

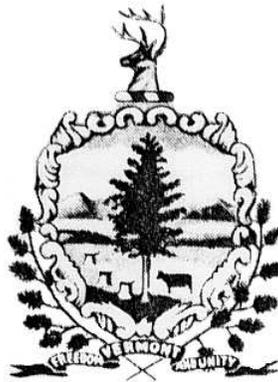
**JOURNAL OF THE SENATE**  
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**MONDAY, MAY 2, 2011**

The Senate was called to order by the President.

**Devotional Exercises**

A moment of silence was observed in lieu of devotions.

**Pledge of Allegiance**

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

**Message from the House No. 62**

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

Mr. President:

I am directed to inform the Senate that:

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

**S. 108.** An act relating to effective strategies to reduce criminal recidivism.

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

**Message from the House No. 63**

A message was received from the House of Representatives by Mr. William M. MaGill, its First Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

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

**H. 287.** An act relating to job creation and economic development.

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

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

Rep. Botzow of Pownal  
Rep. Marcotte of Coventry  
Rep. Condon of Colchester

**Consideration Resumed; Bill Amended; Third Reading Ordered****H. 420.**

Consideration was resumed on House bill entitled:

An act relating to the office of professional regulation.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as moved by Senator White?, was agreed to.

Thereupon, the pending question, Shall the bill be read the third time?, was decided in the affirmative.

**Consideration Resumed; Bill Amended; Third Reading Ordered**

**H. 438.**

Consideration was resumed on House bill entitled:

An act relating to the department of banking, insurance, securities, and health care administration.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Finance?, was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Brock, on behalf of the Committee on Finance, moved to amend the Senate proposal of amendment as follows:

Sec. 11a. 8 V.S.A. § 12603 is amended to read:

§ 12603. MERCHANT BANKS

\* \* \*

(f) The minimum amount of initial capital for a merchant bank is ~~\$10,000,000.00~~ \$1,000,000.00, all of which ~~at least \$5,000,000.00~~ shall be common stock or equity interest in the merchant bank. ~~The balance may be composed of qualifying subordinated or similar debt~~ A merchant bank may use qualified subordinated debt or senior debt as part of its capital structure above \$1,000,000.00, provided that the amount of subordinated debt or senior debt used as capital above \$1,000,000.00 is not greater than the amount of common stock or equity interest used as capital above \$1,000,000.00. The commissioner, in his or her discretion, may increase the minimum capital required for a merchant bank.

\* \* \*

(m) Any acquisition or change in control of ~~five~~ ten percent or more of the common stock or equity interests in a merchant bank shall be subject to the prior approval by the commissioner. The acquiring person shall file an application with the commissioner for approval. The application shall be subject to the provisions of subchapter 7 of chapter 201 of this title.

(n) The commissioner ~~may~~ shall examine the merchant bank and any person who controls it to the extent necessary to determine the soundness and viability of the merchant bank in the same manner as required by subchapter 5 of chapter 201 of this title.

(o) A merchant bank shall include on all its advertising a prominent disclosure that deposits are not accepted by a merchant bank.

(p) For purposes of this section, “control” means that a person:

(1) directly, indirectly, or acting through another person owns, controls, or has power to vote ten percent or more of any class of equity interest of the merchant bank;

(2) controls in any manner the election of a majority of the directors of the merchant bank; or

(3) directly or indirectly exercises a controlling influence over the management or policies of the merchant bank.

Which was agreed to.

Thereupon, the recurring question, Shall the bill be read the third time?, was decided in the affirmative.

#### **Rules Suspended; Bills on Notice Calendar for Immediate Consideration**

On motion of Senator Campbell, the rules were suspended, and the following bills, appearing on the Calendar for notice, were ordered to be brought up for immediate consideration:

**H. 73, H. 264, H. 369, H. 448.**

#### **Proposal of Amendment; Third Reading Ordered**

#### **H. 369.**

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

An act relating to health professionals regulated by the board of medical practice.

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. 26 V.S.A. chapter 7 is amended to read:

#### CHAPTER 7. PODIATRY

##### Subchapter 1. General Provisions

#### § 321. DEFINITIONS

In this chapter, unless the context requires another meaning:

(1) “Board” means the state board of medical practice established by chapter 23 of this title.

(2) “Disciplinary action” means any action taken against a licensee or an applicant by the board, ~~the appellate officer,~~ or on appeal ~~therefrom~~ from that

action, when that action suspends, revokes, limits, or conditions licensure in any way, ~~and~~ or when it includes reprimands or an administrative penalty.

