previous ten years regarding conduct jeopardizing the safety of a minor or vulnerable adult; and

(2) the current and former employers to disclose the requested information as provided in subsection (c) of this section.

(b) The prospective employer of a prospective employee described in subsection (a) of this section shall request in writing that the current and former employers disclose all factual information that would lead a reasonable person to conclude that the prospective employee engaged in conduct jeopardizing the safety of a minor or vulnerable adult.

(c) Upon receiving an inquiry from a prospective employer pursuant to subsection (b) of this section, a current or former employer promptly shall disclose in writing all factual information in its possession that is responsive to that inquiry; provided that the affected employee shall have had the opportunity to review and respond to the information and the employee's response, if any, shall be included with the disclosure. Current and former employers shall provide a copy of the disclosure, or a statement that there is nothing to disclose, to both the prospective employer and the prospective employee.

Sec. 19. REPORT; CIVIL IMMUNITY

Legislative counsel shall review the potential impacts on hiring practices in Vermont if the state were to grant civil immunity for prospective, current, and former employers in connection with the disclosure of information concerning conduct jeopardizing the safety of a minor or vulnerable adult contained in a prospective employee's personnel file from the previous ten years, including the manner in which these matters are addressed in other jurisdictions. On or before January 15, 2011, the legislative counsel shall submit a report regarding the review to the general assembly.

Sec. 20. REPORT; SUSPECTED CHILD ABUSE

The commissioner of education and the commissioner for children and families, in consultation with the Vermont Superintendents Association, the Vermont School Boards Association, the Vermont Principals' Association, and the Vermont-National Education Association, shall examine the effectiveness of the memorandum of understanding entered into between the department of education and the department for children and families dated November 23, 2009 regarding sharing reported information concerning the behaviors of individuals regulated by the department of education. On or before December 15, 2010, the commissioners shall jointly report their conclusions, together with any proposed statutory amendments, to the senate and house committees on judiciary and on education.

Sec. 21. COMMISSIONER OF CORRECTIONS; AID TO COMMUNITIES WITH A HIGH PERCENTAGE PER CAPITA OF PEOPLE UNDER THE CUSTODY OF THE COMMISSIONER

Notwithstanding Sec. D.12 of H.792 of 2010, for expenditures from funds reinvested in community level services pursuant to Sec. D9 of H.792 of 2010 (Challenges Bill) and Sec. 338 of H.789 of 2010 (Appropriations Act), the commissioner shall give priority to projects located in communities which have a high percentage per capita of people under his or her custody, including those living in the community and residents who are incarcerated, and not limited to those four communities that have the highest number of people under his or her custody.

Sec. 22. EFFECTIVE DATES

(a) Sec. 18 of this act shall take effect on April 1, 2011.

(b) This section and Secs. 17, 19, 20, and 21 of this act shall take effect on passage.

(c) The remaining sections of this act shall take effect on July 1, 2010.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment with further proposal of amendment?, Senators Campbell, Nitka and McCormack moved that the proposal of amendment to the House proposal of amendment as moved by Senator Sears be amended as follows:

First: By inserting a new section to be numbered Sec. 22 to read as follows:

Sec. 22. SOUTHEAST STATE CORRECTIONAL FACILITY; CLOSING

If the state closes the southeast state correctional facility, it shall assign the building and associated land to the town of Windsor.

Second: By renumbering Sec. 22 to be Sec. 23.

Thereupon, pending the question, Shall the proposal of amendment to the House proposal of amendment be amended as recommended by Senators Campbell, Nitka and McCormack?, Senator Campbell requested and was granted leave to withdraw the motion to amend the proposal of amendment.

Thereupon, the pending question, Shall the Senate concur in the House proposal of amendment with further proposal of amendment as moved by Senator Sears?, was decided in the affirmative.

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

Rules Suspended; Proposal of Amendment; Consideration Postponed

H. 760.

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

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

Was taken up for immediate consideration.

Senator Flanagan, for the Committee on Government Operations, 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. 3 V.S.A. § 2504(a) is amended to read:

(a) The secretary of the agency of agriculture, food and markets and the secretary of the agency of commerce and community development~~, in consultation with the market Vermont board,~~ shall develop categories and standards designed to identify those Vermont goods, services, and experiences which best portray and promote Vermont's reputation for high standards of quality.

Sec. 2. 8 V.S.A. § 4089b(d)(1)(C) is amended to read:

(C) Prior to the adoption of rules pursuant to this subdivision, the commissioner shall consult with the commissioner of mental health ~~and the task force established pursuant to subsection (h) of this section~~ concerning:

* * *

Sec. 3. 10 V.S.A. § 647 is amended to read:

§ 647. ANNUAL REPORT

Annually, on or before March 1, the board of directors of the Vermont film corporation shall submit a report to the department of tourism and marketing and to the ~~general assembly~~ house and senate committees on government operations for the prior 12-month period. The report shall:

(1) describe the activities of the board during the preceding year;

(2) ~~and shall also~~ include an accounting of revenues received by and expenditures of the board;

(3) describe outcomes and revenues, if known, that are generated by activities of the corporation; and

(4) include plans to minimize future state funding of the corporation's activities.

Sec. 4. 10 V.S.A. § 2606a(b) is amended to read:

(b) ~~Specific sites.~~

~~(1)~~ Mountaintop designation. The state-owned mountaintops to which this section shall apply are: Ascutney Mountain North Peak and Ascutney Mountain South Peak, Burke Mountain, Okemo Mountain, and Killington Mountain. ~~Before any applicable permitting process is commenced regarding Okemo Mountain, the Okemo Mountain technical site committee, created by subdivision (2) of this subsection, shall hold a public hearing in the Town of Ludlow before authorizing any use of the Okemo Mountain site for communications purposes. Upon a request for use or other indication of need for establishing additional communications facilities by either public or private parties, additional mountaintop communications sites may be designated by the department when consistent with long-range management plans for state-owned land and subject to public input. Such designations shall be by rule adopted pursuant to chapter 25 of Title 3.~~

* * *

Sec. 5. 15 V.S.A. § 1140(b) is amended to read:

(b) The commission shall be comprised of ~~15~~ 17 members, consisting of the following:

* * *

(14) a physician, appointed by the governor; ~~and~~

(15) the executive director of the Vermont criminal justice training council~~,~~ or his or her designee;

(16) the commissioner of mental health or his or her designee; and

(17) one judge, appointed by the chief justice of the Vermont supreme court.

Sec. 6. 16 V.S.A. § 216(b) is amended to read:

(b) The commissioner with the approval of the state board shall establish an advisory council on wellness and comprehensive health which shall include at least three members associated with the health services field. The members shall serve without compensation but shall receive their actual expenses incurred in the pursuit of their duties relating to wellness and comprehensive health programs. The council shall assist the department of education in planning, coordinating, and encouraging wellness and comprehensive health programs in the public schools.

Sec. 7. 18 V.S.A. § 1700 is amended to read:

§ 1700. CREATION; MEMBERSHIP; OFFICERS; QUORUM

(a) There is created a nuclear advisory panel which shall consist of the following:

* * *

(3) the commissioner of the department of public service, or his or her designee;

* * *

(f) The department of public service shall:

(1) keep the panel informed of the status of matters within the jurisdiction of the panel;

(2) notify members of the panel in a timely manner upon receipt of information relating to matters within the jurisdiction of the panel; and

(3) provide to all members of the panel all relevant information relating to subjects within the scope of the duties of the panel.

Sec. 8. 18 V.S.A. § 1701 is amended to read:

§ 1701. DUTIES

The duties of the panel shall be:

(1) To hold ~~regular~~ a minimum of three public meetings each year for the purpose of discussing issues relating to the present and future use of nuclear power and to advise the governor, the general assembly and the agencies of the state thereon with a written report being provided annually to the governor and to the energy committees of the general assembly;

* * *

Sec. 9. 18 V.S.A. § 4702(a) is amended to read:

(a) The department of health~~, in collaboration with the opiate addiction treatment advisory committee,~~ shall develop by rule comprehensive guidelines for a regional system of opiate addiction treatment.

Sec. 10. 18 V.S.A. § 5212b(c) is amended to read:

(c) The commissioner of housing and community affairs 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 shall approve any process developed through consensus or agreement of the interested parties, including

the municipality, the ~~governor's advisory~~ Vermont commission on Native American affairs, and private property owners of property on which there are known or likely to be unmarked burial sites, provided the commissioner determines that the process is likely to be effective, and includes all the following:

* * *

Sec. 11. 18 V.S.A. § 9405(b)(4) is amended to read:

(4) The commissioner shall develop a mechanism for receiving ongoing public comment regarding the plan and for revising it every four years or as needed. ~~The public oversight commission shall recommend revisions to the plan at least every four years and at any other time it determines revisions are warranted.~~

Sec. 12. 18 V.S.A. § 9405a is amended to read:

§ 9405a. PUBLIC PARTICIPATION AND STRATEGIC PLANNING

Each hospital shall have a protocol for meaningful public participation in its strategic planning process for identifying and addressing health care needs that the hospital provides or could provide in its service area. Needs identified through the process shall be integrated with the hospital's long-term planning and shall be described as a component of its four-year capital expenditure projections ~~provided to the public oversight commission under subdivision 9407(b)(2) of this title~~. The process shall be updated as necessary to continue to be consistent with such planning and capital expenditure projections, and identified needs shall be summarized in the hospital's community report.

Sec. 13. 18 V.S.A. § 9405b is amended to read:

§ 9405b. HOSPITAL COMMUNITY REPORTS

(a) The commissioner, in consultation with representatives from ~~the public oversight commission,~~ hospitals, other groups of health care professionals, and members of the public representing patient interests, shall adopt rules establishing a standard format for community reports, as well as the contents, which shall include:

* * *

(c) The community reports shall be provided to ~~the public oversight commission and~~ the commissioner. The commissioner shall publish the reports on a public website and shall develop and include a format for comparisons of hospitals within the same categories of quality and financial indicators.

Sec. 14. 18 V.S.A. § 9433(c) is amended to read:

(c) The commissioner shall consult with hospitals, nursing homes and professional associations and societies, ~~the public oversight commission,~~ the secretary of human services, and other interested parties in matters of policy affecting the administration of this subchapter.

Sec. 15. 18 V.S.A. § 9440 is amended to read:

§ 9440. PROCEDURES

* * *

(d) The review process shall be as follows:

(1) The ~~public oversight commission~~ department shall review:

(A) The application materials provided by the applicant.

(B) ~~The assessment of the applicant's materials provided by the department.~~

~~(C)~~ Any information, evidence, or arguments raised by interested parties or amicus curiae, and any other public input.

(2) The ~~public oversight commission~~ commissioner shall hold a public hearing during the course of a review.

(3) The ~~public oversight commission~~ department shall ~~make a written findings and a recommendation~~ submit a report to the commissioner in favor of or against each application. A record shall be maintained of all information reviewed in connection with each application.

* * *

(5) After reviewing each application and after considering the ~~recommendations of the public oversight commission~~ report of the department, and any other information submitted in connection with the application, the commissioner shall make a decision either to issue or to deny the application for a certificate of need. The decision shall be in the form of an approval in whole or in part, or an approval subject to such conditions as the commissioner may impose in furtherance of the purposes of this subchapter, or a denial. In granting a partial approval or a conditional approval the commissioner shall not mandate a new health care project not proposed by the applicant or mandate the deletion of any existing service. Any partial approval or conditional approval must be directly within the scope of the project proposed by the applicant and the criteria used in reviewing the application.

(6)~~(A)~~ If the commissioner proposes to render a final decision denying an application in whole or in part, or approving a contested application, the

commissioner shall serve the parties with notice of a proposed decision containing proposed findings of fact and conclusions of law, and shall provide the parties an opportunity to file exceptions and present briefs and oral argument to the commissioner. The commissioner may also permit the parties to present additional evidence.

~~(B) If the commissioner's proposed decision is contrary to the recommendation of the public oversight commission:~~

~~(i) the notice of proposed decision shall contain findings of fact and conclusions of law demonstrating that the commissioner fully considered all the findings and conclusions of the public oversight commission and explaining why his or her proposed decision is contrary to the recommendation of the public oversight commission and necessary to further the policies and purposes of this subchapter; and~~

~~(ii) the commissioner shall permit the parties to present additional evidence.~~

* * *

(8) The commissioner shall ~~establish~~ adopt rules governing the compilation of the record used by the ~~public oversight commission and~~ department and the commissioner in connection with decisions made on applications filed and certificates issued under this subchapter.

* * *

(f) Any applicant, competing applicant, or interested party aggrieved by a final decision of the commissioner under this section may appeal the decision to the supreme court. ~~If the commissioner's decision is contrary to the recommendation of the public oversight commission, the standard of review on appeal shall require that the commissioner's decision be supported by a preponderance of the evidence in the record.~~

* * *

Sec. 16. 18 V.S.A. § 9440a(a) is amended to read:

(a) Each application filed under this subchapter, any written information required or permitted to be submitted in connection with an application or with the monitoring of an order, decision, or certificate issued by the commissioner, and any testimony ~~taken before the public oversight commission,~~ received by the commissioner, or a hearing officer appointed by the commissioner shall be submitted or taken under oath. The form and manner of the submission shall be prescribed by the commissioner. The authority granted to the commissioner under this section is in addition to any other authority granted to the commissioner under law.

Sec. 17. 18 V.S.A. § 9456(h)(3)(B) is amended to read:

(B) A person who knowingly makes a false statement under oath or who knowingly submits false information under oath to the commissioner ~~or to the public oversight commission~~ or to a hearing officer appointed by the commissioner or who knowingly testifies falsely in any proceeding before the commissioner ~~or the public oversight commission~~ or a hearing officer appointed by the commissioner shall be guilty of perjury and punished as provided in ~~section~~ 13 V.S.A. § 2901 ~~of Title 13~~.

Sec. 18. 21 V.S.A. § 1306(a) is amended to read:

(a) The governor shall appoint a state department of labor advisory council composed of eight members from the general public to include four employer representatives and four employee representatives who may fairly be regarded as employees because of their vocations, employment, and affiliations. Appointment of the four employee representatives, at least one of whom shall have experience in workers' compensation law and one of whom shall be a member of a building trade, shall be made from a list of qualified individuals submitted by the Vermont state labor council, the Vermont state employees' association, and the Vermont national education association. Appointment of the four employer representatives shall be made from a list of qualified individuals submitted by the Vermont chamber of commerce, associated general contractors of Vermont, and Vermont businesses for social responsibility. The council members shall be appointed for staggered terms of four years. The council shall meet at least ~~six~~ three times a year.

Sec. 19. 23 V.S.A. § 3310(a) is amended to read:

(a) The ~~state board~~ commissioner of forests, parks and recreation or a municipality in administering a swimming beach or waterfront program may designate a swimming area in front of the beach or land which the state or a municipality owns or controls and may make rules pertaining to the area. The rules may provide that no person, except a lifeguard on duty and other authorized personnel, may operate any boat, canoe, or water vehicle of any sort within the designated swimming area.

Sec. 20. 28 V.S.A. § 121 is amended to read:

§ 121. COMMUNITY HIGH SCHOOL OF VERMONT BOARD

(a) ~~A board is established for the purpose of advising the education supervisor of the independent school established in section 120 of this title.~~ The community high school of Vermont board ~~shall have supervision over~~ is established to recommend policy ~~formation~~ for the ~~independent school,~~ community high school of Vermont and offender work programs to the commissioner of corrections, except as otherwise provided, ~~shall recommend~~

~~school policy to the commissioner of corrections, shall~~ advise the education supervisor, oversee local advisory boards of the school, and ~~shall~~ perform ~~such~~ other duties as requested ~~from time to time~~ by the commissioner of education or of corrections.

(b) The board shall consist of nine members, each appointed by the governor for a three-year term subject to the advice and consent of the senate, in such a manner that no more than three terms shall expire annually, as follows:

(1) ~~Six~~ Five representatives from the membership of local advisory boards serving the school sites, not to include more than one member from any advisory board.

(2) ~~Three members-at-large~~ Three representatives of public sector and private nonprofit organization customers of the products and services of offender work programs.

(3) One member-at-large.

(c) The board shall appoint a chair and vice chair, each of whom shall serve for one year or until a successor is appointed by the board.

(d) The board shall report on its activities at least annually to the state board of education and the commissioner of corrections.

(e) ~~The board may, with the approval of the commissioner of corrections, appoint the education supervisor of the independent school.~~ The board shall review plans submitted by the director of offender work programs, conduct public hearings regarding potentially affected private businesses and labor groups, evaluate the impact on private sector business, and provide its recommendations to the commissioner of corrections.

Sec. 21. 28 V.S.A. § 751b is amended to read:

§ 751b. GENERAL PROVISIONS GOVERNING OFFENDER WORK

* * *

(d) The labor, work product, or time of an offender may be sold, contracted, or hired out by the state only:

(1) To the federal government.

(2) To any state or political subdivision of a state, or to any nonprofit organization which is exempt from federal or state income taxation, subject to federal law, to the laws of the recipient state and to the rules of the department. ~~Five~~ Two of the three members of the ~~offender work programs~~ community high school of Vermont board appointed under subdivision 121(b)(2) of this title at a scheduled and warned board meeting may vote to disapprove any

future sales of offender produced goods or services to any nonprofit organization and ~~such~~ the vote shall be binding on the department.

(3) To any private person or enterprise not involving the provision of the federally authorized Prison Industries Enhancement Program, provided that the ~~offender work programs~~ community high school of Vermont board shall first determine that the offender work product in question is not otherwise produced or available within the state. ~~Five~~ Two of the three members of the ~~such~~ board appointed under subdivision 121(b)(2) of this title at a scheduled and warned board meeting may vote to disapprove any future sales of offender produced goods or services to any person or entity not involving the provisions of the federally authorized Prison Industries Enhancement Program and such vote shall be binding on the department.

* * *

(e) Offender work programs managers shall seek to offset production, service and related costs from product and service sales; however, this financial objective of offsetting the costs to the department of servicing and supervising offender work programs shall not be pursued to the detriment of accomplishing the purposes of offender work programs set out in subsection (a) of this section or to the detriment of private businesses as safeguarded by ~~section 761~~ subsection 121(e) of this title.

* * *

(g) Assembled products shall not be sold to any person, enterprise, or entity unless the ~~offender work programs~~ community high school of Vermont board has first reviewed any such proposed sale, and ~~five~~ two of the three members of the board appointed under subdivision 121(b)(2) of this title have voted in favor of the proposal at a scheduled and warned meeting of the board.

* * *

Sec. 22. 28 V.S.A. § 752(b) is amended to read:

(b) Any expenses incurred by offender work programs ~~and the offender work programs board~~ shall be defrayed by this fund.

Sec. 23. 29 V.S.A. § 152(a)(3)(A) is amended to read:

(A) For which the legislature or the emergency board has made specific appropriations. In consultation with the department or agency concerned ~~and with the approval of the board of state buildings~~, the commissioner shall select sites, purchase lands, determine plans and specifications, and advertise for bids for the furnishing of materials and construction thereof and of appurtenances thereto. The commissioner shall determine the time for beginning and completing the construction. Any

change orders occurring under the contracts let as the result of actions previously mentioned in this section shall not be allowed unless they have the approval of the secretary of administration.

Sec. 24. 29 V.S.A. § 152(a)(5) is amended to read:

(5) Inspect, appraise, and maintain a current appraisal schedule of all state-owned buildings, appendages, and appurtenances thereto based upon replacement value in the first instance and upon depreciated value in the second instance. ~~Such appraisals~~ Appraisals shall be furnished upon request to the secretary of administration, ~~the board of state buildings,~~ the commissioner of buildings and general services, departments and agencies concerned, and appropriate committees of the general assembly.

Sec. 25. 32 V.S.A. § 1010(a) is amended to read:

(a) Except for those members serving ex officio or otherwise regularly employed by the state, the compensation of the members of the following boards shall be $50.00 per diem:

(1) Board of bar examiners

(2) Board of libraries

(3) Vermont milk commission

(4) Board of education

(5) State board of health

(6) Emergency board

(7) Liquor control board

(8) ~~[Repealed.]~~

~~(9)~~ Human services board

~~(10) State board of forests, parks and recreation~~

~~(11)~~(9) State fish and wildlife board

~~(12)~~(10) State board of mental health

~~(13) Vermont development advisory board~~

~~(14) Vermont state water resources board~~

~~(15)~~(11) Vermont employment security board

~~(16)~~(12) Capitol complex commission

~~(17)~~(13) Natural gas and oil resources board

~~(18) Commission of the deaf and hearing impaired~~

~~(19)~~(14) Transportation board

~~(20) Health policy council~~

~~(21) Certificate of need review board~~

~~(22) Certificate of need appeals board~~

~~(23)~~(15) Vermont veterans' home board of trustees

~~(24)~~(16) Advisory council on historic preservation

~~(25) Vermont whey pollution abatement authority~~

~~(26)~~(17) The electricians' licensing board

~~(27) The alternatives to incarceration board~~

~~(28) Offender work programs board~~

~~(29) Firefighters'~~ (18) Emergency personnel survivors benefit review board

~~(30)~~(19) Community high school of Vermont and offender work programs board

~~(31) Municipal land records commission~~.

Sec. 26. REPEAL

The following are repealed:

(1) Subchapter 1 of chapter 21 of Title 1 (commission on interstate cooperation).

(2) The following sections, subsections, and subdivisions in Title 3:

(A) § 2(3)(C) (commission on interstate cooperation);

(B) § 2294 (technology advisory board);

(C) § 2503 (market Vermont advisory board);

(D) § 2873(h) (compliance advisory board).

(3) 8 V.S.A. § 4089b(h) (mental health insurance task force).

(4) The following chapters and subchapters in Title 10:

(A) Subchapter 1 of chapter 1 (Vermont business recruitment partnership);

(B) Chapter 4 (world trade office);

(C) Chapter 11A (Vermont qualifying facility contract mitigation authority);

(D) Chapter 24 (outdoor lighting);

(E) Chapter 28 (Vermont small business investment);

(F) Subchapter 5 of chapter 73 (forest resource advisory council).

(5) The following sections and subdivisions in Title 10:

(A) § 2604 (state board of forests, parks and recreation);

(B) § 2606a(b)(2)–(5) (technical site committees, duties, leases, administration).

(6) Subchapter 3 of chapter 125 of Title 16 (benefits under higher education facilities act of 1963).

(7) The following sections and subsections in Title 16:

(A) § 15 (council on civics education);

(B) § 132 (comprehensive health education advisory council).

(8) The following sections and subsections in Title 18:

(A) § 104b(c) and (d) (community health and wellness grant committee);

(B) § 4703 (opiate addiction treatment advisory committee);

(C) § 9402(15) (definitions; public oversight commission);

(D) § 9407 (public oversight commission; duties);

(9) The following subsections in Title 20:

(A) § 2673(d) (assistance of the state HAZMAT emergency operation team);

(B) § 2681(b) and (c) (state HAZMAT emergency operation team).

(10) 21 V.S.A. § 229 (VOSHA advisory councils).

(11) 23 V.S.A. § 735 (motorcycle training advisory committee).

(12) The following chapters in Title 24:

(A) Chapter 133 (Vermont independent school finance authority);

(B) Chapter 135 (Vermont municipal land records commission).

(13) 28 V.S.A. § 761 (offender work programs board).

(14) The following sections in Title 29:

(A) § 156 (composition of the board of state buildings);

(B) § 158 (land and office building development plan).

(15) The following chapters in Title 30:

(A) Chapter 85 (West River Basin energy authority);

(B) Chapter 90 (Vermont hydro-electric power authority);

(16) The following sections in Title 31:

(A) § 641 (Vermont breeder's stake board);

(B) § 642 (Vermont standard-bred development special fund).

(17) 32 V.S.A. § 203 (committee on coordination).

(18) Chapter 61 of Title 33 (Vermont independence fund).

(19) The following sections in Title 33:

(A) § 308 (child care advisory board);

(B) § 806 (alcohol and drug abuse advisor appointees).

(20) Sec. 1 of No. 204 of the Acts of the 2005 Adj. Sess. (2006) (commission to develop the next generation initiative) is repealed.

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

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposal of amendment was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, on motion of Senator Shumlin consideration was postponed.

Rules Suspended; Proposals of Amendment; Bill Passed in Concurrence with Proposals of Amendment

H. 542.

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

An act relating to transfers of mobile homes and rent-to-own transactions.

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

Thereupon, pending third reading of the bill, Senator Ashe moved to amend the Senate proposal of amendment in Sec.1 as follows:

First: In 9 V.S.A. § 2602(b)(4) by striking out the first sentence in its entirety and inserting in lieu thereof the following: The buyer or transferee shall execute and then file the executed bill of sale with the clerk of the town in which the mobile home will be located within 10 days of executing the bill of sale.

Second: In 9 V.S.A. § 2602(b)(5), before the period, by inserting the following: at least 21 days prior to the sale or transfer of the mobile home

Third: In 9 V.S.A. § 2602(b)(6), before the period, by inserting the following: in the bill of sale pursuant to subdivision (c)(1) of this section

Fourth: In 9 V.S.A. § 2602(c)(2), in the body of the mobile home uniform bill of sale under the heading "Retail Installment Transaction", by striking out the following "4451(8)" and inserting in lieu thereof the following: 2351(4)

Fifth: In subsection 2062(f), following "transactions." and preceding "(1)" by inserting the following: Except for a mobile home that is financed or conveyed as real property:

Which was agreed to.

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

Consideration Resumed; Senate Proposal of Amendment Amended; Third Reading Ordered

H. 760.

Consideration was resumed on House bill entitled:

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

Thereupon, pending the question, Shall the bill be read a third time?, Senator Flanagan moved to amend the Senate proposal of amendment as follows:

First: In Sec. 7, 18 V.S.A. § 1700(f), by striking out subdivision (3) in its entirety and inserting in lieu thereof a new subdivision (3) to read as follows:

(3) upon request, provide to all members of the panel all relevant information within the department's control relating to subjects within the scope of the duties of the panel.

Second: In Sec. 25, 3 V.S.A. § 1010(a)(19), by striking out the following: "and offender work programs"

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Flanagan?, Senator Flanagan requested and was granted leave to withdraw the proposal of amendment.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Flanagan moved to amend the Senate proposal of amendment as follows:

First: By striking out Secs. 2, 11, 12, 13, 14, 15, 16, 17, 20, 21 and 22 in their entirety.

Second: In Sec. 7, 18 V.S.A. § 1700(f), by striking out subdivision (3) in its entirety and inserting in lieu thereof a new subdivision (3) to read as follows:

(3) upon request, provide to all members of the panel all relevant information within the department's control relating to subjects within the scope of the duties of the panel.

Third: By striking out Sec. 25 in its entirety and inserting in lieu thereof a new Sec. 25 to read as follows:

Sec. 25. 32 V.S.A. § 1010(a) is amended to read:

(a) Except for those members serving ex officio or otherwise regularly employed by the state, the compensation of the members of the following boards shall be $50.00 per diem:

(1) Board of bar examiners

(2) Board of libraries

(3) Vermont milk commission

(4) Board of education

(5) State board of health

(6) Emergency board

(7) Liquor control board

(8) ~~[Repealed.]~~

~~(9)~~ Human services board

~~(10) State board of forests, parks and recreation~~

~~(11)~~(9) State fish and wildlife board

~~(12)~~(10) State board of mental health

~~(13) Vermont development advisory board~~

~~(14) Vermont state water resources board~~

~~(15)~~(11) Vermont employment security board

~~(16)~~(12) Capitol complex commission

~~(17)~~(13) Natural gas and oil resources board

~~(18) Commission of the deaf and hearing impaired~~

~~(19)~~(14) Transportation board

~~(20) Health policy council~~

~~(21) Certificate of need review board~~

~~(22) Certificate of need appeals board~~

~~(23)~~(15) Vermont veterans' home board of trustees

~~(24)~~(16) Advisory council on historic preservation

~~(25) Vermont whey pollution abatement authority~~

~~(26)~~(17) The electricians' licensing board

~~(27) The alternatives to incarceration board~~

~~(28)~~(18) Offender work programs board

~~(29) Firefighters'~~ (19) Emergency personnel survivors benefit review board

~~(30)~~(20) Community high school of Vermont board

~~(31) Municipal land records commission~~.

Fourth: By striking out Sec. 26 in its entirety and inserting in lieu thereof a new Sec. 26 to read as follows:

Sec. 26. REPEAL

The following are repealed:

(1) Subchapter 1 of chapter 21 of Title 1 (commission on interstate cooperation).

(2) The following sections, subsections, and subdivisions in Title 3:

(A) § 2(3)(C) (commission on interstate cooperation);

(B) § 2294 (technology advisory board);

(C) § 2503 (market Vermont advisory board);

(D) § 2873(h) (compliance advisory board).

(3) The following chapters and subchapters in Title 10:

(A) Subchapter 1 of chapter 1 (Vermont business recruitment partnership);

(B) Chapter 4 (world trade office);

(C) Chapter 11A (Vermont qualifying facility contract mitigation authority);

(D) Chapter 24 (outdoor lighting);

(E) Chapter 28 (Vermont small business investment);

(F) Subchapter 5 of chapter 73 (forest resource advisory council).

(4) The following sections and subdivisions in Title 10:

(A) § 2604 (state board of forests, parks and recreation);

(B) § 2606a(b)(2)–(5) (technical site committees, duties, leases, administration).

(5) Subchapter 3 of chapter 125 of Title 16 (benefits under higher education facilities act of 1963).

(6) The following sections and subsections in Title 16:

(A) § 15 (council on civics education);

(B) § 132 (comprehensive health education advisory council).

(7) The following sections and subsections in Title 18:

(A) § 104b(c) and (d) (community health and wellness grant committee);

(B) § 4703 (opiate addiction treatment advisory committee);

(8) The following subsections in Title 20:

(A) § 2673(d) (assistance of the state HAZMAT emergency operation team);

(B) § 2681(b) and (c) (state HAZMAT emergency operation team).

(9) 21 V.S.A. § 229 (VOSHA advisory councils).

(10) 23 V.S.A. § 735 (motorcycle training advisory committee).

(11) The following chapters in Title 24:

(A) Chapter 133 (Vermont independent school finance authority);

(B) Chapter 135 (Vermont municipal land records commission).

(12) The following sections in Title 29:

(A) § 156 (composition of the board of state buildings);

(B) § 158 (land and office building development plan).

(13) The following chapters in Title 30:

(A) Chapter 85 (West River Basin energy authority);

(B) Chapter 90 (Vermont hydro-electric power authority);

(14) The following sections in Title 31:

(A) § 641 (Vermont breeder's stake board);

(B) § 642 (Vermont standard-bred development special fund).

(15) 32 V.S.A. § 203 (committee on coordination).

(16) Chapter 61 of Title 33 (Vermont independence fund).

(17) The following sections in Title 33:

(A) § 308 (child care advisory board);

(B) § 806 (alcohol and drug abuse advisor appointees).

(18) Sec. 1 of No. 204 of the Acts of the 2005 Adj. Sess. (2006) (commission to develop the next generation initiative) is repealed.

Which was agreed to.

Thereupon, the pending question, Shall the bill be read a third time?, was decided in the affirmative.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until five o'clock in the afternoon.

Evening

The Senate was called to order by the President.

Message from the House No. 81

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

Mr. President:

I am directed to inform the Senate that:

The House has adopted joint resolution of the following title:

J.R.H. 51. Joint resolution supporting the assignment of the F-35 aircraft to the Vermont Air National Guard.

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

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

S. 292. An act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees.

And has concurred therein with further amendments in the passage of which the concurrence of the Senate is requested.

Proposals of Amendment; Third Reading Ordered

H. 66.

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

An act relating to including secondary students with disabilities in senior year activities and ceremonies.

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

First: In Sec. 1, 16 V.S.A. § 2944, by redesignating the section to be Sec. 22 and in the new Sec. 22 by redesignating subsections (h) and (i) as subsections (i) and (j) respectively and by inserting a new subsection to be subdivision (h) to read:

(h) A school shall not be required to permit a student to participate in a graduation ceremony or senior year activities pursuant to subsection (g) of this section if the student has not met graduation requirements for reasons that are wholly unrelated to the student's disability.

Second: By adding twenty-one new sections to be numbered Secs. 1 through 21 to read as follows:

Sec. 1. FINDINGS

The general assembly finds that:

(1) the voluntary merger of Vermont's education governing units will support:

(A) increased educational opportunities for all students, including the effective use of technology to expand those opportunities;

(B) increased economies of scale;

(C) enhanced cost efficiencies available in personnel assignment and the management of resources, particularly at a time when many districts are experiencing declining enrollment;

(2) providing incentives, technical assistance, and statutory changes to encourage voluntary merger of school districts will allow governance changes

to occur while preserving the authority of voters to make local decisions that are appropriate for their communities; and

(3) the voluntary merger of Vermont's education governing units:

(A) will assist schools and education governing units to obtain meaningful, standardized metrics for evaluating programs; comparing local, national, and international student data; assessing and identifying system improvements; and analyzing the costs and benefits of resource allocations;

(B) provides voters opportunities to make local decisions regarding school choice and other enrollment options, in Vermont public schools and in approved independent schools, that are appropriate for their communities;

(C) recognizes school choice as a significant part of the Vermont elementary and secondary system as it currently exists and as it will continue to exist as changes to the structure are made in the future; and

(4) encouraging education governing units to enter into contracts to share administrative, educational, technical, labor, and material resources, which may be considered to be "virtual mergers," will also assist the governing units to reduce costs, to improve educational outcomes, and to eliminate barriers to increased efficiency.

* * * School District Merger Incentive Program * * *

Sec. 2. SCHOOL DISTRICT MERGER INCENTIVE PROGRAM

(a) Program created. There is created a school district merger incentive program under which the incentives outlined in Sec. 4 of this act shall be available to each new unified union school district created pursuant to Sec. 3 of this act and to each new district created under that section by the merger of districts that provide secondary education by paying tuition. Incentives shall be available, however, only if the effective date of merger is on or before July 1, 2017.

(b) Board discussion. On or before December 1, 2010, the board of each supervisory union in the state shall discuss, and the board of every school district may discuss, whether it wishes to explore the merger of districts within the supervisory union or with one or more districts outside of the supervisory union, or both under the terms of this act.

(c) Board vote. On or before October 1, 2012, each supervisory union board shall vote whether to perform a more comprehensive analysis of potential merger, and shall report the results of its vote to the commissioner of education and the voters of each member school district.

Sec. 3. VOLUNTARY SCHOOL DISTRICT MERGER INCENTIVE PROGRAM

(a) Size.

(1) School districts, which may include one or more union school districts, may merge to form a union school district pursuant to chapter 11 of Title 16 (a "Regional Education District" or "RED") that shall have an average daily membership of at least 1,250 or result from the merger of at least four districts, or both.

(2) School districts interested in merger may request the state board of education to grant them a waiver from the requirements of subdivision (1) of this subsection, which shall be granted if the districts can demonstrate that the requirements would not be cost-effective, would decrease educational opportunities, or would diminish student achievement, or any combination of these.

(b) Elementary and Secondary Education.

(1) A RED formed under this act shall provide for the education of its resident students by operating one or more public schools offering elementary and secondary education.

(2) If they comply with all other provisions of this act, then notwithstanding subdivision (1) of this subsection, school districts that do not operate secondary schools may merge to form a RED, operate as a K–12 district, and receive the incentives in Sec. 4 of this act if the proposed RED operates one or more schools offering at least kindergarten through grade 6 for the resident students in those grade and implements one of the following options:

(A) The RED designates either a Vermont public school outside the district or a Vermont approved independent school located inside or outside the district as the sole public secondary school of the RED pursuant to the provisions of 16 V.S.A. § 827.

(B) The RED provides for the education of students in all grades for which it does not operate a school by paying tuition pursuant to 16 V.S.A. § 824, provided that the RED will neither operate a school offering the grades for which it pays tuition nor designate a school that offers those grades.

(3) If they comply with all other provisions of this act, then notwithstanding subdivision (1) of this subsection, school districts that do not operate any schools may merge to form a RED, operate as a K–12 district, and receive the incentives in Sec. 4 of this act if the proposed RED provides for the education of students in all grades by paying tuition pursuant to 16 V.S.A.

§ 824, provided that the RED will neither operate a school offering the grades for which it pays tuition nor designate a school that offers those grades.

(c) Supervisory unions and supervisory districts.

(1) School districts that merge to form a RED do not need to be members of the same supervisory union prior to merger.

(2) Upon merger, the state board of education shall assign the RED to a supervisory union or determine that the RED will operate as a supervisory district. In addition, the state board shall assign any district or districts in the original supervisory union or unions that did not merge into the RED to one or more supervisory unions; provided, however, a district may request placement within a specified supervisory union pursuant to 16 V.S.A. § 261(b).

(d) Operation of schools. A RED shall not close any school within its boundaries during the first four years after the effective date of merger unless the electorate of the town in which the school is located consents to closure. The participating districts' plan of merger may include processes governing the manner in which the RED may close schools after the fourth year.

(e) Local participation. Because the RED shall be governed by one board, the plan for merger presented to the electorate for approval under chapter 11 of Title 16 shall include structures and processes that provide opportunities for local participation in the creation of RED policy and budget development.

(f) Enrollment options. The plan for merger presented to the electorate for approval shall include whether and to what extent elementary and secondary students residing within the RED may enroll in any school the RED operates, provided:

(1) a RED that operates or designates a secondary school shall comply with regional high school choice provisions of 16 V.S.A. § 1622;

(2) each RED shall provide, or provide access to, secondary technical education for students residing within its boundaries;

(3) if the approved merger plan provides fewer options to the students in one or more of the merging districts than they have prior to merger, then the RED shall pay tuition to a school pursuant to the provisions of 16 V.S.A. §§ 823 and 824 for any resident student who resided in one of those districts and was enrolled in the school at public expense at the time of merger, even if the approved merger plan does not otherwise require the RED to pay tuition to that school; and

(4) if a RED is created pursuant to subdivision (b)(2) or (b)(3) of this section and provides for the education of resident secondary students by paying tuition, and if after the effective date of merger the RED electorate is asked to

vote on a proposal to limit enrollment options in those grades, then the proposed amendment, as with any change to a specific term of a merger agreement, shall be affirmed or rejected by the voters of each member town pursuant to 16 V.S.A. § 706n(a).

(g) Employment and labor relations. On the first day of its existence, the RED shall:

(1) assume the obligations of individual employment contracts between the participating districts and their bargaining unit employees;

(2) assume the collective bargaining agreements between the participating districts and their respective representative organizations, including any provisions that address the transition to the RED, until such time as it reaches its own agreement with teachers and administrators under 16 V.S.A. § 2005, and with other employees under 21 V.S.A. § 1725(a);

(3) recognize the representatives of the employees of the former member districts as the recognized representatives of the employees of the RED;

(4) ensure that an employee of the former member district who is not a probationary employee shall not be considered a probationary employee of the RED; and

(5) have reached an agreement with the recognized representatives of the employees, effective on the first day of the RED's existence, regarding how to address issues of seniority, reduction in force, layoff, and recall prior to reaching its first collective bargaining agreement with its employees.

(h) Cost-benefit analysis. School districts shall conduct a cost-benefit analysis as part of their merger planning. The plan for merger submitted to the state board of education pursuant to 16 V.S.A. § 706c and presented to the electorate for approval shall identify cost efficiencies and improved educational outcomes that will result from merger in order to demonstrate a rational basis for the decision to merge and shall address:

(A) real dollar efficiencies;

(B) operational efficiencies;

(C) student learning opportunities; and

(D) student outcomes.

(i) Qualification. No individual entitlement or private right of action is created by Secs. 2 through 4 of this act.

Sec. 4. VOLUNTARY SCHOOL DISTRICT MERGER; INCENTIVES

(a) Equalized homestead property tax rates.

(1)(A) Subject to the provisions of subdivision (2) of this subsection and notwithstanding any other provision of law, the RED's equalized homestead property tax rate shall be

(i) decreased by $0.08 in the first year after the effective date of merger;

(ii) decreased by $0.06 in the second year after the effective date of merger;

(iii) decreased by $0.04 in the third year after the effective date of merger; and

(iv) decreased by $0.02 in the fourth year after the effective date of merger.

(B) The household income percentage shall be calculated accordingly.

(2) During the years in which a RED's equalized homestead property tax rate is decreased pursuant to this subsection, the rate for each town within the RED shall not increase or decrease by more than five percent in a single year. The household income percentage shall be calculated accordingly.

(3) On and after the effective date of merger, the common level of appraisal shall be calculated independently for each town within the RED for purposes of determining the homestead property tax rate for each town.

(b) Capital debt service**.** Beginning in fiscal year 2018, and notwithstanding any other provision of law, the commissioner annually shall reimburse from the education fund the amount of interest paid in the prior year by a RED to its lender on borrowing in anticipation of any state school construction aid that was owed to a merging member of the RED as of the effective date of this act and has not been paid to the RED by the state as of July 1, 2016.

(c) Sale of school buildings. Subject to the provisions of Sec. 3(d) of this act:

(1) if a RED closes a school building and sells the school building, or an energy saving measure within it as contemplated in 16 V.S.A. § 3448f(g), then neither the RED nor any other entity shall be required to refund a percentage of the sale price to the state pursuant to chapter 123 of Title 16; and

(2) if a participating district retains ownership of and closes a school building as part of the electorate-approved plan for merger and the participating district sells the school building or energy saving measure associated with the building, then neither the district nor any other entity shall be required to refund a percentage of the sale price to the state pursuant to chapter 123 of Title 16.

(d) Merger support grant. If the merging districts of a RED included at least one "eligible school district," as defined in 16 V.S.A. § 4015, that had received a small school support grant under section 4015 in the fiscal year two years prior to the first fiscal year of merger, then the RED shall be eligible to receive a merger support grant in each of its first five fiscal years in an amount equal to the small school support grant received by the eligible school district in the fiscal year two years prior to the first fiscal year of merger. If more than one merging district was an eligible school district, then the merger support grant shall be in an amount equal to the total combined small school support grants they received in the fiscal year two years prior to the first fiscal year of merger.

(e) Consulting services reimbursement grant. From the education fund, the commissioner of education shall pay up to $20,000.00 to the merger study committee established under 16 V.S.A. § 706 to reimburse the participating districts for legal and other consulting fees necessary for the analysis and report required by 16 V.S.A. § 706b. The study committee shall forward invoices to the commissioner on a quarterly basis. The commissioner shall reimburse one-half of the total amount reflected in each set of invoices and the remaining one-half upon completion of the final report, provided that no payment shall cause the total amount paid to exceed the $20,00.00 limit. In addition, any facilitation grant funds paid to the RED pursuant to Sec. 5 of this act shall be reduced by the total amount of funds provided under this subsection (e).

(f) Multiyear budgets.

(1) In addition to the option of proposing a single-year budget on an annual basis pursuant to the provisions of chapter 11 of Title 16 and notwithstanding any other provision of law, a RED formed pursuant to Secs. 2 and 3 of this act shall also have the option to propose one or both of the following:

(A) A multiyear budget for the first two fiscal years of its existence that will be included as part of the plan that must be approved by the electorate in order to create the RED.

(B) A multiyear budget for the third and fourth fiscal years of its existence that is presented to the electorate for approval at the RED's annual meeting convened in its second fiscal year.

(2) The plan presented to the electorate to authorize creation of the RED may contain a provision authorizing the RED, beginning in the fifth fiscal year of its existence to present multiyear proposed budgets to the electorate once in every two or three years.

(g) Recent merger. If the Addison Northwest Unified Union School District becomes a body corporate and politic on or before July 1, 2010, then the merged district shall be entitled to receive any of the benefits set forth in this section that it elects and is otherwise eligible to receive if, on or before July 1, 2011:

(1) it notifies the commissioner of its election; and

(2) it provides the commissioner with a cost-benefit analysis as required by Sec. 3(h) of this act.

Sec. 5. Sec. 168a of No. 122 of the Acts of the 2003 Adj. Sess. (2004) as amended by Sec. 23 of No. 66 of the Acts of 2007 is amended to read:

Sec. 168a. SCHOOL DISTRICT CONSOLIDATION; TRANSITION AID; APPROPRIATION SUNSET

(a) After voter approval of the establishment of a union, unified union, or interstate school district, the commissioner of education shall pay to the board of the union, unified union, or interstate school district a facilitation grant of five percent of the base education ~~payment~~ amount in 16 V.S.A. § 4001(13) based on the combined enrollment of the participating districts on October 1 of the year in which the successful vote was taken or $150,000.00, whichever is less, from the education fund. The grant shall be in addition to funds received under 16 V.S.A. § 4028.

(b) This section shall sunset on June 30, 2010 2014.

Sec. 6. STUDY; TUITION VOUCHERS

On or before January 15, 2011, the state board of education's commission on redistricting shall research, analyze, and report to the senate and house committees on education, the senate committee on finance, and the house committee on ways and means regarding the fiscal impacts on the education fund, the general fund, property tax rates, and school budgets as well as the effects on educational outcomes if the state were to make tuition vouchers available to all Vermont students. The report shall include a summary of peer-reviewed research, with particular emphasis on research related to Vermont or other demographically or geographically similar states. Areas of

inquiry shall include student achievement, property values, special education services, transportation, income levels served, community involvement, and social and economic stratification, if any.

Sec. 7. MERGER TEMPLATE

After reviewing existing models, the department of education shall develop a merger template to assist study committees formed pursuant 16 V.S.A. § 706 to consider the advisability of and prepare a proposal for merger. Among other things, the template shall provide data regarding the enrollment and finances of the participating school districts and demographic statistics. It shall also outline common issues considered by districts exploring merger and provide links to related resources. The department shall publish the template on its website on or before December 15, 2010.

Sec. 8. REPORTS; EFFECTS OF MERGER; RECOMMENDATIONS

(a) On or before January 15, 2011, and in every January thereafter through 2018, the commissioner shall report to the house and senate committees on education regarding the status of merger discussions and votes.

(b) The James M. Jeffords Center of the University of the Vermont, the department of education, and school districts participating in the voluntary merger process authorized by this act shall collaborate to study:

(1) data and comments from school districts and supervisory unions statewide that are discussing voluntary merger;

(2) the results of local district elections to approve voluntary merger under the provisions of this act; and

(3) in connection with USDs that are formed under the provisions of this act:

(A) real dollar efficiencies realized;

(B) operational efficiencies realized;

(C) changes in student learning opportunities; and

(D) changes in student outcomes.

(c) On or before January 15, 2018, the James M. Jeffords Center and the department of education shall present a final report concerning the study required in subsection (b) of this section, including recommendations to the house and senate committees on education regarding what further actions, if any, should be pursued to encourage or require merger by nonparticipating school districts, and shall provide interim reports in each January until that date.

* * * Virtual Merger; Supervisory Unions; Superintendents; Class Sizes * * *

Sec. 9. 16 V.S.A. § 261a is amended to read:

§ 261a. DUTIES OF SUPERVISORY UNION BOARD

(a) Duties. The board of each supervisory union shall:

(1) ~~set policy to coordinate curriculum plans among the sending and receiving schools in that supervisory union~~ establish a supervisory union-wide curriculum, by either developing the curriculum or assisting the member districts to develop it jointly, and ensure implementation of the curriculum. The curriculum ~~plans~~ shall meet the requirements adopted by the state board under subdivision 165(a)(3)(B) of this title;

(2) ~~take reasonable steps to~~ assist each school in the supervisory union to follow ~~its respective~~ the curriculum ~~plan~~ as adopted under the requirements of the state board pursuant to subdivision 165(a)(3)(B) of this title;

(3) if students residing in the supervisory union receive their education outside the supervisory union, periodically review the compatibility of the supervisory union's curriculum ~~plans~~ with those other schools;

(4) in accordance with criteria established by the state board, establish and implement a plan for receiving and disbursing federal and state funds distributed by the department of education, including funds awarded under P.L. 89-10, the Elementary and Secondary Education Act of 1965 as amended;

(5) provide ~~for the establishment of a written policy on professional development of teachers employed in the supervisory union and periodically review that policy. The policy may~~ professional development programs or arrange for the provision of them, or both, for teachers, administrators, and staff within the supervisory union, which may include programs offered solely to one school or other component of the entire supervisory union to meet the specific needs or interests of that component; a supervisory union has the discretion to provide financial assistance outside the negotiated agreements for teachers' professional development activities ~~and may require the superintendent periodically to develop and offer professional development activities within the supervisory union~~;

(6) ~~provide or, if agreed upon by unanimous vote at a supervisory union meeting, coordinate provision of the following educational services on behalf of member districts:~~

~~(A) special education;~~

~~(B) except as provided in section 144b of this title, compensatory and remedial services; and~~

~~(C) other services as directed by the state board and local boards~~ provide special education services on behalf of its member districts and, except as provided in section 144b of this title, compensatory and remedial services, and provide or coordinate the provision of other educational services as directed by the state board or local boards; provided, however, if a supervisory union determines that services would be provided more efficiently and effectively in another manner, then it may ask the commissioner to grant it a waiver from this provision;

(7) employ a person or persons qualified to ~~manage~~ provide financial and student data management services for the supervisory union ~~accounts~~;

(8) ~~at the option of the supervisory union,~~ provide the following services for the benefit of member districts ~~according~~ in a manner that promotes the efficient use of financial and human resources, which shall be provided pursuant to joint agreements under section 267 of this title whenever feasible; provided, however, if a supervisory union determines that services would be provided more efficiently and effectively in another manner, then it may ask the commissioner to grant it a waiver from this subdivision:

(A) ~~centralized purchasing~~ manage a system to procure and distribute goods and operational services;

(B) ~~construction management~~ manage construction projects;

(C) ~~budgeting, accounting and other financial management~~ provide financial and student data management services, including grant writing and fundraising as requested;

(D) ~~teacher negotiations~~ negotiate with teachers and administrators, pursuant to chapter 57 of this title, and with other school personnel, pursuant to chapter 22 of Title 21, at the supervisory union level; provided that

(i) contract terms may vary by district; and

(ii) contracts may include terms facilitating arrangements between or among districts to share the services of teachers, administrators, and other school personnel;

(E) ~~transportation~~ provide transportation or arrange for the provision of transportation, or both in any districts in which it is offered within the supervisory union; ~~and~~

(F) provide human resources management support; and

(G) provide other appropriate services according to joint agreements pursuant to section 267 of this title;

(9) ~~require that the superintendent as executive officer of the supervisory union board be responsible to the commissioner and state board for reporting on all financial transactions within the supervisory union. On or before August 15 of each year, the superintendent, using a format approved by the commissioner, shall forward to the commissioner a report describing the financial operations of the supervisory union for the preceding school year. The state board may withhold any state funds from distribution to a supervisory union until such returns are made;~~ [Repealed.]

(10) submit to the town auditors of each member school district or to the person authorized to perform the duties of an auditor for the school district, on or before January 15 of each year, a summary report of financial operations of the supervisory union for the preceding school year, an estimate of its financial operations for the current school year, and a preliminary budget for the supervisory union for the ensuing school year. This requirement shall not apply to a supervisory district. For each school year, the report shall show the actual or estimated amount expended by the supervisory union for special education-related services, including:

(A) A breakdown of that figure showing the amount paid by each school district within the supervisory union;

(B) A summary of the services provided by the supervisory union's use of the expended funds;

(11) on or before June 30 of each year, adopt a budget for the ensuing school year; and

(12) adopt supervisory union-wide truancy policies consistent with the model protocols developed by the commissioner.

(13)–(17) [Repealed.]

(b) Virtual merger. In order to promote the efficient use of financial and human resources, and whenever legally permissible, supervisory unions are encouraged to reach agreements with other supervisory unions jointly to provide any service or perform any duty under this section pursuant to section 267 of this title. Agreements between supervisory unions are not subject to the waiver requirement of subdivision (a)(8) of this section. Agreements shall include a cost-benefit analysis outlining the projected financial savings or enhanced outcomes, or both, that the parties expect to realize through shared services or programs.

Sec. 10. 16 V.S.A. § 242 is amended to read:

§ 242. DUTIES OF SUPERINTENDENTS

The superintendent shall be the chief executive officer for the supervisory union board and for each school board ~~in~~ within the supervisory ~~district~~ union, and shall:

(1) carry out the policies adopted by the school ~~board~~ boards relating to the educational or business affairs of the school district or supervisory union, and develop procedures to do so;

(2) ~~identify~~ prepare, for adoption by a local school board, plans to achieve the educational goals and objectives ~~of~~ established by the school district ~~and prepare plans to achieve those goals and objectives for adoption by the school board~~;

(3) ~~recommend that the school board employ or dismiss persons as necessary to carry out the work of the school district~~ (A) nominate a candidate for employment by the school district or supervisory union if the vacant position requires a licensed employee; provided, if the appropriate board declines to hire a candidate, then the superintendent shall nominate a new candidate;

(B) select nonlicensed employees to be employed by the district or supervisory union; and

(C) dismiss licensed and nonlicensed employees of a school district or the supervisory union as necessary, subject to all procedural and other protections provided by contract, collective bargaining agreement, or provision of state and federal law;

(4)(A) ~~furnish the commissioner~~ provide data and information required by the commissioner; ~~and~~

(B) report all financial operations within the supervisory union to the commissioner and state board for the preceding school year on or before August 15 of each year, using a format approved by the commissioner;

(C) report all financial operations for each member school district to the commissioner and state board for the preceding school year on or before August 15 of each year, using a format approved by the commissioner; and

(D) prepare for each district an itemized report detailing the portion of the proposed supervisory union budget for which the district would be assessed for the subsequent school year identifying the component costs by category and explaining the method by which the district's share for each cost was calculated; and provide the report to each district at least 14 days before a

budget, including the supervisory union assessment, is voted on by the electorate of the district;

* * *

Sec. 11. 16 V.S.A. § 563(11)(C) is amended to read:

(C) At a school district's annual or special meeting, the electorate may vote to provide notice of availability of the school budget required by this subdivision to the electorate in lieu of distributing the budget. If the electorate of the school district votes to provide notice of availability, it must specify how notice of availability shall be given, and such notice of availability shall be provided to the electorate at least 30 days before the district's annual meeting. The proposed budget shall be prepared and distributed at least ten days before a sum of money is voted on by the electorate. Any proposed budget shall show the following information in a format prescribed by the commissioner of education:

(i) all revenues from all sources, and expenses, including as separate items any assessment for a supervisory union of which it is a member~~,~~ and any tuition to be paid to a technical center; and including the report required in subdivision 242(4)(D) of this title itemizing the component costs of the supervisory union assessment;

* * *

Sec. 12. REPEAL

16 V.S.A. § 563(13) (duty of school district board to report financial information to the commissioner) is repealed.

Sec. 13. 16 V.S.A. § 1981(8) and (9) are amended to read:

(8) "School board negotiations council" means, for a supervisory district, its school board, and, for school districts within a supervisory union, the body comprising representatives designated by each school board within the supervisory union to engage in professional negotiations with a teachers' or administrators' organization.

~~(A) School districts within a supervisory union that has more than one public high school, however, may form separate negotiations councils, each consisting of representatives, as appropriate, designated by:~~

~~(i) Each school district providing kindergarten through grade 12 within the supervisory union; or~~

~~(ii) The school board for a high school within the supervisory union and the board of each elementary school, if any, that sends its students to the high school.~~

~~(B) A school district, however, may form a separate negotiations council if it:~~

~~(i) Maintains a school but does not offer grades 9 through 12;~~

~~(ii) Is not a member of a union high school district; and~~

~~(iii) Is in a supervisory union that includes a district providing kindergarten through grade 12.~~

(9) "Teachers' organization negotiations council" or "administrators' organization negotiations council" means the body comprising representatives designated by each teachers' organization or administrators' organization within a supervisory district or supervisory union to act as its representative for professional negotiations.

~~(A) Teachers' or administrators' organizations within a supervisory union that has more than one public high school, however, may form separate negotiations councils, each consisting of representatives designated by the teachers' or administrators' organization, as appropriate, of:~~

~~(i) Each school district providing kindergarten through grade 12 within the supervisory union; or~~

~~(ii) A high school within the supervisory union and of each elementary school, if any, that sends its students to the high school.~~

~~(B) A teachers' or administrators' organization, however, may form a separate negotiations council if it is within a school district that:~~

~~(i) Maintains a school but does not offer grades 9 through 12;~~

~~(ii) Is not a member of a union high school district; and~~

~~(iii) Is in a supervisory union that includes a district providing kindergarten through grade 12.~~

Sec. 14. 21 V.S.A. § 1722(18) and (19) are amended to read:

(18) "School board negotiations council" means, for a supervisory district, its school board, and, for school districts within a supervisory union, the body comprising representatives designated by each school board within the supervisory union to engage in collective bargaining with their school employees' negotiations council.

~~(A) School districts within a supervisory union that has more than one public high school, however, may form separate negotiations councils, each consisting of representatives, as appropriate, designated by:~~

~~(i) Each school district providing kindergarten through grade 12 within the supervisory union; or~~

~~(ii) The school board for a high school within the supervisory union and the board of each elementary school, if any, that sends its students to the high school.~~

~~(B) A school district, however, may form a separate negotiations council if it:~~

~~(i) Maintains a school but does not offer grades nine through 12;~~

~~(ii) Is not a member of a union high school district; and~~

~~(iii) Is in a supervisory union that includes a district providing kindergarten through grade 12.~~

(19) "School employees' negotiations council" means the body comprising representatives designated by each exclusive bargaining agent within a supervisory district or supervisory union to engage in collective bargaining with its school board negotiations council.

~~(A) Exclusive bargaining agents within a supervisory union that has more than one public high school, however, may form separate negotiations councils, each consisting of representatives designated by the exclusive bargaining agent, as appropriate, of:~~

~~(i) Each school district providing kindergarten through grade 12 within the supervisory union; or~~

~~(ii) A high school within the supervisory union and of each elementary school, if any, that sends its students to the high school.~~

~~(B) An exclusive bargaining agent, however, may form a separate negotiations council if it is within a school district that:~~

~~(i) Maintains a school but does not offer grades nine through 12;~~

~~(ii) Is not a member of a union high school district; and~~

~~(iii) Is in a supervisory union that includes a district providing kindergarten through grade 12.~~

Sec. 15. 16 V.S.A. § 242(5) is amended to read:

(5) work with the school boards of the member districts to develop and implement policies regarding minimum and optimal average class sizes for regular and technical education classes. The policies may be supervisory union-wide, may be course- or grade-specific, and may reflect differences among school districts due to geography or other factors; and

(6) provide for the general supervision of the public schools in the supervisory union or district.

Sec. 16. MINIMUM AND OPTIMAL CLASS SIZE POLICIES

(a) On or before January 15, 2011, the policy required by Sec. 15 of this act, 16 V.S.A. § 242(5), regarding minimum and optimal average class size, shall be:

(1) adopted by each supervisory union board and member district board;

(2) posted on the website maintained by the supervisory union; and

(3) forwarded to the commissioner of education.

(b) On or before August 31, 2010, the commissioner of education shall develop two or more model policies regarding minimum and optimal class size and shall post them on the department's website.

Sec. 17. STUDENT-TO-STAFF RATIOS; DATA

In order to develop meaningful proposals to determine optimal cost-effective student-to-staff ratios, the commissioner of education shall research and, on or before January 15, 2011, shall present to the senate and house committees on education the following statistics for the most recent academic year for which data is available:

(1) the total staff-to-student ratios at a supervisory unionwide level, without including transportation, food service, maintenance, enterprise operations, or community service operations;

(2) classroom teacher-to-student ratios at a supervisory unionwide level, without including transportation, food service, maintenance, enterprise operations, or community service operations;

(3) administrative staff-to-student ratios at a supervisory unionwide level, without including transportation, food service, maintenance, enterprise operations, or community service operations;

(4) licensed educator-to-student ratios at a supervisory unionwide level, without including transportation, food service, maintenance, enterprise operations, or community service operations; and

(5) total expenditures, at both the supervisory unionwide and statewide levels, of transportation, food service, maintenance, enterprise operations, or community service operations, with a breakdown of contractual services and services provided by the supervisory union or school district.

Sec. 18. TRANSITION

Each supervisory union shall provide for any transition of employment of special education staff by member districts to employment by the supervisory union, pursuant to Sec. 9 of this act, 16 V.S.A. § 261a(6), by:

(1) providing that the supervisory union assumes all obligations of each existing collective bargaining agreement in effect between the member districts and their special education employees until the agreement's expiration, subject to employee compliance with performance standards and any lawful reduction in force, layoff, nonrenewal, or dismissal;

(2) providing, in the absence of an existing recognized representative of its employees, for the immediate and voluntary recognition by the supervisory union of the recognized representatives of the employees of the member districts as the recognized representatives of the employees of the supervisory union;

(3) ensuring that an employee of a member district who is not a probationary employee shall not be considered a probationary employee upon transition to the supervisory union; and

(4) containing an agreement with the recognized representatives of the employees of the member districts that is effective on the day the supervisory union assumes obligations of existing agreements regarding how the supervisory union, prior to reaching its first collective bargaining agreement with its special education employees, will address issues of seniority, reduction in force, layoff, and recall.

Sec. 19. INTEGRATED FINANCIAL MANAGEMENT PROCESS

(a) The commissioner of education shall develop an integrated process, including consistent policies and practices, for financial management and reporting that includes common accounting standards, to be used by supervisory unions in the state to enable the supervisory unions share financial information with each other, with the public, and with the department and to ensure that all districts and supervisory unions consistently use uniform, high quality practices. In developing the integrated process, the commissioner shall include standards requiring that persons responsible for the financial management of Vermont education entities share an equivalent level of training and expertise.

(b) The commissioner shall ensure that the integrated process of financial management and reporting is fully implemented no later than July 1, 2011, and shall report to the senate and house committees on education regarding implementation on or before January 15, 2012.

Sec. 20. HIGH SCHOOL TUITION; UNDERCHARGES AND OVERCHARGES

On or before January 15, 2011, the department of education shall:

(1) review 16 V.S.A. § 824(b)(1) regarding tuition payments that are three percent more or less than the calculated net cost per secondary pupil for the year of attendance;

(2) calculate the number of receiving schools that have been subject to the provisions of subdivision 824(b)(1) during the last three years;

(3) calculate the total amount of additional tuition that sending districts have paid to receiving schools pursuant to the provisions of subdivision 824(b)(1) during the last three years;

(4) calculate the number of total amount of tuition that receiving schools have credited to sending districts pursuant to the provisions of subdivision 824(b)(1) during the last three years;

(5) calculate the number of total amount of tuition that receiving schools have refunded to sending districts pursuant to the provisions of subdivision 824(b)(1) during the last three years;

(6) consider and propose to the senate and house committees on education alternative means by which tuition payments that are three percent more or less than the calculated net cost per secondary pupil can be addressed.

* * * Small Schools * * *

Sec. 21. RECOMMENDATIONS; SMALL SCHOOLS

On or before January 15, 2011, the commissioner of education shall develop and present to the general assembly a detailed proposal to:

(1) identify annually the school districts that are "eligible school districts" pursuant to 16 V.S.A. § 4015 due to geographic necessity, including the criteria that indicate geographic necessity;

(2) calculate and adjust the level of additional financial support necessary for the districts identified in subdivision (1) of this section to provide an education to resident students in compliance with state education quality standards and other state and federal laws; and

(3) withdraw small school support gradually from districts that are "eligible school districts" pursuant to 16 V.S.A. § 4015 as currently enacted but will not be identified as "eligible school districts" pursuant to subdivision (1) of this section.

Third: By adding a new section to be numbered Sec. 23 to read as follows:

Sec. 23. EFFECTIVE DATES

(a) Secs. 5 and 22 of this act shall take effect on passage.

(b) Secs 9 through 12 of this act shall take effect on July 1, 2012, subject to the provisions of existing contracts.

(c) This section and all other sections of this act not mentioned in subsections (a) and (b) of this section shall take effect on July 1, 2010.

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

"An act relating to voluntary school district merger, virtual merger, supervisory union duties, and including secondary students with disabilities in senior year activities and ceremonies."

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

Senator Mazza Assumes the Chair

Senator Giard, for the Committee on Finance, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Education with the following amendments thereto:

First: In the *second* proposal of amendment, in Sec. 2, subsection (a), in the first sentence, by striking out the word "secondary"

Second: In the *second* proposal of amendment, in Sec. 3, by striking out subsection (h) in its entirety and inserting in lieu thereof a new subsection (h) to read as follows:

(h) Cost-benefit analysis. School districts shall conduct a cost-benefit analysis as part of their merger planning. The plan for merger submitted to the state board of education pursuant to 16 V.S.A. § 706c and presented to the voters for approval shall identify cost efficiencies and improved educational outcomes that will result from merger in order to demonstrate a rational basis for the decision to merge and shall outline and, to the extent possible, document projected:

(A) real dollar efficiencies;

(B) operational efficiencies;

(C) expanded student learning opportunities; and

(D) improved student outcomes.

Third: In the *second* proposal of amendment, in Sec. 6, in the first sentence, by striking out the words "the state board of education's commission on redistricting" and inserting in lieu thereof the words the joint fiscal office and the office of legislative council

Fourth: In the *second* proposal of amendment, in Sec. 9, 16 V.S.A. § 261a, in subdivision (a)(6), by striking out the words "in another manner" and inserting in lieu thereof the words in whole or in part at the district level

Fifth: In the *second* proposal of amendment, after Sec. 9, by inserting a new section to be Sec. 9a to read as follows:

Sec. 9a. AGREEMENTS BETWEEN SUPERVISORY UNIONS; REIMBURSEMENT

From the education fund, the commissioner of education shall pay up to $10,000.00 to supervisory unions to reimburse the transitional costs, including legal and other consulting fees, necessary for the supervisory unions to enter into agreements to provide services or perform duties jointly pursuant to the provisions of 16 V.S.A. §§ 261a(b) and 267.

Sixth: In the *third* proposal of amendment, in Sec. 23, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) Secs 9 through 12 of this act shall take effect on passage and shall be fully implemented by July 1, 2012, subject to the provisions of existing contracts.

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

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the pending question, Shall the Senate propose to amend the bill as recommended by the Committee on Education?, was agreed to.

Thereupon, pending the question, Shall the proposal of amendment of the Committee on Education be amended as recommended by the Committee on Finance?, Senator Giard, on behalf of the Committee on Finance, moved to amend the proposal of amendment of the Committee on Finance as follows:

By striking out the *third* proposal of amendment in its entirety and inserting in lieu thereof a new *third* proposal of amendment to read as follows:

Third: In the *second* proposal of amendment, in Sec. 6, in the first sentence, by striking out the following: "On or before January 15, 2011, the state board of education's commission on redistricting shall research, analyze, and report" and inserting in lieu thereof the following: The commissioner of education

shall request the Regional Education Laboratory Northeast and Islands (REL-NEI) to research, analyze and, on or before January 15, 2011, report

Which was agreed to.

Thereupon, the pending question, Shall the proposal of amendment of the Committee on Education be amended as recommended by the Committee on Finance, as amended?, was decided in the affirmative.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as proposed by the Committee on Education, as amended?, Senator Flory, on behalf of the Committee on Education, moved to amend the proposal of amendment by adding an internal caption and a new section to be Sec. 21a to read as follows:

* * * Designation; Codification * * *

Sec. 21a. 16 V.S.A. § 827(e) is added to read:

(e) Notwithstanding any other provision of law to the contrary:

(1) the school districts of Pawlet, Rupert, and Wells may designate a public high school located in New York as the public high school of the district pursuant to the provisions of this section; and

(2) unless otherwise directed by an affirmative vote of the school district, when the Wells board approves parental requests to pay tuition to a nondesignated approved independent or public school, the board shall pay tuition in an amount not to exceed the base education amount as determined under section 4011 of this title for the fiscal year in which tuition is being paid.

Which was agreed to.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as proposed by the Committee on Education, as amended?, was decided in the affirmative.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Lyons moved that the Senate proposal of amendment be amended by adding two new sections to be Secs. 18a and 18b to read as follows:

Sec. 18a. 16 V.S.A. § 1071(b) is amended to read:

(b) Hours of operation; academic year. Within the minimum set by the state board, the school board shall fix the number of hours that shall constitute a school day, subject to change upon the order of the state board. The first student day shall not occur before Labor Day in any academic year.

Sec. 18b. APPLICATION

Sec. 18a of this act shall apply in the 2011–2012 academic year and after.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

House Proposals of Amendment to Senate Proposals of Amendment Concurred In

S. 88.

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

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

Were taken up.

The House proposes to the Senate to amend the Senate proposal of amendment as follows:

First: By striking out Sec. 33 in its entirety and inserting in lieu thereof a new Sec. 33 to read as follows:

Sec. 33. 18 V.S.A. § 4632 is amended to read:

§ 4632. DISCLOSURE OF ALLOWABLE EXPENDITURES AND GIFTS BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a)(1) Annually on or before October 1 of each year, every manufacturer of prescribed products shall disclose to the office of the attorney general for the fiscal year ending the previous June 30th the value, nature, purpose, and recipient information of:

(A) any allowable expenditure or gift permitted under subdivision 4631a(b)(2) of this title to any health care provider, except:

(i) royalties and licensing fees as described in subdivision 4631a(a)(1)(F) of this title;

(ii) rebates and discounts for prescribed products provided in the normal course of business as described in subdivision 4631a(b)(2)(F) of this title;

(iii) payments for clinical trials as described in subdivision 4631a(a)(1)(C) of this title, which shall be disclosed after the earlier of the date of the approval or clearance of the prescribed product by the Food and Drug Administration or two calendar years after the date the payment was made. For a clinical trial for which disclosure is delayed under this subdivision (iii), the manufacturer shall identify to the attorney general the clinical trial, the start date, and the web link to the clinical trial registration on the national clinical trials registry; ~~and~~

(iv) ~~samples of a prescription drug or biological product provided to a health care professional for free distribution to patients~~ interview expenses as described in subdivision 4631a(a)(1)(G) of this title; and

(v) coffee or other snacks or refreshments at a booth at a conference or seminar.

(B) any allowable expenditure or gift ~~permitted under subdivision 4631a(b)(2) of this title~~ to an academic institution, to a nonprofit hospital foundation, or to a professional, educational, or patient organization representing or serving health care providers or consumers located in or providing services in Vermont, except:

(i) royalties and licensing fees as described in subdivision 4631a(a)(1)(F) of this title;

(ii) rebates and discounts for prescribed products provided in the normal course of business as described in subdivision 4631a(b)(2)(F) of this title; and

(iii) payments for clinical trials as described in subdivision 4631a(a)(1)(C) of this title, which shall be disclosed after the earlier of the date of the approval or clearance of the prescribed product by the Food and Drug Administration or two calendar years after the date the payment was made. For a clinical trial for which disclosure is delayed under this subdivision (iii), the manufacturer shall identify to the attorney general the clinical trial, the start date, and the web link to the clinical trial registration on the national clinical trials registry~~; and~~

~~(iv) samples of a prescription drug provided to a health care professional for free distribution to patients~~.

(2)(A)(i) Subject to the provisions of subdivision (B) of this subdivision (a)(2) and to the extent allowed under federal law, annually on or before April 1 of each year beginning in 2012, each manufacturer of prescribed products shall disclose to the office of the attorney general all free samples of prescribed products provided to health care providers during the preceding calendar year, identifying for each sample the product, recipient, number of units, and dosage.

(ii) The office of the attorney general may contract with academic researchers to release to such researchers data relating to manufacturer distribution of free samples, subject to confidentiality provisions and without including the names or license numbers of individual recipients, for analysis and aggregated public reporting.

(iii) Any public reporting of manufacturer distribution of free samples shall not include information that allows for the identification of individual recipients of samples or connects individual recipients with the monetary value of the samples provided.

(B) Subdivision (A) of this subdivision (a)(2) shall not apply to samples of prescription drugs required to be reported under Sec. 6004 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, if as of January 1, 2011, the office of the attorney general has determined that the U.S. Department of Health and Human Services will collect and report state- and recipient-specific information regarding manufacturer distribution of free samples of such prescription drugs.

~~(2)~~(3) Annually on July 1, each manufacturer of prescribed products also shall disclose to the office of the attorney general the name and address of the individual responsible for the manufacturer's compliance with the provisions of this section.

~~(3)~~(4) Disclosure shall be made on a form and in a manner prescribed by the office of the attorney general and shall require manufacturers of prescribed products to report each allowable expenditure or gift permitted under subdivision 4631a(b)(2) of this title including:

(A) except as otherwise provided in subdivision (a)(2) of this section, the value, nature, and purpose of each allowable expenditure, and gift permitted under subdivision 4631a(b)(2) of this title according to specific categories identified by the office of the attorney general;

(B) the name of the recipient;

(C) the recipient's address;

(D) the recipient's institutional affiliation;

(E) prescribed product or products being marketed, if any; and

(F) the recipient's state board number.

~~(4)~~(5) The office of the attorney general shall report annually on the disclosures made under this section to the general assembly and the governor on or before April 1. The report shall include:

(A) Information on allowable expenditures and gifts required to be disclosed under this section, which shall be presented in both aggregate form and by selected types of health care providers or individual health care providers, as prioritized each year by the office.

(B) Information on violations and enforcement actions brought pursuant to this section and section 4631a of this title.

~~(5)~~(6) After issuance of the report required by subdivision ~~(a)~~(5) of this ~~section~~ subsection and except as otherwise provided in subdivision (2)(A)(i) of this subsection, the office of the attorney general shall make all disclosed data used for the report publicly available and searchable through an Internet website.

~~(6)~~(7) The office of Vermont health access shall examine the data available from the office of the attorney general for relevant expenditures and determine whether and to what extent prescribing patterns by health care providers of prescribed products reimbursed by Medicaid, VHAP, Dr. Dynasaur, VermontRx, and VPharm may reflect manufacturer influence. The office may select the data most relevant to its analysis. The office shall report its analysis annually to the general assembly and the governor on or before October 1.

(b)(1) Annually on July 1, the office of the attorney general shall collect a $500.00 fee from each manufacturer of prescribed products filing annual disclosures of expenditures greater than zero described in subsection (a) of this section.

(2) Fees collected under this section shall fund collection and analysis of information on activities related to the marketing of prescribed products under ~~sections~~ section 4631a ~~and 4632~~ of ~~Title 18~~ this title and under this section. The fees shall be collected in a special fund assigned to the office.

(c) The attorney general may bring an action in Washington superior court for injunctive relief, costs, and attorney's fees, and to impose on a manufacturer of prescribed products that fails to disclose as required by subsection (a) of this section a civil penalty of no more than $10,000.00 per violation. Each unlawful failure to disclose shall constitute a separate violation.

(d) The terms used in this section shall have the same meanings as they do in section 4631a of this title.

Second: By striking out Sec. 38b in its entirety and inserting in lieu thereof a new Sec. 38b to read as follows:

Sec. 38b. 18 V.S.A. chapter 82, subchapter 2 is added to read:

Subchapter 2. Menu Labeling

§ 4086. MENUS AND MENU BOARDS

(a) Restaurants and similar food establishments that are part of a chain with 20 or more locations doing business under the same name and offering for sale substantially the same menu items shall disclose on the menu and on the menu board:

(1) adjacent to the name of each standard menu item the number of calories contained in the item; and

(2) a succinct statement concerning suggested daily caloric intake.

(b) This section shall not apply to alcoholic beverages or to grocery stores except for separately owned food facilities to which this section otherwise applies that are located in a grocery store. For purposes of this section, grocery stores include convenience stores.

(c) If at any time subsection (a) or (b) of this section or both are preempted by federal law, then restaurants and similar food establishments that are part of a chain with 20 or more locations doing business under the same name and offering for sale substantially the same menu items shall comply with the menu labeling provisions of the applicable federal statutes and regulations.

(d) A violation of this section shall be deemed a violation of the Consumer Fraud Act, chapter 63 of Title 9, provided that no private right of action shall arise from the provisions of this section. The attorney general has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under subchapter 1 of chapter 63 of Title 9.

Third: In Sec. 41, by adding a subsection (e) to read as follows:

(e) Secs. 38a (statutory revision) and 38b (menu labeling) of this act shall take effect on January 1, 2011.

Fourth: In Sec. 6, in subdivision (g)(3), in the first sentence, following "health care reform efforts", by adding the following: , the new federal insurance exchange, insurance regulatory provisions, and other provisions in the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010

Thereupon, the question, Shall the Senate concur in the House proposals of amendment to the Senate proposals of amendment?, was decided in the affirmative on a roll call, Yeas 25, Nays 4.

Senator Ashe 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, McCormack, Miller, Nitka, Racine, Sears, Shumlin, Snelling, Starr, White.

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

The Senator absent or not voting was: Mazza (presiding).

Rules Suspended; Bill Passed in Concurrence with Proposals of Amendment

H. 760.

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

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

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 proposals of amendment.

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

H. 66.

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

An act relating to including secondary students with disabilities in senior year activities and ceremonies.

Was taken up for immediate consideration.

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposals of amendment.

Senator Shumlin Assumes the Chair

Thereupon, pending third reading of the bill, Senators MacDonald and Miller moved to amend the Senate proposal of amendment by in Sec. 2,

subsection (a), by striking out the final sentence in its entirety and inserting in lieu thereof the following: Incentives shall be available, however, only if the vote to merge occurs on or before Town Meeting Day in March 2013.

Which was disagreed to.

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

Rules Suspended; House Proposal of Amendment Concurred in with Proposal of Amendment; Rules Suspended; Bill Messaged

S. 296.

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

An act relating to sale or lease of the John H. Boylan state airport.

Was taken up for immediate consideration.

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

Sec. 1. 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 at fair market value.

(b) Conditions of the lease or sale shall include:

(1) The state shall retain an ownership interest in sufficient flat, open acreage which is in close proximity to route 105 to be used for landing of helicopters. The land purchaser or lessee shall maintain the helicopter landing area so that it is accessible for authorized uses.

(2) The agency of transportation shall have received inactive status for the John H. Boylan state airport from the FAA in order to preserve air space for future use as an airport.

(3) If the conveyance is a lease agreement, the lessee shall purchase liability insurance sufficient to cover potential injuries and damages and shall indemnify the state from loss or injury during the lessee's tenancy.

(4) The purchaser or lessee shall have obtained all necessary permits.

(c) The property shall be conveyed subject to the following covenants:

(1) The property shall be used only for storage and processing of logs for a pellet manufacturing operation in the former Ethan Allen facility on route 105 in Brighton.

(2) If the property is conveyed through a sale, the property shall not be assigned to any other person except that:

(A) at the request of the purchaser, the land may be sold back to the state in the condition required under subdivision (3) of this subsection at the original sale price not increased by interest or an inflation index,

(B) the purchaser may sell the land to another party subject to the conditions and covenants of this section, or

(C) if the purchaser ceases to use the land for storage and processing of logs for a pellet manufacturing operation for 18 months or more, or uses the land in a manner contrary to the conditions and covenants of this section, the land shall revert to the state at no cost to the state.

(3) Upon termination of a lease or sale of the property back to the state, the owner shall return the property to the state in a condition sufficient to support a grass strip airport of the size in existence at the time of the first sale. Upon lease or purchase of the property, the lessor or purchaser or assignee shall also purchase a 7-year performance bond of $50,000 to ensure that if the land is returned to the state, it will be returned to the state in the required condition.

(d) Any purchaser or lessee shall agree to purchase the hangars, including the concrete pads, on the property from their owners at replacement value as mutually agreed upon by the purchaser or lessee and hangar owner, or as determined by an appraiser mutually agreed upon by the purchaser or lessee and hangar owner, and paid for by the purchaser or lessee. The state shall terminate the hangar leases at the John H. Boylan state airport or, if the owner so desires, shall transfer the lease for placement of the hangar to a nearby airport on the same terms for the remainder of the lease. Any building movement of the hangar shall be at the expense of the hangars owner.

(e) 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.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Ashe moved that the Senate concur in the House proposal of amendment with an amendment as follows:

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

Sec. 1. 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 at fair market value.

(b) Conditions of the lease or sale shall include:

(1) The state shall retain an ownership interest in sufficient flat, open acreage which is in close proximity to VT route 105 to be used for landing of helicopters. The land purchaser or lessee shall maintain the helicopter landing area so that it is accessible for this purpose.

(2) The agency of transportation shall have received inactive status for the John H. Boylan state airport from the U.S. Federal Aviation Administration (FAA) in order to preserve air space for future use as an airport.

(3) If the conveyance is a lease agreement, the lessee shall purchase liability insurance sufficient to cover potential injuries and damages and shall indemnify the state from loss or injury during the lessee's tenancy.

(4) The purchaser or lessee shall have obtained all necessary permits.

(c) The property shall be conveyed subject to the following covenants:

(1) The property shall be used only for storage and processing of wood for a pellet manufacturing operation at the former Ethan Allen property on VT route 105 in Brighton, and other uses directly related to the operation.

(2) If the property is conveyed through a sale, the property shall not be sold or assigned to any other person except that:

(A) at the request of the purchaser, the land may be sold back to the state in the condition required under subdivision (3) of this subsection at the original sale price not increased by interest or an inflation index;

(B) the purchaser may sell the land to another person subject to the applicable conditions and covenants of this section; or

(C) if the purchaser ceases to use the land for storage and processing of logs for a pellet manufacturing operation for a continuous period of more than 18 months, or uses the land in a manner contrary to the applicable conditions and covenants of this section, the land shall revert to the state at no cost to the state.

(3) Upon termination of a lease or sale of the property back to the state, the owner shall return the property to the state in a condition sufficient to support a grass strip airport of the size in existence at the time of the first sale. Upon lease or purchase of the property, the lessor or purchaser or assignee shall also purchase a seven-year performance bond of $50,000.00 to ensure that if the land is returned to the state, it will be returned to the state in the required condition.

(d) Any purchaser or lessee shall agree to purchase the hangars, including the concrete pads, on the property from their owners at fair market value as mutually agreed upon by the purchaser or lessee and hangar owner, or as determined by an appraiser mutually agreed upon by the purchaser or lessee and hangar owner, and paid for by the purchaser or lessee. If there is no agreement, the matter shall be resolved by binding arbitration no later than January 1, 2011 by a single arbitrator selected by the secretary of transportation with all arbitration fees and costs to be shared by the hangar owners and the purchaser or lessor. The state shall terminate the hangar leases at the John H. Boylan state airport or, if the owner so desires, shall transfer one or more lease for placement of the hangar to a nearby airport on the same terms for the remainder of the lease. Any movement of the hangar shall be at the expense of the hangar owner.

(e) 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.

(g) Any issue not addressed or contemplated by this section may be addressed by the secretary and included in any purchase or lease agreement after consultation with the chairs of the senate committee on institutions, the house committee on corrections and institutions, and the senate and house committees on transportation.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

Which was agreed to.

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

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. 66, H. 542, H. 760.

Rules Suspended; Concurrent Resolution Messaged

On motion of Senator Ayer, the rules were suspended, and the following concurrent resolution was ordered messaged to the House forthwith:

S.C.R. 54.

Rules Suspended; Bill Delivered

On motion of Senator Ayer, the rules were suspended, and the following bill was ordered delivered to the Governor forthwith:

S. 88.

Message from the House No. 82

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

Mr. President:

I am directed to inform the Senate that:

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

H. 470. An act relating to restructuring of the judiciary.

And has adopted the same on its part.

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

H. 759. An act relating to executive branch fees.

And has adopted the same on its part.

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

H. 781. An act relating to renewable energy.

And has severally concurred therein.

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

H.C.R. 356. House concurrent resolution congratulating Alice Jersey on her 101st birthday.

H.C.R. 357. House concurrent resolution congratulating Donna Smith on her receipt of the 2010 Patricia Cummings Pierce Excellence in Teaching Award.

H.C.R. 358. House concurrent resolution in memory of Stratton Mountain Ski Resort skiing legend Emo Henrich.

H.C.R. 359. House concurrent resolution congratulating the Milton High School and Thetford Academy 2010 Vermont Drama Festival cochampions.

H.C.R. 360. House concurrent resolution honoring Vermont Association for Mental Health Executive Director Ken Libertoff for his exemplary work as a mental health care advocate.

H.C.R. 361. House concurrent resolution honoring the Reverend Kathryn Hult of Bellows Falls for her compassionate community leadership.

H.C.R. 362. House concurrent resolution honoring Richard Slusky's career and civic service in Windsor County.

H.C.R. 363. House concurrent resolution congratulating the Peacham Library on its bicentennial anniversary.

H.C.R. 364. House concurrent resolution honoring Dr. Peter M. Wright for his leadership in public education.

H.C.R. 365. House concurrent resolution welcoming the National Speleological Society to Vermont for its 2010 national convention.

H.C.R. 366. House concurrent resolution honoring Michael J. Chernick for his dedicated service to the Vermont state house.

H.C.R. 367. House concurrent resolution thanking legislative staff, the department of buildings and general services guards and custodial staff, and the cafeteria employees.

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

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

S.C.R. 52. Senate concurrent resolution honoring Green Up Day on its 40th anniversary.

S.C.R. 53. Senate concurrent resolution congratulating Gregory MacDonald on being named the Northeast Kingdom Chamber of Commerce 2010 Citizen of the Year.

And has adopted the same in concurrence.

The Governor has informed the House that on May 8, 2010, he approved and signed a bill originating in the House of the following title:

H. 507. An act relating to fostering connections to success in guardianships.

The Governor has informed the House that on May 10, 2010, he approved and signed a bill originating in the House of the following title:

H. 622. An act relating to solicitation by prescreened trigger lead information.

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 Sweaney,

By Senators Campbell, McCormack and Nitka,

H.C.R. 356.

House concurrent resolution congratulating Alice Jersey on her 101st birthday.

By Representatives Clark and Bray,

By Senators Ayer and Giard,

H.C.R. 357.

House concurrent resolution congratulating Donna Smith on her receipt of the 2010 Patricia Cummings Pierce Excellence in Teaching Award.

By Representative Olsen and others,

By Senators Shumlin and White,

H.C.R. 358.

House concurrent resolution in memory of Stratton Mountain Ski Resort skiing legend Emo Henrich.

By Representative Turner and others,

H.C.R. 359.

House concurrent resolution congratulating the Milton High School and Thetford Academy 2010 Vermont Drama Festival cochampions.

By Representative Donahue and others,

By Senators Choate, Kitchel, Kittell, Lyons, Mullin, Racine, Shumlin, Snelling and White,

H.C.R. 360.

House concurrent resolution honoring Vermont Association for Mental Health Executive Director Ken Libertoff for his exemplary work as a mental health care advocate.

By Representatives Obuchowski and Partridge,

H.C.R. 361.

House concurrent resolution honoring the Reverend Kathryn Hult of Bellows Falls for her compassionate community leadership.

By Representative Sweaney and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 362.

House concurrent resolution honoring Richard Slusky's career and civic service in Windsor County.

By Representative Toll,

By Senators Kitchel and Choate,

H.C.R. 363.

House concurrent resolution congratulating the Peacham Library on its bicentennial anniversary.

By Representatives Manwaring and Moran,

By Senators Shumlin, White, Hartwell and Sears,

H.C.R. 364.

House concurrent resolution honoring Dr. Peter M. Wright for his leadership in public education.

By Representative Nease and others,

H.C.R. 365.

House concurrent resolution welcoming the National Speleological Society to Vermont for its 2010 national convention

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By Representatives Clarkson and McDonald,

H.C.R. 366.

House concurrent resolution honoring Michael J. Chernick for his dedicated service to the Vermont State House.

By All Members of the House,

By All Members of the Senate,

H.C.R. 367.

House concurrent resolution thanking legislative staff, the department of buildings and general services guards and custodial staff, and the cafeteria employees.

Adjournment

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

WEDNESDAY, MAY 12, 2010

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

Devotional Exercises

A moment of silence was observed in lieu of devotions.

President Assumes the Chair

Joint Resolution Adopted in Concurrence

J.R.H. 51.

Joint resolution originating in the House of the following title was read and adopted in concurrence and is as follows:

Joint resolution supporting the assignment of the F-35 aircraft to the Vermont Air National Guard.

Whereas, since 1946, the Vermont Air National Guard in South Burlington at the Burlington International Airport (BIA) has been home to the 158th Fighter Wing, and for approximately 20 years, it has hosted the F-16 jet combat aircraft, long considered one of the United States Air Force's (USAF's) premier fighter planes, and

Whereas, the Vermont Air National Guard is an essential component of the BIA's administrative operations providing approximately $2 million annually in fire protection services as well as emergency response support, and

Whereas, the Green Mountain Boys of the Vermont Air National Guard proudly "maintain the highest caliber of trained personnel and equipment to accomplish the USAF mission of 'Fly, Fight, and Win,' " and

Whereas, although a highly respected and venerable aircraft, the lifespan of the F-16 is close to its conclusion, and during the next decade, the more technologically advanced F-35 is scheduled to replace the F-16, and

Whereas, the USAF has narrowed the potential bedding sites for the F-35 to 11 locations nationwide, and only three, including South Burlington, are National Guard fighter wings, and

Whereas, the USAF will make a final determination where to station the F-35 in 2011, and deployment will probably not occur until several years later, and

Whereas, residents of South Burlington and other affected municipalities have expressed concerns about the noise that the F-35 might cause, and

Whereas, although the USAF is currently conducting an Environmental Impact Study (EIS) on the F-35, including local noise impacts, this study will not be completed until later in 2010, and

Whereas, Vermont Air National Guard Lt. Col. Chris Caputo, the local F-35 project manager, has commented that the F-35 takeoffs could possibly be

quieter than those of the F-16, as the older plane relies on external fuel tanks compared to the stealth-shaped F-35 which is equipped with interior fuel tanks that enable it to take off at a lower throttle setting, and

Whereas, an EIS completed at Eglin Air Force Base in Florida did document high F-35 noise levels; however, they reflected that use of that base as a training facility where repeated high speed landings and takeoffs occur, and

Whereas, unlike at Eglin, the more restrained airport protocol of the Vermont Air National Guard will mean that more advanced training maneuvers are conducted in remote areas of northern New England and upstate New York and not over the more densely populated areas of Chittenden County, and

Whereas, an acoustic analysis of the F-35 conducted at Edwards Air Force Base in California recorded only slightly higher decibel levels for the F-35 in comparison to the F-16, including: flying at 1,000 feet and at 160 knots at full throttle — but without its afterburner — the F-35 generated 121 decibels compared to 114 for the F-16; at minimum throttle, the F-35 was recorded at 94 decibels compared to the F-16's 89, and

Whereas, responding to noise concerns of the South Burlington City Council, Brigadier General Steven Cray noted that the Vermont Air National Guard has decades of experience and an excellent heritage of working with neighbors on fighter jet noise problems and would continue this tradition with the F-35, and

Whereas, although there are noise issues related to the prospect of a new, and more technologically advanced, F-35 fighter jet being stationed at BIA in South Burlington, the Vermont Air National Guard is working to address neighbors' concerns, and

Whereas, the general assembly is confident that with its tradition of excellence in training and commitment to accomplishing its mission, the current F-16 workforce will be able to adapt its skill set to meet the technical needs of the F-35, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly looks favorably upon the permanent assignment of the F-35 fighter jets to the Vermont Air National Guard's base at Burlington International Airport in South Burlington, and be it further

Resolved: That the General Assembly supports the Vermont Air National Guard's transitioning to the next generation of aviation technology, and be it further

Resolved: That the General Assembly encourages collaboration among the Vermont Air National Guard, the city of South Burlington, and other affected municipalities to identify and address environmental, health, housing, and workforce concerns, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to United State Air Force Secretary Michael Donley, Vermont National Guard Adjutant General Major General Michael Dubie, and the Vermont Congressional Delegation.