\* \* \*

#### § 324. PROHIBITIONS; PENALTIES

\* \* \*

(c) A person who violates a provision of this ~~chapter~~ section shall be imprisoned not more than two years or fined not more than \$100.00 for the first offense and not more than \$500.00 for each subsequent offense \$10,000.00.

\* \* \*

#### § 371. ELIGIBILITY

To be eligible for licensure as a podiatrist, an applicant must:

\* \* \*

(3) have received a diploma or certificate of graduation from an accredited school of podiatric medicine approved by the board; ~~and~~

(4) successfully complete the examinations given by the National Board of Podiatry Examiners; and

(5) if the applicant has not engaged in practice as a podiatrist within the last three years, comply with the requirements for updating knowledge and skills as defined by board rules.

\* \* \*

#### § 373. RENEWAL OF LICENSURE

(a) ~~Licenses shall be renewable every two years without examination and on payment of the required fee~~ A person licensed by the board to practice podiatry shall apply biennially for the renewal of his or her license. At least one month prior to the date on which renewal is required, the board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee; however, any podiatrist while on extended active duty in the uniformed services of the United States or as a member of the national guard, state guard, or reserve component who is licensed as a podiatrist at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the podiatrist's return from activation or deployment, provided the podiatrist notifies the board of his or her activation or deployment prior to the expiration of the current license and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license. The board shall register the applicant and issue the renewal license. Within one month following the date by which renewal is required, the board shall pay the license renewal fees into the medical practice board special fund.

(b) A license which has lapsed may be reinstated on payment of a renewal fee and a late renewal penalty. The applicant shall not be required to pay renewal fees during periods when the license was lapsed. However, if such license remains lapsed for a period of three years, the board may, ~~after notice and an opportunity for hearing,~~ require reexamination as a condition of renewal the licensee to update his or her knowledge and skills as defined by board rules.

\* \* \*

(d) All applicants shall demonstrate that the requirements for licensure are met.

#### § 374. FEES; LICENSES

Applicants and persons regulated under this chapter shall pay the following fees:

(1) Application for licensure ~~\$565.00, in fiscal year 2009 \$600.00, and in fiscal year 2010 and thereafter,~~ \$625.00; the board shall use at least \$25.00 of this fee to support the ~~eosts~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2) Biennial renewal ~~\$450.00 and in fiscal year 2009 and thereafter,~~ \$500.00; the board shall use at least \$25.00 of this fee to support the ~~eosts~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

#### § 375. UNPROFESSIONAL CONDUCT

(a) ~~The term "unprofessional conduct" as used in this chapter shall mean the conduct prohibited by this chapter.~~

(b) The following conduct and the conduct described in section 1354 of this title by a licensed podiatrist constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of licensure:

(1) ~~fraudulent procuring~~ fraud or ~~use of a license~~ misrepresentation in applying for or procuring a podiatry license or in connection with applying for or procuring a periodic renewal of a podiatry license;

\* \* \*

(c) Unprofessional conduct includes the following actions by a licensee:

\* \* \*

(3) ~~professional negligence~~ failure to practice competently by reason of any cause on a single occasion or on multiple occasions constitutes unprofessional conduct. Failure to practice competently includes as determined by the board:

(A) performance of unsafe or unacceptable patient care; and

(B) failure to conform to the essential standards of acceptable and prevailing practice;

\* \* \*

(7) administering, dispensing or prescribing any controlled substance other than as authorized by law;

(8) habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the podiatrist's ability to practice.

\* \* \*

#### § 376. DISPOSITION OF COMPLAINTS

\* \* \*

~~(b) The board shall accept complaints from any person including a state or federal agency and the attorney general~~ Any person, firm, corporation, or public officer may submit a written complaint to the board charging any podiatrist practicing in the state with unprofessional conduct, specifying the grounds. The board may shall initiate disciplinary action in any complaint against an investigation of a podiatrist and when a complaint is received or may act without having received a complaint.

~~(c) After giving an opportunity for a hearing and upon a finding of unprofessional conduct, the board may suspend or revoke a license, refuse to issue or renew a license, issue a warning, or limit or condition a license~~ shall take disciplinary action described in subsection 1361(b) of this title against a podiatrist or applicant found guilty of unprofessional conduct.

(d) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. Such an agreement may include, ~~without limitation,~~ any of the following conditions or restrictions which may be in addition to, or in lieu of, suspension:

\* \* \*

(4) a requirement that the scope of practice permitted be restricted to a specified extent;

(5) an administrative penalty not to exceed \$1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subdivision shall be deposited into the board of medical practice regulatory fee fund for the purpose of providing education and training for board members and the professions regulated by the board. The commissioner shall detail in the annual report receipts and expenses from money received under this subsection.