Proposal of Amendment; Third Reading Ordered

H. 498.

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

An act relating to maintenance of private roads.

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. 19 V.S.A. § chapter 27 is added to read:

CHAPTER 27. PRIVATE ROADS

§ 2701. DEFINITIONS

As used in this chapter, "private road" means a road whose owner is not the state of Vermont, a municipality, or a single private property owner, but two or more owners of private property abutting the road and the owners of any easements recorded in the municipal land records of the town in which the road is located granting a right to cross the road in order to access their property.

§ 2702. PRIVATE ROAD MAINTENANCE

(a) For the purposes of this section, the term "maintenance" shall include activities related to the upkeep of a private road in its existing condition or as necessary to allow safe passage on a private road within its existing scope of use and shall not be construed to include any expansions of or improvements to a private road.

(b) In the absence of any other agreement for the maintenance of a private road, including covenants, requirements contained in deeds, and state or local permits, the owners of the property abutting a private road and the holders of recorded easements with a right to use a private road shall divide reasonable maintenance costs commensurate with their use of the private road.

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 Senate propose to the House to amend the bill as recommended by the Committee on Transportation?, Senator Scott requested and was granted leave to withdraw the proposal of amendment.

Thereupon, pending the question, Shall the bill be read the third time?, Senator White, moved that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE FINDINGS

The general assembly finds that:

(1) The current Fannie Mae appraisal form contains a section for the appraiser to comment on off-site improvements — including private streets — and to indicate whether the improvements are publicly or privately maintained. If a property is located on a community-owned or privately owned and maintained street, Fannie Mae requires a legally enforceable agreement or covenant for maintenance of the street.

(2) On January 31, 2008, Fannie Mae issued Announcement 08-01, which specifies that Fannie Mae will permit the delivery of mortgage loans for properties for which there is no such maintenance agreement or covenant, provided that the property is located in a state that has statutory provisions defining the responsibilities of property owners for the maintenance and repair of private streets.

(3) Since the mortgage crisis, Fannie Mae has become stricter in its underwriting standards and in enforcing the private street maintenance agreement requirement. Because the ability to sell mortgages to Fannie Mae on the secondary market is critical to most mortgage lenders, this has delayed mortgage closings and created uncertainty for Vermont homeowners throughout the state.

Sec. 2. PRIVATE ROAD MAINTENANCE AGREEMENT STUDY

(a) A committee consisting of two members of the public appointed by the governor, a representative of the Vermont Bankers Association, a representative of the Vermont League of Cities and Towns, and the commissioner of banking, insurance, securities, and health care administration or designee is established to study the creation of default statutory requirements defining the responsibilities of property owners for the

maintenance and repair of private roads and to formulate recommended legislation.

(b) For attendance at committee meetings, the members of the committee appointed by the governor shall be reimbursed at the per diem rate set forth in 32 V.S.A. § 1010(b) and for their actual and necessary mileage expenses.

(c) The committee shall report its findings and recommended legislation to the senate committees on finance and on transportation and to the house committee on commerce and economic development no later than January 15, 2011.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

Which was agreed to.

Thereupon, the pending question, Shall the bill read the third time?, was agreed to.

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.

House Proposal of Amendment Concurred In

J.R.S. 47.

House proposal of amendment to Senate bill 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.

Was taken up.

The House proposes to the Senate to amend the resolution by striking the second ***Resolved*** clause and insert in lieu thereof the following:

Resolved: That the Secretary of State be directed to send a copy of this resolution to the United States Secretary of State, the Order of Saint Andrew the Apostle Archons of the Ecumenical Patriarchate in New York City, and the Vermont Congressional Delegation.

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

Message from the House No. 83

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

Mr. President:

I am directed to inform the Senate that:

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

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.

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

Rules Suspended; Report of Committee of Conference; Consideration Postponed

H. 790.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to capital construction and state bonding.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

H. 790. An act relating to capital construction and state bonding.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Capital Appropriations * * *

Sec. 1. STATE BUILDINGS

The following sums are appropriated in total to the department of buildings and general services, and the commissioner is authorized to direct funds

appropriated in this section to the projects contained in this section; however, no project shall be canceled unless the chairs of the senate committee on institutions and the house committee on corrections and institutions are notified before that action is taken. The individual allocations in this section are estimates only.

(1) Statewide, 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: 500,000

(5) Statewide elevator repairs and upgrades: 350,000

(6) Statewide, major maintenance. Of this amount, up to 400,000 may be expended for window replacement at the Waterbury complex: 8,025,579

(7) Statewide, major maintenance, VT information centers: 100,000

(8) Statewide: BGS engineering and architectural project costs: 2,465,785

(9) Statewide physical security enhancements: 100,000

(10) Montpelier, 116 State St., restore building envelope: 750,000

(11) Montpelier, 133 State St., infrastructure repair: 1,250,000

(12) Montpelier, 120 State St., replace heating system 750,000

(13) Waterbury, steamline extension: 700,000

(14) Waterbury, state office complex fire alarm panels and door holders: 250,000

(15) Springfield, state office building, HVAC upgrade: 500,000

(16) Bennington, courthouse and state office building: 6,958,340

(17) Burlington, 32 Cherry St., HVAC upgrades: 500,000

(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, geothermal energy project: 2,000,000

(20) Montpelier, for the secretary of state, for renovations and code compliance at 128 State Street, including the third floor, and necessary fit-up at 14/16 Baldwin St: 300,000

(21) Montpelier, state house, renovate and refurnish up to three house committee rooms, chosen by the speaker of the house, as the first step in making better use of existing space. By January 1, 2011, the joint rules committee shall consider restoring the Ethan Allen room to public use: 100,000

(22) For Burlington International Airport to continue the process of planning and designing a new aviation technical training center: 150,000

Total Appropriation – Section 1 $26,774,704

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 $4,500,000 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 30 V.S.A. § 8079 and Sec. 4 of No. 78 of the Acts of the 2009 Adj. Sess. (2010) as amended by this act.

(c) The sum of $1,456,280 is appropriated to the department of information and innovation for Vermont integrated eligibility work flow system (VIEWS).

Total Appropriation – Section 2 $6,056,280

Sec. 3. HUMAN SERVICES

The following sums are appropriated in total to the department of buildings and general services for the agency of human services for the projects described in this section.

(1) Health laboratory design. Site acquisition, permitting, and construction documents for co-location of the 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

Total Appropriation – Section 3 $5,435,000

Sec. 4. JUDICIARY

The sum of $200,000 is appropriated to the department of buildings and general services to design the replacement of the electric boiler and HVAC system, including an upgrade to a renewable energy system, and to reconfigure office space in the Barre district court and office building.

Total Appropriation – Section 4 $200,000

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) 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: 6,355,111

Total Appropriation – Section 7 $7,000,000

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.

Total Appropriation – Section 8 $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.

Total Appropriation – Section 9 $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: 200,000

(C) Middlebury, pump station work: 450,000

(D) Montpelier, several areas of the city: 138,500

(E) Proctor sewer system rehabilitation: 32,500

(F) Springfield, several areas: 374,000

(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 $100,000 of this appropriation to work with the Vermont youth conservation corps on appropriate ecosystem restoration and protection projects: 1,900,000

(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 sum is appropriated to the agency of natural resources for the department of forests, parks and recreation for 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. Up to $100,000 of these funds may be used to work with the Vermont youth conservation corps on appropriate forests, parks and recreation projects: 2,500,000

(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

(4) Bald Hill emergency dam repair: 70,000

(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 $11,208,860

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

(3) For infrastructure improvements at farmers' markets which are members of the Vermont farmers' markets association: 25,000

Total Appropriation – Section 16 $1,700,000

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.

Total Appropriation – Section 18 $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: 170,000

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) evaluate its current applications for building of affordable housing and give priority to encouraging and planning transitional and supportive housing for offenders reentering the community and persons with substance abuse problems, including public inebriates. The board and agency of human services shall collaborate to conduct outreach to and build partnerships among housing and human services providers. The agency of human services shall work to provide necessary support services for residents of these housing projects;

(3) 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 $3,590,000 of the state's private use 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;

(4) 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;

(5) leverage federal and private funds to the maximum extent feasible; and

(6) 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

(14) of the amount appropriated by Sec. 10(k) of No. 147 of the Acts of 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: 247,802.15

(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

(19) 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. 1(7) of No. 147 of the Acts of 2005 Adj. Sess. (2006) for repairs to Vermont Veterans Home Heat Distribution System: 7,374.00

(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

(31) of the amount appropriated by Sec. 1 of No. 43 of the Acts of 2009 for VSH planning: 495,604.60

(32) of the amount appropriated by Sec. 4(a) of No. 200 of the Acts of the 2007 Adj. Sess. (2008) for a VSH feasibility study: 246,625.50

(33) of the amount appropriated by Sec. 3(b)(1)(A) of No. 43 of the Acts of 2005 for VSH futures planning: 28,000.40

Total Reallocations and Transfers – Section 23 $2,355,032.80

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.

Total Revenues – Section 24 $73,825,000

* * * 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 $1.00, and to enter into a ground lease with the University of Vermont for $1.00 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 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.

(e) 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).

(f) 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, the secretary of agriculture, food and markets, 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 house and senate committees on natural resources and energy, 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 provide electricity or heat or both, to both state buildings and a portion of the city. If needed, the commissioner is authorized to sign a letter of intent which would broadly describe the general terms for the state's participation in the project, and 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) The commissioner of buildings and general services may use up to $400,000 of unexpended FY10 funds allocated for major maintenance and $400,000 of funds allocated for major maintenance in FY11 for:

(1) up to $600,000 for 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.

(d) 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. chapter 137 is amended to read:

CHAPTER 137. BUILDING COMMUNITIES GRANTS

§ 5601. BUILDING COMMUNITIES GRANTS

(a) The purpose of this chapter is to establish grants to help communities preserve important historic buildings and enhance community facilities. Therefore, in order to make it easy for communities to apply, the board or department which administers a grant program under this chapter shall work with other administrators of building communities grants to develop a standard application form which:

(1) describes the application process and includes clear instructions and examples to help applicants complete the form;

(2) includes an opportunity for a community to demonstrate its ability to generate ~~required~~ one-for-one matching funds from local fundraising or other efforts;

(3) includes a summary of each of the other grants, their deadlines, and a statement that no community shall apply for more than one grant under this chapter for the same project in the same calendar year; and

(4) may include supplements specific to an individual grant.

* * *

§ 5602. HISTORIC PRESERVATION GRANT PROGRAM

There is established an historic 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 ~~on a one-for-one matching basis~~ for restoring buildings and structures.

§ 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 on a one-for-one matching basis~~ barn owners for restoring historic barns.

§ 5604. CULTURAL FACILITIES GRANT PROGRAM

(a) There is established a cultural facilities competitive grant program to be administered by the Vermont arts council ~~and made available on a one-for-one~~

~~matching basis with funds raised from nonstate sources~~. No portion of a grant shall be used to pay salaries.

(b) Grants shall be awarded on a competitive basis. In recommending grant awards, a review panel shall give priority consideration to applicants who demonstrate greater financial need or are in underserved areas of the state.

§ 5605. RECREATIONAL FACILITIES GRANT PROGRAM

(a) Creation of program. There is created a recreational facilities grant program to be the successor to and a continuation of the recreational and educational facilities grant program established in Sec. 34 of No. 43 of the Acts of 2005 to provide competitive grants to municipalities as defined in chapter 117 of Title 24 and to nonprofit organizations for capital costs associated with the development and creation of community recreational opportunities in Vermont communities. The program is authorized to award matching grants of up to $25,000.00 per project~~, provided that grant funds shall be awarded only when evidence is presented by a successful applicant that three dollars have been raised from nonstate sources for every one dollar awarded under this program~~. The required match shall be met through dollars raised and not through in-kind services.

* * *

§ 5606. HUMAN SERVICES AND EDUCATIONAL FACILITIES COMPETITIVE GRANT PROGRAM

(a) Creation of program. There is created a human services and educational facilities grant program to be the successor to and a continuation of the human services competitive grant program established in Sec. 36 of No. 43 of the Acts of 2005 to provide competitive grants to municipalities as defined in chapter 117 of this title and to nonprofit organizations for capital costs associated with the major maintenance, renovation, or development of facilities for the delivery of human services and health care or for the development of educational opportunities in Vermont communities. The program is authorized to award matching grants of up to $25,000.00 per project~~, provided that grant funds shall be awarded only when evidence is presented by a successful applicant that at least three dollars have been raised from nonstate sources for every dollar awarded under this program~~ The required match shall be met through dollars raised and not through in-kind services.

* * *

* * * 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 or remotely operated vehicle diving at the preserve. In this subsection, "remotely operated vehicle diving" means using an unstaffed underwater robot to view a preserve site;

(2) ~~only~~ vessels 35 feet in length or less~~, and only those engaged in diving,~~ may secure to a buoy;

(3) vessels 50 feet in length or less and piloted by a U.S. Coast 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 for characterization or assessment 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, the house committee on ways and means, 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 are 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~~ $50,091 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 general assembly supports the continued development of a secure recovery residence as a next step to replace a function of the state hospital. 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 commissioner of buildings and general services shall make funds necessary for this work available from funds allocated in the past for planning and development of a secure recovery residence pursuant to subsection (c) of this section and for replacement of Vermont state hospital inpatient beds pursuant to subsection (d) of this section. These funds shall be replaced with up to $10,000,000 in federal case load reserve funds, if available.

(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.

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. 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 an upload speed of at least one megabit per second, and combined download and upload speeds equal to or greater than five megabits per second. However, the Vermont telecommunications authority may waive the one megabit upload speed requirement if it determines this is in the best interest of the consumers.

(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. 41. Sec. 4(b) of No. 78 of the Acts of the 2009 Adj. Sess. (2010) 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.

Sec. 42. COMMUNITY SAFETY AND CORRECTIONS TASK FORCE

(a) There is created a task force made up of one representative of the department of corrections chosen by the commissioner of corrections, two representatives of municipal governments chosen by the Vermont league of cities and towns, one member of the judiciary chosen by the administrative judge, one prosecutor chosen by the association of Vermont states attorneys and sheriffs, one representative of law enforcement chosen by the association of the Vermont police chiefs association, one representative of the community justice centers chosen by the community justice center of Vermont. The commissioner of corrections shall call the committee together and preside until the election of a chair. The department of corrections shall provide staff services to the committee.

(b) The task force shall consider the best ways to provide correctional services within the correctional system and within the community. The task force shall:

(1) Inventory overnight and residential facilities both in the corrections system and in the community for persons incapacitated due to overuse of alcohol or drugs, persons at risk of committing or who have committed a crime and who have a mental disability, persons at risk of committing or who have committed a crime and who have a substance abuse problem, detainees who need temporary housing, people reentering the community who need transitional housing after serving time in a correctional facility, and persons who have been convicted of a crime and are serving an alternate sentence in the community.

(2) Consider:

(A) the need for more bed capacity within the correctional system and whether the need can be met by building additional correctional capacity, reorganization of existing facilities, better use of community facilities for persons who may be lodged in a corrections facility for lack of a more appropriate space, additional supported and nonsupported community capacity, or some combination of these;

(B) ways to reduce the need for incarcerative beds through use of alternative sentencing and provision of community services to reduce crime, including consideration that the number of people on furlough, probation, or parole in a particular municipality does not overburden that municipality. A key benchmark to be considered is the ratio of supervisees to the municipality's total population. The task force shall also consider recommendations on how to minimize the related impact on the community.

(3) Report on the progress of its work to the general assembly on or before January 15, 2011, and make a final report with recommendations to the general assembly on or before November 15, 2011.

(c) The task force shall report its progress to the corrections oversight committee at least twice during the summer and fall of 2010.

Sec. 43. SHADOW LAKE FISH AND WILDLIFE ACCESS AREA; RIGHT OF WAY; COMMISSIONER OF BUILDINGS AND GENERAL SERVICES

(a) The commissioner of fish and wildlife shall negotiate an agreement with Junnie and Nellie Peck, who own land adjacent to the Shadow Lake fishing access. The agreement shall provide an easement across the land owned by the department of fish and wildlife to enable the landowners to access their residence. In return, the landowners shall provide to the state of Vermont a right of first refusal on the land and shall retire the development rights on the land.

(b) The commissioner of buildings and general services shall appraise the value of development rights and right of first refusal on the Junnie and Nellie Peck property adjacent to the Shadow Lake fishing access.

Sec. 44. Sec. 13 of No. 78 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

Sec. 13. FARM-TO-PLATE INVESTMENT PROGRAM

The funds received pursuant to Sec. 7(a) 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. 45. 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. 46. EFFECTIVE DATE

This act shall take effect on passage.

PHILIP B. SCOTT
JOHN F. CAMPBELL
RICHARD T. MAZZA

Committee on the part of the Senate

ALICE M. EMMONS
LINDA K. MYERS
JOHN S. RODGERS

Committee on the part of the House

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, on motion of Senator Shumlin consideration of the Report of the Committee of Conference was postponed.

Rules Suspended; Proposals of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposal of Amendment

H. 778.

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

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

Was taken up for immediate consideration.

Senator White, for the Committee on Government Operations, 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. 3 V.S.A. § 455(a)(4)(E) is added to read:

(E) For group A, C, or F members who retire on or after July 1, 2012, an increase in compensable hours in any year used to calculate average final compensation that exceeds 120 percent of average compensable hours, shall be excluded from that year when calculating average final compensation.

Sec. 2. 3 V.S.A. § 455(a)(26) and (27) are added to read:

(26) "Average compensable hours" shall mean average annual compensable hours for a period of five full years immediately preceding the years used to determine average final compensation. If a member's compensable hours in any year used to calculate average final compensation exceeds 120 percent of average compensable hours, the compensation for hours worked in excess of 120 percent shall be excluded from average final compensation for that particular year. Average compensable hours form the benchmark to preclude abuses by implementing a 20-percent limit on increases in compensable hours in any year used to calculate average final compensation.

(27) "Compensable hours" shall mean all hours worked during a fiscal year and shall include the following types of paid time: regular hours worked, overtime hours worked, and paid leave.

Sec. 2a. 3 V.S.A. § 470 is amended to read:

§ 470. POST-RETIREMENT ADJUSTMENTS TO RETIREMENT ALLOWANCES

(a) For group A, group C, and group D members, as of June 30 in each year, commencing June 30, 1972, a determination shall be made of the increase ~~or decrease~~, to the nearest one-tenth of a percent, in the ratio of the average of the Consumer Price Index for the month ending on that date to the average of said index for the month ending on June 30, 1971, or the month ending on June 30 of the most recent year subsequent thereto as of which an increase ~~or decrease~~ in retirement allowance was made. If the increase ~~or decrease~~, so determined, equals or exceeds one percent, the retirement allowance of each beneficiary in receipt of an allowance for at least one year on the next following December 31st shall be increased ~~or decreased, as the case may be,~~ by an equal percentage. Such increase or decrease shall commence on the January 1st immediately following such December 31st. Such percentage increase ~~or decrease~~ shall also be made in the retirement allowance payable to a beneficiary in receipt of an allowance under an optional election, provided the member on whose account the allowance is payable and such other person shall have received a total of at least 12 monthly payments by such December 31st. The maximum adjustment of any retirement allowance resulting from any such determination shall be five percent and the minimum shall be one percent, and no retirement allowance shall be reduced below the amount payable to the beneficiary without regard to the provisions of this section.

(b) For group F members, as of June 30 in each year, commencing January 1, 1991, a determination shall be made of the increase ~~or decrease~~, to the nearest one-tenth of a percent of the Consumer Price Index for the preceding fiscal year. The retirement allowance of each beneficiary in receipt of an allowance for at least one year on the next following December 31st shall be increased ~~or decreased, as the case may be,~~ by an amount equal to one-half of the percentage increase ~~or decrease~~. Commencing January 1, 2014, the retirement allowance of each beneficiary who was an active contributing member of the group F plan on or after June 30, 2008, and who retires on or after July 1, 2008, shall be increased ~~or decreased, as the case may be,~~ by an equal percentage of the Consumer Price Index for the preceding year. The increase ~~or decrease~~ shall commence on the January 1st immediately following such December 31st. The adjustment shall apply to group F members receiving an early retirement allowance only in the year following attainment of age 62, provided the member has received benefits for at least 12 months as of December 31 of the year preceding any January adjustment. The maximum adjustment of any retirement allowance resulting from any such determination shall be five percent and the minimum shall be one percent, and no retirement

allowance shall be reduced below the amount payable to the beneficiary without regard to the provisions of this section.

* * *

(e) No adjustment shall be made pursuant to this section in January if the Consumer Price Index as of the previous June 30th is a negative rate.

Sec. 3. 3 V.S.A. § 522 is amended to read:

§ 522. VERMONT PENSION INVESTMENT COMMITTEE

(a) There is created the Vermont pension investment committee to ~~be comprised of six~~ comprise seven members as follows:

(1) one member and one alternate, who may or may not be trustees of the board of the Vermont state employees' retirement system, elected by the employee and retiree members of that board;

(2) one member and one alternate, who may or may not be trustees of the board of the state teachers' retirement system of Vermont, elected by the employee and retiree members of that board;

(3) one member and one alternate, who may or may not be trustees of the board of the Vermont municipal employees' retirement system, elected by the municipal employee and municipal official members of that board;

(4) two members and one alternate, appointed by the governor; ~~and~~

(5) the state treasurer or designee; and

(6) one member, appointed by the other six voting members of the committee, who shall serve as chair of the committee and at the pleasure of the committee.

* * *

(d) The chair of the Vermont pension investment committee shall be a nonvoting member, except in the case of a tie vote.

(e) The ~~members of the~~ Vermont pension investment committee shall elect a ~~chair and~~ vice chair from among its members.

~~(e)~~(f) Four members of the committee shall constitute a quorum. If a member is not in attendance, the alternate of that member shall be eligible to act as a member of the committee during the absence of the member. Four concurring votes shall be necessary for a decision of the committee at any meeting of the committee. The committee shall be attached to the office of the state treasurer for administrative support, and the expenses of the committee and the treasurer's office in support of the committee shall be paid proportionately from the funds of the three retirement systems and any

individual municipalities that have been allowed to invest their retirement funds pursuant to subsection 523(a) of this title.

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

~~(g)~~(h) The committee shall provide an annual report to the respective authorities responsible for electing and appointing members and alternates regarding attendance at committee meetings and relevant educational programs attended.

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

Sec. 4. 3 V.S.A. § 523 is amended to read:

§ 523. VERMONT PENSION INVESTMENT COMMITTEE; DUTIES

(a) The Vermont pension investment committee shall be responsible for the investment of the assets of the state teachers' retirement system of Vermont, the Vermont state employees' retirement system, and the Vermont municipal employees' retirement system pursuant to section 472 of this title, ~~section~~ 16 V.S.A. § 1943 ~~of Title 16~~, and ~~section~~ 24 V.S.A. § 5063 ~~of Title 24~~. The committee shall strive to maximize total return on investment, within acceptable levels of risk for public retirement systems, in accordance with the standards of care established by the prudent investor rule under ~~chapter 147 of Title 9~~ 14A V.S.A. § 902. The committee may, in its discretion, subject to approval by the attorney general, also enter into agreements with municipalities administering their own retirement systems to invest retirement funds for those municipal pension plans. The state treasurer shall serve as the custodian of the funds of all three retirement systems.

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

(c) The committee shall keep a record of all its proceedings which shall be open for public inspection.

(d) The committee ~~may~~ shall formulate policies and procedures deemed necessary and appropriate to carry out its functions~~. Notwithstanding the~~

~~foregoing, the committee shall consider, consistent with chapter 147 of Title 9, subsection 472a(b) of this title, 16 V.S.A. § 1943a(b), and 24 V.S.A. § 5063a(b), investing up to $17,500,000.00 with the Vermont housing finance agency to assist in its homeownership financing programs for persons and families of low and moderate income as defined in 10 V.S.A. § 601(11),~~ including a written statement of the responsibilities of and expectations for the chair of the committee.

* * *

Sec. 5. 16 V.S.A. § 1937(c)(1)(C), as amended by Sec. 3 of No. 74 of the Acts of the 2010 General Assembly, is amended to read:

(C) 1-2/3 percent of the member's average final compensation multiplied by years of creditable service, two of which shall be membership service, on or after July 1, 2010, to a maximum of 53.34 percent of average final compensation;

Sec. 6. 16 V.S.A. § 1944(c)(12)(A), as amended by Sec. 6 of No. 74 of the Acts of the 2010 General Assembly, is amended to read:

(12)(A) Payment of a portion of the cost of health and medical benefits provided by subsection 1942(p) of this title for retired members shall be made from the medical account created by subsection (i) of this section. The board shall determine the total costs of the applicable standard plan for a retired member and of the applicable standard plan for a retired member and spouse, and the board shall pay the following portion of those costs:

(i) 80 percent of the cost for a retired member who has at least 10 years of creditable service as of July 1, 2010, and fewer than 25 years of creditable service at the time of retirement;

(ii) 80 percent of the cost for a retired member and spouse if the retired member has at least 10 years of creditable service as of July 1, 2010, and at least 25 years of creditable service at the time of retirement;

(iii) 60 percent of the cost for a retired member who has fewer than 10 years of creditable service as of July 1, 2010, and 15 or more but fewer than 20 years of creditable service at the time of retirement;

(iv) 70 percent of the cost for a retired member who has fewer than 10 years of creditable service as of July 1, 2010, and 20 or more but fewer than 25 years of creditable service at the time of retirement; and

(v) 80 percent of the cost for a retired member and spouse if:

(I) the retired member has 10 or more but fewer than 15 years of creditable service as of July 1, 2010, and at least 25 years of creditable service at the time of retirement; or

(II) the retired member has 15 or more but fewer than 25 years of creditable service as of July 10, 2010, and at least 10 additional years of creditable service at the time of retirement; or

(III) the retired member has 25 or more but fewer than 30 years of creditable service as of July 1, 2010, and at least 35 years of creditable service at the time of retirement; or

(IV) the retired member has at least 30 years of creditable service as of July 1, 2010, and at least five additional years of creditable service at the time of retirement; and

(V) the service was not purchased, restored, granted, or transferred on or after July 1, 2010.

Sec. 6a. 16 V.S.A. § 1949 is amended to read:

§ 1949. POST-RETIREMENT ADJUSTMENTS TO RETIREMENT ALLOWANCES

(a) For all group A members, as of June 30 in each year, beginning June 30, 1972, the board shall determine the increase ~~or decrease~~, to the nearest one-tenth of one percent, in the ratio of the average of the consumer price index for the month ending on that date to the average of the index for the month ending on June 30, 1971, or the month ending on June 30 of the most recent year subsequent thereto as to which an increase ~~or decrease~~ in retirement allowance was made. If the increase ~~or decrease~~, so determined, equals or exceeds one percent, the retirement allowance of each beneficiary in receipt of an allowance for at least one year on the next following December 31 shall be increased ~~or decreased, as the case may be,~~ by an equal percentage. The increase ~~or decrease~~ shall begin on January 1 immediately following that December 31. An equivalent percentage increase or decrease shall also be made in the retirement allowance payable to a beneficiary in receipt of an allowance under an optional election, provided the member on whose account the allowance is payable and such other person shall have received a total of at least 12 monthly payments by such December 31. The maximum adjustment of any retirement allowance in any calendar year resulting from any determination under this section shall be five percent and the minimum shall be one percent, and no retirement allowance shall be reduced below the amount payable to the beneficiary without regard to the provisions of this section.

* * *

(d) No adjustment shall be made pursuant to this section in January if the Consumer Price Index as of the previous June 30th is a negative rate.

Sec. 6b. 16 V.S.A. § 1949(b), as amended by Sec. 7 of No. 74 of the Acts of the 2010 General Assembly, is amended to read:

(b) For group C members, as of June 30 in each year, commencing June 30, 1981, a determination shall be made of the increase ~~or decrease~~, to the nearest one-tenth of a percent of the consumer price index for the preceding fiscal year. The retirement allowance of each beneficiary in receipt of an allowance for at least one year on the next following December 31st shall be increased ~~or decreased, as the case may be,~~ by an amount equal to one-half of the percentage increase ~~or decrease~~. The increase ~~or decrease~~ shall commence on the January 1st immediately following that December 31st. The adjustment shall apply to group C members having attained the age of 57 or completed at least 25 years of creditable service as of June 30, 2010, and receiving an early retirement allowance only in the year following attainment of age 62, and shall apply to group C members not having attained the age of 57 or having completed at least 25 years of creditable service as of June 30, 2010, and receiving an early retirement allowance only in the year following the member's attainment of age 65 or when the combination of the member's age and years of creditable service totals 90, provided the member has received benefits for at least 12 months as of December 31 of the year preceding any January adjustment. The maximum adjustment of any retirement allowance resulting from any such determination shall be five percent and the minimum shall be one percent, and no retirement allowance shall be reduced below the amount payable to the beneficiary without regard to the provisions of this section.

Sec. 7. 16 V.S.A. § 1949(b), as amended by Sec. 7 of No. 74 of the Acts of the 2010 General Assembly, is amended to read:

(b) For group C members, as of June 30 in each year, commencing June 30, 1981, a determination shall be made of the increase or decrease, to the nearest one-tenth of a percent of the consumer price index for the preceding fiscal year. The retirement allowance of each beneficiary in receipt of an allowance for at least one year on the next following December 31st shall be increased or decreased, as the case may be, by an amount equal to one-half of the percentage increase or decrease. The increase or decrease shall commence on the January 1st immediately following that December 31st. The adjustment shall apply to group C members having attained the age of 57 or completed at least 25 years of creditable service as of June 30, 2010, and receiving an early retirement allowance only in the year following attainment of age 62, and shall apply to group C members not having attained the age of 57 or having

completed at least 25 years of creditable service as of June 30, 2010, and receiving an early retirement allowance only in the year following the member's attainment of age 65 ~~or when the combination of the member's age and years of creditable service totals 90~~, provided the member has received benefits for at least 12 months as of December 31 of the year preceding any January adjustment. The maximum adjustment of any retirement allowance resulting from any such determination shall be five percent and the minimum shall be one percent, and no retirement allowance shall be reduced below the amount payable to the beneficiary without regard to the provisions of this section.

Sec. 8. VERMONT MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM; BOARD; FINDINGS

The general assembly finds that the current composition of the board of the Vermont municipal employees' retirement system is inequitable because municipal employees are not adequately represented on the board. The general assembly intends to investigate options for modifying the composition of the board.

Sec. 9. 24 V.S.A. § 5064(b) is amended to read:

(b) Member savings. Contributions deducted from the compensation of members together with any member contributions transferred from a predecessor system shall be accumulated in the fund and separately recorded for each member. Contributions shall be made by group A members at the rate of three percent of earnable compensation. Contributions shall be made by group B members at the rate of five percent of earnable compensation. Contributions shall be made by group C and group D members at a rate of 11 percent of earnable compensation. Additionally, if an employee remains in group C and is employed by an employer who elects to revoke its group C membership in accordance with subsection 5068(f) of this title, the rate established in this subsection will be adjusted. This adjustment shall be determined by subtracting the group B rate, or if not applicable, the group A rate determined in subdivision (c)(1) of this section from the group C rate determined in subdivision (c)(1) of this section. ~~Notwithstanding the provisions of this subsection, for the period July 1, 2000 through June 30, 2010, contributions shall be made by group A members at the rate of two and one-half percent of earnable compensation, by group B members at the rate of four and one-half percent of earnable compensation, and by group C members at the rate of nine percent of earnable compensation.~~

* * *

Sec. 10. VERMONT MUNICIPAL RETIREMENT FUND

Notwithstanding the provisions of 24 V.S.A. § 5064(b), for the period July 1, 2010 through June 30, 2011, contributions shall be made by group A members at the rate of two and one-half percent of earnable compensation, by group B members at the rate of four and one-half percent of earnable compensation, and by group C members at the rate of nine percent of earnable compensation.

Sec. 10a. 24 V.S.A. § 5067 is amended to read:

§ 5067. COST OF LIVING ADJUSTMENTS

(a) For members, as of June 30 in each year, commencing June 30, 1987, a determination shall be made of the increase ~~or decrease~~, to the nearest one-tenth of a percent of the Consumer Price Index for the preceding fiscal year. The retirement allowance of each beneficiary in receipt of an allowance for at least one year on the next following December 31 shall be increased ~~or decreased, as the case may be,~~ by an amount equal to one-half of the percentage increase ~~or decrease~~. The increase ~~or decrease~~ shall commence on the January 1 immediately following such December 31. The adjustment shall apply to members of the group A, B, or D plans receiving an early retirement allowance only in the year following attainment of normal retirement age, provided the member has received benefits for at least 12 months as of December 31 of the year preceding any January adjustment. The maximum adjustment of any retirement allowance resulting from any such determination shall be two percent for group A members and three percent for group B, C, and D members, and no retirement allowance shall be reduced below the amount payable to the beneficiary without regard to the provisions of this section.

* * *

(e) No adjustment shall be made pursuant to this section in January if the Consumer Price Index as of the previous June 30th is a negative rate.

Sec. 11. STATE TEACHERS' RETIREMENT SYSTEM OF VERMONT; MEMBERSHIP

Notwithstanding any provision of law to the contrary, amendments to 16 V.S.A. § 1931(20) in Sec. 5 of No. 24 of the Acts of 2009 (retirement system available only to licensed teachers) shall not apply to:

(1) Any person who was a member of the state teachers' retirement system of Vermont under chapter 55 of Title 16 on June 30, 2009.

(2) Any person who signed a contract prior to July 1, 2009, for employment in an independent school beginning on that date if the contract

included provisions ensuring membership in the state teachers' retirement system of Vermont under chapter 55 of Title 16.

Sec. 12. STATE TEACHERS' RETIREMENT SYSTEM OF VERMONT; CREDITABLE SERVICE

Any member of the state teachers' retirement system of Vermont whose creditable service is greater than 24.90 but less than 25.00 years on June 30, 2010, shall be granted, upon written approval from the member, sufficient creditable service to equal 25.00 years on June 30, 2010.

Sec. 13. REPEAL

(a) Sec. 1, 3 V.S.A. § 455(a)(4)(E), and Sec. 2, 3 V.S.A. § 455(a)(26) and (27), shall be repealed on July 1, 2014.

(b) Secs. 2a, 6a, 6b, and 10 shall be repealed on July 1, 2011, and the amendments to the statutory provision set forth in those Secs. shall revert to the language in existence prior to the effective date of this act, except to the extent that 16 V.S.A. § 1949(b) has otherwise been amended by Sec. 7 of this Act.

Sec. 14. EFFECTIVE DATES

This section and Sec. 11 of this act shall take effect upon passage.

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

Senator Shumlin, for the Committee on Appropriations, to which the bill was referred, reported the bill without recommendation.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the Senate propose to the House to amend the bill as proposed by the Committee on Government Operations?, Senator White requested and was granted leave to withdraw the proposal of amendment.

Thereupon, Senator White moved that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 3 V.S.A. § 455(a)(4)(E) is added to read:

(E) For group A, C, or F members who retire on or after July 1, 2012, an increase in compensable hours in any year used to calculate average final compensation that exceeds 120 percent of average compensable hours, shall be excluded from that year when calculating average final compensation.

Sec. 2. 3 V.S.A. § 455(a)(26) and (27) are added to read:

(26) "Average compensable hours" shall mean average annual compensable hours for a period of five full years immediately preceding the years used to determine average final compensation. If a member's compensable hours in any year used to calculate average final compensation exceeds 120 percent of average compensable hours, the compensation for hours worked in excess of 120 percent shall be excluded from average final compensation for that particular year. Average compensable hours form the benchmark to preclude abuses by implementing a 20-percent limit on increases in compensable hours in any year used to calculate average final compensation.

(27) "Compensable hours" shall mean all hours worked during a fiscal year and shall include the following types of paid time: regular hours worked, overtime hours worked, and paid leave.

Sec. 2a. 3 V.S.A. § 470 is amended to read:

§ 470. POST-RETIREMENT ADJUSTMENTS TO RETIREMENT ALLOWANCES

(a) For group A, group C, and group D members, as of June 30 in each year, commencing June 30, 1972, a determination shall be made of the increase ~~or decrease~~, to the nearest one-tenth of a percent, in the ratio of the average of the Consumer Price Index for the month ending on that date to the average of said index for the month ending on June 30, 1971, or the month ending on June 30 of the most recent year subsequent thereto as of which an increase ~~or decrease~~ in retirement allowance was made. If the increase ~~or decrease~~, so determined, equals or exceeds one percent, the retirement allowance of each beneficiary in receipt of an allowance for at least one year on the next following December 31st shall be increased ~~or decreased, as the case may be,~~ by an equal percentage. Such increase or decrease shall commence on the January 1st immediately following such December 31st. Such percentage increase ~~or decrease~~ shall also be made in the retirement allowance payable to a beneficiary in receipt of an allowance under an optional election, provided the member on whose account the allowance is payable and such other person shall have received a total of at least 12 monthly payments by such December 31st. The maximum adjustment of any retirement allowance resulting from any such determination shall be five percent and the minimum shall be one percent, and no retirement allowance shall be reduced below the amount payable to the beneficiary without regard to the provisions of this section.

(b) For group F members, as of June 30 in each year, commencing January 1, 1991, a determination shall be made of the increase ~~or decrease~~, to the nearest one-tenth of a percent of the Consumer Price Index for the

preceding fiscal year. The retirement allowance of each beneficiary in receipt of an allowance for at least one year on the next following December 31st shall be increased ~~or decreased, as the case may be,~~ by an amount equal to one-half of the percentage increase ~~or decrease~~. Commencing January 1, 2014, the retirement allowance of each beneficiary who was an active contributing member of the group F plan on or after June 30, 2008, and who retires on or after July 1, 2008, shall be increased ~~or decreased, as the case may be,~~ by an equal percentage of the Consumer Price Index for the preceding year. The increase ~~or decrease~~ shall commence on the January 1st immediately following such December 31st. The adjustment shall apply to group F members receiving an early retirement allowance only in the year following attainment of age 62, provided the member has received benefits for at least 12 months as of December 31 of the year preceding any January adjustment. The maximum adjustment of any retirement allowance resulting from any such determination shall be five percent and the minimum shall be one percent, and no retirement allowance shall be reduced below the amount payable to the beneficiary without regard to the provisions of this section.

* * *

(e) No adjustment shall be made pursuant to this section in January if the Consumer Price Index as of the previous June 30th is a negative rate.

Sec. 3. 3 V.S.A. § 522 is amended to read:

§ 522. VERMONT PENSION INVESTMENT COMMITTEE

(a) There is created the Vermont pension investment committee to ~~be comprised of six~~ comprise seven members as follows:

(1) one member and one alternate, who may or may not be trustees of the board of the Vermont state employees' retirement system, elected by the employee and retiree members of that board;

(2) one member and one alternate, who may or may not be trustees of the board of the state teachers' retirement system of Vermont, elected by the employee and retiree members of that board;

(3) one member and one alternate, who may or may not be trustees of the board of the Vermont municipal employees' retirement system, elected by the municipal employee and municipal official members of that board;

(4) two members and one alternate, appointed by the governor; ~~and~~

(5) the state treasurer or designee; and

(6) one member, appointed by the other six voting members of the committee, who shall serve as chair of the committee and at the pleasure of the committee.

* * *

(d) The chair of the Vermont pension investment committee shall be a nonvoting member, except in the case of a tie vote.

(e) The ~~members of the~~ Vermont pension investment committee shall elect a ~~chair and~~ vice chair from among its members.

~~(e)~~(f) Four members of the committee shall constitute a quorum. If a member is not in attendance, the alternate of that member shall be eligible to act as a member of the committee during the absence of the member. Four concurring votes shall be necessary for a decision of the committee at any meeting of the committee. The committee shall be attached to the office of the state treasurer for administrative support, and the expenses of the committee and the treasurer's office in support of the committee shall be paid proportionately from the funds of the three retirement systems and any individual municipalities that have been allowed to invest their retirement funds pursuant to subsection 523(a) of this title.

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

~~(g)~~(h) The committee shall provide an annual report to the respective authorities responsible for electing and appointing members and alternates regarding attendance at committee meetings and relevant educational programs attended.

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

Sec. 4. 3 V.S.A. § 523 is amended to read:

§ 523. VERMONT PENSION INVESTMENT COMMITTEE; DUTIES

(a) The Vermont pension investment committee shall be responsible for the investment of the assets of the state teachers' retirement system of Vermont, the Vermont state employees' retirement system, and the Vermont municipal employees' retirement system pursuant to section 472 of this title, ~~section~~ 16 V.S.A. § 1943 ~~of Title 16~~, and ~~section~~ 24 V.S.A. § 5063 ~~of Title 24~~. The committee shall strive to maximize total return on investment, within acceptable levels of risk for public retirement systems, in accordance with the standards of care established by the prudent investor rule under ~~chapter 147 of~~

~~Title 9~~ 14A V.S.A. § 902. The committee may, in its discretion, subject to approval by the attorney general, also enter into agreements with municipalities administering their own retirement systems to invest retirement funds for those municipal pension plans. The state treasurer shall serve as the custodian of the funds of all three retirement systems.

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

(c) The committee shall keep a record of all its proceedings which shall be open for public inspection.

(d) The committee ~~may~~ shall formulate policies and procedures deemed necessary and appropriate to carry out its functions~~. Notwithstanding the foregoing, the committee shall consider, consistent with chapter 147 of Title 9, subsection 472a(b) of this title, 16 V.S.A. § 1943a(b), and 24 V.S.A. § 5063a(b), investing up to $17,500,000.00 with the Vermont housing finance agency to assist in its homeownership financing programs for persons and families of low and moderate income as defined in 10 V.S.A. § 601(11),~~ including a written statement of the responsibilities of and expectations for the chair of the committee.

* * *

Sec. 5. 16 V.S.A. § 1937(c)(1)(C), as amended by Sec. 3 of No. 74 of the Acts of the 2010 General Assembly, is amended to read:

(C) 1-2/3 percent of the member's average final compensation multiplied by years of creditable service, two of which shall be membership service, on or after July 1, 2010, to a maximum of 53.34 percent of average final compensation;

Sec. 6. 16 V.S.A. § 1944(c)(12)(A), as amended by Sec. 6 of No. 74 of the Acts of the 2010 General Assembly, is amended to read:

(12)(A) Payment of a portion of the cost of health and medical benefits provided by subsection 1942(p) of this title for retired members shall be made from the medical account created by subsection (i) of this section. The board shall determine the total costs of the applicable standard plan for a retired member and of the applicable standard plan for a retired member and spouse, and the board shall pay the following portion of those costs:

(i) 80 percent of the cost for a retired member who has at least 10 years of creditable service as of July 1, 2010, and fewer than 25 years of creditable service at the time of retirement;

(ii) 80 percent of the cost for a retired member and spouse if the retired member has at least 10 years of creditable service as of July 1, 2010, and at least 25 years of creditable service at the time of retirement;

(iii) 60 percent of the cost for a retired member who has fewer than 10 years of creditable service as of July 1, 2010, and 15 or more but fewer than 20 years of creditable service at the time of retirement;

(iv) 70 percent of the cost for a retired member who has fewer than 10 years of creditable service as of July 1, 2010, and 20 or more but fewer than 25 years of creditable service at the time of retirement; and

(v) 80 percent of the cost for a retired member and spouse if:

(I) the retired member has 10 or more but fewer than 15 years of creditable service as of July 1, 2010, and at least 25 years of creditable service at the time of retirement; or

(II) the retired member has 15 or more but fewer than 25 years of creditable service as of July 10, 2010, and at least 10 additional years of creditable service at the time of retirement; or

(III) the retired member has 25 or more but fewer than 30 years of creditable service as of July 1, 2010, and at least 35 years of creditable service at the time of retirement; or

(IV) the retired member has at least 30 years of creditable service as of July 1, 2010, and at least five additional years of creditable service at the time of retirement; and

(V) the service was not purchased, restored, granted, or transferred on or after July 1, 2010.

Sec. 6a. 16 V.S.A. § 1949 is amended to read:

§ 1949. POST-RETIREMENT ADJUSTMENTS TO RETIREMENT ALLOWANCES

(a) For all group A members, as of June 30 in each year, beginning June 30, 1972, the board shall determine the increase ~~or decrease~~, to the nearest one-tenth of one percent, in the ratio of the average of the consumer price index for the month ending on that date to the average of the index for the month ending on June 30, 1971, or the month ending on June 30 of the most recent year subsequent thereto as to which an increase ~~or decrease~~ in retirement allowance was made. If the increase ~~or decrease~~, so determined,

equals or exceeds one percent, the retirement allowance of each beneficiary in receipt of an allowance for at least one year on the next following December 31 shall be increased ~~or decreased, as the case may be,~~ by an equal percentage. The increase ~~or decrease~~ shall begin on January 1 immediately following that December 31. An equivalent percentage increase or decrease shall also be made in the retirement allowance payable to a beneficiary in receipt of an allowance under an optional election, provided the member on whose account the allowance is payable and such other person shall have received a total of at least 12 monthly payments by such December 31. The maximum adjustment of any retirement allowance in any calendar year resulting from any determination under this section shall be five percent and the minimum shall be one percent, and no retirement allowance shall be reduced below the amount payable to the beneficiary without regard to the provisions of this section.

* * *

(d) No adjustment shall be made pursuant to this section in January if the Consumer Price Index as of the previous June 30th is a negative rate.

Sec. 6b. 16 V.S.A. § 1949(b), as amended by Sec. 7 of No. 74 of the Acts of the 2010 General Assembly, is amended to read:

(b) For group C members, as of June 30 in each year, commencing June 30, 1981, a determination shall be made of the increase ~~or decrease~~, to the nearest one-tenth of a percent of the consumer price index for the preceding fiscal year. The retirement allowance of each beneficiary in receipt of an allowance for at least one year on the next following December 31st shall be increased ~~or decreased, as the case may be,~~ by an amount equal to one-half of the percentage increase ~~or decrease~~. The increase ~~or decrease~~ shall commence on the January 1st immediately following that December 31st. The adjustment shall apply to group C members having attained the age of 57 or completed at least 25 years of creditable service as of June 30, 2010, and receiving an early retirement allowance only in the year following attainment of age 62, and shall apply to group C members not having attained the age of 57 or having completed at least 25 years of creditable service as of June 30, 2010, and receiving an early retirement allowance only in the year following the member's attainment of age 65 or when the combination of the member's age and years of creditable service totals 90, provided the member has received benefits for at least 12 months as of December 31 of the year preceding any January adjustment. The maximum adjustment of any retirement allowance resulting from any such determination shall be five percent and the minimum shall be one percent, and no retirement allowance shall be reduced below the

amount payable to the beneficiary without regard to the provisions of this section.

Sec. 7. 16 V.S.A. § 1949(b), as amended by Sec. 7 of No. 74 of the Acts of the 2010 General Assembly, is amended to read:

(b) For group C members, as of June 30 in each year, commencing June 30, 1981, a determination shall be made of the increase or decrease, to the nearest one-tenth of a percent of the consumer price index for the preceding fiscal year. The retirement allowance of each beneficiary in receipt of an allowance for at least one year on the next following December 31st shall be increased or decreased, as the case may be, by an amount equal to one-half of the percentage increase or decrease. The increase or decrease shall commence on the January 1st immediately following that December 31st. The adjustment shall apply to group C members having attained the age of 57 or completed at least 25 years of creditable service as of June 30, 2010, and receiving an early retirement allowance only in the year following attainment of age 62, and shall apply to group C members not having attained the age of 57 or having completed at least 25 years of creditable service as of June 30, 2010, and receiving an early retirement allowance only in the year following the member's attainment of age 65 ~~or when the combination of the member's age and years of creditable service totals 90~~, provided the member has received benefits for at least 12 months as of December 31 of the year preceding any January adjustment. The maximum adjustment of any retirement allowance resulting from any such determination shall be five percent and the minimum shall be one percent, and no retirement allowance shall be reduced below the amount payable to the beneficiary without regard to the provisions of this section.

Sec. 8. 24 V.S.A. § 5062 is amended to read:

§ 5062. RETIREMENT BOARD; MEDICAL BOARD; ACTUARY; RATES OF CONTRIBUTION; SAFEKEEPING OF SECURITIES

(a)(1) The general administration and responsibility for the proper operation of the retirement system and for making effective the provisions of this chapter are hereby vested in a board of five trustees, known as the retirement board. The board shall consist of:

(A) ~~the representative designated by the governor,~~ the state treasurer~~,~~;

(B) ~~and two municipal employees~~ two employee representatives who shall at all times during their term of office both be contributing members of the system and have completed five years of creditable service, elected by the membership of the system; ~~and~~

(C) one ~~municipal official~~ employer representative who shall at all times during their term of office be a member of a governing body, the chief executive officer, or a supervisor as defined in 21 V.S.A. § 1502(13), of an employer participating in the system, elected by the ~~membership of the system~~ governing bodies of the system employers; and

(D) one employer representative who shall at all times during their term of office be a member of a governing body, the chief executive officer, or a supervisor as defined in 21 V.S.A. § 1502(13), of an employer participating in the system, appointed by the governor from a list of not less than three nominations jointly submitted by the Vermont League of Cities and Towns and the Vermont School Boards Association.

(2) An individual shall not be eligible to serve as an employee representative if the individual is eligible to serve as an employer representative.

* * *

(n) The board shall determine the election procedures by which the two ~~municipal employees and one municipal official~~ employee representatives and employer representative elected by the governing bodies of the system employers who are members of the board are elected. Elections shall be held to take effect on July 1, ~~1978 and triennially thereafter for the first municipal employee's seat; on July 1, 1979 and triennially thereafter for the municipal official's seat; and on July 1, 1980 and triennially thereafter for the second municipal employee's seat~~ 2010, for the first employee representative and employer representative elected by the governing bodies of the system employers and every four years thereafter; and on July 1, 2012, for the second employee representative and employer representative appointed by the governor and every four years thereafter. The term in office for each elected member of the board shall be ~~three~~ four years. Vacancies of an elected board member's seat in midterm shall be filled by ~~a person~~ an individual eligible for election to that seat designated by the remaining members of the board.

* * *

Sec. 8a. VMERS BOARD OF TRUSTEES TRANSITIONAL PROVISIONS

The representative designated by the governor under the provisions of 24 V.S.A. § 5062(a) prior to the effective date of this act shall cease to serve on the board upon the effective date of Sec. 8 and this section of this act. The municipal employee representative whose term expires on June 30, 2011, under the provisions of 24 V.S.A. § 5062(a) prior to the effective date of this act shall, upon the effective date of this act, fill the position of employee representative until the election effective July 1, 2012. The municipal official

serving under the provisions of 24 V.S.A. § 5062(a) prior to the effective date of this act shall serve until the employer representative appointed by the governor is appointed.

Sec. 9. 24 V.S.A. § 5064(b) is amended to read:

(b) Member savings. Contributions deducted from the compensation of members together with any member contributions transferred from a predecessor system shall be accumulated in the fund and separately recorded for each member. Contributions shall be made by group A members at the rate of three percent of earnable compensation. Contributions shall be made by group B members at the rate of five percent of earnable compensation. Contributions shall be made by group C and group D members at a rate of 11 percent of earnable compensation. Additionally, if an employee remains in group C and is employed by an employer who elects to revoke its group C membership in accordance with subsection 5068(f) of this title, the rate established in this subsection will be adjusted. This adjustment shall be determined by subtracting the group B rate, or if not applicable, the group A rate determined in subdivision (c)(1) of this section from the group C rate determined in subdivision (c)(1) of this section. ~~Notwithstanding the provisions of this subsection, for the period July 1, 2000 through June 30, 2010, contributions shall be made by group A members at the rate of two and one-half percent of earnable compensation, by group B members at the rate of four and one-half percent of earnable compensation, and by group C members at the rate of nine percent of earnable compensation.~~

* * *

Sec. 10. VERMONT MUNICIPAL RETIREMENT FUND

Notwithstanding the provisions of 24 V.S.A. § 5064(b), for the period July 1, 2010 through June 30, 2011, contributions shall be made by group A members at the rate of two and one-half percent of earnable compensation, by group B members at the rate of four and one-half percent of earnable compensation, and by group C members at the rate of nine and one quarter percent of earnable compensation.

Sec. 10a. 24 V.S.A. § 5067 is amended to read:

§ 5067. COST OF LIVING ADJUSTMENTS

(a) For members, as of June 30 in each year, commencing June 30, 1987, a determination shall be made of the increase ~~or decrease~~, to the nearest one-tenth of a percent of the Consumer Price Index for the preceding fiscal year. The retirement allowance of each beneficiary in receipt of an allowance for at least one year on the next following December 31 shall be increased ~~or decreased, as the case may be,~~ by an amount equal to one-half of the

percentage increase ~~or decrease~~. The increase ~~or decrease~~ shall commence on the January 1 immediately following such December 31. The adjustment shall apply to members of the group A, B, or D plans receiving an early retirement allowance only in the year following attainment of normal retirement age, provided the member has received benefits for at least 12 months as of December 31 of the year preceding any January adjustment. The maximum adjustment of any retirement allowance resulting from any such determination shall be two percent for group A members and three percent for group B, C, and D members, and no retirement allowance shall be reduced below the amount payable to the beneficiary without regard to the provisions of this section.

* * *

(e) No adjustment shall be made pursuant to this section in January if the Consumer Price Index as of the previous June 30th is a negative rate.

Sec. 11. STATE TEACHERS' RETIREMENT SYSTEM OF VERMONT; MEMBERSHIP

Notwithstanding any provision of law to the contrary, amendments to 16 V.S.A. § 1931(20) in Sec. 5 of No. 24 of the Acts of 2009 (retirement system available only to licensed teachers) shall not apply to:

(1) Any person who was a member of the state teachers' retirement system of Vermont under chapter 55 of Title 16 on June 30, 2009.

(2) Any person who signed a contract prior to July 1, 2009, for employment in an independent school beginning on that date if the contract included provisions ensuring membership in the state teachers' retirement system of Vermont under chapter 55 of Title 16.

Sec. 12. STATE TEACHERS' RETIREMENT SYSTEM OF VERMONT; CREDITABLE SERVICE

Any member of the state teachers' retirement system of Vermont whose creditable service is greater than 24.90 but less than 25.00 years on June 30, 2010, shall be granted, upon written approval from the member, sufficient creditable service to equal 25.00 years on June 30, 2010.

Sec. 13. REPEAL

(a) Sec. 1, 3 V.S.A. § 455(a)(4)(E), and Sec. 2, 3 V.S.A. § 455(a)(26) and (27), shall be repealed on July 1, 2014.

(b) Secs. 2a, 6a, 6b, and 10 shall be repealed on July 1, 2011, and the amendments to the statutory provision set forth in those Secs. shall revert to the language in existence prior to the effective date of this act, except to the

extent that 16 V.S.A. § 1949(b) has otherwise been amended by Sec. 7 of this Act.

Sec. 14. EFFECTIVE DATES

(a) Secs. 8 and 8a shall take effect on June 30, 2010.

(b) This section and Sec. 11 of this act shall take effect upon passage.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senators Campbell, Nitka and McCormack moved that the Senate proposal of amendment be amended in Sec. 12, at the end of the section, by adding a second sentence to read as follows:

Any member of the state teachers' retirement system of Vermont who has reached the normal retirement age and whose creditable service is greater than or equal to 9.90 but less than 10 years on June 30, 2010, shall be granted, upon written approval from the member, sufficient creditable service to equal 10 years on June 30, 2010.

Which was agreed to on a roll call, Yeas 16, Nays 13.

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: Bartlett, Campbell, Carris, Cummings, Flanagan, Giard, Hartwell, Illuzzi, Kittell, Lyons, MacDonald, McCormack, Nitka, Sears, Shumlin, White.

Those Senators who voted in the negative were: Ashe, Ayer, Brock, Doyle, Flory, Kitchel, Mazza, Miller, Mullin, Racine, Scott, Snelling, Starr.

The Senator absent and not voting was: Choate.

Thereupon, the question, Shall the bill be read a third time?, was decided in the affirmative.

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.

Consideration Resumed; Report of Committee of Conference Accepted and Adopted on the Part of the Senate

H. 790.

Consideration was resumed on House bill entitled:

An act relating to capital construction and state bonding.

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

Rules Suspended; Bills Messaged

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

H. 498, H. 778, H. 790.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until twelve o'clock and forty-five minutes in the afternoon.

Afternoon

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

Rules Suspended; Proposal of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposal of Amendment

H. 722.

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

An act relating to notice of security breaches and internet ticket sales.

Was taken up for immediate consideration.

President Assumes the Chair

Senator Miller, 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. 9 V.S.A. Chapter 117 is added to read:

CHAPTER 117. INTERNET SALES

§ 4190. INTERFERING WITH INTERNET TICKET SALES

(a) A person shall not intentionally use a computer program or other software intended to interfere with or circumvent, on a ticket seller's website, an equitable ticket buying process established by the seller for tickets of admission to a sporting event, theatre, musical performance, or place of public entertainment or amusement of any kind.

(b) A person who violates this section, in a civil action brought by the seller, shall be subject to:

(1) appropriate equitable relief;

(2) reasonable attorney's fees and costs; and

(3) liquidated damages of up to $3,000 per transaction.

Sec. 2. EFFECTIVE DATE

This act shall take effect July 1, 2010.

And by amending the title of the bill to read as follows:

"An act relating to preventing ticket scalping."

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposal of amendment was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Illuzzi moved that the Senate proposal of amendment be amended by inserting a new Sec. 2 to read as follows:

Sec. 2. FARM-TO-PLATE INVESTMENT PROGRAM

The funds received pursuant to Sec. 7(a) 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 for-profit and nonprofit 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.

And by renumbering the remaining sections of the bill to be numerically correct.

Which was agreed to.

Thereupon, the pending question, Shall the bill be read the third time?, was decided in the affirmative.

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.

Rules Suspended; Report of Committee of Conference; Consideration Interrupted by Recess

H. 789.

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

An act making appropriations for the support of government.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

H. 789. An act making appropriations for the support of government.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. A.100 SHORT TITLE

(a) This bill may be referred to as the BIG BILL - Fiscal Year 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 general assembly that activities of the various agencies, departments, divisions, boards, and commissions be limited to those which can be supported by funds appropriated in this act or other acts passed prior to June 30, 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	Labor
B.500–B.599 and E.500–E.599	General Education
B.600–B.699 and E.600–E.699	Higher Education
B.700–B.799 and E.700–E.799	Natural Resources
B.800–B.899 and E.800–E.899	Commerce and Community Development
B.900–B.999 and E.900–E.999	Transportation
B.1000–B.1099 and E.1000–E.1099	Debt Service
B.1100–B.1199 and E.1100–E.1199	One-time and other appropriation actions

Sec. B.100 Secretary of administration - secretary's office

Personal services	584,928
Operating expenses	73,832
Total	658,760
Source of funds	

General fund	658,760
Total	658,760

Sec. B.101 Information and innovation - communications and information technology

Personal services	6,842,098
Operating expenses	2,505,878
Grants	700,000
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	3,026,767
Total	3,026,767

Sec. B.104 Human resources - operations

Personal services	2,543,406
Operating expenses	414,786
Total	2,958,192
Source of funds	
General fund	1,689,278
Special funds	280,835
Interdepartmental transfers	988,079
Total	2,958,192

Sec. B.105 Human resources - employee benefits and wellness	
Personal services	1,152,032
Operating expenses	647,868
Total	1,799,900
Source of funds	
Internal service funds	1,760,047
Interdepartmental transfers	39,853
Total	1,799,900
Sec. B.106 Libraries	
Personal services	1,857,236
Operating expenses	1,804,985
Grants	62,500
Total	3,724,721
Source of funds	
General fund	2,534,917
Special funds	132,656
Federal funds	955,372
Interdepartmental transfers	101,776
Total	3,724,721
Sec. B.107 Tax - administration/collection	
Personal services	12,586,124
Operating expenses	3,138,092
Total	15,724,216
Source of funds	
Tobacco fund	58,000
General fund	14,399,315
Special funds	1,069,901
Interdepartmental transfers	197,000
Total	15,724,216
Sec. B.108 Buildings and general services - administration	
Personal services	1,487,119
Operating expenses	153,311
Total	1,640,430
Source of funds	
Interdepartmental transfers	1,640,430
Total	1,640,430

Sec. B.109 Buildings and general services - engineering

Personal services	2,124,181
Operating expenses	341,604
Total	2,465,785
Source of funds	
Interdepartmental transfers	2,465,785
Total	2,465,785

Sec. B.110 Buildings and general services - information centers

Personal services	3,060,509
Operating expenses	1,324,371
Grants	45,000
Total	4,429,880
Source of funds	
General fund	4,379,880
Special funds	50,000
Total	4,429,880

Sec. B.111 Buildings and general services - purchasing

Personal services	642,843
Operating expenses	149,518
Total	792,361
Source of funds	
General fund	792,361
Total	792,361

Sec. B.112 Buildings and general services - postal services

Personal services	636,412
Operating expenses	148,967
Total	785,379
Source of funds	
General fund	35,716
Internal service funds	749,663
Total	785,379

Sec. B.113 Buildings and general services - copy center

Personal services	715,491
Operating expenses	122,107
Total	837,598
Source of funds	
Internal service funds	837,598
Total	837,598

Sec. B.114 Buildings and general services - fleet management services

Personal services	473,550
Operating expenses	119,974
Total	593,524
Source of funds	
Internal service funds	593,524
Total	593,524

Sec. B.115 Buildings and general services - federal surplus property

Personal services	91,690
Operating expenses	44,687
Total	136,377
Source of funds	
Enterprise funds	136,377
Total	136,377

Sec. B.116 Buildings and general services - state surplus property

Personal services	66,974
Operating expenses	99,806
Total	166,780
Source of funds	
Internal service funds	166,780
Total	166,780

Sec. B.117 Buildings and general services - property management

Personal services	1,120,071
Operating expenses	1,457,881
Total	2,577,952
Source of funds	
Internal service funds	2,577,952
Total	2,577,952

Sec. B.118 Buildings and general services - workers' compensation insurance

Personal services	1,295,161
Operating expenses	271,331
Total	1,566,492
Source of funds	
Internal service funds	1,566,492
Total	1,566,492

Sec. B.119 Buildings and general services - general liability insurance

Personal services	304,042
Operating expenses	76,203
Total	380,245
Source of funds	
Internal service funds	380,245
Total	380,245

Sec. B.120 Buildings and general services - all other insurance

Personal services	39,531
Operating expenses	30,469
Total	70,000
Source of funds	
Internal service funds	70,000
Total	70,000

Sec. B.121 Buildings and general services - fee for space

Personal services	13,357,546
Operating expenses	13,886,975
Total	27,244,521
Source of funds	
Internal service funds	27,244,521
Total	27,244,521

Sec. B.122 Geographic information system

Grants	408,700
Total	408,700
Source of funds	
Special funds	408,700
Total	408,700

Sec. B.123 Executive office - governor's office

Personal services	1,169,079
Operating expenses	391,275
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	192,964
Total	2,282,993
Source of funds	
General fund	2,282,993
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	6,937,568
Total	6,937,568
Sec. B.126 Legislative information technology	
Personal services	376,107
Operating expenses	504,480
Total	880,587
Source of funds	
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	
General fund	1,504,666
Total	1,504,666
Sec. B.128 Sergeant at arms	
Personal services	477,005
Operating expenses	82,428
Total	559,433
Source of funds	
General fund	559,433
Total	559,433

Sec. B.129 Lieutenant governor

Personal services	150,836
Operating expenses	16,376
Total	167,212
Source of funds	
General fund	167,212
Total	167,212

Sec. B.130 Auditor of accounts

Personal services	3,494,631
Operating expenses	139,445
Total	3,634,076
Source of funds	
General fund	399,951
Special funds	53,099
Internal service funds	3,181,026
Total	3,634,076

Sec. B.131 State treasurer

Personal services	2,522,619
Operating expenses	331,089
Grants	16,484
Total	2,870,192
Source 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 property

Personal services	670,521
Operating expenses	243,474
Total	913,995
Source of funds	
Private purpose trust funds	913,995
Total	913,995

Sec. B.133 Vermont state retirement system

Personal services	6,370,747
Operating expenses	27,934,748
Total	34,305,495
Source of funds	

Pension trust funds	34,305,495
Total	34,305,495

Sec. B.134 Municipal employees' retirement system

Personal services	2,002,388
Operating expenses	451,355
Total	2,453,743
Source of funds	
Pension trust funds	2,453,743
Total	2,453,743

Sec. B.135 State labor relations board

Personal services	161,823
Operating expenses	38,452
Total	200,275
Source of funds	
General fund	194,699
Special funds	2,788
Interdepartmental transfers	2,788
Total	200,275

Sec. B.136 VOSHA review board

Personal services	42,635
Operating expenses	10,531
Total	53,166
Source of funds	
General fund	26,583
Interdepartmental transfers	26,583
Total	53,166

Sec. B.137 Homeowner rebate

Grants	16,720,000
Total	16,720,000
Source of funds	
General fund	16,720,000
Total	16,720,000

Sec. B.138 Renter rebate

Grants	8,300,000
Total	8,300,000
Source of funds	
General fund	2,500,000

Education fund	5,800,000
Total	8,300,000

Sec. B.139 Tax department - reappraisal and listing payments

Grants	3,243,196
Total	3,243,196
Source of funds	
Education fund	3,243,196
Total	3,243,196

Sec. B.140 Municipal current use

Grants	11,700,000
Total	11,700,000
Source of funds	
General fund	11,700,000
Total	11,700,000

Sec. B.141 Lottery commission

Personal services	1,658,986
Operating expenses	1,096,215
Total	2,755,201
Source of funds	
Enterprise funds	2,755,201
Total	2,755,201

Sec. B.142 Payments in lieu of taxes

Grants	5,650,000
Total	5,650,000
Source of funds	
Special funds	5,650,000
Total	5,650,000

Sec. B.143 Payments in lieu of taxes - Montpelier

Grants	184,000
Total	184,000
Source of funds	
Special funds	184,000
Total	184,000

Sec. B.144 Payments in lieu of taxes - correctional facilities

Grants	40,000
Total	40,000
Source of funds	

Special funds	40,000
Total	40,000
Sec. B.145 Total general government	190,068,094
Source of funds	
General fund	71,764,967
Education fund	9,043,196
Special funds	9,508,078
Tobacco fund	58,000
Federal funds	955,372
Enterprise funds	2,891,578
Internal service funds	52,181,680
Pension trust funds	36,759,238
Private purpose trust funds	913,995
Interdepartmental transfers	5,991,990
Total	190,068,094
Sec. B.200 Attorney general	
Personal services	6,942,359
Operating expenses	1,095,205
Total	8,037,564
Source of funds	
Tobacco fund	625,000
General fund	3,785,911
Special funds	990,000
Federal funds	707,526
Interdepartmental transfers	1,929,127
Total	8,037,564
Sec. B.201 Vermont court diversion	
Grants	1,724,773
Total	1,724,773
Source of funds	
General fund	1,204,776
Special funds	519,997
Total	1,724,773
Sec. B.202 Defender general - public defense	
Personal services	7,631,450
Operating expenses	890,945
Total	8,522,395
Source of funds	
General fund	8,009,107

Special funds	513,288
Total	8,522,395
Sec. B.203 Defender general - assigned counsel	
Personal services	3,414,589
Operating expenses	41,909
Total	3,456,498
Source of funds	
General fund	3,331,234
Special funds	125,264
Total	3,456,498
Sec. B.204 Judiciary	
Personal services	27,415,175
Operating expenses	10,118,692
Grants	70,000
Total	37,603,867
Source of funds	
Tobacco fund	39,871
General fund	30,944,988
Special funds	3,105,455
Federal funds	1,435,418
Interdepartmental transfers	2,078,135
Total	37,603,867
Sec. B.205 State's attorneys	
Personal services	9,398,345
Operating expenses	1,137,233
Total	10,535,578
Source of funds	
General fund	8,329,655
Special funds	32,775
Federal funds	31,000
Interdepartmental transfers	2,142,148
Total	10,535,578
Sec. B.206 Special investigative unit	
Grants	1,060,950
Total	1,060,950
Source of funds	
General fund	1,060,950
Total	1,060,950

Sec. B.207 Sheriffs	
Personal services	3,261,904
Operating expenses	283,826
Total	3,545,730
Source of funds	
General fund	3,545,730
Total	3,545,730
Sec. B.208 Public safety - administration	
Personal services	1,619,185
Operating expenses	197,234
Total	1,816,419
Source of funds	
General fund	1,776,694
Federal funds	39,725
Total	1,816,419
Sec. B.209 Public safety - state police	
Personal services	45,090,220
Operating expenses	8,211,814
Grants	854,866
Total	54,156,900
Source 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	1,307,660
Total	54,156,900
Sec. B.210 Public safety - criminal justice services	
Personal services	6,625,882
Operating expenses	3,291,327
Grants	5,977,000
Total	15,894,209
Source of funds	
ARRA funds	640,956
General fund	5,546,732
Special funds	1,972,320
Federal funds	7,645,784

Interdepartmental transfers	88,417
Total	15,894,209

Sec. B.211 Public safety - emergency management

Personal services	2,716,202
Operating expenses	879,113
Grants	1,602,000
Total	5,197,315
Source 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
Source 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 security

Personal services	9,213,757
Operating expenses	718,374
Grants	2,380,000
Total	12,312,131
Source of funds	
ARRA funds	295,267
General fund	430,545
Federal funds	11,586,319
Total	12,312,131

Sec. B.214 Radiological emergency response plan

Personal services	657,163
Operating expenses	215,438
Grants	876,975
Total	1,749,576

Source of funds	
Special funds	1,749,576
Total	1,749,576
Sec. B.215 Military - administration	
Personal services	548,148
Operating expenses	198,427
Grants	100,000
Total	846,575
Source of funds	
General fund	846,575
Total	846,575
Sec. B.216 Military - air service contract	
Personal services	4,618,657
Operating expenses	1,214,629
Total	5,833,286
Source of funds	
General fund	468,392
Federal funds	5,364,894
Total	5,833,286
Sec. B.217 Military - army service contract	
Personal services	3,729,599
Operating expenses	9,185,720
Total	12,915,319
Source of funds	
General fund	112,380
Federal funds	12,802,939
Total	12,915,319
Sec. B.218 Military - building maintenance	
Personal services	983,598
Operating expenses	386,580
Total	1,370,178
Source of funds	
General fund	1,370,178
Total	1,370,178
Sec. B.219 Military - veterans' affairs	
Personal services	467,788
Operating expenses	132,754
Grants	163,815

Total	764,357
Source of funds	
General fund	605,099
Special funds	83,529
Federal funds	75,729
Total	764,357

Sec. B.220 Center for crime victims' services

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 council

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	364,508
Total	2,488,255

Sec. B.222 Agriculture, food and markets - administration

Personal services	764,915
Operating expenses	323,363
Grants	538,351
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	7,000
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	184,758
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	2,204,989
Total	2,204,989

Sec. B.227 Banking, insurance, securities, and health care administration - banking

Personal services	1,338,504
Operating expenses	243,041
Total	1,581,545
Source of funds	
Special funds	1,581,545
Total	1,581,545

Sec. B.228 Banking, insurance, securities, and health care administration - insurance

Personal services	2,768,091
Operating expenses	433,803
Total	3,201,894
Source of funds	
Special funds	3,201,894
Total	3,201,894

Sec. B.229 Banking, insurance, securities, and health care administration - captive

Personal services	3,237,368
Operating expenses	439,405
Total	3,676,773
Source of funds	
Special funds	3,676,773
Total	3,676,773

Sec. B.230 Banking, insurance, securities, and health care administration - securities

Personal services	447,065
Operating expenses	140,714
Total	587,779
Source of funds	
Special funds	587,779
Total	587,779

Sec. B.231 Banking, insurance, securities, and health care administration - health care administration

Personal services	4,421,102
Operating expenses	320,805
Total	4,741,907
Source of funds	
Special funds	2,843,083
Global Commitment fund	1,898,824
Total	4,741,907

Sec. B.232 Secretary of state

Personal services	5,639,766
Operating expenses	2,010,915
Grants	1,000,000
Total	8,650,681
Source of funds	
General fund	1,741,157
Special funds	4,834,524
Federal funds	2,000,000
Interdepartmental transfers	75,000
Total	8,650,681

Sec. B.233 Public service - regulation and energy

Personal services	7,227,506
Operating expenses	703,315
Grants	21,203,466
Total	29,134,287
Source of funds	
ARRA funds	15,796,250
Special funds	12,180,237
Federal funds	1,157,800
Total	29,134,287

Sec. B.234 Public service board

Personal services	2,716,697
Operating expenses	364,000
Total	3,080,697
Source of funds	
ARRA funds	265,834
Special funds	2,814,863
Total	3,080,697

Sec. B.235 Enhanced 9-1-1 Board

Personal services	2,441,508
Operating expenses	1,252,574
Grants	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	86,264
Total	488,994
Source of funds	
General fund	318,255
Federal funds	170,739
Total	488,994

Sec. B.237 Liquor control - administration

Personal services	1,442,422
Operating expenses	625,578
Total	2,068,000
Source of funds	
Tobacco fund	6,661
Enterprise funds	1,811,339
Interdepartmental transfers	250,000
Total	2,068,000

Sec. B.238 Liquor control - enforcement and licensing

Personal services	1,930,027
Operating expenses	377,524
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 - warehousing and distribution

Personal services	813,769
Operating expenses	329,615
Total	1,143,384
Source of funds	

	Enterprise funds	1,143,384
	Total	1,143,384
Sec. B.240	Total protection to persons and property	290,020,924
	Source of funds	
	General fund	101,547,048
	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
	Total	290,020,924
Sec. B.300	Human services - agency of human services - secretary's office	
	Personal services	8,997,483
	Operating expenses	2,427,168
	Grants	5,195,241
	Total	16,619,892
	Source of funds	
	Tobacco fund	423,330
	General fund	4,911,040
	Special funds	7,517
	Global Commitment fund	415,000
	Federal funds	7,444,102
	Interdepartmental transfers	3,418,903
	Total	16,619,892
Sec. B.301	Secretary's office - global commitment	
	Grants	1,069,564,058
	Total	1,069,564,058
	Source of funds	
	ARRA funds	114,748,181
	Tobacco fund	35,848,873
	General fund	66,312,737
	Special funds	11,398,028
	State health care resources fund	176,395,700
	Catamount fund	19,076,195
	Federal funds	645,426,677
	Interdepartmental transfers	357,667
	Total	1,069,564,058

Sec. B.302 Rate setting

Personal services	858,339
Operating expenses	70,029
Total	928,368
Source of funds	
Global Commitment fund	928,368
Total	928,368

Sec. B.303 Developmental disabilities council

Personal services	269,694
Operating expenses	51,991
Grants	220,000
Total	541,685
Source of funds	
Federal funds	541,685
Total	541,685

Sec. B.304 Human services board

Personal services	282,894
Operating expenses	67,804
Total	350,698
Source of funds	
General fund	49,713
Federal funds	150,493
Interdepartmental transfers	150,492
Total	350,698

Sec. B.305 AHS - administrative fund

Personal services	250,000
Operating expenses	4,750,000
Total	5,000,000
Source of funds	
Interdepartmental transfers	5,000,000
Total	5,000,000

Sec. B.306 Department of Vermont health access - administration

Personal services	44,647,574
Operating expenses	2,593,853
Grants	7,625,573
Total	54,867,000
Source of funds	
General fund	1,549,943

Special funds	3,016,174
Global Commitment fund	37,417,425
Federal funds	12,883,458
Total	54,867,000

Sec. B.307 Department of Vermont health access - Medicaid program - global commitment

Grants	632,073,546
Total	632,073,546
Source of funds	
Global Commitment fund	632,073,546
Total	632,073,546

Sec. B.308 Department of Vermont health access - Medicaid program - long term care waiver

Grants	206,544,910
Total	206,544,910
Source of funds	
ARRA funds	22,351,327
General fund	62,936,176
Federal funds	121,257,407
Total	206,544,910

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 nonwaiver 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 support	
Personal services	5,741,814
Operating expenses	2,182,153
Grants	2,612,000
Total	10,535,967
Source of funds	
General fund	1,070,058
Special funds	232,148
Global Commitment fund	3,400,011
Federal funds	5,833,750
Total	10,535,967
Sec. B.312 Health - public health	
Personal services	31,006,247
Operating expenses	7,030,217
Grants	30,531,561
Total	68,568,025
Source of funds	
Tobacco fund	1,166,803
General fund	7,737,787
Special funds	4,783,956
Global Commitment fund	20,959,163
Catamount fund	2,510,319
Federal funds	30,795,573
Permanent trust funds	10,000
Interdepartmental transfers	604,424
Total	68,568,025
Sec. B.313 Health - alcohol and drug abuse programs	
Personal services	2,931,722
Operating expenses	709,845
Grants	28,007,483
Total	31,649,050
Source of funds	
Tobacco fund	2,382,834
General fund	2,929,387
Special funds	232,084
Global Commitment fund	17,503,430
Federal funds	8,341,315
Interdepartmental transfers	260,000
Total	31,649,050

Sec. B.314 Mental health - mental health

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 and support services

Personal services	37,767,592
Operating expenses	7,451,074
Grants	842,829
Total	46,061,495
Source of funds	
General fund	15,044,158
Global Commitment fund	17,233,385
Federal funds	13,783,952
Total	46,061,495

Sec. B.317 Department for children and families - family services

Personal services	22,899,710
Operating expenses	3,344,491
Grants	63,133,025

Total	89,377,226
Source of funds	
ARRA funds	705,724
Tobacco fund	275,000
General fund	21,230,731
Special funds	1,691,637
Global Commitment fund	37,870,954
Federal funds	27,503,180
Interdepartmental transfers	100,000
Total	89,377,226

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	387,600
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	5,850,928
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	22,610,178
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	4,747,762
Total	5,092,390
Source of funds	
General fund	1,241,285
Special funds	57,990
Federal funds	3,793,115
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	5,240,792
Total	5,487,309

Sec. B.329 Disabilities, aging and independent living - administration and 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	1,481,457
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	7,302,971
Total	7,302,971

Source of funds	
ARRA funds	1,334,000
General fund	1,535,695
Global Commitment fund	7,500
Federal funds	4,132,389
Interdepartmental transfers	293,387
Total	7,302,971

Sec. B.333 Disabilities, aging and independent living - developmental services

Grants	149,922,473
Total	149,922,473
Source of funds	
General fund	155,125
Special funds	15,463
Global Commitment fund	149,392,028
Federal funds	359,857
Total	149,922,473

Sec. B.334 Disabilities, aging and independent living -TBI home and community based waiver

Grants	4,044,899
Total	4,044,899
Source of funds	
Global Commitment fund	4,044,899
Total	4,044,899

Sec. B.335 Corrections - administration

Personal services	1,984,192
Operating expenses	215,304
Total	2,199,496
Source of funds	
General fund	2,199,496
Total	2,199,496

Sec. B.336 Corrections - parole board

Personal services	328,861
Operating expenses	60,198
Total	389,059
Source of funds	
General fund	389,059
Total	389,059

Sec. B.337 Corrections - correctional education	
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	396,315
Total	117,538,706
Sec. B.339 Correctional services - out of state beds	
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	
Personal services	475,506
Operating expenses	342,362
Total	817,868
Source of funds	
General fund	125,000
Special funds	692,868
Total	817,868

Sec. B.341 Corrections - Vermont offender work program	
Personal services	986,255
Operating expenses	554,103
Total	1,540,358
Source of funds	
Internal service funds	1,540,358
Total	1,540,358
Sec. B.342 Vermont veterans' home - care and support services	
Personal services	15,385,424
Operating expenses	3,673,019
Total	19,058,443
Source of funds	
Special funds	11,615,802
Global Commitment fund	1,410,956
Federal funds	6,031,685
Total	19,058,443
Sec. B.343 Commission on women	
Personal services	235,132
Operating expenses	66,690
Total	301,822
Source of funds	
General fund	296,822
Special funds	5,000
Total	301,822
Sec. B.344 Retired senior volunteer program	
Grants	131,096
Total	131,096
Source of funds	
General fund	131,096
Total	131,096
Sec. B.345 Total human services	3,038,198,507
Source of funds	
General fund	456,318,953
Special funds	62,894,725
Tobacco fund	40,184,340
Global Commitment fund	1,075,480,315
State health care resources fund	176,395,700
Catamount fund	21,586,514

Federal funds	1,031,436,809
ARRA funds	154,080,195
Permanent trust funds	10,000
Internal service funds	1,540,358
Interdepartmental transfers	18,270,598
Total	3,038,198,507

Sec. B.400 Labor - administration

Personal services	2,746,693
Operating expenses	577,547
Grants	30,000
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	195,000
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	1,305,001
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	1,500,001
Total	35,571,720

Sec. B.500 Education - finance and administration

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	4,730
Total	18,766,525

Sec. B.501 Education - education services

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	24,831
Total	180,575,277

Sec. B.502 Education - special education: formula grants

Grants	142,687,975
Total	142,687,975
Source of funds	
Education fund	142,457,975
Global Commitment fund	230,000
Total	142,687,975

Sec. B.503 Education - state-placed students

Grants	15,700,000
Total	15,700,000
Source of funds	

Education fund	15,700,000
Total	15,700,000

Sec. B.504 Education - adult education and literacy

Grants	6,463,656
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.505 Education - adjusted education payment

Grants	1,138,075,036
Total	1,138,075,036
Source of funds	
ARRA interdepartmental transfer	38,575,036
Education fund	1,099,500,000
Total	1,138,075,036

Sec. B.506 Education - transportation

Grants	15,782,031
Total	15,782,031
Source of funds	
Education fund	15,782,031
Total	15,782,031

Sec. B.507 Education - small school grants

Grants	7,000,000
Total	7,000,000
Source of funds	
Education fund	7,000,000
Total	7,000,000

Sec. B.508 Education - capital debt service aid

Grants	180,000
Total	180,000
Source of funds	
Education fund	180,000
Total	180,000

Sec. B.509 Education - tobacco litigation

Personal services	129,931
Operating expenses	46,222
Grants	812,764
Total	988,917
Source of funds	
Tobacco fund	988,917
Total	988,917

Sec. B.510 Education - essential early education grant

Grants	5,679,216
Total	5,679,216
Source of funds	
Education fund	5,679,216
Total	5,679,216

Sec. B.511 Education - technical education

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 containment

Personal services	1,059,820
Operating expenses	131,887
Grants	91,000
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	240,803,945
Total	240,803,945

Sec. B.514 State teachers' retirement system

Personal services	7,269,278
Operating expenses	20,964,109

Grants	46,913,381
Total	75,146,768
Source of funds	
General fund	46,913,381
Pension trust funds	28,233,387
Total	75,146,768
Sec. B.515 Total general education	1,861,916,435
Source of funds	
General fund	296,413,882
Education fund	1,305,442,881
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 transfer	38,575,036
Total	1,861,916,435
Sec. B.600 University of Vermont	
Grants	40,746,633
Total	40,746,633
Source of funds	
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	547,683
Source of funds	
General fund	547,683
Total	547,683
Sec. B.602 Vermont state colleges	
Grants	23,107,247
Total	23,107,247
Source of funds	
General fund	23,107,247
Total	23,107,247

Sec. B.603 Vermont state colleges - allied health	
Grants	1,116,503
Total	1,116,503
Source of funds	
General fund	711,096
Global Commitment fund	405,407
Total	1,116,503
Sec. B.604 Vermont interactive television	
Grants	785,679
Total	785,679
Source of funds	
General fund	785,679
Total	785,679
Sec. B.605 Vermont student assistance corporation	
Grants	18,363,607
Total	18,363,607
Source of funds	
General fund	18,363,607
Total	18,363,607
Sec. B.606 New England higher education compact	
Grants	84,000
Total	84,000
Source of funds	
General fund	84,000
Total	84,000
Sec. B.607 University of Vermont - Morgan Horse Farm	
Grants	1
Total	1
Source of funds	
General fund	1
Total	1
Sec. B.608 Total higher education	84,751,353
Source of funds	
General fund	80,339,790
Global Commitment fund	4,411,563
Total	84,751,353

Sec. B.700 Natural resources - agency of natural resources - administration

Personal services	3,496,740
Operating expenses	1,107,048
Grants	70,510
Total	4,674,298
Source of funds	
General fund	4,269,265
Special funds	17,797
Federal funds	174,332
Interdepartmental transfers	212,904
Total	4,674,298

Sec. B.701 Natural resources - state land local property tax assessment

Operating expenses	2,128,733
Total	2,128,733
Source of funds	
General fund	1,707,233
Interdepartmental transfers	421,500
Total	2,128,733

Sec. B.702 Fish and wildlife - support and field services

Personal services	12,803,506
Operating expenses	4,897,176
Grants	904,333
Total	18,605,015
Source of funds	
General fund	1,157,253
Fish and wildlife fund	17,113,525
Interdepartmental transfers	334,237
Total	18,605,015

Sec. B.703 Forests, parks and recreation - administration

Personal services	918,024
Operating expenses	621,179
Grants	1,815,491
Total	3,354,694
Source of funds	
ARRA funds	50,000
General fund	1,033,816
Special funds	1,307,878
Federal funds	963,000
Total	3,354,694

Sec. B.704 Forests, parks and recreation - forestry

Personal services	4,511,199
Operating expenses	531,567
Grants	501,000
Total	5,543,766
Source of funds	
ARRA funds	252,750
General fund	3,221,738
Special funds	679,372
Federal funds	1,259,906
Interdepartmental transfers	130,000
Total	5,543,766

Sec. B.705 Forests, parks and recreation - state parks

Personal services	5,503,357
Operating expenses	1,984,815
Total	7,488,172
Source of funds	
ARRA funds	70,000
General fund	532,197
Special funds	6,751,451
Interdepartmental transfers	134,524
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	45,000
Total	1,659,579

Sec. B.707 Forests, parks and recreation - youth conservation corps

Grants	670,541
Total	670,541
Source of funds	
General fund	42,320
Special funds	284,221
Federal funds	94,000

Interdepartmental transfers	250,000
Total	670,541

Sec. B.708 Forests, parks and recreation - forest highway maintenance

Personal services	20,000
Operating expenses	134,925
Total	154,925
Source of funds	
General fund	154,925
Total	154,925

Sec. B.709 Environmental conservation - management and support services

Personal services	3,745,984
Operating expenses	1,119,601
Grants	100,000
Total	4,965,585
Source of funds	
General fund	691,248
Special funds	2,366,427
Federal funds	1,397,800
Interdepartmental transfers	510,110
Total	4,965,585

Sec. B.710 Environmental conservation - air and waste management

Personal services	7,715,537
Operating expenses	6,426,547
Grants	1,756,800
Total	15,898,884
Source of funds	
ARRA funds	540,966
General fund	560,448
Special funds	10,909,314
Federal funds	3,583,156
Interdepartmental transfers	305,000
Total	15,898,884

Sec. B.711 Environmental conservation - office of water programs

Personal services	13,400,525
Operating expenses	1,967,669
Grants	2,246,681
Total	17,614,875
Source of funds	
ARRA funds	553,471

General fund	5,708,472
Special funds	4,705,975
Federal funds	6,136,957
Interdepartmental transfers	510,000
Total	17,614,875

Sec. B.712 Environmental conservation - tax-loss-Connecticut river flood control

Operating expenses	34,700
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	356,939
Total	2,732,602
Source of funds	
General fund	766,716
Special funds	1,965,886
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	1,486,390
Total	4,491,075
Source of funds	
ARRA funds	350,000
General fund	2,726,075

Federal funds	800,000
Interdepartmental transfers	615,000
Total	4,491,075

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	
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	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
Total	400,000

Sec. B.805 Tourism and marketing

Personal services	1,503,826
Operating expenses	1,651,984
Grants	130,000
Total	3,285,810
Source of funds	
General fund	3,279,810
Special funds	6,000
Total	3,285,810

Sec. B.806 Vermont life

Personal services	723,536
Operating expenses	89,881
Total	813,417
Source of funds	
Enterprise funds	813,417
Total	813,417

Sec. B.807 Vermont council on the arts

Grants	507,607
Total	507,607
Source of funds	
General fund	507,607
Total	507,607

Sec. B.808 Vermont symphony orchestra

Grants	113,821
Total	113,821
Source of funds	
General fund	113,821
Total	113,821

Sec. B.809 Vermont historical society

Grants	795,669
Total	795,669
Source of funds	
General fund	795,669
Total	795,669

Sec. B.810 Vermont housing and conservation board

Grants	23,789,348
Total	23,789,348

Source 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
Source of funds	
General fund	172,670
Total	172,670
Sec. B.812 Total commerce and community development	66,873,049
Source of funds	
General fund	13,704,312
Special funds	11,163,919
Federal funds	39,026,536
ARRA funds	1,529,195
Enterprise funds	813,417
Interdepartmental transfers	635,670
Total	66,873,049
Sec. B.900 Transportation - finance and administration	
Personal services	9,737,904
Operating expenses	2,720,073
Grants	385,000
Total	12,842,977
Source 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	160,000
Total	22,976,642
Source 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 - buildings	
Operating expenses	2,467,500
Total	2,467,500
Source of funds	
TIB fund	190,000
Transportation fund	1,517,500
Federal funds	760,000
Total	2,467,500
Sec. B.903 Transportation - program development	
Personal services	36,339,478
Operating expenses	220,453,550
Grants	26,819,421
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	3,641,980
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	100,000
Total	67,381,887

Sec. B.906 Transportation - planning, outreach and community affairs

Personal services	3,080,461
Operating expenses	1,350,317
Grants	4,969,488
Total	9,400,266
Source of funds	
Transportation fund	1,986,265
Federal funds	7,166,001
Interdepartmental transfers	248,000
Total	9,400,266

Sec. B.907 Transportation - rail

Personal services	3,344,027
Operating expenses	48,385,856
Total	51,729,883
Source of funds	
ARRA funds	26,231,846
TIB fund	1,609,000
Transportation fund	10,026,291
Local match	250,000
Federal funds	13,612,746
Total	51,729,883

Sec. B.908 Transportation - public transit

Personal services	707,567
Operating expenses	168,602
Grants	23,863,535
Total	24,739,704
Source of funds	
ARRA funds	2,000,000
Transportation fund	6,842,927
Federal funds	15,896,777
Total	24,739,704

Sec. B.909 Transportation - central garage

Personal services	3,347,147
Operating expenses	14,130,716
Total	17,477,863
Source of funds	

Internal service funds	17,477,863
Total	17,477,863

Sec. B.910 Department of motor vehicles

Personal services	15,786,441
Operating expenses	8,303,553
Grants	136,476
Total	24,226,470
Source of funds	
Transportation fund	23,022,730
Federal funds	1,203,740
Total	24,226,470

Sec. B.911 Transportation - town highway structures

Grants	5,833,500
Total	5,833,500
Source of funds	
Transportation fund	5,833,500
Total	5,833,500

Sec. B.912 Transportation - town highway Vermont local roads

Grants	390,000
Total	390,000
Source of funds	
Transportation fund	235,000
Federal funds	155,000
Total	390,000

Sec. B.913 Transportation - town highway class 2 roadway

Grants	7,248,750
Total	7,248,750
Source of funds	
Transportation fund	7,248,750
Total	7,248,750

Sec. B.914 Transportation - town highway bridges

Personal services	3,600,000
Operating expenses	15,489,340
Total	19,089,340
Source of funds	
ARRA funds	3,990,070
TIB fund	1,616,014
Transportation fund	658,224

Local match	766,631
Federal funds	12,058,401
Total	19,089,340

Sec. B.915 Transportation - town highway aid program

Grants	24,982,744
Total	24,982,744
Source of funds	
Transportation fund	24,982,744
Total	24,982,744

Sec. B.916 Transportation - town highway class 1 supplemental grants

Grants	128,750
Total	128,750
Source of funds	
Transportation fund	128,750
Total	128,750

Sec. B.917 Transportation - town highway emergency fund

Grants	750,000
Total	750,000
Source of funds	
Transportation fund	750,000
Total	750,000

Sec. B.918 Transportation - municipal mitigation grant program

Grants	2,112,998
Total	2,112,998
Source of funds	
Transportation fund	247,998
Federal funds	1,865,000
Total	2,112,998

Sec. B.919 Transportation - public assistance grant program

Grants	200,000
Total	200,000
Source of funds	
Federal funds	200,000
Total	200,000

Sec. B.920 Transportation board

Personal services	75,633
Operating expenses	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	71,576,314
Total	71,576,314
Source of funds	
ARRA funds	667,565
TIB fund	600,000
General fund	65,804,622
Transportation fund	3,477,902
Special funds	1,026,225
Total	71,576,314
Sec. B.1001 Total debt service	71,576,314
Source of funds	
General fund	65,804,622
Transportation fund	3,477,902
TIB fund	600,000
Special funds	1,026,225
ARRA funds	667,565
Total	71,576,314

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. § 1522, 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 Sec. 6(b) of No. 46 of the Acts of 2007 as added by Sec. 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. § 2856.