\* \* \*

Sec. 2. 26 V.S.A. chapter 23 is amended to read:

CHAPTER 23. MEDICINE ~~AND SURGERY~~

Subchapter 1. General Provisions

§ 1311. DEFINITIONS

For the purposes of this chapter:

(1) ~~A person who advertises or holds himself or herself out to the public as a physician or surgeon, or who assumes the title or uses the words or letters “Dr.,” “Doctor,” “Professor,” “M.D.,” or “M.B.,” in connection with his or her name, or any other title implying or designating that he or she is a practitioner of medicine or surgery in any of its branches, or shall advertise or hold himself or herself out to the public as one skilled in the art of curing or alleviating disease, pain, bodily injuries or physical or nervous ailments, or shall prescribe, direct, recommend, or advise, give or sell for the use of any person, any drug, medicine or other agency or application for the treatment, cure or relief of any bodily injury, pain, infirmity or disease, or who follows the occupation of treating diseases by any system or method, shall be deemed a physician, or practitioner of medicine or surgery.~~  
Practice of medicine means:

(A) using the designation “Doctor,” “Doctor of Medicine,” “Physician,” “Dr.,” “M.D.,” or any combination thereof in the conduct of any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition unless the designation additionally contains the description of another branch of the healing arts for which one holds a valid license in Vermont;

(B) advertising, holding out to the public, or representing in any manner that one is authorized to practice medicine in the jurisdiction;

(C) offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of any other person;

(D) offering or undertaking to prevent, diagnose, correct, or treat in any manner or by any means, methods, or devices any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of any person, including the management of pregnancy and parturition;

(E) offering or undertaking to perform any surgical operation upon any person;

(F) rendering a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient or the actual rendering of treatment to a patient within the state by a physician located outside the state as a result of the transmission of individual patient data by electronic or other means from within the state to the physician or his or her agent; or

(G) rendering a determination of medical necessity or a decision affecting the diagnosis or treatment of a patient.

\* \* \*

## § 1313. EXEMPTIONS

(a) ~~Except as to the provisions of sections 1398 and 1399 of this title, this chapter shall not apply to persons licensed to practice osteopathy under chapter 33 of this title; or to persons licensed to practice chiropractic under the laws of the state; or to persons licensed under the laws in force prior to December 9, 1904, or to commissioned officers.~~ The provisions of this chapter shall not apply to the following:

(1) a health care professional licensed or certified by the office of professional regulation when that person is practicing within the scope of his or her profession;

(2) a member of the United States army, navy or marine hospital service military or national guard, including a national guard member in state status, or to any person or persons giving aid, assistance, or relief in emergency or accident cases pending the arrival of a regularly licensed physician or surgeon;

~~(b)(3) This chapter shall not apply to a nonresident physician or surgeon who is called to treat a particular case in this state and who does not otherwise practice in this state, provided that such nonresident physician or surgeon is duly licensed where he resides and that the state of his residence grants the same privilege to duly licensed practitioners of this state. This chapter shall not prevent a nonresident physician or surgeon from coming into this state for consultation to consult or using telecommunications to consult with a duly licensed practitioner herein nor shall it prevent;~~ or

(4) a duly licensed physician or surgeon of an adjoining in another state, or of the Dominion of in Canada from coming into a town bordering thereon, in this state for the purpose of treating a sick or disabled person therein, or in another nation as approved by the board who is visiting a medical school or a teaching hospital in this state to receive or conduct medical instruction for a period not to exceed three months, provided the practice is limited to that instruction and is under the supervision of a physician licensed by the board.

~~(e)(b)~~ The provisions of sections 1311 and 1312 of this title shall not apply to a person, firm or corporation that manufactures or sells patent, compound or proprietary medicines, that are compounded according to the prescription of a physician who has been duly authorized to practice medicine, or to the domestic administration of family remedies.

\* \* \*

~~(e) Notwithstanding the provisions of subsection 1313(d) of this title, no physician's assistant shall engage in the practice of optometry as defined in section 1601 of this title.~~

\* \* \*

---

§ 1314. ILLEGAL PRACTICE

(a) A person who, not being licensed, advertises or holds himself or herself out to the public as described in section 1311 of this title, or who, not being licensed, practices medicine ~~or surgery~~ as defined in section 1311 of this title, or who practices medicine ~~or surgery~~ under a fictitious or assumed name, or who impersonates another practitioner or who is not a licensed health care provider as defined in 18 V.S.A. § 5202 and signs a certificate of death for the purpose of burial or removal, shall be imprisoned not more than ~~three months~~ two years or fined not more than ~~\$200.00 nor less than \$50.00~~ \$10,000.00, or both.