(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

(b) In fiscal year 2011, the secretary of administration is authorized to reduce the following amounts from appropriations for savings associated with the consolidation of servers and other information technology changes.

General fund $1,636,574

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 the agency of commerce and community development for communities to utilize the sales tax reallocation in fiscal year 2011 pursuant to Sec. 54 of H.783 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 the Acts of the 2003 Adj. Sess. (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 $1,200,000

(12) To the department of tourism and marketing for a grant to the

Shires of Vermont: General fund $20,000

(13) 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

(14) 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

(15) 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

(16) 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 $25,000

(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 the 2009 Adj. Sess. (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 the 2009 Adj. Sess. (2010) is further amended to read:

Sec. B.345 Total human services	~~2,882,737,164~~	2,872,837,164
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~~	2,872,837,164

Sec. C.100.2 CHITTENDEN COUNTY COMMUNITY COORDINATOR

(a) The $100,000 of funds allocated in fiscal year 2010 in the department of corrections justice reinvestment for recovery center expansion but remaining unexpended as of May 12, 2010, shall be used to provide a grant for a community coordinator initiative to be developed by 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 to reduce the number of Vermont youths and young adults who are at risk of incarceration or re-incarceration. The department of corrections shall develop measures to evaluate the success of this grant-funded program. This evaluation shall be submitted with the fiscal year 2012 budget materials to the house and senate committees on appropriations.

Sec. C.101 Sec. 60 of No. 67 of the Acts of the 2009 Adj. Sess. (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:

21405	Fidelity/interest earnings	51,797 Approx.
21500	Inter-Unit Transfer (Bus Unit #01150) - Buildings and General Services	186,135
21500	Inter-Unit Transfers Spec Fd (Bus Unit #01120) - Human Resources	23,020
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 - Food & Fuel)~~	~~150,000~~
~~21991~~	~~Clean Energy Development Fund~~	~~143,672~~
21500	Inter-unit Transfers Special Fund (Bus Unit # 01110) - Finance and Management	293,672
22005	AHS Central Office earned federal receipts	1,500,000
50300	Liquor Control	836,516
62100	Abandoned property	1,993,024 Approx.
Caledonia Fair		5,000
North Country 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. §308d, after the general fund budget stabilization reserve attains its statutory maximum, up to $15,110,000 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. The amount of $15,110,000 shall be adjusted by any expenditure of general funds authorized in subsection (d) of Sec. 9 of No. 68 of the Acts of the 2009 Adj. Sess. (2010) and any funds expended under Sec. 9(d) of No. 68 of the Acts of the 2009 Adj. Sess. (2010) shall not be included for the purposes of 32 V.S.A. §308.

(b) Notwithstanding 32 V.S.A. § 308d, 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. Of the funds reserved in accordance with 32 V.S.A. § 308c:

(1) To the extent that said funds are reserved, up to $6,890,000 shall be unreserved and a like amount of funds which would otherwise be deposited into the general fund in accordance with Sec. D.104 of this act shall not be deposited into the general fund but shall be deposited into the education fund.

(2) If the provisions of Sec. D.106(a) of this act result in the preclusion of the provisions of Sec.D.106(c)(2)(B) of this act, then in fiscal year 2011 the

next $6,400,000 shall be unreserved and appropriated for expenditure as follows:

(A) $3,000,000 to implement the computer server and e-mail consolidation project;

(B) $3,000,000 for the financial and human resource system development project; and

(C) $400,000 for a case management system in the department of the attorney general.

(c) After satisfying subsections (a) and (b) of this section, any additional unreserved and undesignated general fund balance shall be reserved in accordance with 32 V.S.A. § 308d.

Sec. C.103 RADIO TRANSMITTER REPLACEMENT

(a) The appropriation in Sec. B.214 of No. 1 of the Acts of the 2009 Special Session for Public Safety – emergency management – radiological emergency response fund shall be used to pay for 50 percent of transmitter replacement at WTSA, which has a contract with the public safety department for the emergency alert system in the emergency planning zone around Vermont Yankee.

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: $62,264,000.

(2) from the transportation fund to the downtown transportation and related capital improvement fund established by 24 V.S.A. § 2796 to be used by the Vermont downtown development board for the purposes of the fund: $400,000.

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 2959a(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, 2011, 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) $10,000,000 is appropriated to the department of buildings and general services for planning and construction of replacement for Vermont State Hospital beds.

(2) $12,035,000 shall be appropriated to the secretary of administration for use as follows:

(A) In addition to any amount provided as a result of Sec. C.102 (b)(2)(A), up to a total of $3,000,000 shall be used to implement the computer server and e-mail consolidation and virtualization project. The commissioner of the department of information and innovation is authorized to implement the server consolidation and virtualization plan for state government. All units of the executive branch shall participate in this initiative. Any proposal for the purchases and implementation of servers shall be approved by the commissioner to ensure that projects are aligned. The commissioner of finance and management is authorized to capture savings of departments related to this project of $1,636,574 consistent with the authority in Sec. B.1101(b) in fiscal

year 2011 and $2,000,000 in fiscal year 2012. The fiscal year 2012 assessment shall be used to fund the fiscal year 2012 implementation costs of this project.

(B) $3,635,000 shall be used for expenditures related to the Vermont Integrated Eligibility Workflow System (VIEWS). These funds, in addition to funds appropriated in the capital bill process shall be available to cover fiscal year 2011 and 2012 project expenditures;

(C) In addition to any amount provided as a result of Sec. C.102(b)(2)(B), up to a total of $5,000,000 shall be used for expenditures related to the VISION Financial and Human Resource System. The commissioner of information and innovation is authorized to enter into a contract for up to $7,000,000 for full implementation of this project. In fiscal year 2013, the commissioner of finance and management is authorized to assess up to $2,000,000 to all units of the executive branch for project costs from savings that the project will produce.

(D) In addition to any amount provided as a result of Sec. C.102(b)(2)(C), up to a total of $400,000 shall be used for expenditures related to the Attorney General's case management system development costs. It is the intent of the general assembly to the extent possible to create a unified multidepartment case management system built on the same system platform. The commissioner of the department of information and innovation with the approval of the secretary of administration is authorized to ensure that all appropriations and investments in new case management software by the executive branch be done in a manner that shall promote a unified case management system. A report on this effort shall be submitted to the house and senate committees on appropriations and on government operations by January 15, 2011.

(3) $2,000,000 shall be appropriated for investments consistent with Sec. C.35 of H. 792 of 2010 which will result in a reduction in the number of people entering the criminal justice system and decrease the recidivism of those who enter the system; and

(4) $3,164,500 shall be appropriated to lower long-term expenses within the correctional system consistent with Sec. D.9 of H.792 of 2010.

(5) $1,000,000 shall be appropriated 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 $2,800,000 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.

(6) Contingent Appropriations and Transfers:

(A) $2,100,000 shall be appropriated to the department of Vermont health access to fund a 53rd week of claims in the long-term care program in fiscal year 2011 if funding is not available within the appropriation provided.

(B) In the event that provisions of Sec. C.102(b)(1) do occur, then $6,890,000 is unreserved and a like amount of funds which would otherwise be deposited into the general fund in accordance with Sec. D.104 of this act shall not be deposited into the general fund but shall be deposited into the education fund.

(C) $3,000,000 is transferred to the education fund to the extent that it is needed to bring the reserve to 3.5 percent. This transfer shall be repaid to the general fund in fiscal year 2012.

(d) Any remaining funds shall be reserved for expenditure 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 [DELETED]

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 the state's 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 five-year 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 22 V.S.A. § 901 is amended to read:

§ 901. ~~Creation of department~~ DEPARTMENT OF INFORMATION AND INNOVATION

~~There is created the~~ The 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. § 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.100.3 INFORMATION TECHNOLOGY INFRASTRUCTURE NEEDS

(a) In order for state government operations to be effective and efficient, timely and reasonable replacement and upgrading of information technology systems is appropriate and necessary. Therefore the secretary of administration, working in collaboration with the state treasurer, shall study

long term options for financing information technology infrastructure needs. The study shall include:

(1) A comprehensive review of the budget projections for information technology activities of more than $100,000 for all departments as presented in the five-year information technology plan written pursuant to 3 V.S.A. § 2222(a)(10) or through other methods of data collection the secretary may deem appropriate in order to conduct the study.

(2) Specific strategies to pay for information technology investments that consider maximization of all available funding sources, including match opportunities. Options to be examined include:

(A) Reviewing how other states fund information technology projects.

(B) Reinvesting the savings that are a result of information technology projects

(C) Creating and capitalizing a revolving loan fund for information technology infrastructure needs. This fund would be used for buying or leasing information technology infrastructure and contain repayment protocols, where possible, for agencies and departments. Examination of this concept shall include capitalization funding options from the general fund, capital funds, or other funds including examination of the option of using: 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.

(D) Dedicating ongoing funding from annual funds or capital funds, or both.

(E) Establishing special agency funds supported by agency revenues such as fees.

(F) Authorizing occasional increases in the debt limit to accommodate specific projects.

(G) Other options.

(b) On or before December 1, 2010, the secretary shall submit a report to the house and senate committees on appropriations, the house committee on institutions and corrections, and the senate committee on institutions presenting the various options and recommendations for setting up and funding these needs.

Sec. E.100.4 IN CASE OF FISCAL YEAR 2011 PROPOSAL TO REDUCE STATE WORK FORCE BY MORE THAN ONE PERCENT

(a) Due to the current and continuing fiscal stress that will impact the Vermont fiscal year 2011 state budget and the unique interplay between the underlying state budget and the Challenges for Change reductions which have been delegated to the administration, it may become necessary to take further significant measures to achieve savings in order to ensure a balanced budget in the general fund. If, after all savings required by the 2010 Challenges for Change legislation in Act 68 and H. 792 as enacted have been identified by the secretary of administration, the secretary of administration determines that in order to ensure a balanced fiscal year 2011 budget it is also necessary, when the general assembly is not in session, to eliminate by reduction in force or positions identified for elimination or both more than one percent of the entire state workforce in fiscal year 2011, with the one percent measured cumulatively from July 1, 2010, the secretary shall first submit a plan which complies with the standards outlined in subdivisions (1) through (6) of this section to the joint fiscal committee for its consideration. For the purposes of this section, "entire state workforce" means all 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 on delivery of services to the public, on public health, and on public 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; and

(6) 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 submitted to the joint fiscal committee and shall not be implemented before 28 days after submission to the joint fiscal committee as set forth under this section. 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. If the plan does not meet the standards of

subsection (a) of this section or if all savings required by the 2010 Challenges for Change legislation in Act 68 and H. 792 as enacted have not been identified by the secretary of administration at the time the plan is submitted to the committee, the committee may disapprove the plan and, if disapproved, the plan may not be implemented.

Sec. E.100.5 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. 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." Pursuant to policy 11.7 of the PPPM, "that policy has been interpreted to allow a limited degree of personal use of state telephones for private call when such use meets certain guidelines," and similar allowances are permitted for Internet, electronic and wireless communication devices and services, and e-mail capabilities.

(2) Further, 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. 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."

(b) The general assembly anticipates that Internet and computer monitoring software, such as Marshall 86, shall be administered consistently with stated policies in PPPM Numbers 5.6 and 11.7.

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 the 2009 Adj. Sess. (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.

(b) Of this appropriation, $30,000 is from the current use special fund and shall be appropriated for programming changes to the CAPTAP software used for the valuation of property tax.

(c) Notwithstanding any law or regulation to the contrary, the department is authorized to pay up to $20.00 an hour for interns to assist with the tax expenditure work required of the department during calendar year 2010.

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 Buildings and general services – fleet management services (Sec. B.114, #1160150000)

(a) The commissioner of the department of buildings and general services shall submit a report to the house and senate committees on appropriations by January 15th of each year detailing the number of state employees, by department, that exceed a $14,000 mileage reimbursement amount for use of their private vehicle.

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 health care information technology. In that the consultant's services are provided in part to executive branch entities, the joint fiscal 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 2007 Adj. Sess. (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 legislative proceeding ~~commenced~~ under or related to 30 V.S.A. § 248(e) or chapter 157 of Title 10.

(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 nonbargaining 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.206 24 V.S.A. § 1940(c) is amended to read:

(c) A specialized investigative unit grants board is created which shall be comprised of the attorney general, the secretary of administration, the executive director of the department of state's attorneys, the commissioner of the department of public safety, a representative of the Vermont sheriffs' association, a representative of the Vermont association of chiefs of police, the executive director of the center for crime victim services, and the executive director of the Vermont League of Cities and Towns, Inc. Specialized investigative units organized and operating under this section for the investigation of sex crimes, child abuse, elder abuse, domestic violence, or crimes against those with physical or developmental disabilities may apply to the board for a grant or grants covering the costs of salaries and employee benefits to be expended during a given year for the performance of unit duties as well as unit operating costs for rent, utilities, equipment, training, and supplies. Grants under this section shall be approved by a majority of the entire board and shall not exceed 50 percent of the yearly salary and employee benefit costs of the unit. Preference shall be given to grant applications which include the participation of the department of public safety, the department for children and families, sheriffs' departments, community victims' advocacy organizations, and municipalities within the region. However, a sheriff's department in a county with a population of less than 8,000 residents shall upon application receive a grant of up to $20,000.00 for 50 percent of the yearly salary and employee benefits costs of a part-time specialized investigative unit investigator which shall be paid to the department as time is billed on a per hour rate as agreed by contract up to the maximum amount of the grant.

Sec. E.207 Sheriffs (Sec. B.207, #2130200000)

(a) In fiscal year 2011, the annual salaries of sheriffs earning $60,000 or more shall be reduced by five percent from the salaries which would otherwise be paid under the provisions of 32 V.S.A. § 1182, and the annual salaries of sheriffs earning less than $60,000 shall be reduced by three percent from the salaries which would otherwise be paid under the provision 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.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 the 2007 Adj. Sess. (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 the 2007 Adj. Sess. (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 for the sole purpose of training Vermont law enforcement and related practitioners on issues related to domestic violence. 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) The commissioner of banking, insurance, securities, and health care administration shall notify the members of the joint fiscal committee by telephone and provide the members with a copy of the application by electronic mail prior to applying 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. If feasible given the federal time lines, the commissioner shall make reasonable efforts to provide notice, a copy of the application, and an opportunity for the members to respond at least three business days prior to the application deadline.

(c)(1) Notwithstanding 32 V.S.A. § 5, and with the approval of the secretary of administration, the commissioner of banking, insurance, securities, and health care administration shall request approval from the joint fiscal committee to accept 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.

(2) The commissioner of banking, insurance, securities, and health care administration shall provide the joint fiscal committee with information on whether the proposal is 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. If the grant meets the criteria under this subsection and notwithstanding 32 V.S.A. § 5, the commissioner may accept the grant after approval by a majority of voting members of the joint fiscal committee.

(d) Upon approval by the joint fiscal committee as part of the review under subsection (c) 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~~ may establish ~~the nongroup~~ a 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 pursuant to chapter 25 of Title 3 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 Enhanced 9-1-1 Board (Sec. B.238, #2260001000)

(a) The director shall develop a plan, for implementation in fiscal year 2012, to equitably fund E 9-1-1 call handling equipment seats at the 9-1-1 public safety answering points operated by the Vermont enhanced 9-1-1 board. This plan shall be submitted to the house and senate committees on appropriations by January 15, 2011.

* * * 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.

(b) Of the funds appropriated, $100,000 is to be granted to Vermont Legal Aid for a pilot project through the Vermont parent representation center for participation in pre-petition hearings.

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 department 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 30 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 Department 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 department 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.

(c) Unexpended funds in the department of health in fiscal year 2010 allocated for the Vermont blueprint for health shall be transferred from the department of health to the department of Vermont health access and used in fiscal year 2011 for expansion of the blueprint program.

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 eight tests per month. The department of Vermont health access shall adopt SAMSHA guidelines, as available, for appropriate use of urine drug tests, including the frequency of

testing, and shall develop protocols for exceptions to the limitation to eight tests.

(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 order 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.

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 this 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 percent 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 ~~office~~ department 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 ~~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 hospital 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 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)(1)(B) is amended to read:

(B) Income greater than 175 percent and less than or equal to 200 percent of FPL: ~~$65.00~~ $60.00 per month.

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 on behalf of an individual enrolled in VPharm after the individual exceeded the initial coverage limit under Section 1860D-2(b)(3) of the Social Security Act for 2010.

(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 18 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 EMERGENCY RULEMAKING; MEDICAID

(a) In order to administer Sec. E.309.1(a) (benefit limits) and (b) (high-tech imaging) 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, and Sec. E.309.11 (Medicare drug benefit), the agency of human services shall be deemed to have met the standard for adoption of emergency rules as required by 3 V.S.A. § 844(a). Notwithstanding 3 V.S.A. § 844, the agency shall provide a minimum of five business days for public comment in advance of filing the emergency rules as provided for in 3 V.S.A. § 844(c).

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 this chapter shall pay to the department of Vermont health access, as the secretary's designee, a rebate on all pharmaceuticals for which state-only funds are expended in an amount at least as favorable as the rebates provided under 42 U.S.C. section 1396r-8 paid to the department in connection with Medicaid and programs funded under the Global Commitment to Health Medicaid Section 1115 waiver.

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~~ DVHA, ~~as a condition of participation in the program~~ as required by section 1901 of this title, a rebate on all pharmaceuticals for which state-only funds are expended 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 on all pharmaceuticals for which state-only funds are expended in an amount at least as favorable as the rebate paid to ~~OVHA~~ DVHA in connection with the Medicaid program.

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.

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 community advisory group (CAG) with current information and data relating to service initiatives. The funds shall be allocated as follows:

(A) AIDS Project of Southern Vermont, $74,059;

(B) A Community Resource Network or its successor, $36,750;

(C) VT CARES, $155,491;

(D) Twin States Network, $31,850;

(E) People with AIDS Coalition, $36,850.

(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)(A) Notwithstanding the provisions of Sec. E.312(a)(6) of Act 1 of the 2009 special session, the department of health shall carry forward $140,000 in general funds from fiscal year 2009 to provide 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. Before using the general fund allocation to cover the costs of AMAP, the department of health shall use pharmaceutical rebate special funds to cover the costs of AMAP. Any carry-forward general funds remaining at the end of fiscal year 2011 shall be distributed to AIDS service organizations in the same proportion as those outlined in this subsection.

(B) 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 collaboration 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.

(C) As provided for in this section, the secretary of human services shall work in collaboration with the AMAP advisory committee, which shall be composed of no less than 50 percent of members who are living with HIV/AIDS. If a modification to the program's eligibility requirements or benefit coverage is considered, the committee shall make recommendations regarding the program's formulary of approved medication, related laboratory testing, nutritional supplements, and eligibility for the program.

(4) In fiscal year 2011, the department of health shall provide grants in the amount of $100,000 in general funds 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.

(b) Funding for the tobacco programs in fiscal year 2011 shall consist of the $1,166,803 in tobacco funds and $529,704 in Global Commitment funds appropriated in Sec. B.312 of this act; and $212,709 of the tobacco funds appropriated in Sec. B.300 of this act. The tobacco evaluation and review board shall determine how these funds are allocated to tobacco cessation, community based, media, public education, surveillance, and evaluation activities. This allocation shall include funding for tobacco cessation programs that serve pregnant women.

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) For fiscal year 2011, the department of Vermont health access and the office of drug and alcohol programs shall determine a means, notwithstanding any other provision of law to the contrary, of opening the preferred provider network to expand Medicaid funded substance abuse services from licensed alcohol and drug abuse counselors in geographic areas in which there are waiting lists for services for referrals from the department of corrections, the department for children and families, and the judiciary. The Vermont addiction professionals association shall be consulted in determining the means of expanding treatment access. The commissioners shall report on this directive to the joint fiscal committee at the September 2010 meeting.

(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 (c)(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 is allocated to the Howard Center for the integrated Howard Center/Maple Leaf Farm Intensive Outpatient Program.

(e) A performance based contract for $150,000 shall be issued to Maple Leaf Farm by July 1, 2010. This contract shall be in addition to other grants and contracts for Maple Leaf Farm and shall be to support enhanced medical and psychiatric services intended to reduce psychiatric and detoxification utilization at hospitals.

(f) Of the interdepartmental funds, $110,000 are from the department of corrections justice reinvestment funds and shall be added to the recovery center base funding for fiscal year 2011. Grants of $45,000 each shall be made for 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: $135,800 to Lamoille County people in partnership program for wrap-around services for at risk youth and $14,550 for a grant to the project against violent encounters for a program for domestic violence prevention and mentoring for youth. The department shall develop measures to evaluate the success of these grant funded programs. This evaluation shall be submitted with the fiscal year 2012 budget materials to the house and senate committees on appropriations.

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. § 3512. 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.

Sec. E.318.1 33 V.S.A. § 4602(a)(10) as added in Sec. 2 of S.268 of 2010 is amended to read:

(10) 12 at-large members, ~~selected on the basis of~~ appointed by the governor based on their commitment to early childhood well-being and representing a range of perspectives and geographic diversity. The governor shall consider the recommendations of the council's nominating committee. 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~~ recommended by the Vermont school boards association.

Sec. E.318.2 S.268 of the 2009 Adj. Sess. (2010); TECHNICAL CORRECTION

(a) The second Sec. 2 in S.268 shall be renumbered to be Sec. 3 and Sec. 3 shall be renumbered to be Sec. 4.

Sec. E.318.3 Sec. 3 of S.268 of 2010, as enacted and as amended by this act, is amended to read:

Sec. 3. 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, including a procedure by which a nominating committee recommends prospective council members to the governor.

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 division of the superior court. Except as provided in section 463 of this title, the office of magistrate shall have nonexclusive jurisdiction ~~concurrent with the family court~~ to hear and dispose of the following cases and proceedings:

(1) Proceedings for the establishment, modification, and enforcement of child support, including contempt proceedings instituted against an obligated party for the limited purpose of enforcing a child support order.

(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) Using reinvestment funds authorized in No. 68 of the Acts of 2010, the office of child support may fill two existing full-time classified positions 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 $1,100 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 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 from the decedent's estate or from the decedent's spouse 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 other individuals 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 ~~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 up to the maximum amount established by rule for the burial of eligible persons who die in this state or residents of this state who die within the state or elsewhere

when ~~such~~ the 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)~~(e) For the purpose of this chapter, "burial" means the ~~act of~~ final disposition of human remains including interring or cremating ~~the human dead~~ 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. 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 EMERGENCY RULEMAKING FOR GENERAL ASSISTANCE PROGRAMS

(a) In order to administer Secs. E.321 and E.321.1 (general assistance burial) of this act, the department for children and families shall be deemed to have met the standard for adoption of emergency rules as required by 3 V.S.A. § 844(a). Notwithstanding 3 V.S.A. § 844, the agency shall provide a minimum of five business days for public comment in advance of filing the emergency rules as provided for in 3 V.S.A. § 844(c).

Sec. E.323 REPEAL

(a) Sec. 106 of No. 4 of the Acts of 2009 (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 postsecondary institutions will team with Reach Up case managers in each district to provide coordinated case management services for students in the postsecondary program.

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.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.

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. 338 Corrections – correctional services (Sec. B.338, #3480004000)

(a) In fiscal year 2011, $110,000 of the funds allocated for recovery centers with justice reinvestment funds shall be transferred to the office of drug and alcohol programs to be added to the base funding for recovery centers.

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.

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.

Sec. E.401.3 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. E.401.4 REPEAL

(a) 21 V.S.A. § 1423b (relating to extended benefits; approved training programs) is repealed.

* * * 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; provided, however, that the number included in the average daily membership shall not exceed the maximum number of children who can be accommodated in all qualified prekindergarten education programs, as defined in state board rule, that are offered by or through the school district and by private providers within the district as of:

(I) June 30, 2010 if the commissioner's determination of insufficient progress is made on or before that date; or

(II) June 30 of the year the commissioner's determination of insufficient progress is made for districts added to the list after June 30, 2010.

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 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.

Sec. E.605.1 VERMONT STUDENT ASSISTANCE CORPORATION; REPORT

(a) The Vermont student assistance corporation (VSAC) shall file a report with the general assembly and the higher education subcommittee of the prekindergarten-16 council by January 15, 2011. The report shall detail VSAC's changing role as a result of changes made in March 2010 to the federal higher education act through the enactment of the health care and education reconciliation act of 2010 (HCERA), Pub.L. 111-152 and HCERA's impacts on VSAC's operating revenues, its ability to provide state services to Vermonters, its strategic direction, and its spending and staffing levels. VSAC shall give updating reports to the higher education subcommittee of the prekindergarten-16 council at the council's meetings in 2010, and the council shall submit its comments on the reports to the general assembly.

Sec. E.605.2 ADVANCED PLACEMENT COURSES; DUAL ENROLLMENT AND OTHER POSTSECONDARY COURSES; POSTSECONDARY CREDIT

(a) On or before January 15, 2011, each Vermont postsecondary institution that receives general fund or capital appropriations from the state shall consider and provide recommendations to the house and senate committees on education regarding ways in which it could improve secondary completion and postsecondary aspiration rates by awarding postsecondary academic credit for the successful completion of one or more of the following:

(1) An advanced placement course at a Vermont secondary school and a score of three or higher on the advanced placement examination.

(2) A postsecondary-level course in a dual enrollment program.

(3) A postsecondary-level course offered online or by correspondence with an accredited college or university.

* * * 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 Sec. 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 implement the landowner Incentive Program and Community Wildlife Program.

(b) The department shall develop measures to evaluate the success of the Scientist II positions in carrying out the purposes 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.702.1 TRANSFER OF REGULATORY OVERSIGHT AND SPECIAL REQUIREMENTS FOR FACILITY AND HERD MANAGEMENT

(a) The general assembly finds and declares that:

(1) Vermont has long recognized that the protection and management of the state's native cervidae population is in the interest of the public welfare.

(2) An abundant, healthy deer herd is a primary goal of wildlife management, and hunting is a time-honored Vermont tradition.

(3) Vermont's captive cervidae herds are regulated as game farms under authority of the secretary of agriculture, food and markets under chapter 102 of Title 6 and the agency of agriculture, food and markets' rules governing captive cervidae.

(4) Captive cervidae herds provide economic benefit to Vermont in the same manner as farms producing cattle, sheep, pigs, and other amenable livestock.

(5) Tuberculosis is a transmissible disease that can infect species of both the cervidae and bovidae families and is zoonotic. The family bovidae includes cattle. The family cervidae include white-tailed deer, moose, and elk.

(6) Chronic wasting disease is a transmissible spongiform encephalopathy that has been identified in both free-ranging and captive cervidae populations in other parts of the United States, including New York state.

(7) Tuberculosis can be transmitted in cervidae and bovidae by nose-to-nose contact and through the sharing of watering and feeding troughs. It is not known exactly how chronic wasting disease is transmitted, but the most likely route of transmission is nose-to-nose contact. The agency of agriculture, food and markets' rules governing captive cervidae contain provisions both for managing herds that may be susceptible to chronic wasting disease and for testing cervidae to monitor for the control of zoonotic diseases contagious to livestock, including tuberculosis.

(8) The captive cervidae facility located in Irasburg manages a special-purpose herd established in 1994 within a 700-acre enclosure. At the time of the enclosure, the 700 acres contained a small population of native cervidae that currently falls outside the jurisdiction of the agency of agriculture, food and markets.

(9) In order to align state regulatory oversight of the facility and balance the state's responsibility to protect and manage its native cervidae populations with the economic benefit contributed by the 700-acre captive cervidae facility, it is necessary to transfer to the agency of agriculture, food and markets full jurisdiction and authority for regulatory oversight of the Irasburg facility and full authority for herd management of the facility and all cervidae currently contained within the 700-acre enclosure.

(b) Notwithstanding any law to the contrary, for the purposes of this section, the term "cervidae" shall include all white-tailed deer and moose currently entrapped in the Irasburg captive cervidae facility that contains a special-purpose herd, as "special-purpose herd" is defined in the agency of agriculture, food and markets' rules governing captive cervidae.

(c) The Irasburg captive cervidae facility that contains a special-purpose herd shall:

(1) Erect a secondary-perimeter fence inside the existing, primary-perimeter fence sufficient to reduce the possibility of contact between native cervidae and any cervidae within the facility. The secondary fencing shall be approved by the secretary of agriculture, food and markets and shall be erected no later October 1, 2010.

(2) Submit a written herd management plan for all cervidae, including entrapped native cervidae, within the facility to the secretary of agriculture, food and markets for approval. The plan shall:

(A) contain a specific disease surveillance component acceptable to the secretary of agriculture, food and markets that presents at least 30 mature native cervidae to the secretary of agriculture, food and markets for tuberculosis and chronic wasting disease testing per year. For purposes of this subdivision, "mature" means an animal older than 16 months of age;

(B) provide for the culling of antlerless native cervidae at a rate that prevents the herd size from overpopulating the enclosed area. The culling program shall include a provision to allow members of the Vermont National Guard who did not participate in the Vermont regular deer or moose hunting seasons and who were awarded or are eligible to receive a campaign ribbon for Operation Iraqi Freedom or Operation Enduring Freedom to assist with the cull; and

(C) be filed with the secretary of agriculture, food and markets no later than August 1, 2010.

(3) Comply with all disease testing protocols established and required by the secretary of agriculture, food and markets.

(4) Demonstrate by no later than September 1, 2010, substantial compliance with the agency of agriculture, food and markets' rules governing captive cervidae.

(5) Remain in good regulatory standing with the secretary of agriculture, food and markets.

(d) The secretary of agriculture, food and markets may grant a variance from the agency of agriculture, food and markets' rules for the design and

construction of the secondary-perimeter fence required under subdivision (c)(1) of this section if the fence design proposed by the owner of the Irasburg facility serves the underlying purpose of reducing the possibility of contact between free-ranging native cervidae and any cervidae enclosed within the facility. The secretary of agriculture, food and markets may grant variances to other provisions of the agency of agriculture, food and markets' rules governing captive cervidae provided that the health and welfare of free-ranging native cervidae are not compromised or put at risk.

(e) In order to ensure that the appropriate number of native cervidae are provided to the secretary of agriculture, food and markets for disease surveillance as required under subdivision (c)(2)(A) of this section and that the facility is able to meet the cull rate required under subdivision (c)(2)(B) of this section, the facility may harvest cervidae during a special season, if necessary. Any special harvest shall be approved in advance by the secretary of agriculture, food and markets after consultation with the commissioner of fish and wildlife. Notice of approval for a special season shall be posted at least 10 days in advance of the season in the office of the town clerk of Irasburg.

(f) Any native cervidae discovered between the primary and secondary fences at the Irasburg captive cervidae facility or any cervidae carcass discovered within the Irasburg facility shall be immediately presented to the secretary of agriculture, food and markets for disease surveillance.

(g) The secretary of agriculture, food and markets may enforce a failure to comply with the requirements of this section under chapter 1 or 102 of Title 6.

(h) It shall be a violation of chapter 103 or 113 of Title 10 if a person knowingly or intentionally entraps or allows a person to knowingly or intentionally entrap a native cervidae within the Irasburg captive cervidae facility.

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. E.800 [DELETED]

Sec. E.800.1 [DELETED]

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, 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.

(5) Preference 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.803.2 Sec. 2(a) of No. 78 of the Acts of 2010 (Vermont Recovery and Reinvestment) is amended to read:

(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~~ $8,565,000.00 is hereby appropriated as prescribed in Secs. 3–10d of this act. The Vermont office of economic stimulus and recovery is directed to track these general fund appropriations as if they were ARRA funds.

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, division of Lake Champlain Regional Chamber of Commerce.

(b) The Vermont convention bureau 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 ~~Finance Regulatory~~ and Economic 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 into 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 appointed by the governor with the advice and consent of the senate, 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 USE 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 use 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.

Sec. E.810.4 COMMISSION ON FINANCING AND DELIVERY OF AFFORDABLE HOUSING AND CONSERVATION

(a) An eight-person commission is created, consisting of the following members: one member of the house of representatives appointed by the speaker of the house; one member of the senate appointed by the senate committee on committees; three citizen members who are not members of the general assembly, appointed by the speaker of the house; and three citizen

members who are not members of the general assembly, appointed by the senate committee on committees. Citizen members shall be experienced in developing or financing affordable housing or conserving Vermont's working landscape and historic properties. The speaker of the house and the senate committee on committees shall appoint one citizen member as chair of the commission.

(b) The commission shall:

(1) identify the state requirements for housing and conservation programs and services administered by the Vermont state housing authority, the Vermont housing finance agency, the Vermont housing and conservation board and the Vermont department of economic development, housing and community development ("statewide entities");

(2) determine whether the statewide entities are taking the following steps to meet their respective state requirements:

(A) assembling multiple funding sources to address a full range of housing needs, including emergency, transitional, assisted living, multi-family rental, and homeownership;

(B) leveraging federal, state, private, and philanthropic resources;

(C) serving Vermonters with the lowest incomes and special needs;

(D) promoting housing and economic development in downtowns and village centers;

(3) review the report required by Executive Order Number 02-10 (March 18, 2010) that addresses the potential merger or consolidation of the statewide entities;

(4) determine the impact of a merger or consolidation of the statewide entities on the production of permanently affordable housing, land conservation, and historic preservation; and

(5) with respect to the Vermont housing and conservation board, determine whether it is fulfilling its statutory mission to develop permanently affordable housing and protect at-risk housing; to conserve Vermont's working landscape, important natural areas, and historic properties; and to build effective community-based nonprofit capacity to advance these goals.

(c) The commission may meet up to six times while the general assembly is not in session and shall hold at least one public hearing. The legislative council shall provide legal and administrative support to the commission. Commission members who are not state employees are entitled to compensation and reimbursement of expenses as provided under 32 V.S.A.

§ 1010 to be paid for equally by the statewide entities. By January 15, 2011, the commission shall submit a report of its findings and recommendations to the house committees on appropriations, on government operations, and on general, military affairs and housing; and the senate committees on appropriations, on government operations, and on economic development, housing and general affairs.

* * * 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.1 Sec. C5(b) of H.792 of the 2010, as enacted, is amended to read:

(b) The agency shall not expand the list of available Medicaid providers of ~~home- and community-based~~ nonmedical personal care services~~, not including case management or self-directed services,~~ and respite care to include providers other than home care agencies certified by the Centers for Medicare and Medicaid Services.

Sec. F.3 Sec. C24 of H.792 of 2010, as enacted, is amended to read:

Sec. C24. INITIATIVES; INDIVIDUALS WITH DISABILITIES, MENTAL HEALTH NEEDS, OR SUBSTANCE ABUSE ISSUES

The general assembly is supportive of the following new proposals and the proposals relating to individuals with disabilities, mental health needs, or substance abuse issues in the agency of human services addendum to the Challenges for Change Progress Report dated March 30, 2010, and urges the agency to implement them, subject to other legislation enacted by the general assembly:

* * *

(13) ~~allowing~~ developing new residential options for individuals with developmental disabilities as described in the state system of care plan;

* * *

(18) redesigning service delivery to individuals with developmental disabilities in ~~the custody of~~ programs funded by the commissioner of

disabilities, aging, and independent living ~~under the~~ who pose a risk to public safety ~~criteria~~.

Sec. F.4 Sec. C25(b)(2) of H.792 of 2010, as enacted, is amended to read:

(2) No later than July 1, 2011, every individual ~~in the custody of the commissioner~~ with developmental disabilities in programs funded by the department of disabilities, aging, and independent living ~~under the~~ who poses a risk to public safety ~~criteria~~ who has not been assessed for a developmental disability within the past two years shall have his or her ~~competency~~ risk to public safety evaluated by a psychologist skilled in assessing developmental disabilities. The commissioner shall develop protocols for evaluating the appropriateness of less restrictive residential placements based on the results of the evaluation.

Sec. F.5 Sec. C25(c) of H.792 of 2010, as enacted, is amended to read:

(c) Individuals may appeal to the human services board as provided for in 3 V.S.A. § 3091, except that the agency shall provide an expedited hearing as described in this subsection in lieu of the hearing provided for in 3 V.S.A. § 3091(b).

(1) An individual may appeal modifications to his or her individualized service plan and budget and receive continuing benefits if requested within the time frames specified in existing law. ~~If the appeal is made within the time frame provided for in existing law, the individual may receive continuing benefits upon request until a decision has been rendered.~~

(2) An expedited hearing shall be held no later than 11 calendar days following the date of the request for an appeal. A special, independent hearing officer shall be appointed by the agency and assigned to hear the appeals provided for under this subdivision. The ~~agency~~ department may contract with an attorney for its representation at these expedited hearings.

(3) ~~Hearings~~ Expedited hearings shall be conducted according to the human services board fair hearing rules, except to the extent that the rules conflict with the process provided for in this subsection.

Sec. F.6 13 V.S.A. § 4816(c) as amended by Sec. C25a of H.792 of 2010, as enacted, is amended to read:

(c) As soon as practicable after the examination has been completed, the examining psychiatrist or psychologist, if applicable, shall prepare a report containing findings in regard to each of the matters listed in subsection (a) of this section. The report shall be transmitted to the court issuing the order for examination, and copies of the report sent to the state's attorney, and to the respondent's attorney if the respondent is represented by counsel.

Sec. F.7 33 V.S.A. § 2031 as added by Sec. C34 of H.792 of 2010, as enacted, is amended to read:

§ 2031. CREATION OF CLINICAL UTILIZATION REVIEW BOARD

(a) No later than ~~May 15, 2010~~ June 15, 2010, the department of Vermont health access shall create a clinical utilization review board to examine existing medical services, emerging technologies, and relevant evidence-based clinical practice guidelines and make recommendations to the department regarding coverage, unit limitations, place of service, and appropriate medical necessity of services in the state's Medicaid programs.

* * *

Sec. F.8 Sec. D10 of H.792 of 2010, as enacted, is amended to read:

Sec. D10. DEPARTMENT OF CORRECTIONS; FACILITIES CLOSING

(a) ~~In~~ Except as provided in subsection (b) of this section, in fiscal year 2011, the department of corrections shall not close or substantially reduce services at a correctional facility or field office.

(b) The department of corrections may close or substantially reduce services at a correctional facility or field office between January 31, 2011, and May 1, 2011, provided that 60 days prior to the closure of a facility or a reduction in services, the secretary of administration provides such a proposal to the house committee on corrections and institutions and the senate committees on judiciary and on institutions, if the general assembly is in session, or to the joint committee on corrections oversight and the joint fiscal committee, if the general assembly has adjourned for the year.

Sec. F.9 Sec. D12 of H.792 of 2010, as enacted, is amended to read:

Sec. D12. COMMISSIONER OF CORRECTIONS; AID TO COMMUNITIES WITH A HIGH ~~NUMBER~~ PERCENTAGE PER CAPITA OF PEOPLE UNDER THE CUSTODY OF THE COMMISSIONER

The commissioner of corrections shall work with communities, in which a high number of people are under his or her custody, including those living in the community and those who are incarcerated residents of the community, to help the community to reduce the number of people entering into custody. For expenditures from funds reinvested pursuant to Sec. D9 of this act and Sec. 338 of H.789 of 2010 (Appropriations Act), in community level services, the commissioner shall give priority to projects located in ~~the four~~ communities which have the highest ~~number~~ percentage per capita of people under his or her custody, including those living in the community and residents who are incarcerated.

Sec. F.10 Sec. G2(b) of H.792 of 2010, as enacted, is amended to read:

(b) Pursuant to the directive contained in ~~Act 68~~ No. 68 of the Acts of the 2009 Adj. Sess. (2010), it is the intent of the general assembly to improve the outcomes for economic development by:

(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.

(4) Using objective data-based indicators to measure performance of these strategies.

Sec. F.11 24 V.S.A. § 4341(c), as enacted by Sec. G5 of H.792 of 2010, is amended to read:

(c) A municipality may ~~withdraw~~ move from ~~a~~ one regional planning commission to another regional planning commission on terms and conditions approved by the secretary of the agency of commerce and community development.

Sec. F.12 Sec. G6(a)(1)(D) of H.792 of 2010, as enacted, is amended to read:

(D) Two members, appointed jointly by the governor, the speaker of the house, and the president pro tempore of the senate, who have a background in municipal planning and do not currently serve on the board of a regional development corporation or a regional planning commission. The governor, the speaker of the house, and the president pro tempore of the senate shall jointly designate one of these two members as the chair of the oversight panel and one member as the vice chair of the oversight panel.

Sec. F.13 Sec. G24(4) of H.792 of 2010, as enacted, is amended to read:

(4) From the Challenges for Change reinvestment funds that are appropriated to the secretary to implement the economic development components of this act, the secretary of administration shall reimburse the joint fiscal office and the appropriate executive agency or department for costs incurred to implement Sec. G10 (economic performance measures) of this act.

Sec. F.14 ECONOMIC DEVELOPMENT TARGET AND INVESTMENT

(a) Notwithstanding No. 68 of the Acts of 2009 Adj. Sess. (2010), in fiscal year 2011, the secretary of administration shall reduce total state fund appropriations related to economic development by $965,600, and to achieve this reduction, the secretary may reduce total appropriations related to economic development by up to $1,065,600 and may reinvest up to $100,000

to accomplish this challenge, so long as the general fund reductions under this subsection, by the end of fiscal year 2011, equal or exceed $965,600.

(b) Subject to the limitations on reductions contained in No. 68 of the Acts of the 2009 Adj. Sess. (2010) and H.792 of 2010 and in order to meet the overall savings of $37,872,375, the secretary of administration shall seek $2,064,400 of state fund reductions from Challenges for Change, other than economic development, or from new, additional Challenges for Change initiatives.

Sec. F.15 Sec. H4(d) of H.792 of 2010, as enacted, is amended to read:

(d) ~~The governor, in achieving the outcomes and associated savings under this act and the Challenges for Change Act, may not reduce government benefits or limit benefit eligibility; and may not reduce personnel unless the personnel reduction is a direct consequence of achieving the required outcomes under the Challenges plan.~~ The administration shall engage the direct participation of service recipients, their families, service providers, and other stakeholders to develop additional Challenges that will meet in full the outcomes and fiscal goals of the Challenges for Change Act and this act, and include a report of these additional Challenges in its July 2010 quarterly report.

Sec. F.15a Sec. H4a of H.792 of 2010, as enacted, is amended to read:

Sec. H4a. 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, government benefits, personnel, and programs which are considered as a means of accomplishing the goals of No. 68 of the Acts of the 2009 Adj. Sess. (2010), 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:

(1) any proposal for a reduction in excess of five percent of the gross expenditure of the appropriated funding for any single function, program, benefit or service as a part of its plan of implementation of Challenges for Change~~, and will~~;

(2) any reduction in government benefits or any limit in benefit eligibility as a part of its plan of implementation of Challenges for Change; or

(3) any reduction in personnel as part of its plan of implementation of Challenges for Change, that is not a direct consequence of achieving the required outcomes under the Challenges for Change provisions in this act.

(b) The secretary of administration shall include in the report provided for under subsection (a) of this section an analysis of how ~~the~~ any reduction is designed to achieve the outcomes expressed in the Challenges for Change, and how ~~the~~ any reduction is designed to achieve legislated policy priorities.

(c) 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. F.16 LONG-TERM MONITORING OF WASTEWATER DISCHARGE

(a) Pursuant to 3 V.S.A. § 2822(j)(2)(B)(i), the agency of natural resources charges an annual fee for the monitoring of certain wastewater discharges. Notwithstanding 3 V.S.A. § 2809, it is the intent of the general assembly to create a special fund that will be used to cover the continuing costs of monitoring in the event that the facilities monitored cease discharging wastewater. The general assembly anticipates that the special fund will be financed by a fee assessment on the facilities that are monitored prior to any cessation of their business.

Sec. G.100 EFFECTIVE DATES

(a) This section and Secs. C.100, C.100.1, C.100.2, C.101, C.102, C.103, E.100.4, E.127.2, E.220.1, E.230, E.230.1, E.309.11 (Medicare One-Time Payment), E.309.14 (Emergency Rules for DVHA), E.309.15-E.309.17 (Rx Rebates), E.309.18 (Pallative Care), E.321.4 (Emergency Rules for DCF), E.323 (Repeal Reach Ahead sunset), E.401.1-E.401.4, E.500.1, E.501.1, E.800, E.800.1, E.801.1, E.803.1, E.803.2, E.810, E.810.3, F.7, F.10-F.13, and F.15 of this act shall take effect upon passage.

(b) Sec. E.309.5 (Catamount Health deductible, co-payment, and out-of-pocket maximum increases) shall take effect on October 1, 2010, and shall apply to all Catamount Health insurance plans on and after October 1, 2010, on such date as a health insurer offers, issues, or renews the Catamount Health insurance plan, but in no event later than October 1, 2011.

(c) Sec. E.318.1-E.318.3 shall be effective upon the enactment of S.268 of 2010.

(d) 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.

(e) 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.

(f) 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.

(g) Sec. E.127.1 (nuclear energy analysis) shall be in effect from July 1, 2008 to July 1, 2012.

(h) 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.

(i) Sec. E.810.2 is effective on passage and the terms of all public members currently appointed to the Vermont Housing and Conservation Trust Fund by the governor or general assembly under 10 V.S.A. § 311 shall be extended from June 30 to January 31.

* * * BUDGETED TAX EXPENDITURES

Sec. H.1 32 V.S.A. chapter 151, subchapter 11M is added to read:

Subchapter 11M. Machinery and Equipment Investment Tax Credit

§ 5930ll. 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 5832 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 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.

(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 credit was earned and year when business was substantially curtailed:	Percent of credits to be when repaid (%):
2 or less	100
More than 2, up to 4	80
More than 4, up to 6	60
More than 6, up to 8	40
More than 8, up to 10	20
More than 10	0

(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. H.2 REPEAL

(a) 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.

Sec. H.3 EFFECTIVE DATE

(a) Sec. H.1 (machinery and equipment investment tax credit) shall apply to taxable years beginning on and after January 1, 2012.

* * * 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 ~~office~~ department 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 ~~office~~ department 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 ~~office~~ department 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 ~~office~~ department 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 ~~director~~ commissioner of ~~the office of~~ Vermont health access or 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 ~~office~~ department 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 ~~office~~ department 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 ~~office~~ department 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 brand-name 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 ~~office~~ department of Vermont health access shall examine the data available from the office of the attorney general for relevant expenditures and determine whether and to what extent prescribing patterns by health care providers of prescribed products reimbursed by Medicaid, VHAP, Dr. Dynasaur, VermontRx, and VPharm may reflect manufacturer influence. The ~~office~~ department may select the data most relevant to its analysis. The ~~office~~ department 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

* * *

(c) 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 ~~office~~ department 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 ~~office~~ department 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 and shall send a certificate of payment to the transferor, the transferee, and the division showing the date when the tax was received~~ 33 V.S.A. § 1901d.

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 ~~director~~ commissioner a determination of the transferor's liability to pay or the amount of the nursing home transfer tax due. The ~~director~~ commissioner shall render a decision within 30 days of the receipt of all information that the ~~director~~ commissioner 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 ~~office~~ department 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 for children and families or the ~~director~~ commissioner of Vermont health access 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 for children and families or the ~~director~~ commissioner of Vermont health access 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 for children and families or ~~director~~ the commissioner of Vermont health access finds that the recipient's circumstances have changed. Upon granting assistance or benefits the department for children and families or ~~office~~ the department of Vermont health access 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 for children and families or ~~director~~ the commissioner of Vermont health access 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 for children and families or ~~director~~ the commissioner of Vermont health access may recoup the amount of assistance or benefits wrongfully obtained by reducing the assistance, 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 ~~office~~ department 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 for children and families and the ~~office~~ department of Vermont health access 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 ~~office~~ department of Vermont health access 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 ~~office~~ department of Vermont health 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 ~~director~~ commissioner shall provide the committee at regularly scheduled meetings updates on the status of policy and budget proposals.

(e) The ~~director~~ commissioner 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 ~~director~~ commissioner shall appoint members of the medical care advisory committee for staggered three-year terms. The ~~director~~ commissioner

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~~ 57 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~~ 57 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 ~~director of the office~~ commissioner 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 [DELETED]

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 ~~director~~ commissioner 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 ~~office~~ department 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 ~~office~~ department 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 ~~office~~ department according to a schedule adopted by the ~~director~~ commissioner. The ~~director~~ commissioner may permit variations in the schedule of payment as deemed necessary.

(d) Any nursing home that fails to make a payment to the ~~office~~ department on or before the specified schedule, or under any schedule of 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 nursing home.

Sec. I.55 33 V.S.A. § 1955 is amended to read:

§ 1955. ICF/MR ASSESSMENT

* * *

(b) The ~~office~~ department 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 ~~office~~ department according to a schedule adopted by the ~~director~~ commissioner. The ~~director~~ commissioner may permit variations in the schedule of payment as deemed necessary.

(d) Any ICF/MR that fails to make a payment to the ~~office~~ department on or before the specified schedule, or under any schedule of 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 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 ~~director~~ commissioner 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 ~~director~~ commissioner 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 ~~office~~ department, the ~~director~~ commissioner 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 ~~director~~ commissioner of ~~the office of~~ 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 ~~director~~ commissioner 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.

(c)(1) 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 ~~director~~ commissioner of ~~the office of~~ Vermont health access~~,~~ 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 ~~director~~ commissioner of Vermont health access 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 ~~director~~ commissioner to limit the plan's participation to one or more program components. The ~~director~~ commissioner 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 ~~director~~ commissioner 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 ~~director~~ commissioner 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 ~~director~~ commissioner 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 ~~director~~ commissioner of ~~the office of~~ Vermont health access shall report for review by the health access oversight committee, prior to initial implementation, and prior to any subsequent modifications:

* * *

(c) The ~~director~~ commissioner of ~~the office of~~ Vermont health access shall 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 ~~director~~ commissioner shall not enter into a contract with a pharmacy benefit manager unless the pharmacy benefit manager has agreed to disclose to the ~~director~~ commissioner 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 ~~office~~ department 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 ~~office~~ department, 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 ~~director~~ commissioner 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 ~~director~~ commissioner 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 ~~office~~ department 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 ~~office~~ department may adjust the requirements and terms of the pharmacy discount plans to accommodate any new federally funded prescription drug programs.

(k) The ~~office~~ department 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 ~~office~~ department 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 ~~office~~ department 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 ~~office~~ department 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 ~~office~~ department 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 ~~office~~ department 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 ~~office~~ department in its contract with the entity. Data compiled in aggregate form by the ~~office~~ department for the purposes of reporting required by this section are public records as defined in ~~subsection~~ 1 V.S.A. § 317(b) ~~of Title 1~~, 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 (DVHA) 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 ~~director~~ commissioner 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 ~~office~~ department 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 ~~office~~ department 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 by renumbering all of the sections of the bill to be numerically correct (including internal references) and adjusting all of the totals to be arithmetically correct.

SUSAN J. BARTLETT
RICHARD W. SEARS
DIANE B. SNELLING

Committee on the part of the Senate

MARTHA P. HEATH
JOSEPH N. ACINAPURA
MITZI JOHNSON

Committee on the part of the House

Thereupon, pending the question, Shall the Senate accept and adopt the report of the Committee of Conference?, on motion of Senator Shumlin, the Senate recessed until the fall of the gavel.

Called to Order

Pursuant to Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the Senate was called to order by David A. Gibson, Secretary of the Senate.

Recess

On motion of Senator Campbell the Senate recessed until 4:45 P.M.

Message from the House No. 84

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

Mr. President:

I am directed to inform the Senate that:

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

S. 295. An act relating to the creation of an agricultural development director.

And has adopted the same on its part.

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

H. 790. An act relating to capital construction and state bonding.

And has adopted the same on its part.

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

H. 760. An act relating to the repeal or revision of certain boards and commissions.

And has concurred therein.

Evening

Pursuant to Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, at 4:45 P.M. the Senate was called to order by David A. Gibson, Secretary of the Senate.

President *pro tempore* Assumes the Chair

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

S. 295.

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

An act relating to the creation of an agricultural development director.

Was taken up for immediate consideration.

President Assumes the Chair

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

To the Senate and House of Representatives:

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

An act relating to the creation of an agricultural development director.

Respectfully reports that it has met and considered the same and recommends that the Senate accede to the House proposal of amendment, and that the bill be further amended as follows:

First: In Sec. 1, by striking out the following: "The general assembly finds" and inserting in lieu thereof the following: For purposes of Secs. 2, 3 and 4 of this act, the generally assembly finds

Second: In Sec. 2, by adding a new subsection (c) to read as follows:

(c) Any change in employment titles or responsibilities resulting from the creation of the position of director of agricultural development shall be accomplished without increasing the overall salary expenditures of the agency of agriculture, food and markets.

Third: In Sec. 4, 6 V.S.A. § 2966(a)(2)(D), by striking out the following: "balancing" and inserting in lieu thereof the following: balance

Fourth: In Sec. 4, 6 V.S.A. § 2966, by striking out subsection (c) in its entirety and inserting in lieu thereof the following:

(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;

(4) request services from state economists, state administrative agencies, and state programs;

(5) obtain information from other planning entities, including the farm-to-plate investment program;

(6) 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; and

(7) develop an annual operating budget, and

(A) solicit any grants, gifts, or appropriations necessary to implement the budget pursuant to 32 V.S.A. § 5;

(B) expend any monies necessary to carry out the purposes of this section.

Fifth: In Sec. 4, 6 V.S.A. § 2966(f), by striking out subdivisions (3) and (4) in their entirety and inserting in lieu thereof the following:

(3) The secretary of agriculture, food and markets or his or her designee shall be a nonvoting, ex officio member. The secretary may provide staff support from the agency of agriculture, food and markets as resources permit.

(4) The secretary of commerce and community development or his or her designee shall be a nonvoting, ex officio member.

Sixth: In Sec. 4, 6 V.S.A. § 2966(g) by striking out subdivision (1) in its entirety; and in subdivision (2), by striking out the following: "Unless a higher threshold is established by the board's rules, seven" and inserting in lieu thereof the following: Eight; and in subdivision (3)(A), by striking out the following: "board shall be led by a chair who" and inserting in lieu thereof the following: chair of the board; and by renumbering the subdivisions accordingly

Seventh: By striking out Secs. 5 and 6 in their entirety and inserting in lieu thereof twelve new sections, to be numbered Sec. 5 through Sec. 16, to read as follows:

Sec. 5. FINDINGS

For purposes of Secs. 6, 7, 8, and 9 of this act, the general assembly finds:

(1) Livestock is the core of dairy and livestock farming. The care of and management of livestock are important to the profitability of Vermont farms and the maintenance of Vermont's working landscape.

(2) The general public is increasingly interested in locally produced food, and local Vermont meat has an excellent reputation for quality and flavor.

(3) Livestock raised on Vermont farms offers profit potential and economic opportunity for Vermont producers.

(4) The state would benefit from a body charged with making policy recommendations regarding livestock care.

(5) It is the intent of this legislation to assure the continued success of livestock and dairy farming in Vermont and the continuance of a safe, local food supply.

Sec. 6. 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, who shall serve as the chair of the council.

(2) The state veterinarian.

(3) The following six members appointed by the governor:

(A) A person with knowledge of food safety and food safety regulation in the state.

(B) A person from a statewide organization that represents the beef industry.

(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 three 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.

(C) A professional in the care and management of equines and equine facilities.

(5) The following three 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.

(C) A person with experience investigating charges of animal cruelty involving livestock, provided that no such person who has received or is receiving compensation from a national humane society or organization may be appointed under this subdivision.

(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. Eight 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.

§ 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;

(F) the protection of local and affordable food supplies for consumers; 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.

(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. 7. 6 V.S.A. § 3306 is amended to read:

§ 3306. LICENSING

* * *

(e) The secretary may, after notice and opportunity for hearing, refuse to grant, suspend, or revoke a license, may impose terms or conditions for operation under a license, including video monitoring, or may take any other action which he or she deems appropriate concerning any license, if he or she determines that any false statement was made in the application or if he or she finds that there is any failure to comply with this chapter or the rules made under it.

* * *

(h) The secretary may deny a commercial slaughter license or the renewal of a commercial slaughter license under this chapter to a person who has been convicted of a felony, convicted of a misdemeanor involving cruelty to animals, or has been found in violation of section 3132 of this title more than once. The secretary may deny a commercial slaughter license or renewal of a commercial slaughter license under this chapter if a person responsibly connected to the applicant has been convicted of a felony, convicted of a misdemeanor involving cruelty to animals, or has been found in violation of section 3132 of this title more than once. For purposes of this subdivision, a

"person responsibly connected to an applicant" is a partner, officer, director, holder, or owner of 10 percent or more of the voting stock of the applicant's business or is an employee in a managerial or executive capacity at the applicant's business.

(i) All applicants for licensure or relicensure as a commercial slaughter facility shall submit a written humane livestock handling plan for review and approval by the secretary of agriculture, food and markets or designee. The secretary may suspend, revoke, or condition any commercial slaughter facility license, after notice and opportunity for hearing, for a licensee's failure to adhere to the written plan.

(j) Commercial slaughter facilities issued a license by the agency of agriculture, food and markets shall submit to the secretary or designee within five days of receipt any documentation received from the U.S. Department of Agriculture (USDA) related to violations of the Federal Humane Slaughter Act and rules adopted thereunder. The secretary shall review the documentation submitted under this subdivision for potential action under this chapter or chapter 201 of this title. A failure to submit documentation required under this subdivision shall be a violation of this chapter subject to an administrative penalty under chapter 15 of this title.

Sec. 8. 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.

Sec. 9. 6 V.S.A. § 3134 is amended to read:

§ 3134. PENALTY

A person who violates ~~this chapter~~ section 3132 of this title shall be guilty of a misdemeanor and shall be fined upon conviction not more than ~~$100.00 nor less than $50.00~~ $1,000.00 for the first violation, not more than $5,000.00 for the second violation, and not more than $10,000.00 per violation for the third and any subsequent violations, or imprisoned not more than ~~90 days~~ two years, or both. In addition to the penalties provided ~~above~~ in this subsection, 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 refer a violation of section 3132 of this title to the attorney general or the state's attorney for criminal prosecution. The secretary may also take any action authorized under chapter 1 of this title.

Sec. 10. 20 V.S.A. § 3901 is amended to read:

§ 3901. DEFINITIONS

As used in this chapter, unless the context clearly requires otherwise:

* * *

(4) "Animal" means any dog or cat, rabbit, rodent, ~~nonhuman primate,~~ bird, or other warm-blooded vertebrate but shall not include horses, cattle, sheep, goats, swine, and domestic fowl.

* * *

(16) "Rescue organization" means any organization that accepts more than five animals in a calendar year for the purpose of finding adoptive homes for the animals, and that:

(A) holds a license as a pet shop;

(B) is recognized and approved as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, but is not registered as an animal shelter; or

(C) is registered as an animal shelter with the agency of agriculture, food and markets under section 3903 of this title.

Sec. 11. 20 V.S.A. § 3903 is amended to read:

§ 3903. REGISTRATION OF ANIMAL SHELTERS AND RESCUE ORGANIZATIONS

(a) No person may operate an animal shelter ~~after the expiration of six months following the effective date of this chapter~~ or rescue organization unless a certificate of registration for the animal shelter or rescue organization has been granted by the secretary. Application for the certificate shall be made in the manner provided by the secretary. No fee shall be required for the certificate. Certificates of registration shall be valid for a period of one year or until revoked, and may be renewed for like periods upon application in the manner provided.

(b) An animal shelter or rescue organization registered under this chapter shall not accept an animal unless the ~~donor~~ person transferring the animal to the shelter provides the following information: the name and address of the ~~donor~~ person transferring the animal and, if known, the name of the animal, its

vaccination history, and other information concerning the background, temperament, and health of the animal.

Sec. 12. 20 V.S.A. § 3907 is amended to read:

§ 3907. DENIAL OR REVOCATION OF REGISTRATION OR LICENSE

Issuance of a certificate of registration may be denied to any animal shelter, rescue organization, or fair, or a license denied to any public auction, or pet merchants, or any certificate or license previously granted under this chapter, may be revoked by the secretary if, after public hearing, it is determined that the housing facilities or primary enclosures are inadequate for the purposes of this chapter, or if the feeding, watering, sanitizing, and housing practices of the animal shelter, rescue organization, fair, public auction, pet merchant as the case may be, are not consistent with this chapter or with rules adopted under this chapter.

Sec. 13. 20 V.S.A. § 3908 is amended to read:

§ 3908. ADOPTION OF REGULATIONS

The secretary may as he or she deems necessary adopt, amend, revise, and repeal rules consistent with this chapter for the purpose of carrying out its purposes. The rules may include, but need not be limited to, provisions relating to humane transportation to and from registered or licensed premises, records of purchase and sale, identification of animals, primary enclosures, housing facilities, sanitation, euthanasia, ambient temperatures, feeding, watering, and adequate veterinary medical care, with respect to animals kept or cared for at premises licensed or registered under this chapter. The secretary may at his or her discretion, adopt in whole or in part those portions of the rules of the secretary of agriculture under Public Law 89-544, commonly known as the Laboratory Animal Welfare Act, which are consistent with the purposes of this chapter.

Sec. 14. 20 V.S.A. § 3911(b) is amended to read:

(b) Any person who operates a fair~~,~~ or public auction, or who transacts business as a pet merchant, animal shelter, or rescue organization without being duly licensed or without possessing a proper certificate of registration, as the case may be, as required under this chapter, or who violates any provision of this chapter or of any rule lawfully adopted under its authority for which no other penalty is provided, shall be fined not more than $300.00 or imprisoned for not more than six months, or both.

Sec. 15. 20 V.S.A. § 3915 is added to read:

§ 3915. HEALTH CERTIFICATE FOR TRANSPORT INTO STATE

(a) A dog, cat, ferret, or wolf-hybrid imported into the state for sale, resale, exchange, or donation shall be accompanied by an official health certificate or similar certificate of inspection for the dog, cat, ferret, or wolf-hybrid issued by a veterinarian licensed in the state or country of origin. The certificate shall certify that:

(1) the dog, cat, ferret, or wolf-hybrid has been inspected and is free of visible signs of infections or contagious or communicable disease; and

(2) if the dog, cat, ferret, or wolf-hybrid is more than three months of age, the dog, cat, ferret, or wolf-hybrid has a current rabies vaccination or is a specific breed for which a rabies vaccination is not age-appropriate.

(b) The agency of agriculture, food and markets may adopt rules regarding the issuance and contents of any certificate required under subsection (a) of this section.

Sec. 16. EFFECTIVE DATES

(a) Secs. 1 (agricultural development findings), 2 (agricultural development director), 3 (elimination of references to commissioner of agricultural development), 4 (agricultural development board), 10 (rescue organization), 11 (registration of rescue organizations), 12 (denial or revocation of animal shelter or rescue organization license), 13 (adoption of welfare of animal regulations), 14 (welfare of animal penalties), and 15 (health certificate for import of animal) of this act shall take effect on July 1, 2010.

(b) This section and Secs. 5 (livestock care findings), 6 (livestock care standards advisory council), 7 (commercial slaughter facility licensing), 8 (slaughterhouse employee training), and 9 (humane slaughter penalties) shall take effect upon passage.

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

"An act relating to miscellaneous agricultural subjects."

SARA BRANON KITTELL
ROBERT A. STARR

Committee on the part of the Senate

WILLIAM C. STEVENS
JOHN W. MALCOLM
THERESE M. TAYLOR

Committee on the part of the House

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

Remarks Journalized

****On a personal point of privilege, Senator Mazza addressed the Chair, and on motion of Senator Campbell, his remarks were ordered to be entered in the Journal, and are as follows:

"Mr. President:

"I would like to take a moment to express my thoughts regarding the members of the Senate who will be leaving us after this session. As you all know four Senators and our Lieutenant Governor will be seeking other offices. In my 25 years of serving in this wonderful legislature, I cannot remember a time of such great loss. For Vermonters, I hope a couple will return to serve as our Governor and Lieutenant Governor. Please allow me to share my thoughts on these great friends.

"First, the loss of Senator Shumlin will leave a significant void in our body. During his time as *Pro tempore*, we all, at one time or another, wanted to take him to the woodshed, but 24 hours later he was our best friend. He takes a beating and keeps on ticking. I wish him well.

"Next, Senator Racine and I go back many years. He has great respect for the Senate and served as *Pro tempore* and Lieutenant Governor. Channel 3 recently aired a 1985 clip, which was my first year, and showed how young we both were he, with his black bushy hair, and me, with my light blue polyester suit and white belt. I'm so glad fads have evolved. Senator Racine will also leave a large void, and I wish him the best.

"Our third Senator to leave us for higher office is Senator Scott. It is no secret that Phil and I are great friends. It's been said by former Senator Leddy that Fast Philly goes in circles. True, but I can tell you he has shown great leadership as the Chair of Institutions Committee and as Vice Chair of the Transportation Committee. Just as an example of his fairness to his friends, he convinced me to purchase a one-third interest in a boat in my area. After the purchase, he and his other partner gave me six months of usage. I thought that was very generous, until I learned those six months were November through March. They get to use it April through September. Friends! I most certainly wish Phil all the best in his future endeavors.

"The fourth Senator I'd like to talk about is Senator Bartlett. If I am fortunate enough to return next year, it will be extremely difficult to look at seat #1 and not see Senator Bartlett there. Over the years, not only have we worked well together, but we also became great friends. I am not surprised by her desire to be Governor. It cannot be as time consuming or as stressful as being Chair of Appropriations! May great things happen for Senator Bartlett.

"Last, but certainly not least, is my friend Lieutenant Governor Dubie. Serving as third member of the Committee on Committees, I can tell you he has been fair and balanced on his decisions. He thinks things through before speaking. When Senator Shumlin, Brian and I meet, who do you think speaks the most?? Brian has also made a decision to fly higher, and I wish him good luck in the friendly skies.

"Although we may differ in our priorities and goals, we share one common theme – how can we make a difference for what is best for all Vermonters. At the end of every session, we all leave this body with a deep respect for one another, knowing we did our very best.

"The fall will bring about many changes. With heartfelt gratitude to those who will not be returning, I wish you all much success."

Rules Suspended; House Proposal of Amendment Concurred In

J.R.S. 64.

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

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.

Was taken up for immediate consideration.

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

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 hay production, 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' 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.

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

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

S. 292.

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

An act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees.

Was taken up for immediate consideration.

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

By inserting a new section to be numbered Sec. 17a to read as follows:

Sec. 17a. 28 V.S.A. §102(c)(22) is added to read:

(22) To notify local and state law enforcement officers of the following information regarding a person released from incarceration on probation, parole or furlough and residing in the community: name; address; conditions imposed by the court, parole board, or commissioner; and the reason for placing the person in that community.

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

Consideration Resumed; Report of Committee of Conference Accepted and Adopted on the Part of the Senate

H. 789.

Consideration was resumed on House bill entitled:

An act making appropriations for the support of government.

Thereupon, pending the question, Shall the Senate accept and adopt the report of the Committee of Conference?, Senator Illuzzi raised a point of order on the ground that the Committee of Conference failed to adhere to the requirements of Sec. 771.2 of Mason's Manual of Legislative Procedure, in that Secs. E.232.1 and E.232.2 were not in the Senate proposal of amendment, nor in the bill as passed by the House, and that therefore the Committee of Conference did not confine itself to the differences between the two houses.

The President *sustained* the point of order.

On motion of Senator Illuzzi, the rules were suspended to permit the Senate to consider the report of the Committee of Conference without Secs. E.232.1 and E.232.2.

Thereupon, pending the question, Shall the Senate accept and adopt the report of the Committee of Conference?, Senator MacDonald raised a point of order on the ground that the Committee of Conference failed to adhere to the requirements of Sec. 771.2 of Mason's Manual of Legislative Procedure, in that Secs. H.1, H.2 and H.3 were not in the Senate proposal of amendment, nor in the bill as passed by the House, and that therefore the Committee of Conference did not confine itself to the differences between the two houses.

The President *sustained* the point of order.

Thereupon, Senator MacDonald moved that the rules be suspended to permit the Senate to consider the report of the Committee of Conference with the provisions of Secs. H.1, H.2 and H.3 retained in the report, which was agreed to on a roll call, Yeas 29, 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, 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.

The Senator absent and not voting was: Choate.

Thereupon, pending the question, Shall the Senate accept and adopt the report of the Committee of Conference?, Senator MacDonald raised a point of order on the ground that the Committee of Conference failed to adhere to the requirements of Sec. 771.2 of Mason's Manual of Legislative Procedure, in that Sec. E.702.1 was not in the Senate proposal of amendment, nor in the bill as passed by the House, and that therefore the Committee of Conference did not confine itself to the differences between the two houses.

The President *sustained* the point of order.

Thereupon, Senator Shumlin moved that the rules be suspended to permit the Senate to consider the report of the Committee of Conference with the provisions of Sec. E.702.1 retained in the report, which was agreed to on a roll call, Yeas 29, 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, 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.

The Senator absent and not voting was: Choate.

Thereupon, the pending question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative, on a roll call, Yeas 24, Nays 5.

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, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, Mazza, Miller, Mullin, Nitka, Scott, Sears, Shumlin, Snelling, Starr.

Those Senators who voted in the negative were: Ashe, MacDonald, McCormack, Racine, White.

The Senator absent and not voting was: Choate.

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. 722, H. 789.

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. 292, S. 295.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eight o’clock and in the evening.

Called to Order

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

Message from the House No. 85

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

Mr. President:

I am directed to inform the Senate that:

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

H. 542. An act relating to transfers of mobile homes and rent-to-own transactions.

H. 778. An act relating to amending miscellaneous provisions in Vermont's public retirement systems.

And has severally concurred therein.

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

H. 783.

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

An act relating to miscellaneous tax provisions.

Was taken up for immediate consideration.

President Assumes the Chair

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

To the Senate and House of Representatives:

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

An act relating to miscellaneous tax provisions.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposals of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * General Provisions * * *

Sec. 1. 32 V.S.A. § 312 is amended to read:

§ 312. TAX EXPENDITURE REPORT

(a) For purposes of this section, "tax expenditure" shall mean the actual or estimated loss in tax revenue resulting from any exemption, exclusion, deduction, or credit applicable to the tax.

(b) Tax expenditure reports. Biennially, as part of the budget process, beginning January 15, 2009, the department of taxes and the joint fiscal office shall file with the house committees on ways and means and appropriations and the senate committees on finance and appropriations a report on tax expenditures in the personal and corporate income taxes, sales and use tax, and meals and rooms tax ~~returns~~, insurance premium tax, ~~and~~ bank franchise tax ~~returns~~, ~~and~~ education property tax ~~grand lists~~, diesel fuel tax, gasoline tax, motor vehicle purchase and use tax, and such other tax expenditures for which the joint fiscal office and the tax department jointly have produced revenue estimates. Legislative council shall also be available to assist with this tax expenditure report. The report shall include, for each tax expenditure, the following information:

(1) A description of the tax expenditure.

(2) The most recent fiscal information available on the direct cost of the tax expenditure in the past two years.

(3) The date of enactment of the expenditure.

(4) A description of and estimate of the number of taxpayers directly benefiting from the expenditure provision.

(c) Based on the information contained in the tax expenditure report, the commissioner shall recommend to the general assembly that any expenditure that has cost less than $50,000.00 or has been claimed by fewer than ten taxpayers in each of the three preceding years be repealed two years hence.

Sec. 2. FUTURE TAX EXPENDITURE REPORTS

(a) The report due January 15, 2011, shall include the pass-through of federal tax expenditures from personal income tax reported on Federal Schedule A to Form 1040.

(b) No later than January 15, 2012, the department of taxes, the joint fiscal office, and legislative council shall research other state tax expenditure reports and federal tax code to determine which federal exemptions, exclusions, deductions, and other adjustments that pass through to Vermont should be included in future tax expenditure reports. The report shall include specific

recommendations with respect to further development of tax expenditure reporting.

(c) The report due on January 15, 2013, shall include the information in subsection (b) of this section plus any specific recommendation by the general assembly in response to the report presented on January 15, 2012.

(d) The report due on January 15, 2015, shall include the information required by 32 V.S.A. § 312(b) plus a list of any additional federal tax expenditures affecting Vermont taxable income that the department and the joint fiscal office believe can reasonably be identified and quantified.

(e) It is the intent of the legislature to continue reviewing tax expenditure reporting in general and the specific recommendations made pursuant to subsection (b) of this section so that future tax expenditure reports will become an increasingly useful tool in the budget process.

(f) The department of motor vehicles shall provide the department of taxes, the joint fiscal office, and legislative council the data available from the diesel fuel tax, gasoline tax, and the motor vehicle purchase and use tax.

Sec. 3. Sec. B.503 (state placed students) of H.789 of 2009, Adj. Sess., as enacted, is amended to read:

Sec. B.503 Education - state-placed students

Grants	~~15,700,000~~ 15,300,000
Total	~~15,700,000~~ 15,300,000
Source of funds	
Education fund	~~15,700,000~~ 15,300,000
Total	~~15,700,000~~ 15,300,000

Sec. 4. 32 V.S.A. § 3201(a)(4) is amended to read:

(4) For the purpose of ascertaining the correctness of any return or making a determination of the tax liability of any taxpayer, examine or cause to be examined by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda of the taxpayer bearing upon the matters required to be included in any return. The commissioner or such designated officers may require the attendance of the taxpayer or of any other person having knowledge in the premises, at any place in the county where the taxpayer or person resides or has a place of business, or in Washington County if the taxpayer is a nonresident individual, estate, trust or is a corporation or business entity not having a place of business in this state, and may take testimony and require proof material and may administer oaths or take acknowledgment in respect of any return or other information required by this title or the rules, regulations, and decisions of the commissioner. If an

individual, estate, trust, corporation, or other business entity fails after request to provide books, records, or memoranda at either its place of business within the state or Washington County, the commissioner may charge the person a reasonable per diem fee and expenses for the auditor making the examination out of state. The charges shall be payable within 30 days of the date billed and may be collected in the manner provided for the collection of taxes in this title.

Sec. 5. 32 V.S.A. § 5404(b) is amended to read:

(b) Annually, on or before August 15, the clerk of a municipality, or the supervisor of an unorganized town or gore, shall transmit to the director in an electronic or other format as prescribed by the director: education and municipal grand list data, including exemption information and grand list abstracts; tax rates; and the total amount of taxes assessed in the town or unorganized town or gore. The data transmitted shall identify each parcel by a parcel identification number assigned under a numbering system prescribed by the director. Municipalities may continue to use existing numbering systems in addition to, but not in substitution for, the parcel identification system prescribed by the director. If changes or additions to the grand list are made by the listers or other officials authorized to do so after such abstract has been so transmitted, such clerks shall forthwith certify the same to the director.

Sec. 6. 32 V.S.A. § 5938 is amended to read:

§ 5938. COLLECTION ASSISTANCE FEES

Annually the department shall ~~assess each participating claimant agency that portion of~~ determine the actual per-offset costs incurred by the department in setting off debts ~~that the number of refunds transferred to the claimant agency in accordance with subsection 5934(b) of this chapter bears to the total number of refunds transferred to claimant agencies by~~ and notwithstanding section 502 of this title, the department may assess against a debtor a collection assistance fee equal to the per-offset cost so determined.

Sec. 7. 32 V.S.A. § 5942 is added to read:

§ 5942. OFFSET FOR TAXES OWED IN ANOTHER STATE; RECIPROCITY

(a) Upon the request and certification of a tax officer of a claimant state to the commissioner that a taxpayer owes taxes to the claimant state and that the debt is fixed and no longer subject to appeal under the laws of that state, the commissioner may set off any refund that it owes to the taxpayer against the amount of the certified debt and pay that amount to the requesting state.

(b) The commissioner shall not set off any debt unless the laws of the requesting state allow the commissioner, in cases where the taxpayer owes

taxes to this state, to certify that a tax is owed and to request a tax officer of the requesting state to set off any refund owed to the taxpayer and pay that amount to this state.

* * * Local Option Tax Administration Fee * * *

Sec. 8. 24 V.S.A. § 138(c) is amended to read:

(c) Any tax imposed under the authority of this section shall be collected and administered by the department of taxes, in accordance with state law governing such state tax or taxes; provided however, that a sales tax imposed under this section shall be collected on each sale that is subject to the Vermont sales tax using a destination basis for taxation. ~~Seventy~~ A per-return fee of $9.52 shall be assessed to compensate the department for the costs of administration and collection, 70 percent of ~~the costs of administration and collection~~ which shall be borne by the municipality, and 30 percent of which shall be borne by the state to be paid from the pilot special fund. The fee shall be subject to the provisions of 32 V.S.A. § 605.

* * * Uninhabitable Property * * *

Sec. 9. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

* * *

(24) Upon the determination by a municipal building inspector, health officer, or fire marshal that a building within the boundaries of the town, city, or incorporated village is uninhabitable, to recover all expenses incident to the maintenance of the uninhabitable building with the expenses to constitute a lien on the property in the same manner and to the same extent as taxes assessed on the grand list, and all procedures and remedies for the collection of taxes shall apply to the collection of those expenses; provided, however, that the town, city, or incorporated village has adopted rules to determine the habitability of a building, including provisions for notice in accordance with 32 V.S.A. § 5252(3) to the building's owner prior to incurring expenses and including provisions for an administrative appeals process.

* * * Vermont Employment Growth Incentives * * *

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

(d) Recapture. To the extent a business authorized to earn employment growth incentives under this section experiences a 90-percent or greater drop

below application base jobs or, in the case of a business with no jobs at the time its application is approved, a 90-percent or greater drop below its cumulative job target during ~~any~~ the utilization ~~year~~ period, all authority to earn and claim incentives pursuant to this section shall be revoked, and such business shall be subject to recapture of all incentives previously claimed, ~~including~~ together with interest and penalty. Notwithstanding any other statute of limitations provisions, for purposes of recapture under this section, the department of taxes shall issue a recapture bill any time within three years from ~~the receipt date of written notification from the business of~~ the triggering drop in payroll or employment or three years from the last day of the end of the utilization period, whichever occurs first. Any amounts subject to recapture under this subsection shall retain their character as withholding and shall be subject to the provisions of section 5844 of this title, including the provision concerning personal liability.

* * * Valuation of Land with Access to Recreational Trails * * *

Sec. 11. VALUATION OF LAND WITH ACCESS TO RECREATIONAL TRAILS

The director of property valuation and review shall convene a meeting of representatives of the Vermont Association of Snow Travelers, the Vermont Assessors and Listers Association, the Town of Canaan, the Vermont League of Cities and Towns, and other interested parties to review and discuss appropriate factors in assessing the value of land that has or is in proximity to recreational trails such as the statewide snowmobile trails, and report back to the house committee on ways and means and the senate committee on finance on the results of the discussions no later than January 15, 2011.

* * * Use Value Appraisal Program * * *

Sec. 12. 32 V.S.A. § 3752(5) is amended to read:

(5) "Development" means, for the purposes of determining whether a land use change tax is to be assessed under section 3757 of this chapter, the construction of any building, road or other structure, or any mining, excavation or landfill activity. "Development" also means the subdivision of a parcel of land into two or more parcels, regardless of whether a change in use actually occurs, where one or more of the resulting parcels contains less than 25 acres each; but if subdivision is solely the result of a transfer to one or more of a spouse, parent, grandparent, child, grandchild, niece, nephew, or sibling of the transferor, or to the surviving spouse of any of the foregoing, then "development" shall not apply to any portion of the newly-created parcel or parcels which qualifies for enrollment and for which, within 30 days following the transfer, each transferee or transferor applies for reenrollment in the use value appraisal program. "Development" also means the cutting of timber on

property appraised under this chapter at use value in a manner contrary to a forest or conservation management plan as provided for in subsection 3755(b) of this title, or contrary to the minimum acceptable standards for forest management; or a change in the parcel or use of the parcel in violation of the conservation management standards established by the commissioner of forests, parks and recreation. The term "development" shall not include the construction, reconstruction, structural alteration, relocation, or enlargement of any building, road or other structure for farming, logging, forestry, or conservation purposes, but shall include the subsequent commencement of a use of that building, road or structure for other than farming, logging or forestry purposes.

Sec. 13. CURRENT USE ADVISORY BOARD; USE VALUE CALCULATION METHODOLOGY

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," dated April 12, 2010. The general assembly hereby deems that the document has the force and effect of administrative rules adopted pursuant to chapter 25 of Title 3 of the Vermont Statutes Annotated, 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.

* * * CLA Calculation in TIF Districts * * *

Sec. 14. 32 V.S.A. § 5405(a) is amended to read:

(a) Annually, on or before April 1, the commissioner shall determine the equalized education property tax grand list and coefficient of dispersion for each municipality in the state; provided, however, that for purposes of equalizing grand lists pursuant to this section, the equalized education property tax grand list of a municipality that establishes a tax increment financing district shall include the fair market value of the property in the district and not the original taxable value of the property.

* * * Excess Property Tax Payment * * *

Sec. 15. 32 V.S.A. § 6066a(f)(4) is amended to read:

(4) If the property tax adjustment amount as described in subsection (e) of this section exceeds the property tax, penalties, and interest, due for the current and all prior years, the municipality shall refund the excess to the taxpayer, without interest, within 20 days of the first date upon which taxes become due and payable or 20 days after notification of the adjustment amount by the commissioner of ~~education~~ taxes, whichever is later.

* * * Property Transfer Tax * * *

Sec. 16. 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.

Sec. 17. 32 V.S.A. § 9606 is amended to read:

§ 9606. PROPERTY TRANSFER RETURN

(a) A property transfer return complying with this section shall be ~~filed with~~ delivered to a town clerk at the time ~~of the payment to the clerk of an amount of property transfer tax under section 9605 of this title, or at the time of the delivery to the clerk for recording of~~ a deed evidencing a transfer of title to property ~~which is not subject to the tax imposed by this chapter~~ is delivered to the clerk for recording.

* * *

(d) For receiving and acknowledging a property transfer return ~~and tax payment, if any,~~ under this chapter, there shall be paid to the town clerk at the time of filing a fee ~~of $10.00~~ as provided for in subdivision 1671(a)(6) of this title.

* * *

Sec. 18. 32 V.S.A. § 9607 is amended to read:

§ 9607. ACKNOWLEDGMENT OF RETURN AND TAX PAYMENT

Upon the receipt by a town clerk of a property transfer return and certificate~~, complete and regular on its face, together with the tax payment, if any, called for by that return,~~ and the fee required under ~~the preceding section~~ subdivision 1671(a)(6) of this title, the clerk shall forthwith mail or otherwise deliver to the transferee of title to property with respect to which such return was filed a signed and written acknowledgment of the receipt of that return~~,~~ and certificate ~~and payment~~. A copy of that acknowledgment, or any other form of acknowledgment approved by the commissioner, shall be affixed to the deed evidencing the transfer of property with respect to which the return and certificate was filed. The acknowledgment so affixed to a deed, however, shall not disclose the amount of tax paid with respect to any return or transfer.

Sec. 19. 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.

Sec. 20. 32 V.S.A. § 9610(a) is amended to read:

(a) Not later than 30 days after the receipt of any property transfer return ~~or payment of tax under this chapter~~, a town clerk shall file the return in the office of the town clerk and electronically forward ~~one~~ a copy of ~~that~~ the acknowledged return ~~and the amount of tax paid with respect thereto~~ to the commissioner; provided, however, that with respect to a return filed in paper format with the town, the commissioner shall have the discretion to allow the town to forward a paper copy of that return to the department.

* * * Clarendon Education Payment * * *

Sec. 21. CLARENDON EDUCATION PAYMENT

Notwithstanding 32 V.S.A. § 5402(c), the commissioner of education shall use the education grand list values provided by the town of Clarendon to the department of taxes on May 1, 2009, to calculate Clarendon's final fiscal year 2009 education property tax liability. Any resulting additional aid shall be credited to the Clarendon school district in fiscal year 2010 on the municipality's fiscal year 2011 education tax liability to the education fund.

* * * Property Tax Exemption for Certain Skating Rinks * * *

Sec. 22. 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.

* * * Property Tax Adjustment and Renter Rebate * * *

* * * Definition of Modified Adjusted Gross Income for * * *

* * * Years 2010, 2011, and 2012: Adding Interest & Dividends * * *

Sec. 23. 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~~ 33 V.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 1 × the sum of interest and dividend income included in household income above $10,000.00, regardless of whether that dividend or interest income is included in federal adjusted gross income.

* * * Definitions of Modified Adjusted Gross Income for * * *

* * * Years 2011 and 2012: Adding Certain Line Q Adjustments * * *

Sec. 24. 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":

* * *

(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 18 V.S.A. § 8907 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 33 V.S.A. § 6321) 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) without the inclusion of adjustments to total income except certain business expenses of reservists, one-half of self-employment tax paid, alimony paid, and deductions for tuition and fees; and

(E) with the addition of an asset adjustment of 1 × the sum of interest and dividend income included in household income above $10,000.00, regardless of whether that dividend or interest income is included in federal adjusted gross income.

(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. 25. 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:

(I) the applicable percentage of household income for the taxable year; plus

(II) the statewide education tax rate, multiplied by the equalized value of the housesite in the taxable year in excess of $200,000.00.

(B) For a claimant with household income of less than $90,000.00 but more than $47,000.00, the statewide education tax rate, multiplied by the equalized value of the housesite in the taxable year, ~~minus the applicable percentage of household income for the taxable year~~ minus (if less) the sum of:

(i) the applicable percentage of household income for the taxable year; plus

(ii) the statewide education tax rate, multiplied by the equalized value of the housesite in the taxable year in excess of $500,000.00.

(C) For a claimant whose household income does not exceed $47,000.00, the statewide education tax rate, multiplied by the equalized value of the housesite in the taxable year, minus the lesser of:

(i) the sum of the applicable percentage of household income for the taxable year plus the statewide education tax rate, multiplied by the equalized value of the housesite in the taxable year in excess of $500,000.00; or

(ii) the statewide education tax rate, multiplied by the equalized value of the housesite in the taxable year reduced by $15,000.00.

~~(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.~~

(2) "Applicable percentage" in this section means two percent, multiplied by the district spending adjustment under subdivision 5401(13) of this title for the property tax year which begins in the claim year for the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than two percent.

(3) a claimant whose household income does not exceed $47,000.00 shall also be entitled to an additional adjustment amount equal to the amount

by which the property taxes for the municipal fiscal year which began in the taxable year upon the claimant's housesite, reduced by the adjustment amount determined under subdivisions (1) and (2) of this subsection, exceeds a percentage of the claimant's household income for the taxable year as follows:

If household income (rounded to the nearest dollar) is:	then the taxpayer is entitled to credit for the reduced property tax in excess of this percent of that income:
$0 – 9,999.00	2.0
$10,000.00 – 24,999.00	4.5
$25,000.00 – 47,000.00	5.0

(4) Credit limitation. In no event shall the credit provided for in subdivision (3) of this subsection exceed the amount of the reduced property tax.

Sec. 26. 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.

~~(c)~~(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. 27. STATUTORY REVISION

The legislative council is directed to revise the Vermont Statutes Annotated to reflect the change in this act from "rent constituting property taxes" to "allocable rent."

* * * Education Property Tax Rate * * *

Sec. 28. 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 $1.35 per $100.00; and

(2) the tax rate for homestead property shall be $0.86 multiplied by the district spending adjustment for the municipality per $100.00 of equalized property value as most recently determined under 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.

Sec. 29. 32 V.S.A. § 5824 is amended to read:

§ 5824. ADOPTION OF FEDERAL INCOME TAX LAWS

The statutes of the United States relating to the federal income tax, as in effect for taxable year ~~2008~~ 2009, but without regard to federal income tax rates under Section 1 of the Internal Revenue Code, are hereby adopted for the purpose of computing the tax liability under this chapter.

* * * Transferability of Downtown and Village Tax Credits * * *

Sec. 30. 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. 31. 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 or insurance credit certificate; and any credit allocated but unclaimed shall be disallowed to the applicant:

* * *

* * * Estate Tax * * *

Sec. 32. 32 V.S.A. § 7488(b) is amended to read:

(b) If the commissioner determines, on a petition for refund or otherwise, that a taxpayer has paid an amount of tax under this chapter which, as of the date of the determination, exceeds the amount of tax liability owing from the taxpayer to the state, with respect to the current and all preceding taxable years, under any provision of this title, the commissioner shall forthwith refund the excess amount to the taxpayer together with interest at the rate per annum established pursuant to section 3108 of this title. That interest shall be computed from 45 days after the date the petition or amended return was filed ~~or from 45 days after the date the return was due, including any extensions of time thereto, with respect to which the excess payment was made, whichever is the later date~~.

* * * Estate Tax for 2011 and After * * *

Sec. 33a. 32 V.S.A. § 7442a(c) is amended to read:

(c) The Vermont estate tax shall not exceed the amount of the tax imposed by ~~Section~~ 26 U.S.C. § 2001 ~~of the Internal Revenue Service Code~~ calculated ~~using~~ as if the applicable ~~credit~~ exclusion amount under ~~Section~~ 26 U.S.C. § 2010 ~~as in effect on January 1, 2008,~~ were $2,750,000.00, and with no deduction under ~~Section~~ 26 U.S.C. § 2058.

Sec. 33b. 32 V.S.A. § 7475 is amended to read:

§ 7475. ADOPTION OF FEDERAL ESTATE AND GIFT TAX LAWS

The laws of the United States, relating to federal estate and gift taxes as in effect on January 1, 2009, are hereby adopted for the purpose of computing the tax liability under this chapter, except:

(1) the credit for state death taxes shall remain as provided for under ~~Sections~~ 26 U.S.C. §§ 2011 and 2604 ~~of the Internal Revenue Code~~ as in effect on January 1, 2001;

(2) the applicable ~~credit~~ exclusion amount ~~shall remain as provided for~~ under ~~Section~~ 26 U.S.C. § 2010 ~~of the Internal Revenue Code as in effect on January 1, 2008~~ shall not apply; and the tax imposed under section 7442a of this chapter shall be calculated as if the applicable exclusion amount under 26 U.S.C. § 2010 were $2,750,000.00; and

(3) the deduction for state death taxes under ~~Section~~ 26 U.S.C. § 2058 ~~of the Internal Revenue Code~~ shall not apply.

Sec. 33c. ESTATE TAX FOR TAX YEARS 2012 AND AFTER

(a) The Federal Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), which made substantial changes to federal estate tax laws, is currently scheduled to sunset on December 31, 2010. At that time, the federal estate tax laws will revert to the statutes in effect prior to enactment of EGTRRA.

(b) After EGTRRA sunsets, it is the intent of the general assembly to make the necessary amendments to chapter 190 of Title 32 so that Vermont estates will be subject to the estate tax laws in effect prior to 2002, which imposed a tax equal to the amount of the federal credit against state estate taxes (the "sponge" tax).

(c) It is the intent of the general assembly to make the necessary amendments to chapter 190 of Title 32 so that, for estates of decedents dying in 2012 or after, the amount of applicable credit otherwise available under 26 U.S.C. § 2010 is, for purposes of chapter 190, one of the following:

(1) if the federal applicable exclusion amount is $2 million or less, then for purposes of chapter 190, the applicable credit shall be calculated for a federal exclusion amount of $2 million; and

(2) if the federal applicable exclusion amount is more than $2 million but not more than $3.5 million, then for purposes of chapter 190, the applicable credit to be applied shall be equal to the federal credit amount; and

(3) if the federal applicable exclusion amount is more than $3.5 million, then for purposes of chapter 190, the applicable credit shall be calculated for a federal exclusion amount of $3.5 million.

* * * Tobacco Tax Provisions * * *

Sec. 34. 32 V.S.A. § 7702(21) is added to read:

(21) "Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subdivision (1) of this section or is a little cigar within the meaning of subdivision (6) of this section).

Sec. 35. 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.

~~(c)~~(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. 36. 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, and cigars with a wholesale price greater than $1.08, which shall be taxed at the rate of $2.00 per cigar if the wholesale price of the cigar is greater than $1.08 and less than $10.00, and at the rate of $4.00 per cigar if the wholesale price of the cigar is $10.00 or more. 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.

* * * Sales and Use Tax * * *

Sec. 37. 32 V.S.A. § 5870 is amended to read:

§ 5870. REPORTING USE TAX ON INDIVIDUAL INCOME TAX RETURNS

The commissioner of taxes shall provide that individuals report use tax on their state individual income tax returns. Taxpayers are required to attest to the amount of their use tax liability under chapter 233 of this title for the period of the tax return. Alternatively, they may elect to report an amount that is ~~0.04~~ 0.08 percent of their Vermont adjusted gross income, as shown on a table published by the commissioner of taxes; and use tax liability arising from the purchase of each item with a purchase price in excess of $1,000.00 shall be added to the table amount.

Sec. 38. 32 V.S.A. § 9701(11) is amended to read:

(11) Place of ~~amusement~~ entertainment: means any place where any facilities for entertainment, recreation, amusement or sports are provided.

Sec. 39. STATUTORY REVISION

The legislative council is directed to revise Title 32 of the Vermont Statutes Annotated to reflect the change in this act of the term "place of amusement" to "place of entertainment." This change in terminology is not a substantive change to the underlying meaning of the term.

Sec. 40a. ABATEMENT

All taxes, interest, and penalties assessed after January 1, 2010, based upon the provisions of 32 V.S.A. § 9743(3)(B) upon any organization qualified for exempt status under the provisions of 26 U.S.C. § 501(c)(3) or upon any agricultural organization qualified for exempt status under 26 U.S.C. § 501(c)(5) and related to a performance which occurred after September 30, 2006, and before January 1, 2010, and for which the organization did not collect sales tax on charges for admission, are hereby abated.

Sec. 40b. NONPROFIT ORGANIZATION AMUSEMENT TAX FROM JANUARY 1, 2010, TO APRIL 1, 2011

Any performance produced or presented by an organization qualified for exempt status under the provisions of 26 U.S.C. § 501(c)(3), or an agricultural organization qualified for exempt status under 26 U.S.C. § 501(c)(5), regardless of whether the performance is considered to be jointly produced or presented, and which occurs after December 31, 2009, and before

April 1, 2011, or which arises out of a written contract offer, or contract entered into, after December 31, 2009, and before June 1, 2010, shall be exempt from sales tax on amusements.

Sec. 41. 32 V.S.A. § 9743 is amended to read:

§ 9743. ORGANIZATIONS NOT COVERED

Any sale, service, or ~~amusement~~ admission to a place of entertainment charged by or to any of the following or any use by any of the following are not subject to the sales and use taxes imposed under this chapter:

(1) The state of Vermont, or any of its agencies, instrumentalities, public authorities, public corporations (including a public corporation created pursuant to agreement or compact with another state) or political subdivisions when it is the purchaser, user or consumer, or when it is a vendor of services or property of a kind not ordinarily sold by private persons, or when it charges for admission to any ~~amusement~~ entertainment; except that ~~a performance jointly produced or presented by it and another person shall not be exempt from amusement tax unless it meets the joint production requirements imposed on a qualified organization under subdivision (3)(B) of this section and~~ sales of alcoholic beverages shall not be exempt from sales tax.

* * *

(3) Organizations which qualify for exempt status under the provisions of ~~Section~~ 26 U.S.C. § 501(c)(3) ~~of the United States Internal Revenue Code~~ and agricultural organizations, qualified for exempt status under ~~Section~~ 26 U.S.C. § 501(c)(5), when presenting agricultural fairs, field days or festivals, as amended, shall be exempt as follows:

(A) The organization first shall have obtained a certificate from the commissioner stating that it is entitled to the exemption. The commissioner shall issue a certificate to any organization which has received federal certification of Section 501(c)(3) status and may issue a certificate to any other qualified organization.

(B) ~~Amusement charges~~ Charges for admission to a place of entertainment 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~~.

(C) Sales other than ~~amusement~~ entertainment charges by qualified Section 501(c)(3) organizations shall be exempt if the organization's gross sales of tangible personal property and services which would be subject to tax under this chapter but for this subdivision, in the prior year, did not exceed $20,000.00.

(D) Sales of fresh cut flowers only, by a qualified Section 501(c)(3) organization, during a single annual sales event not to exceed seven days, shall be exempt.

(4) Sales of building materials and supplies to be used in the construction, reconstruction, alteration, remodeling or repair of: (A) any building structure, or other public works owned by or held in trust for the benefit of any governmental body or agency mentioned in subdivisions (1) and (2) of this section and used exclusively for public purposes; (B) any building or structure owned by or held in trust for the benefit of any organization described in subdivision (3) and used exclusively for the purposes upon which its exempt status is based; and (C) any building or structure owned by ~~a "development corporation" as defined in subdivision 202(4) of Title 10 and~~ any "local development corporation" as defined in ~~subdivision 222(4) of Title~~ 10 V.S.A. § 212(10), and used exclusively for the purposes authorized in chapter ~~11A~~ 12 of Title 10; provided, however, that the governmental body or agency, the organization, or the development corporation has first obtained a certificate from the commissioner stating that it is entitled to the exemption and the vendor keeps a record of the sales price of each separate sale, the name of the purchaser, the date of each separate sale, and the number of the certificate. In this subdivision the words "building materials and supplies" shall include all materials and supplies consumed, employed or expended in the construction, reconstruction, alteration, remodeling, or repair of any building, structure, or other public work as well as the materials and supplies physically incorporated therein.

(5) Organizations which qualify for exempt status under the provisions of ~~Section~~ 26 U.S.C. § 501(c)(4)-(13) and (19), and political organizations as defined in ~~Section~~ 26 U.S.C. § 527(e)~~, of the United States Internal Revenue Code~~, as the same may be amended or redesignated, other than organizations which qualify for exempt status under the provisions of ~~Section~~ 26 U.S.C. § 501(c)(4) ~~of the United States Internal Revenue Code~~ whose bylaws provide for the contribution of their net income to organizations which qualify for exempt status under the provisions of ~~Section~~ 26 U.S.C. § 501(c)(3) ~~of the United States Internal Revenue Code~~, shall not be exempt from taxation of the sale or use of tangible personal property as defined in section 9701 of this title, but shall be exempt from the sales and use tax upon ~~amusement~~ entertainment charges as defined in section 9701, in the case of not more than four special

events (not including usual or continuing activities of the organization) held in any calendar year, and which, in the aggregate, are not held on more than four days in such year, and which are open to the general public. In case the organization holds more than four such special events a year, or such events are held on more than four days in a year, the organization may elect the events or the days to which the exemption provided by this subsection shall apply, by giving prior notice to the commissioner. This subdivision shall not apply to agricultural organizations governed by subdivision (3) of this section.

(6) A school or municipality; provided, however, that a vendor who is required to register with the commissioner pursuant to section 9707 of this title who receives a share of the proceeds from the sale of property at a school or municipal premises shall collect and remit tax on the total sale price of such sales regardless of who is the direct recipient of the payment. For the purposes of this subdivision, "school" means a school as defined in 16 V.S.A. § 11(7) and (8) and "municipality" means a city, town, unorganized town, village, grant, or gore.

(7) An exemption under subdivisions (3) and (5) of this section shall not be available for entertainment charges for admission to a live performance by an organization whose gross sales of entertainment charges by or on behalf of an organization for admission to live performances in the prior calendar year exceeded $50,000.00.

* * * Petroleum Cleanup Fund * * *

Sec. 42. 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;

Sec. 43. 10 V.S.A. § 1942 is amended to read:

§ 1942. PETROLEUM DISTRIBUTOR LICENSING FEE

(a) There is hereby established a licensing fee of one cent per gallon of motor fuel sold by a distributor or dealer or used by a user in this state, which will be assessed against every distributor, dealer or user as defined in ~~23 V.S.A.~~ chapters 27 and 28 of Title 23, and which will be deposited into the petroleum cleanup fund established pursuant to subsection 1941(a) of this title. ~~After analysis of the projected unencumbered fund balance, the~~ The secretary,

in consultation with the ~~Vermont Petroleum Association and the Vermont Fuel Dealers Association, Inc. may make a~~ ~~recommendation~~ petroleum cleanup fund advisory committee established pursuant to subsection 1941(e) of this title, shall annually report to the legislature ~~as to whether or not to assess the one-cent licensing fee for the upcoming year~~ on the balance of the motor fuel account of the fund and shall make recommendations, if any, for changes to the program. The secretary shall also determine the unencumbered balance of the motor fuel account of the fund as of May 15 of each year, and if the balance is equal to or greater than $7,000,000.00, then the licensing fee shall not be assessed in the upcoming fiscal year. The secretary shall promptly notify all sellers assessing this fee of the status of the fee for the upcoming fiscal year. This fee will be paid in the same manner, at the same time, and subject to the same restrictions or limitations as the tax on motor fuels. The fee will be collected by the commissioner of motor vehicles and deposited into the petroleum cleanup fund. This fee requirement shall terminate on April 1, 2016.

(b) There is assessed against every seller receiving more than $10,000.00 annually for the retail sale of heating oil, kerosene, or other dyed diesel fuel sold in this state and not used to propel a motor vehicle, a licensing fee of ~~one-half~~ one cent per gallon of such heating oil, kerosene, or other dyed diesel fuel. This fee shall be subject to the collection, administration, and enforcement provisions of chapter 233 of Title 32, and the fees collected under this subsection by the commissioner of taxes shall be deposited into the petroleum cleanup fund established pursuant to subsection 1941(a) of this title. ~~After analysis of the projected unencumbered fund balance, the~~ The secretary, in consultation with the ~~Vermont Petroleum Association and the Vermont Fuel Dealers Association, Inc. may make a~~ ~~recommendation~~ petroleum cleanup fund advisory committee established pursuant to subsection 1941(e) of this title, shall annually report to the legislature ~~as to whether or not to assess the one-cent licensing fee for the upcoming year~~ on the balance of the heating fuel account of the fund and shall make recommendations, if any, for changes to the program. The secretary shall also determine the unencumbered balance of the heating fuel account of the fund as of May 15 of each year, and if the balance is equal to or greater than $3,000,000.00, then the licensing fee shall not be assessed in the upcoming fiscal year. The secretary shall promptly notify all sellers assessing this fee of the status of the fee for the upcoming fiscal year. This fee provision shall terminate April 1, 2016.

* * * Fuel Gross Receipts Tax * * *

Sec. 44. 33 V.S.A. § 2503(a) is amended to read:

(a) There is imposed a gross receipts tax of 0.5 percent on the retail sale of the following types of fuel by sellers receiving more than $10,000.00 annually for the sale of such fuels:

(1) heating oil, kerosene, and other dyed diesel fuel ~~not used to propel a motor vehicle~~ delivered to a residence or business;

(2) propane;

(3) natural gas;

(4) electricity;

(5) coal.

* * * State Collection of Education Property Tax * * *

Sec. 45. STATE COLLECTION OF EDUCATION PROPERTY TAX

No later than July 15, 2011, the department of taxes shall provide the joint fiscal committee with a feasibility report on developing an electronic system for the department's administration, billing, and collection of the education property tax provided for in chapter 135 of Title 32.

* * * Blue Ribbon Tax Structure Commission – Education Finance * * *

Sec. 46. FUTURE OF EDUCATION GOVERNANCE AND EDUCATION FINANCE

(a) The blue ribbon tax structure commission created in Sec. H.56 of No. 1 of the Acts of the Special Session of 2009 shall, with the aid of public hearings and other public involvement:

(1) Goals. In consultation with the house committees on education and on ways and means and the senate committees on education and on finance, identify the five most important short-term goals and the five most important long-term goals for an education system, taking into account the following: student educational achievement, education governance, finance, spending controls, and cost savings; and design a quantifiable nonmonetary measure of whether schools provide a "substantially equal educational opportunity" for student educational achievement; and report its findings by April 1, 2011.

(2) Evaluation. Evaluate Vermont's current education governance, finance, and spending control systems in light of the goals established in subdivision (1) of this subsection, the current education governance model, and the proposed changes to education governance made by the general assembly and determine the elements of the current systems which achieve these goals

well and should be maintained and those elements which do not achieve these goals well and should be modified or eliminated and report its findings by June 1, 2011.

(3) Proposals. Develop new systems of education finance, spending controls, and cost savings guided by but not limited to the goals established in subdivision (1) of this subsection and the elements identified in subdivision (2) of this subsection to be maintained, modified, or eliminated and report its proposals by September 15, 2011.

(b) Advisory panel. In order to facilitate its study of these education systems, the commission may appoint an advisory panel of individuals who have a familiarity with education assessment, education governance, or education finance and have a demonstrated commitment to supporting a high-quality and efficient public education system with high outcomes and have demonstrated an understanding of both the state and local aspects of public education in Vermont. The advisory panel may include professionals in education and in taxation; representatives of municipal government, of the education community, of taxpayers, or of other interests; civic-minded Vermonters; or others as the commission may determine, but shall not include current members of the general assembly. The commission may delegate fact-finding and other supporting tasks to the advisory panel and may request the panel to participate in any meetings or hearings of the commission; and the panel may itself convene meetings, including public hearings.

(c) Reports. All reports required in this section shall be submitted to the house committees on education and on ways and means and to the senate committees on education and on finance and to the house clerk and the senate secretary.

(d) The house committees on education and on ways and means and the senate committees on education and on finance may meet in October, November, and December 2011 to consider and propose legislation based upon the reports of the commission under this section for the 2012 session.

(e) To advance the purpose for which it was formed and any education-related purpose with which it is charged during the 2009–2010 biennium, the commission shall also examine and propose an appropriate balance between education funding from education property taxes and education funding from the general fund and other source and analyze and recommend alternative means of maintaining the balance. In fiscal year 2011, the balance will be 68.2 percent of education funding from education property tax revenues and 31.8 percent of education funding from the general fund and other education funding sources. In comparison, in fiscal year 2005, that balance was 60.8 percent and 39.2 percent, respectively. The committee shall

report its analysis and recommendations to the house and senate committees on education and on appropriations, the house committee on ways and means, and the senate committee on finance on or before September 15, 2011.

* * * One-Time Homestead Declaration * * *

Sec. 47. 32 V.S.A. § 5410(b) and (g) are amended to read:

(b)(1) Annually on or before the due date for filing the Vermont income tax return, without extension, each homestead owner shall, on a form prescribed by the commissioner, which shall be verified under the pains and penalties of perjury, declare his or her homestead, if any, as of, or expected to be as of, April 1 of the year in which the declaration is made for property that was acquired by the declarant or was made the declarant's homestead after April 1 of the previous year. The declaration of homestead shall remain in effect until the earlier of:

(A) the transfer of title of all or any portion of the homestead; or

(B) that time that the property or any portion of the property ceases to qualify as a homestead.

(2) Within 30 days of the transfer of title of all or any portion of the homestead, or upon any portion of the property ceasing to be a homestead, the declarant shall provide notice to the commissioner on a form to be prescribed by the commissioner.

* * *

(g) If the property identified in a declaration under subsection (b) of this section is not the taxpayer's homestead, or if the owner of a homestead fails to declare a homestead as required under this section, or fails to file a notice of transfer or change in qualification pursuant to subdivisions (b)(1)(A) and (B) of this section, the commissioner shall notify the municipality and the municipality shall issue a corrected tax bill that includes a penalty in an amount equal to three percent of the education tax on the property if the municipality's nonresidential tax rate is higher than the municipality's homestead tax rate for the tax year to which the declaration or failure pertains, or in any other case shall assess the taxpayer a penalty in an amount equal to eight percent of the education tax on the property. ~~The municipality shall also assess the taxpayer a penalty in an amount equal to one percent of the education tax on the property; or if~~ If the commissioner determines that the declaration or failure to declare was with fraudulent intent, then the municipality shall assess the taxpayer a penalty in an amount equal to 100 percent of the education tax on the property; plus any interest and late-payment fee or commission which may be due. Any penalty imposed under this section and any additional property tax interest and late-payment fee or commission

shall be assessed and collected by the municipality in the same manner as a property tax under chapter 133 of this title.

* * * Vermont Veterans' Fund * * *

Sec. 48. 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 nine-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 director of the White River Junction VA medical center or designee;

(6) The director of the White River Junction VA benefits office, or designee; and

(7) Three members of the governor's veterans' council to be appointed by that council.

(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.

(5) To recognize veterans.

(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.

Sec. 49. 32 V.S.A. § 5862e is added to read:

§ 5862e. VERMONT VETERANS' FUND CHECKOFF

(a) Returns filed by individuals shall include, on a form prescribed by the commissioner of taxes, an opportunity for the taxpayer to designate funds to the Vermont veterans' fund.

(b) Amounts designated under subsection (a) of this section shall be deducted from refund due to, or overpayment made by, the designating taxpayer. All amounts so designated and deducted shall be deposited in an account by the commissioner of taxes for payment to the Vermont veterans' fund. If at any time after the payment of amounts so designated to the account it is determined that the taxpayer was not entitled to all or any part of the amount so designated, the commissioner may assess, and the account shall then pay to the commissioner, the amount received, together with interest at the rate prescribed by section 3108 of this title, from the date the payment was made until the date of repayment.

(c) The commissioner of taxes shall explain to taxpayers the purpose of the account and how to contribute to it. The commissioner shall provide notice in the instructions for the state individual income tax return as to how to obtain a copy of the annual income and expense report of the Vermont veterans' fund.

(d) If amounts paid with respect to a return are insufficient to cover both the amount owed on the return under this chapter and the amount designated as a contribution to the Vermont veterans' fund, the payment shall first be applied to the amount owed on the return under this chapter and the balance, if any, shall be deposited in the fund.

(e) Nothing in this section shall be construed to require the commissioner to collect any amount designated as a contribution to the Vermont veterans' fund.

Sec. 50. 32 V.S.A. § 5402b(c) is added to read:

(c) 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.

Sec. 51. REPEAL

(a) The following tax expenditures are repealed for tax years beginning on and after January 1, 2013:

(1) 32 V.S.A. § 5823(a)(6) (support payments for developmentally disabled persons); and

(2) 32 V.S.A. § 5826 (income from commercial film production credit).

(b) The following sections of Title 32 relating to homestead education property tax income sensitivity adjustments are repealed for claims filed on and after January 1, 2013:

(1) 32 V.S.A. § 6061(5)(E) (requiring adjustment for interest and dividend income for purposes calculating modified adjusted gross income).

(2) The amendments in this act to 32 V.S.A. § 6066(a) regarding the equalized value of a housesite in excess of $500,000.00.

(c) The following statutes regarding the Vermont campaign finance checkoff are repealed as follows:

(1) 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.

(2) 17 V.S.A. § 2856(b)(5) (providing that revenues from the income tax return checkoff shall be deposited in the Vermont campaign fund) is repealed effective January 1, 2011.

(d) 32 V.S.A. § 5402b(c) (requiring additional education property tax information from the commissioner) is repealed effective April 15, 2011.

(e) 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.

Sec. 52. USE OF TAX EXPENDITURE SAVINGS

Sec. 51(a)(1) of this act repeals the exemption from taxable income of certain amounts paid by the state to a taxpayer caring for a person with a developmental disability. It is the intent of the general assembly that the estimated $5,000.00 in additional revenue to the state that is raised by this repeal be appropriated to the department on disabilities, aging, and independent living within the agency of human services.

* * * Repeal of Film Income Tax Provisions * * *

Sec. 53. 32 V.S.A. § 5823(b) is amended to read:

(b) For any taxable year, the Vermont income of a nonresident individual, estate or trust is the sum of the following items of income to the extent they are required to be included in the adjusted gross income of the individual or the gross income of an estate or trust for that taxable year:

(1) Rents and royalties derived from the ownership of property located within this state.

(2) Gains from the sale or exchange of property located within this state.

(3) Wages, salaries, commissions or other income (excluding military pay for full-time active duty with the armed services and also excluding funds received through the federal armed forces educational loan repayment program under 10 U.S.C. chapters 109 and 1609; and also excluding the first $2,000.00 of military pay for unit training in the state to National Guard and United States Reserve personnel for whom the adjutant general or reserve component commander certifies that the taxpayer completed all unit training of his or her unit during the calendar year, and who has a federal adjusted gross income of less than $50,000.00) received with respect to services performed within this state~~; and also excluding income received for a dramatic performance in a commercial film production to the extent such income would be excluded from personal income taxation in the state of residence~~.

(4) Income (other than income exempted from state taxation under the laws of the United States) derived from every business, trade, occupation or profession to the extent that the business, trade, occupation or profession is carried on within this state including any compensation received

(A) under an agreement not to compete with a business operating in Vermont;

(B) for goodwill associated with the sale of a Vermont business; or

(C) for services to be performed under a contract associated with the sale of a Vermont business, unless it is shown that the compensation for services does not constitute income from the sale of the business~~; but excluding income received for a dramatic performance in a commercial film production to the extent such income would be excluded from personal income taxation in the state of residence~~.

* * *

* * * Downtown and Village Center Program – Winooski * * *

Sec. 54. VERMONT DOWNTOWN DEVELOPMENT BOARD

The authorization of the Vermont downtown development board to certify for reallocation to municipalities sales tax revenues under 32 V.S.A. § 9819 and award tax credits under subchapter 11J of chapter 151 of Title 32 is amended for fiscal year 2011 so that the limitations provided in 32 V.S.A. § 5930ee shall apply against a total amount of $2,300,000 for the authorization of sales tax reallocation and against a total amount of $1,700,000 for the authorization of tax credits. Where a municipality in fiscal year 2011 is awarded both reallocation of sales tax revenues and tax credits, the limitations provided in 32 V.S.A. § 5930ee shall apply against a total annual authorization amount of $2,300,000.

Sec. 55. START-UP BUSINESS COMPETITION

(a) There is hereby created a start-up business competition committee that will develop a competition to encourage entrepreneurs to incorporate start-up growth businesses in Vermont. The members of the committee shall be:

(1) The commissioner of the agency of economic and community development, or designee;

(2) The president of the Vermont Technology Council or designee.

(3) A member of the faculty or the BYOBiz program of Champlain College appointed by its dean.

(4) A member of the faculty of Johnson State College appointed by its dean.

(5) A member of the faculty or Middlebury Solutions Group of Middlebury College appointed by its dean.

(6) A member of the faculty of Norwich University appointed by its dean.

(7) A member of the faculty of the University of Vermont appointed by its dean.

(8) The president of the Vermont Center for Emerging Technologies or designee.

(b) The commissioner of the agency of economic and community development shall chair the committee and shall call its first meeting no later than August 15, 2010. The committee shall develop a business start-up business competition and report its activities to the house committees on ways and means and on commerce and economic development and to the senate committees on finance and on economic development, housing and general

affairs no later than January 15, 2011. The report shall address the following issues in detail:

(1) The specific industries, if any, targeted by the competition.

(2) The types of awards available for participants.

(3) The specific format for entering the competition.

(4) The membership of the judging body overseeing the competition.

(5) The specific criteria used to judge entries in the competition.

(c) The committee shall seek private sponsorships to offset the costs of the competition and to provide for awards for participants.

Sec. 56. ADAMANT FLOOD SUPPORT

The commissioner of finance and management shall disburse $5,000.00 from the fund established pursuant to 17 V.S.A. § 2856 to the East Montpelier fire department to be used to assist any individuals who were displaced by the flood in the Village of Adamant on May 3–4, 2010.

Sec. 57. CITY OF RUTLAND; WATER AND SEWER RECONNECTION FEES

Notwithstanding the maximum allowable water and sewer reconnection fees set forth in 24 V.S.A. § 5151(b) and in the uniform notice form set forth in 24 V.S.A. § 5144, the City of Rutland may charge reconnection fees for normal hours not to exceed $50.00 and for overtime not to exceed $100.00.

* * * Hydroelectric Generating Plants * * *

Sec. 58. FINDINGS

The general assembly finds that:

(1) Valuations of hydroelectric generating plants based on short-term experience have often proven to be volatile due to the volatility of wholesale power markets.

(2) The value of these plants is a significant fraction of the grand lists of many Vermont towns, and it is therefore important that the value be credible.

(3) Currently, most of these plants are valued using a formula based on only one year's output and revenue, which can result in volatility in tax revenues from one year to the next.

(4) Analyses with long-term market projections are commonly used to establish a value that would be put on a plant by a willing buyer and willing seller; the use of such an analysis was affirmed by the Vermont supreme court in 2004.

(5) A reappraisal of hydroelectric stations on the Connecticut and Deerfield Rivers is being conducted by the department of taxes; the values reached in that reappraisal may be tested in the courts for years to come.

(6) There is a need to stabilize the values of hydroelectric generators while credible methodologies are devised and tested.

(7) Since some plants still have values that were set many years ago or set by agreement, there is also a need to allow towns that can justify increases in value to do so, provided such increases remain subject to appeal by the taxpayer.

Sec. 59. VALUATION OF HYDROELECTRIC GENERATING FACILITIES

For purposes of the education and municipal property tax grand lists and notwithstanding any other statute, the grand list value of hydroelectric facilities as of April l, 2010, and continuing through January 1, 2012, shall be no lower than the grand list value as of April 1, 2009, and the equalized value of these facilities shall be the equalized value as determined by the director of property valuation and review on or before January 1, 2010; provided, however, that this section shall not amend or modify existing agreements between municipalities and owners of hydroelectric facilities in effect on September 1, 2009, nor shall it prohibit tax stabilization or other agreements between municipalities and owners of hydroelectric generating facilities entered into after September 1, 2009, which do not reduce the grand list value of the hydroelectric facility below the April 1, 2009, valuation; and provided, further, that the grand list value may be changed if the municipality in which the facility is located completes a revaluation of all taxable real estate after April 1, 2009. For purposes of this section, "hydroelectric facilities" means the works used directly for the production of power and the facilities used to transmit the power to the grid, and the lands under or directly associated with those works and facilities. The department of taxes, in conjunction with the department of public service and representatives of Vermont municipalities, shall study the feasibility of implementing an appraisal method that uses three-to-five-year rolling appraisal values on hydroelectric facilities and report to the house committee on ways and means and the senate committee on finance no later than January 15, 2011, with their findings.

* * * Treatment of Certain Capital Gains * * *

Sec. 60. 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:

* * *

(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: either the first $5,000.00 of adjusted net capital gain income; or 40 percent of adjusted net capital gain income from the sale of assets held by the taxpayer for more than three years, except not adjusted net capital gain income from:

~~(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) for all other capital gain income, the first $5,000.00 of adjusted net capital gain income;~~

(I) the sale of any real estate or portion of real estate used by the taxpayer as a primary or nonprimary residence; or

(II) the sale of depreciable personal property other than farm property and standing timber; or stocks or bonds publicly traded or traded on an exchange, or any other financial instruments; regardless of whether sold by an individual or business; and provided that the total amount of decrease under this subdivision (21)(B)(ii) shall not exceed 40 percent of federal taxable income; and

(iii) recapture of state and local income tax deductions not taken against Vermont income tax.

* * * Amendment to Budget Bill * * *

Sec. 61. Sec. E.100.4 of H. 789 of 2009, Adj. Session, as enacted, is amended to read:

(a) Due to the current and continuing fiscal stress that will impact the Vermont fiscal year 2011 state budget, and the unique interplay between the underlying state budget and the Challenges for Change reductions which have been delegated to the administration, it may become necessary to take further significant measures to achieve savings in order to ensure a balanced budget in the general fund. If, after all savings required by the 2010 Challenges for Change legislation in Act 68 and H. 792 as enacted, have been identified by the secretary of administration, the secretary of administration determines that in order to ensure a balanced fiscal year 2011 budget it is also necessary, when the general assembly is not in session, to eliminate, by reduction in force, or

positions identified for elimination after the date of enactment of this act, or both, more than one percent of the entire state workforce in fiscal year 2011, with the one percent measured cumulatively from ~~July 1, 2010~~ the date of enactment of this act, the secretary shall first submit a plan which complies with the standards outlined in subdivisions (1) through (6) of this section to the joint fiscal committee for its consideration. For the purposes of this section, "entire state workforce" means all full-time, permanent, classified, and exempt state employees.

* * *

* * * Effective Dates * * *

Sec. 62. EFFECTIVE DATES

This act shall take effect upon passage, except:

(1) Sec. 6 (collection assistance fees) shall apply to fees assessed on or after July 1, 2010.

(2) Sec. 8 (local option tax administration fee) shall apply to all returns filed with the department on or after July 1, 2010.

(3) Sec. 10 (Vermont economic growth incentive recapture) shall take effect retroactively on January 1, 2010.

(4) Secs. 16–20 (property transfer tax) shall apply to transfers occurring on or after January 1, 2011.

(5) Secs. 23 and 25 (definition of modified adjusted gross income to include additional interest and dividends; computation of adjustment) 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. 24 and 26 (definitions of household income, modified adjusted gross income to include certain federal adjustments, and allocable rent; landlord certificate) shall apply to property tax adjustment and renter rebate claims made in 2011 and after.

(7) Sec. 29 (link to Internal Revenue Code) shall apply to taxable years beginning on and after January 1, 2009.

(8) Secs. 30 and 31 of this act (downtown insurance credit certificates) shall take effect upon passage and shall apply to tax years beginning on or after January 1, 2010.

(9) Sec. 32 (estate tax petition for refund) shall apply to decedents dying after December 31, 2009.

(10) Secs. 33a and 33b (estate tax) shall apply to decedents dying after December 31, 2010.

(11) Secs. 34–36 (tobacco taxes) shall take effect on July 1, 2010.

(12) Sec. 37 (income tax instruction booklet) shall apply to taxable years beginning on and after January 1, 2010.

(13) Secs. 38 and 39 (changing the term "amusement" to "entertainment") and in Sec. 41, the lead-in paragraph and subdivisions (1), (3), (5), and (7) of 32 V.S.A. § 9743 (entertainment sales and use tax) shall take effect on April 1, 2011, and shall apply to charges for admission to a place of entertainment on or after April 1, 2011.

(14) Sec. 42 (increasing the per-site disbursement cap for the petroleum cleanup fund) shall apply to any remediation currently in progress and all future remediation.

(15) Sec. 43 (petroleum cleanup fund) shall take effect on July 1, 2010.

(16) Sec. 44 (fuel gross receipts tax) shall apply to sales of fuels on or after July 1, 2010.

(17) Sec. 49 (income tax return checkoff for Vermont veterans' fund) shall apply to income tax returns for taxable years 2010 and after.

(18) Sec. 58 (repeal of exclusion of certain income received for a dramatic performance in a commercial film production) shall apply to taxable years beginning on and after January 1, 2013.

(19) Sec. 60 of this act (capital gains) shall apply to taxable years 2011 and after.

ANN E. CUMMINGS
WILLIAM H. CARRIS

Committee on the part of the Senate

JANET ANCEL
MICHAEL J. OBUCHOWSKI
JAMES O. CONDON

Committee on the part of the House

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative on a roll call, Yeas 22, Nays 7.

Senator MacDonald 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, Flory, Illuzzi, Kitchel, Kittell, Lyons, Mazza, Miller, Mullin, Nitka, Racine, Scott, Shumlin, Snelling, Starr.

Those Senators who voted in the negative were: Ashe, Flanagan, Hartwell, MacDonald, McCormack, Sears, White.

The Senator absent and not voting was: Giard.

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

Message from the House No. 86

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

Mr. President:

I am directed to inform the Senate that:

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

H. 66. An act relating to including secondary students with disabilities in senior year activities and ceremonies.

And has severally concurred therein with further amendments in the passage of which the concurrence of the Senate is requested.

Message from the House No. 87

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

Mr. President:

I am directed to inform the Senate that:

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

H. 722. An act relating to notice of security breaches and internet ticket sales.

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

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

S. 296. An act relating to sale or lease of the John H. Boylan state airport.

And has concurred therein with further amendments in the passage of which the concurrence of the Senate is requested.

Rules Suspended; Immediate Consideration

On motion of Senator Shumlin, the rules were suspended, and, pending entry on the Calendar for notice, the following bills, were ordered to be brought up for immediate consideration:

S. 296, H. 66, H. 281, H. 722.

House Proposals of Amendment to Senate Proposal of Amendment Concurred In

S. 296.

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

An act relating to sale or lease of the John H. Boylan state airport.

Were taken up.

The House concurs in the Senate proposal of amendment to the House proposal of amendment, with a further proposals of amendment, as follows:

First: In Sec. 1(d), by striking out the subsection in its entirety and inserting in lieu thereof:

(d) Upon sale or leasing of the land, the state shall terminate the hangar leases at the John H. Boylan state airport or, if the owner so desires, shall transfer the lease for placement of the hangar to a nearby airport on the same terms for the remainder of the lease. Hangar negotiations do not need to be complete prior to using the area as a log yard. Any purchaser or lessee shall agree to purchase the hangars, including the concrete pads, at fair market value as mutually agreed upon by the purchaser or lessee and hangar owner, or as determined by an appraiser mutually agreed upon by the purchaser or lessee and hangar owner and paid for by the purchaser or lessee. If the parties cannot agree on an appraiser, the secretary of transportation shall choose an appraiser, and the secretary's choice shall be final. The decision of the appraiser shall be final.

Second: In Sec. 1(g), by striking out the subsection in its entirety.

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

House Proposals of Amendment to Senate Proposals of Amendment Concurred In

H. 66.

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

An act relating to including secondary students with disabilities in senior year activities and ceremonies.

Were taken up.

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

First: By striking out Secs. 18a and 18b in their entirety.

Second: After Sec. 21a, by adding an internal caption and two new sections to be Secs 21b and 21c to read as follows:

* * * Distance Learning; Out-of-State Programs * * *

Sec. 21b. 16 V.S.A. § 166(b)(6) is amended to read:

(6) This subdivision applies to an independent school located in Vermont ~~which~~ that offers a distance learning program ~~of elementary or secondary education through correspondence, electronic mail, satellite communication, or other means~~ and ~~which~~ that, because of its structure, does not meet some or all the rules of the state board for approved independent schools. In order to be approved under this subdivision, a school shall meet the standards adopted by rule of the state board for approved independent schools ~~which~~ that can be applied to the applicant school and any other standards or rules adopted by the state board regarding these types of schools. A school approved under this subdivision shall not be eligible to receive tuition payments from public school districts under chapter 21 of this title. ~~However, a school district may enter into a contract or contracts with a school approved under this subdivision for provisions of some education services for its students.~~

Sec. 21c. 16 V.S.A. § 563(32) is added to read:

(32) May enter into a contract or contracts with a school offering a distance learning program that is approved by one or more accrediting agencies recognized by the U.S. Department of Education or is approved in Vermont pursuant to subdivision 166(b)(6) of this title.

Third: H.792 of 2010, as enacted, is amended in Sec. H2, 2 V.S.A. § 970, by striking out subsections (b) and (c) in their entirety and inserting in lieu thereof the following:

(b) The membership of the committee shall be appointed each biennial session of the general assembly. The committee shall be comprised of twelve members: six members of the house of representatives who shall not all be from the same party: one from the committee on government operations, one from the committee on human services, one from the committee on appropriations, one from the committee on ways and means, one from the committee on education, and one from the committee on corrections and institutions, appointed by the speaker of the house; and six members of the senate who shall not all be from the same party: one from the committee on government operations, one from the committee on health and welfare, one from the committee on appropriations, one from the committee on finance, one from the committee on education, and one from the committee on institutions, appointed by the committee on committees. The governor shall appoint one person to serve as a nonvoting liaison to the committee.

(c) The committee shall elect a chair, vice chair, and clerk from among its members and shall adopt rules of procedure. The chair shall alternate biennially between the house and the senate members. The committee shall keep minutes of its meetings and maintain a file thereof. A quorum shall consist of seven members.

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

House Proposal of Amendment to Senate Proposals of Amendment Concurred In

H. 722.

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

An act relating to notice of security breaches and internet ticket sales.

Was taken up.

The House proposes to the Senate to amend the Senate proposal of amendment in Sec. 1, 9 V.S.A. § 4190, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) A person who violates this section, in a civil action brought by the seller, shall be subject to:

(1) appropriate equitable relief;

(2) reasonable attorney's fees and costs;

(3) actual damages suffered; and

(4) statutory damages of up to $1,500.00 per ticket, payable to the seller.

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

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

H. 281.

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

To the Senate and House of Representatives:

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

An act relating to the removal of bodily remains.

Respectfully reports that it has met and considered the same and recommends that House accede to the Senate's proposal of amendment with further amendment as follows:

First: In Sec. 2, in subdivision (b)(2) by striking out the final sentence and inserting in lieu thereof the following: Each treatment plan shall include the following as appropriate:

Second: In Sec. 4. 18 V.S.A. § 5217(c)(3) by striking out the word "decedent" and inserting in lieu thereof the word descendant

Third: In Sec. 4. 18 V.S.A. § 5217(c), by adding a new subdivision (4) to read as follows:

(4) The state archeologist.

Fourth: In Sec. 4. 18 V.S.A. § 5217, by striking out subsection (d) and inserting in lieu thereof the following:

(d) A cemetery commissioner or municipal authority responsible for cemeteries, a historical society, a descendant, or the state archeologist may file an objection to the proposed removal of historic remains with the probate court in the district in which the historic remains are located and with the clerks of the municipality in which the historical remains are located within 30 days after the date the notice was mailed.

Fifth: In Sec. 4. 18 V.S.A. § 5217(h), by striking out the first sentence and inserting in lieu thereof the following: The permit shall require that all remains, markers, and relevant funeral-related materials associated with the burial site be removed, and the permit may require that the removal be

conducted or supervised by a qualified professional archeologist in compliance with standard archeological process.

Sixth: By striking out Secs. 5 and 6 in their entirety.

And by renumbering the remaining sections to be numerically correct.

VINCENT ILLUZZI
WILLIAM H. CARRIS
TIMOTHY R. ASHE

Committee on the part of the Senate

HELEN J. HEAD
JOSEPH A. BAKER
KESHA K. RAM

Committee on the part of the House

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

Rules Suspended; Bills Messaged

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

H. 66, H. 281, H. 722.

Rules Suspended; Bill Delivered

On motion of Senator Shumlin, the rules were suspended, and the following bill was ordered delivered to the Governor forthwith:

S. 296.

Message from the House No. 88

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

Mr. President:

I am directed to inform the Senate that:

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

H. 485. An act relating to the use value appraisal program.

And has concurred therein with further amendment in the passage of which the concurrence of the Senate is requested.

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

H. 778. An act relating to amending miscellaneous provisions in Vermont's public retirement systems.

And has concurred therein with further amendments in the passage of which the concurrence of the Senate is requested.

Rules Suspended; Immediate Consideration

On motion of Senator Shumlin, the rules were suspended, and the following bills, appearing on the Calendar for notice, were ordered to be brought up for immediate consideration:

H. 485, H. 778.

House Proposal of Amendment to Senate Proposal of Amendment Concurred In; Rules Suspended; Bill Messaged

H. 485.

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

An act relating to the use value appraisal program.

Were taken up.

The House proposes to the Senate to amend the Senate proposal of amendment by adding two new sections to be numbered Secs. 8a and 8b to read as follows:

Sec. 8a. USE VALUE APPRAISAL "EASY-OUT"

Notwithstanding any other provision of law, an owner of property enrolled in use value appraisal under chapter 124 of Title 32 as of the passage of this act, who elects to discontinue enrollment of the entire parcel may be relieved of the first $100,000.00 of land use change tax imposed pursuant to section 3757 of that title; provided that, if the property owner does elect to discontinue enrollment and be relieved of the first $100,000.00 of land use change tax, the owner shall pay the full property tax, based upon the property's full fair market value, for the 2010 assessment, and no state reimbursement shall be paid for that land. No property owner may be relieved of more than $100,000.00 in land use change tax under this provision. An election to discontinue enrollment under this provision is effective only if made in writing to the director of property valuation and review on or before September 1, 2010; and no owner or successor who elects to discontinue enrollment under this section may re-enroll less than the entire withdrawn parcel in the succeeding five years.

Sec. 8b. LIMITATION ON EASY-OUT

The "easy-out" provided for in Sec. 8a of this act shall not be available for any parcel that been developed, as that term is defined in 32 V.S.A. § 3752(5), prior to the effective date of this act.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment to the Senate proposal of amendment?, Senator Starr moved that the Senate concur in the House proposal of amendment to the Senate proposal of amendment with a further proposal of amendment as follows:

By striking out Secs. 2 through 8 including 8a and 8b in their entirety.

Thereupon, pending the question Shall the House proposal of amendment to the Senate proposal of amendment be amended as recommended by Senator Starr? Senator Starr requested and was granted leave to withdraw the proposal of amendment.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment to the Senate proposal of amendment?, was decided in the affirmative on a roll call, Yeas 20, Nays 9.

Senator Kittell 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, Cummings, Doyle, Flanagan, Hartwell, Kitchel, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Racine, Shumlin, Snelling, White.

Those Senators who voted in the negative were: Brock, Choate, Flory, Illuzzi, Kittell, Mullin, Scott, Sears, Starr.

The Senator absent and not voting was: Giard.

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

House Proposal of Amendment to Senate Proposal of Amendment Concurred In; Rules Suspended; Bill Messaged

H. 778.

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

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

Was taken up.

The House proposes to the Senate to amend the Senate proposal of amendment by adding a new section to be numbered Sec. 2b to read as follows:

Sec. 2b. STATE EMPLOYEES; AVERAGE FINAL COMPENSATION

Contingent upon the implementation of a plan to make this section cost-neutral by achieving sufficient ongoing savings in the Vermont state employees' retirement system, developed by the state treasurer, the Vermont State Employees' Association, and the Vermont Troopers' Association, the salary used to determine a state employee's average final compensation for fiscal years 2011 and 2012, for an employee retiring on or after June 30, 2011, shall be no less than the employee's salary paid during fiscal year 2010 when calculating the employee's retirement allowance.

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

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

Joint Resolution Adopted on the Part of the Senate

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

By Senator Shumlin,

J.R.S. 66. Joint resolution relating to final adjournment of the General Assembly in 2010.

Resolved by the Senate and House of Representatives

That when the President of the Senate and the Speaker of the House of Representatives adjourn their respective houses on the twelfth or thirteenth day of May, 2010, they shall do so to reconvene on the ninth day of June, 2010, at ten o'clock in the forenoon if the Governor should fail to approve and sign any bill and should he return it to the house of origin with his objections in writing after such adjournment, but if the Governor should *not* so return any bill to either house, to be adjourned *sine die*.

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 twelfth day of May, 2010, he approved and signed bill originating in the Senate of the following title:

S. 268. An act relating to the building bright futures council.

Secretary Directed to Inform the House of Completion of Business

On motion of Senator Shumlin, the Secretary was directed to inform the House that the Senate has completed the business of the session and is ready to adjourn *sine die*.

Committee Appointed to Inform Governor of Completion of Business

On motion of Senator Shumlin, the President appointed the following four Senators as members of a committee to wait upon His Excellency, James H. Douglas, the Governor, and inform him that the Senate has completed the business of the session and is ready to adjourn *sine die*:

Senator Shumlin
Senator Bartlett
Senator Racine
Senator Scott

Report of Committee

The Committee appointed to wait upon His Excellency, the Governor, to inform him that the Senate had, on its part, completed the business of the session and was ready to adjourn *sine die*, pursuant to the provisions of J.R.S. 66, performed the duties assigned to it and escorted the Governor to the rostrum where he delivered his remarks in person.

Remarks of Governor

The Governor, the Honorable James H. Douglas, assumed the rostrum and briefly addressed the Senate.

"When we returned to Montpelier in January for the second half of this biennium, there was little doubt that this would be the most challenging year in recent memory.

"As our state and nation slowly emerge from the deepest and longest recession since the Second World War, our most critical task is to restart the engine of our economy and set Vermont on a sustainable fiscal path.

"The urgency of our efforts is heightened by the knowledge that many of our friends and neighbors are working longer hours for lower wages and that others are out of work altogether.

"The economic upheaval Vermonters have experienced has contributed to serious troubles in our state's fiscal situation. But despite these challenges, we can feel good about the work done here, under the Golden Dome, in 2010.

"While other states are cutting programs and raising taxes in response to the fiscal crisis, Vermont, I am proud to say, is moving in a different direction. We are looking toward the future and striving for economic success.

"We are reforming government through Challenges for Change; we undertook overdue changes in our unemployment insurance and pension systems; we protected vital human services programs for the most vulnerable and indeed strengthened many programs through innovation; and we've done so while making investments in society's most critical safety net – a strong economy.

"Reinstating the 40 percent capital gains exemption for employers sends a powerful signal to job creators that Vermont is open for business: that we are listening and we are committed to competing in the global economy.

"That change, coupled with the estate tax rollback, increasing the cap in the Vermont Employment Growth Incentive and the $8.7 million jobs bill enacted earlier this session – with money for job training, telecommunications, small business lending, farmers and tourism – is an important start on the road to full fiscal health.

"Putting our UI trust fund back on stable ground was necessary to return certainty to our economy and our state budget. We knew a solution would be difficult – requiring compromise and sacrifice from all sides. I am proud that we worked together to achieve a solution that charts a course for solvency. Shoring up the UI trust fund this year was the right thing to do.

"Despite our fiscal challenges, we again renewed our commitment to the Road to Affordability, building a safe and healthy infrastructure through another strong Transportation Bill. I was proud to celebrate, just this week, a record paving budget that will improve our roads and create jobs throughout our state.

"After decades of hard work by many, truck weight limits on our Interstate system were finally lifted – helping to get heavy trucks off town roads and out of our village centers and giving a needed boost to our economy.

"In addition to a robust investment in our roads, bridges and culverts, we passed a commonsense ban on texting while driving – making our roadways safer for all Vermonters and those who visit the Green Mountains.

"A commitment to a cleaner environment is part of who we are as Vermonters. That strong environmental ethic goes hand in hand with our desire to ensure a healthy and competitive economy.

"Through the Capital Bill we are investing in geothermal heating at state facilities to reduce the cost to taxpayers and reduce emissions.

"Earlier this year Vermont secured a significant portion of our energy future through a long-term power contract with our friends to the north. That agreement benefits from the energy bill that was passed by this General Assembly, which recognizes power from Hydro-Quebec as renewable. Vermont is now positioned to reap greater benefits from our strong relationship with Quebec.

"Restructuring our judiciary is critical to ensuring that Vermonters have timely access to justice. I commend Chief Justice Reiber for conveying the urgency of this challenge and offering a way to achieve savings through unification of the court system. The judicial restructuring effort will ensure that our courts remain open, our system is strong and its cost is sustainable.

"As we struggle to do what is right for those we serve, I remain humbled by and grateful for those brave Vermonters serving our nation overseas, defending the very ideals of self-government. That is why I am proud that you have passed and I signed the Military Parents' Rights Act. Ensuring that the men and women serving our country have greater certainty in their family circumstances is a small, but important commitment to them. We continue to pray and hope for the safe return of those brave Vermonters deployed overseas.

"As we end this session, I want to recognize and thank those throughout state government who work every day to better our great state.

"And I want to thank each of you for your dedication to the people you serve and the state we love so very much. At times we've had our differences, but Vermonters can be proud that we conducted the people's business with a strong sense of duty, a commitment to do what is right and the civility that should always be expected from elected leaders.

"I first took my seat in this General Assembly in 1973 and have devoted my adult life to advancing the cause of the people of Vermont. There is always more to be done and the challenges facing our state remain daunting. I am proud of what we have accomplished, together, for those we have the honor to serve.

"Thank you all."

Departure of Governor

The Governor, having completed the delivery of his message, was escorted from the Chamber by the committee appointed by the Chair.

Final Adjournment

On motion of Senator Shumlin, at eleven o'clock and forty-four minutes in the evening, (11:44 P.M.), the Senate adjourned *sine die*, pursuant to the provisions of **J.R.S. 66**.

Messages Received After Final Adjournment

After final adjournment, the following messages were received by the Secretary.

Message from the House No. 89

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

Mr. President:

I am directed to inform the Senate that:

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

H. 213. An act to provide fairness to tenants in cases of contested housing security deposit withholding.

H. 498. An act relating to maintenance of private roads.

H. 792. An act relating to implementation of challenges for change.

And has severally concurred therein.

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

H. 281. An act relating to the removal of bodily remains.

And has adopted the same on its part.

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

H. 783. An act relating to miscellaneous tax provisions.

And has adopted the same on its part.

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

H. 789. An act making appropriations for the support of government.

And has adopted the same on its part.

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

H.C.R. 368. House concurrent resolution honoring former Randolph selectboard member C. Walter Dewey of Randolph.

H.C.R. 369. House concurrent resolution in memory of Edna Fairbanks-Williams of Hubbardton.

H.C.R. 370. House concurrent resolution in memory of Vermont Chief Justice Honorable Albert Wilkins Barney, Jr.

H.C.R. 371. House concurrent resolution in memory of Mildred Ellen Orton.

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. 54. Senate concurrent resolution in memory of Baseball Hall of Famer and Vermont Mountaineers' board member Robin Roberts.

And has adopted the same in concurrence.

Message from the House No. 90

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

Mr. President:

I am directed to inform the Senate that the House has on its part completed the business of the second half of the Biennial session and is ready to adjourn *sine die*, pursuant to the provisions of J.R.S. 66.

Concurrent Resolutions Adopted by Senate

Secretary's Note: The following House concurrent resolutions, which were adopted by the House on May 11 or 12, 2010, were not received in the office of the Secretary of the Senate until after the Senate had adjourned *sine die* on May 12, 2010. Nevertheless, in keeping with the spirit of Joint Rules 16a through 16d, the Secretary has deemed them to have been timely noticed for adoption in concurrence by the Senate.

By Representative French,

H.C.R. 368.

House concurrent resolution honoring former Randolph selectboard member C. Walter Dewey of Randolph.

By Representative Donahue and others,

H.C.R. 369.

House concurrent resolution in memory of Edna Fairbanks-Williams of Hubbardton.

By the House Committee on Judiciary,

By the Senate Committee on Judiciary,

H.C.R. 370.

House concurrent resolution in memory of Vermont Chief Justice Honorable Albert Wilkins Barney, Jr.

By Representative Olsen and others,

By Senators Campbell, McCormack, Nitka, Hartwell, Sears, Shumlin and White,

H.C.R. 371.

House concurrent resolution in memory of Mildred Ellen Orton.

Bill Titles Amended by Secretary

Pursuant to Senate Rule 40, after final adjournment and final action was taken on **S. 207** and **S. 295**, the titles to the bills were amended by the Secretary to read as follows:

S. 207. An act relating to preliminary incubation testing of milk; raw milk quality study and report; and unlawful cutting of trees.

S. 295. An act relating to agricultural development, including agency positions and creation of development board; establishment of livestock care standards; operation of commercial slaughter facilities; animal rescue organizations; and health certificates for importation of certain animals.

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 fourteenth day of May, 2010, he approved and signed bills originating in the Senate of the following titles:

S. 222. An act relating to state recognition of Native American Indian tribes in Vermont.

S. 161. An act relating to National Crime Prevention and Privacy Compact.

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 eighteenth day of May, 2010, he approved and signed a bill originating in the Senate of the following title:

S. 218. An act relating to voyeurism.

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 May, 2010, he approved and signed bills originating in the Senate of the following titles:

S. 247. An act relating to bisphenol A.

S. 263. An act relating to the Vermont Benefit Corporations Act.

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 May, 2010, he approved and signed a bill originating in the Senate of the following title:

S. 58. An act relating to electronic payment of wages.

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 May, 2010, he did not approve and *allowed to become law without his signature* a bill originating in the Senate of the following title:

S. 138. An act relating to unfair business practices of credit card companies and fraudulent use of scanning devices and re-encoders.

Text of Communication from Governor

The text of the communication to the Senate from His Excellency, the Governor, setting forth his reasons for refusing to sign and *allowing to become law without his signature,* **Senate Bill No. 138**, is as follows:

May 21, 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.138, *An Act Relating To Unfair Business Practices Of Credit Card Companies And Fraudulent Use Of Scanning Devices And Re-Encoders,* to become law without my signature for the reasons stated herein.

I understand and sympathize with the frustration and concern of Vermont's merchants regarding credit card fees, credit card rules and interchange fees imposed upon them without the opportunity to negotiate terms and the freedom to choose pricing options or the type of payment they will accept.

I do not believe, however, that legislation of this nature is best handled at the state level. This is a national, if not an international, issue that is best addressed in a wider forum. Indeed, Congress is starting to address these concerns. A recent amendment to the United States Senate version of the national financial regulatory reform legislation places restrictions on the fees and practices that card companies may impose on merchants when a buyer uses a debit card. While I appreciate the General Assembly's strong desire to address this issue, a better approach would have been to encourage our Congressional delegation to support amendments to federal law.

With the passage of S. 138, Vermont will be the first state in the nation to challenge the rules of the electronic payment system through legislation. This is not without risk to Vermonters and, particularly, those who depend on visitors to our state for their livelihoods. Consumers may find that their debit and credit cards are not accepted by certain merchants or in certain situations. Also, certain electronic payment systems may decide to pull out of the state or only offer limited services in Vermont.

These reservations were shared with legislators and, despite them, S.138 passed unanimously. I will encourage our delegation to address these issues on a nationwide basis so that uniformity among and between states will be achieved.

Sincerely,

/s/James H. Douglas

James H. Douglas
Governor

JHD/psy

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-fourth day of May, 2010, he approved and signed bills originating in the Senate of the following titles:

S. 182. An act relating to determining unemployment compensation experience rating for successor businesses.

S. 205. An act relating to the Revised Uniform Anatomical Gift Act.

S. 290. An act relating to restoring solvency to the unemployment trust fund.

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 May, 2010, he approved and signed bills originating in the Senate of the following titles:

S. 90. An act relating to representative annual meetings.

S. 103. An act relating to the study and recommendation of ignition interlock device legislation.

S. 262. An act relating to a study of coverage of appropriate services for children with autism spectrum disorders.

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 May, 2010, he did not approve and *allowed to become law without his signature* 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.

Text of Communication from Governor

The text of the communication to the Senate from His Excellency, the Governor, setting forth his reasons for refusing to sign and *allowing to become law without his signature,* **Senate Bill No. 88**, is as follows:

May 27, 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. 88, *An Act Relating to Health Care Financing and Universal Access to Health Care in Vermont*, to become law without my signature for the reasons stated herein.

S. 88 includes a number of provisions that I strongly support and a number of provisions about which I have significant concerns.

On the one hand, it provides critically important codification of our Blueprint for Health – Vermont's signature, forward-thinking effort to improve quality and reduce growth in health care costs. But at the same time, physicians, non-profits and other organizations across Vermont have expressed significant concern about the chilling effect certain provisions could have on

the ability of low-income Vermonters to receive free samples of vital prescription drugs. And family-owned restaurants in Vermont have voiced concern about S. 88's accelerated implementation of menu labeling requirements that were included in recently enacted federal health care reform.

Vermont has been at the forefront of state-led health care reform efforts and worked closely with our Congressional delegation on the recently enacted Patient Protection and Affordable Care Act. After five solid years of state-led reform and with President Obama's sweeping health care law barely in hand, S. 88's "design options" study mandates that Vermont now consider striking out on its own, in a totally different direction. Moreover, the study is a wasteful expense of time and scarce resources, as Vermont would be prevented by the federal health care reform law from implementing any of the new "designs" until 2017 at the earliest.

I thank the Legislature, however, for the careful, positive work they put into many provisions of S. 88. The revisions to the Blueprint are vitally important, outweighing the other objectionable portions of the bill. Indeed, the bill represents the culmination of years of work positioning Vermont to lead the nation in a comprehensive effort that has been recognized for its groundbreaking innovation in a multi-payer approach to payment and delivery system reform.

The need to enact the Blueprint revisions rests on two critical developments in the evolution of the program that require legislative authority. First, the Blueprint's integrated medical home and community health team payment reform model grew out of language authorizing a pilot program in Act 71 of 2007. S. 88 articulates the components of that pilot as they have subsequently been designed and implemented, providing statutory recognition for what the Blueprint has become, how it functions, and authority to make further modifications and development.

S. 88 takes an added needed step in Blueprint development by requiring insurance carriers to participate in the statewide expansion of the Blueprint as a condition of doing business in Vermont. Hospitals will establish and maintain interoperable connectivity to the state Health Information Exchange network operated by Vermont Information Technology Leaders, Inc. (VITL) in order to support the Blueprint's clinical data repository and make lab, hospital discharge and other data broadly available to physicians.

Absent these provisions, Vermont participation in the Centers for Medicare and Medicaid Services Advanced Primary Care Practice Medicare demonstration program, which is based in large measure on the Blueprint, would be jeopardized. Statewide expansion (to at least two medical home sites in each Hospital Service Area by July 1, 2011 and to all primary care practices

by October 1, 2013) is premised on Medicare participation. Medicare participation in the Blueprint is premised on comprehensive participation by commercial insurers. S. 88 is needed to ensure this happens.

In an initiative that complements the Blueprint, the bill also establishes an important, one year primary care work force development committee to determine the additional capacity needed in the primary care delivery system when Vermont achieves health reform goals that place such a key emphasis on enhancing the primary care infrastructure. The committee's charge is to create a strategic plan for ensuring that the necessary workforce capacity is achieved to meet the needs of our primary care delivery system.

S. 88 provides important direction to the Department of Banking, Insurance, Securities and Health Care Administration to limit the rate of growth in hospital spending and insurance premiums. At a time when schools, state employees, and employers across the state are tightening their belts and reducing spending, hospitals must also share in that sacrifice. Controls have been built in to assure that safety and quality won't be compromised, but the time for business as usual has ended. Creative and innovative approaches to operating our state's hospitals more efficiently must be pursued.

Again, it is unfortunate that the many exciting and useful provisions in this bill have been clouded by the objectionable provisions outlined, which is why I must let S. 88 become law without my signature.

Sincerely,

/s/James H. Douglas

James H. Douglas
Governor

JHD/pht

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-ninth day of May, 2010, he approved and signed bills originating in the Senate of the following titles:

S. 64. An act relating to growth center designations and appeals of such designations.

S. 278. An act relating to the department of banking, insurance, securities, and health care administration.

S. 296. An act relating to sale or lease of the John H. Boylan state airport.

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 first day of June, 2010, he approved and signed bills originating in the Senate of the following titles:

S. 207. An act relating to preliminary incubation testing of milk; raw milk quality study and report; and unlawful cutting of trees.

S. 264. An act relating to stop and hauling charges.

S. 280. An act relating to prohibiting texting, prohibiting use of portable electronic devices by junior operators, and primary seatbelt enforcement for persons under 18..

S. 282. An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles.

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 first day of June, 2010, he did not approve and *allowed to become law without his signature* a bill originating in the Senate of the following title:

S. 97. An act relating to a Vermont state employees' cost-savings incentive program.

Text of Communication from Governor

The text of the communication to the Senate from His Excellency, the Governor, setting forth his reasons for refusing to sign and *allowing to become law without his signature,* **Senate Bill No. 97**, is as follows:

June 1, 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. 97, *Vermont State Employees' Cost-Savings Incentive Program*, to become law without my signature. I support efforts to find cost savings in state government and had hoped to sign a bill that created incentives for state employees to offer their ideas. In its final form, however, S. 97 contains provisions that prevent me from fully supporting what is otherwise a valuable program.

First, S. 97 creates a panel that will hear appeals from state employees when their suggestions have not been adopted. That panel is composed of five members, two of whom would be appointed by the Vermont State Employees' Association. Inserting the union into executive branch decision-making is an inappropriate intrusion into the labor-management relationship and opens the door to increasing levels of union access into future administrations.

Further, with this new panel, S. 97 creates more state bureaucracy and increases administrative burdens. The appeals panel adds no value to taxpayers, but rather serves as an internal bureaucratic process designed to second-guess managers. This process will redirect state employees' focus away from their primary responsibilities, consume precious time, and create additional administrative costs – a result at odds with the very purpose of the bill.

I am also concerned that S. 97 does not require as a prerequisite for an award that the employee who has made the suggestion has performed his or her job in a satisfactory manner, as evidenced by his or her last performance evaluation. Those few employees who are not doing the very jobs the taxpayers already pay them to do should not be rewarded. S. 97 has the potential to encourage state employees to divert time and energy away from the jobs that taxpayers employ them to do during working hours.

Finally, S. 97 provides that an employee could receive as much as $25,000 for submitting a suggestion. Many other states adopting employee incentive programs have limited awards to $10,000 or less, and there is no indication that these programs have not created the desired results. I believe a cap of $10,000 would be more than sufficient to provide an incentive to employees to develop creative cost saving ideas. Moreover, it is the taxpayer who should reap the savings achieved through actions taken by state government.

As public servants, it is the job of state employees to make government more efficient and effective for the benefit of Vermont taxpayers. If state employees want to switch from the current seniority-based pay scale to a performance-based salary system, I would welcome that conversation as part of the next collective bargaining process.

Despite these objections, I will let S. 97 go into law without my signature because in these difficult economic times any effort to trim the cost of the state budget, even a flawed effort, is a useful endeavor. The bill allows for a review of the program by the State Auditor and the Joint Legislative Committee on Government Accountability after the first fiscal year of its operation and sunsets the program on June 1, 2012. A full analysis of the cost to the State in administering the program and the cost savings associated with any idea actually implemented will highlight issues in implementation and the efficacy of the program and allow for necessary amendments or for the sunset of the program if it proves to be unsuccessful.

Sincerely,

/s/ James H. Douglas

James H. Douglas
Governor

JHD/lkp

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 third day of June, 2010, he approved and signed bills originating in the Senate of the following titles:

S. 292. An act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees.

S. 295. An act relating to agricultural development, including agency positions and creation of development board; establishment of livestock care standards; operation of commercial slaughter facilities; animal rescue organizations; and health certificates for importation of certain animals.

Message from the House No. 91

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

Mr. President:

I am directed to inform the Senate that:

The Governor has informed the House that on the May 11, 2010, he approved and signed bills originating in the House of the following titles:

H. 765. An act relating to establishing the Vermont agricultural innovation authority.

H. 772. An act relating to alcoholic beverage tastings and other liquor licensing issues.

The Governor has informed the House that on the May 12, 2010, he approved and signed bills originating in the House of the following titles:

H. 562. An act relating to the regulation of professions and occupations.

H. 770. An act relating to approval of amendments to the charter of the city of Barre.

The Governor has informed the House that on the May 13, 2010, he approved and signed bills originating in the House of the following titles:

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.

H. 648. An act relating to harassment and hazing policies at independent colleges.

The Governor has informed the House that on the May 18, 2010, he approved and signed bills originating in the House of the following titles:

H. 725. An act relating to farmers' markets.

H. 763. An act relating to establishment of an agency of natural resources' river corridor management program.

The Governor has informed the House that on the May 19, 2010, he approved and signed bills originating in the House of the following titles:

H. 788. An act relating to approval of amendments to the charter of the town of Berlin.

H. 793. An act relating to approval of amendments to the charter of the village of Essex Junction.

The Governor has informed the House that on the May 20, 2010, he approved and signed bills originating in the House of the following titles:

H. 540. An act relating to motor vehicles passing vulnerable users on the highway and to bicycle operation.

H. 794. An act relating to approval of the merger of the town of Cabot and the village of Cabot.

H. 780. An act relating to approval of amendments to the charter of the city of St. Albans.

The Governor has informed the House that on the May 24, 2010, he approved and signed a bill originating in the House of the following title:

H. 462. An act relating to encroachments on public waters.

The Governor has informed the House that on the May 26, 2010, he approved and signed bills originating in the House of the following titles:

H. 524. An act relating to interference with or cruelty to a service animal guide dog, warrants to impound a dog or wolf-hybrid, and the definition of "humane officer".

H. 243. An act relating to the creation of a mentored hunting license.

H. 555. An act relating to youth hunting.

H. 784. An act relating to the state's transportation program.

The Governor has informed the House that on May 27, 2010, he returned without signature and vetoed a bill originating in the House of the following title:

H. 485. An act relating to the use value appraisal program.

Text of Communication from Governor

The text of the communication from His Excellency, the Governor, whereby he vetoed and returned unsigned **House Bill No. 485** to the House is as follows:

May 27, 2010

The Honorable Donald G. Milne
Clerk of the House of Representatives
State House
Montpelier, VT 05633-5401

Dear Mr. Milne:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I am returning H. 485, *An Act Relating to the Use Value Appraisal Program*, without my signature because of objections described herein.

Earlier this year, I recommended full funding of the Use Value Appraisal Program – otherwise known as Current Use – as a part of my proposed FY 2011 budget. I did so because Current Use is critically important to maintaining our working landscape. Current Use allows agricultural and managed forest lands to be taxed on their use value as opposed to their fair market value, thus relieving the pressure on farmers and foresters to remove land from agriculture and forestry and develop it to pay the taxes. While some

see this as simply a benefit to enrolled landowners, the entire state is the beneficiary of keeping farms as farms and forests as forests.

H. 485, however, greatly undermines the original intent of the Current Use program, is complicated, highly nuanced, difficult to understand, administratively complex, and needlessly and unfairly increases three taxes. I am disappointed that, in spite of many opportunities to compromise, the Legislature chose to move forward without addressing any of the objections and concerns raised by my Administration and many other Vermonters.

Just when Vermont's agriculture and forest products industries are facing the most daunting economic times in modern history, H. 485 imposes additional taxes and burdensome bureaucracy on the owners of our state's farm and forest land. This approach is in direct opposition to helping our traditional industries prosper in the 21st Century. We should find ways to lower costs for farmers and foresters rather than dump additional taxes and requirements on an already fragile sector of our economy.

Dedicated, long-term participants, who entered into an agreement with the state under one set of provisions, are facing significant changes when they can least afford the impact. Difficult, far-reaching, permanent ownership and enrollment decisions that will affect struggling farm and forest owners must be made in a very short time frame, and may well result in a serious negative impact on Vermont's working landscape. The bill punitively increases the Land Use Change Tax (LUCT) which, among other things, would require farmers to pay the penalty for development of a farm labor housing site and punish parents who wish to provide some land to their children by requiring them to pay a high penalty to do so.

In the FY 2010 budget, the Legislature set a target for themselves to "save" $1.6 million in the Current Use program. Instead they created a new "one-time" $128 assessment on all enrolled landowners. Charging a fee to allow continued enrollment in a program that is designed to make land ownership affordable is both ironic and counterproductive.

H. 485 increases a second tax – the property transfer tax. The bill increases the tax in some cases by 150 percent – from .5 percent to 1.25 percent.

The third tax increase – the increase in the LUCT – is a significant policy change and perhaps the most troublesome aspect of H. 485. While those who support this redesign of Current Use say it will "strengthen" the program, I believe it will have the opposite effect. The current penalty calculation motivates participants to stay in the program by reducing the penalty percentage after ten years; the new calculation would not provide any benefit for long periods of enrollment.

Further, by changing from the enrolled per acre value as the basis for the LUCT to the parcel value of the removed land, the penalty on a small parcel is likely to be very large. An unintended consequence of H. 485 is that people who remove a parcel will likely take out more land than they would otherwise, so that the assessment per acre will be lower.

Some have claimed that the LUCT increase is necessary to prevent abuses, such as putting land in Current Use for a short period (called "parking") to reap tax benefits prior to development. While there are a few anecdotal instances of this behavior, it is a small problem as roughly two-tenths of one percent of the total land in the program has been subject to the LUCT annually over the past five years. If, in fact, the object is to address the "parking" problem, the penalty should be structured to accomplish that goal, and not to penalize all participants.

Above and beyond its intent, the LUCT will affect far more landowners than those who plan to sell land. Although H. 485 includes a so-called "easy out" option, it is clear there's nothing easy about it. The limitation cited in Section 8b that any parcel that has been developed as defined in 32 V.S.A. § 3752(5) will not be eligible for the "easy out" is especially problematic and raises troubling issues.

For example, cross referencing to the definition of development includes activity such as cutting trees contrary to a forest management plan. The increased penalty will apply, as a result, to forest landowners who have been found to have "cut contrary" to their forest management plan – even if unintentional. This is a severe penalty for what can be a small mistake. H. 485 is clear that the penalty is due "at the time of development," thereby unfairly increasing the penalty for landowners.

Because there is no database for parcels that have been "cut contrary," county foresters will need to review paper files, chewing up precious time and creating an unnecessary administrative burden. How this limitation is defined and/or interpreted will be important and will require further refinement prior to application on a parcel-by-parcel basis. Ultimately, this provision raises more questions than it answers. Does it apply to any parcel that had a "portion" developed? What if the parcel was sold and subdivided? What if the parcel was found in violation of its management plan, removed from the program, and then re-enrolled after 5 years? What if the parcel is now under new ownership?

Section 6 is fundamentally unfair to the pending program applicants, who filed their applications under the old rules. With the new LUCT, it is expected that some may want to amend their applications, but they can't do so without paying a penalty. Common sense and basic fairness dictate that an applicant

should be able to amend an application based on a major change in the program.

H. 485 requires that the Department of Taxes provide timely notice to all program participants of the changes to the current use penalty and the participant's options in terms of continued enrollment of some or all of their current use property. Those applicants who have applied to enroll some 900 parcels in 2009 must be informed of their option to choose not to enroll under the new penalties, taxes and fees. They must respond by July 1, 2010—an unworkable and unfair time frame of just over a month in which timely notification and responses must occur.

In addition to the notice provisions there are a number of difficult administrative issues associated with the implementation of H. 485. In order to assess and collect the $128 per owner surcharge through municipal property tax bills, electronic information systems will have to be developed and in place by July 1, 2010, as electronic files must be transmitted from the State to towns identifying which properties within each municipality are to be assessed the surcharge. Changes to the New England Municipal Resource Center (NEMRC) tax billing and collection software modules to get the assessment on all tax bills will be necessary for Towns to account for the surcharge and issue reports on collection status.

Collectively, the administrative issues in H. 485, given the timeframe within which they have to be accomplished, would make it extremely difficult, if not impossible, to implement. Not only would implementation issues associated with H. 485 be problematic for the Tax Department, they would result in a significant burden for municipal listers and treasurers to change the grand list values and revise tax bills to be consistent with changes required by the bill.

Prior to the legislative session, the Tax Commissioner warned legislative leaders about the inevitable confusion and cost that would be involved in the implementation of broad changes to the Current Use program for FY 2011. In his letter, he suggested that a more realistic timeframe that would allow all parties to be engaged and to do the necessary education and outreach would be for any changes to become effective in FY 2012.

The change in the LUCT is clearly a policy issue that deserves a full and open public discussion, along with other aspects of the Current Use program. Section 8 of the bill raises important issues that need to be thoughtfully considered. In addition to those, other facts must be gathered and other issues must be discussed more fully prior to making any major changes to the program. These include: the identification and analysis of parcels/acres removed from the program for the last five years and the subsequent use of those parcels; the level of productivity expected from smaller parcels; review of the eligibility standards in Title 32 § 3752 to determine if they need to be revised or updated; the need to monitor the actual use of enrolled farm

structures; consideration of a per acre cap for municipal reimbursement; and the advisability of decentralizing the calculation of fair market value when assessing the LUCT by transferring that responsibility from the state to the towns in which the property is located.

Any revenue implications from not implementing this legislation can be addressed if necessary in the FY 2011 budget adjustment or supplemented through contingent appropriations or excess FY 2011 revenue.

I continue to support the Current Use program, and believe that it has provided great benefits to our state. It is unfortunate that the General Assembly chose to raise taxes unnecessarily and punitively on the stewards of Vermont's working landscape in an effort to address the perceived misuse of the program. A more calibrated approach is required to achieve the desired objectives.

Therefore I am returning H. 485 without my signature.

Sincerely,

/s/James H. Douglas

James H. Douglas
Governor

JHD/pem

The Governor has informed the House that on the May 29, 2010, he did not approve and allowed to become law without his signature bill originating in the House of the following title:

H. 778 An act relating to amending miscellaneous provisions in Vermont's public retirement systems.

Text of Communication from Governor

The text of the communication to the House from His Excellency, the Governor, setting forth his reasons for refusing to sign and *allowing to become law without his signature,* **House Bill No. 778**, is as follows:

May 29, 2010

The Honorable Donald G. Milne
Clerk of the House of Representatives
State House
Montpelier, VT 05633-5401

Dear Mr. Milne:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I will allow H. 778, *An Act Relating to Amending Miscellaneous Provisions in Vermont's*

Public Retirement System, to become law without my signature. I am unable to fully endorse the bill because I am concerned that H. 778 may significantly increase General Fund pressure in order to ensure the long-term sustainability of state retirement plans.

Demographic trends and the recent upheaval in the financial markets have required Vermont to make significantly larger contributions to the systems to maintain them in a financially responsible manner. Last year, the Legislature empanelled a commission to study the state's retirement systems. This year, the *Commission on the Design and Funding of Retirement and Retiree Health Benefit Plans for State Employees and Teachers* returned a comprehensive plan to reform pension systems for both teachers and state employees and lower costs for taxpayers. While the Legislature enacted some welcome changes to teachers' retirement, it failed to make any meaningful cost saving reforms for the state employees' system. In fact, with the passage of H. 778, the Legislature went in the opposite direction, as this bill could increase the amount Vermont taxpayers must contribute to the systems by millions of dollars.

Of greatest concern, Section 2b of H. 778 provides that the salary reductions negotiated with the Vermont State Employees' Association and the Vermont Troopers' Association in an effort to balance the State's budget, will not be reflected in the retirement calculations for employees who retire on or after June 30, 2011. This bill is an effort to circumvent the financial reality of the new collective bargaining agreements; this reality well understood by all parties negotiating the wage reductions in those new agreements. The salaries for those employees who will be retiring over the next two years reflect many years where the increases in salaries were quite large – increases that are unlikely to be given to state workers anytime in the near future. From at least 1986 to the present, employees covered under collective bargaining agreements received no reductions in wages; to the contrary, they received increases as high as 6, 7 and 8%. Even in the last two years, wages to these employees increased by 3.5% in each year. Just as these employees' retirement calculations should reflect these increases, I believe they should also reflect the decreases, with the amounts averaging out over time.

The General Assembly's budget reflects ongoing savings to be achieved as a result of the revised retirement calculation in FY2011 of $4.4 million dollars without including the cost of Section 2b. Beginning in FY2012, if this provision is enacted we must achieve an additional $2.4 million dollars of savings – for a total of $6.8 million – to offset this new and unanticipated interpretation of the bargain.

Essentially acknowledging the fiscal irresponsibility of Section 2b, the bill includes the caveat that it will be "contingent upon the implementation of a plan to make this section cost-neutral by achieving ongoing savings" in the future. Yet nothing in H. 778 suggests how those savings will be achieved. More fundamentally, it ignores that the state pension system is already facing unprecedented costs, and that this bill will only increase the difficult choices that are ahead.

Further, H. 778 is narrowly tailored to support union employees in a defined benefit plan to the exclusion of many exempt state employees. The bill does not acknowledge or account for exempt employees in the defined contribution plan, many of whom have experienced a 5% pay decrease and frozen salaries since 2008. This pay reduction comes with a corresponding decrease in the state's contribution to their retirement plan. Does the Legislature intend to redress this inequity in future years? Instead of focusing on one group of employees, the Legislature should have dealt fairly with all employees and found responsible ways to fund the retirement plan so that it will be solvent into the future.

Other provisions in H. 778 are also problematic because they increase the costs that must be allocated from the General Fund to fund the retirement systems. In Sections 2a, 6a, and 6b the bill sets a floor for post-retirement adjustments for beneficiaries of the state employees and teachers' retirement plans, so that no reductions will be made if there is a decrease in the Consumer Price Index.

H. 778 contains a provision that I support that will ensure that employees cannot take advantage of the retirement system by working an excessive amount of overtime in the last two years of their careers to increase their retirement benefit. I understand there are also technical corrections to the teachers' retirement reforms that are necessary for the successful implementation of those changes. I think these efforts are an important step in the right direction to reduce costs to taxpayers.

Because additional legislative action will inevitably be necessary before the plan developed under Section 2b can be implemented, there is time next session for the Legislature to reconsider the sustainability and fairness of the proposed changes. Likewise, the changes in sections 2a, 6a and 6b will sunset on July 1, 2011 so the potential for increased cost will sunset as well. Thus, despite my objections, I am letting H. 778 go into law without my signature.

Sincerely,

/s/James H. Douglas

James H. Douglas
Governor

JHD/psy

The Governor has informed the House that on the May 29, 2010, he approved and signed bills originating in the House of the following titles:

H. 213. An act to provide fairness to tenants in cases of contested housing security deposit withholding.

H. 488. An act relating to the use of felt-soled boots in the waters of Vermont.

H. 498. An act relating to maintenance of private roads.

H. 590. An act relating to mediation in foreclosure proceedings.

H. 709. An act relating to creating a prekindergarten–16 council.

H. 759. An act relating to executive branch fees.

H. 760. An act relating to the repeal or revision of certain boards and commissions.

The Governor has informed the House that on the June 1, 2010, he approved and signed bills originating in the House of the following titles:

H. 281. An act relating to the removal of bodily remains.

H. 542. An act relating to transfers of mobile homes and rent-to-own transactions.

H. 614. An act relating to the regulation of composting.

H. 647. An act relating to misclassification of employees to lower premiums for workers' compensation and unemployment compensation.

H. 722. An act relating to ticket scalping.

H. 769. An act relating to the licensing and inspection of plant and tree nurseries.

H. 779. An act relating to potable water supply and wastewater system permits.

H. 792. An act relating to implementation of challenges for change.

The Governor has informed the House that on the June 3, 2010, he did not approve and allowed to become law without his signature bill originating in the House of the following title:

H. 66 An act relating to voluntary school district merger, virtual merger, supervisory union duties, and including secondary students with disabilities in senior year activities and ceremonies.

Text of Communication from Governor

The text of the communication to the House from His Excellency, the Governor, setting forth his reasons for refusing to sign and *allowing to become law without his signature,* **House Bill No. 66**, is as follows:

June 3, 2010

The Honorable Don Milne
House Clerk
State House
115 State Street, Drawer 33
Montpelier, VT 05633

Dear Mr. Milne:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I will allow H. 66, *An Act Relating to Voluntary School District Merger, Virtual Merger, Supervisory Union Duties, and Including Secondary Students with Disabilities in Senior Year Activities and Ceremonies*, to become law without my signature for the reasons stated herein.

It is quite clear that Vermont's system of education is out of balance. Per-pupil spending in Vermont is among the highest in the nation – and still growing – yet our student-to-teacher ratio is the lowest in the nation and without reforms will continue to shrink as our student population continues to decline. The result is property taxes that increase every year – straining the budgets of Vermonters and limiting the full potential of our economy.

During my tenure as Governor, I have repeatedly asked legislators to address the burden of property taxes. For the past five years, I have suggested various means of controlling school spending and thus property tax growth. One recommendation from this year was to move from our current 10:1 student-to-teacher ratio to a 13:1 ratio. That modest change would ensure Vermont retains among the lowest ratios in the country, while saving property tax payers nearly $100 million.

The consolidation of school districts to achieve greater economies-of-scale and administrative efficiencies could help, over time, contain costs and increase opportunities for Vermont students. But while I fully support such

efforts, I cannot endorse a bill that will have little, if any, meaningful impact. H. 66 is a mere façade of reform and its efforts to make our system of education more efficient and affordable are flawed in a number of ways.

This bill fails to recognize the immediacy of the challenges in the Education Fund. Because the Legislature chose not to take meaningful steps this year to address property tax growth, there could be as much as a $100 million shortfall in the Fiscal Year 2012 Education Fund depending on the Legislature's choices to resolve General Fund challenges. In contrast, the timeline established by H. 66 unfolds through 2017. Vermont taxpayers do not have seven more years to wait for relief.

In fact, the incentives in H. 66 themselves could increase pressure in the Education Fund. These incentives include tax rate relief up to $0.08, facilitation grants up to $150,000, enhanced income sensitivity payments, and consulting services grants up to $20,000, among others. However, paying for all of this is a zero-sum game, since the funding source for these "incentives" is the Education Fund, which is supported by property taxes from other school districts, many of which are well managed. When one district gains because of H. 66, other districts must lose. This is a poorly constructed system that does not require offsetting savings for cost neutrality.

While H. 66 offers short term incentives to merge school districts, there is a built-in long-term disincentive for efficient school districts to participate in such mergers. The averaging of costs and tax rates across such districts will lower tax rates in high tax districts but raise taxes in low tax districts. Thus, low tax rate districts are less likely to participate, leaving high tax rate districts with few opportunities to partner.

H. 66 retains subsidies for the duration of school years covered by the statute, such as small school grants and "phantom student" subsidies, both of which encourage the status quo and discourage consolidation. For example, school districts will retain small school grants during the 5-year period – although such grants are now renamed "merger support grants"; simply changing the nomenclature does not make this unnecessary stipend any more effective.

Further, H. 66 sets no performance goals from which to measure success or failure including measures of fiscal success. Expected changes in basic outcome parameters such as student-to-teacher ratios, average daily membership per district, and the percent reduction in education spending per pupil, among other measures, are not specified nor established. Also, while H. 66 requires "cost-benefit" analyses by districts considering a merger, the law provides no reference to any measures of success or failure. The simple enumeration of information, such as student-to-teacher ratios, is not an

analysis. Absent the benchmarking of this information relative to desired and measurable outcomes, taxpayers have no way to know whether fiscal goals are being achieved.

Finally, H. 66 is built upon the byzantine infrastructure of Act 60, which has substantially weakened local control with regard to education funding. Vermonters understand the traditional meaning of local control. It integrates the authority to approve governmental spending with the responsibility to raise the associated revenues. Municipal budgets are still built upon these balanced principles while education budgets no longer are. While local voters retained the authority to approve local school spending, the responsibility to raise the associated revenues is now divorced from this authority.

While some of this separation is the proper result of the *Brigham* decision, the Legislature has gone much farther than *Brigham* requires. Current law provisions for key components of Act 60 and Act 68 – such as the income sensitivity program, provisions shifting education costs onto the general fund, the sales tax and the purchase and use tax, and our bifurcated grand list, which allows for a cost shift onto nonresidential property –are not threshold *Brigham* requirements. H. 66 aggravates the burden of these provisions by enhancing income sensitivity for residents of merged districts and shifting a greater tax burden onto non-income sensitized properties.

H. 66 proposes to make an omelet without cracking any eggs. The bill has none of the strong measures necessary to constrain education spending and reduce property taxes. The many flaws and complexities of H.66 will essentially result in few, if any, mergers among Vermont school districts and thus will prove to be of no material consequence. Therefore, I cannot endorse this timid approach and I worry that some may consider it a sufficient effort to avoid needed reforms in the future.

Despite good work in other areas of the state budget, the Legislature's near paralysis on education spending reform and failure to live up to the education component of *Challenges for Change* – a bar the Legislature set for itself – will result in higher property taxes for Vermonters for years to come. H. 66 stands as a symbol of the Legislature's continued ineffectiveness with regard to protecting the justifiable interests of property tax payers.

We need the broad concerns of tax-burdened constituents to outweigh the narrow demands of Vermont's education lobby who seek to sustain the status quo. We need real reform in the face of a serious reckoning in our Education Fund. Vermonters can neither afford nor abide another year of inaction.

Sincerely,

/s/James H. Douglas

James H. Douglas
Governor

JHD/pkp

The Governor has informed the House that on the June 3, 2010, he approved and signed bills originating in the House of the following titles:

H. 470. An act relating to restructuring of the judiciary.

H. 689. An act relating to the Uniform Common Interest Ownership Act.

H. 789. An act making appropriations for the support of government.

The Governor has informed the House that on the June 4, 2010, he approved and signed bills originating in the House of the following titles:

H. 781. An act relating to renewable energy.

H. 783. An act relating to miscellaneous tax provisions.

H. 790. An act relating to capital construction and state bonding.

WEDNESDAY, JUNE 9, 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 ten o'clock in the morning, pursuant to J.R.S. 66, the Senate was called to order by David A. Gibson, Secretary of the Senate.

Adjournment

At ten o'clock and fifteen minutes in the morning and no quorum of the Senate having assembled, pursuant to Rule 9 of the Senate Rules on motion of Senator Doyle, the Senate adjourned *sine die*.

CERTIFICATION

"STATE OF VERMONT

Office of the Secretary of the Senate
Senate Chamber
State House
Montpelier, VT 05633-5501

I hereby certify that the foregoing Journal is a true and correct record of the proceedings of the Senate of the State of Vermont for the second year of the biennial session of 2010, often referred to as the adjourned session of 2010.

This year was the second one of the sixty-eighth biennial session of the Vermont General Assembly, beginning on the fifth day of January, 2010, and ending on the ninth day of June, 2010.

Attest:

DAVID A. GIBSON
Secretary of the Senate

/s/ Steven D. Marshall

STEVEN D. MARSHALL
Assistant Secretary of the Senate"