\* \* \*

§ 1317. UNPROFESSIONAL CONDUCT TO BE REPORTED TO BOARD

(a) Any hospital, clinic, community mental health center, or other health care institution in which a licensee performs professional services shall report to the ~~commissioner of health~~ board, along with supporting information and evidence, any disciplinary action taken by it or its staff which significantly limits the licensee's privilege to practice or leads to suspension or expulsion from the institution, a nonrenewal of medical staff membership, or the restrictions of privileges at a hospital taken in lieu of, or in settlement of, a pending disciplinary case related to unprofessional conduct as defined in sections 1354 and 1398 of this title. The commissioner of health shall forward any such information or evidence he or she receives immediately to the board. The report shall be made within 10 days of the date such disciplinary action was taken, and, in the case of disciplinary action taken against a licensee based on the provision of mental health services, a copy of the report shall also be sent to the commissioner of mental health and the commissioner of disabilities, aging, and independent living. This section shall not apply to cases of resignation or separation from service for reasons unrelated to disciplinary action.

\* \* \*

(e) A person who violates this section shall be subject to a civil penalty of not more than ~~\$1,000.00~~ \$10,000.00.

§ 1318. ACCESSIBILITY AND CONFIDENTIALITY OF DISCIPLINARY MATTERS

\* \* \*

(c) The commissioner of health shall prepare and maintain a register of all complaints, which shall be a public record, and which shall show:

\* \* \*

(2) only with respect to complaints resulting in filing of disciplinary charges or stipulations or the taking of disciplinary action, the following additional information, except for medical and other protected health information contained

therein pertaining to any identifiable person that is otherwise confidential by state or federal law:

\* \* \*

(E) stipulations filed with presented to the board at a public meeting;  
and

\* \* \*

(f) For the purposes of this section, “disciplinary action” means action that suspends, revokes, limits, or conditions licensure or certification in any way, and includes reprimands and administrative penalties.

(g) Nothing in this section shall prohibit the disclosure of information by the commissioner regarding disciplinary complaints to Vermont or other state or federal law enforcement or regulatory agencies in the execution of its duties authorized by statute or regulation, including the department of disabilities, aging, and independent living or the department of banking, insurance, securities, and health care administration in the course of its investigations about an identified licensee, provided the agency or department agrees to maintain the confidentiality and privileged status of the information as provided in subsection (d) of this section.

(h) Nothing in this section shall prohibit the board, at its discretion, from sharing investigative and adjudicatory files of an identified licensee with another state, territorial, or international medical board at any time during the investigational or adjudicative process.

(i) Neither the commissioner nor any person who received documents, material, or 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, material, or information.

#### Subchapter 2. Board of Medical Practice

#### § 1351. BOARD OF MEDICAL PRACTICE

(a) A state board of medical practice is created. The board shall be composed of 17 members, nine of whom shall be licensed physicians, one of whom shall be a ~~physician’s~~ physician assistant ~~certified~~ licensed pursuant to chapter 31 of this title, one of whom shall be a podiatrist ~~as described in section 322~~ licensed pursuant to chapter 7 of this title, and six of whom shall be persons not associated with the medical field. The governor, with the advice and consent of the senate, shall appoint the members of the board. Appointments shall be for a term of five years, except that a vacancy occurring during a term shall be filled by an appointment by the governor for the unexpired term. No member shall be appointed to more than two consecutive full terms, but a member appointed for less than a full term (originally or to fill a vacancy) may serve two full terms in

addition to such part of a full term, and a former member shall again be eligible for appointment after a lapse of one or more years. Any member of the board may be removed by the governor at any time. The board shall elect from its members a chair, vice chair, and secretary who shall serve for one year and until their successors are appointed and qualified. The board shall meet upon the call of the chair or the commissioner of health, or at such other times and places as the board may determine. Except as provided in section 1360 of this title, nine members of the board shall constitute a quorum for the transaction of business. The affirmative vote of the majority of the members present shall be required to carry any motion or resolution, to adopt any rule, to pass any measure or to authorize any decision or order of the board.

(b) In the performance of their duties, members of the board shall be paid ~~\$30.00~~ a per diem and their actual and necessary expenses as provided by 32 V.S.A. § 1010(b).

(c) The board of medical practice is established as an office within the department of health. With respect to the board, the commissioner shall have the following powers and duties to:

\* \* \*

(4) act as custodian of the records of the board; ~~and~~

(5) prepare an annual budget and administer money appropriated to the board by the general assembly. The budget of the board shall be part of the budget of the department. A board of medical practice regulatory fee fund is created. All board regulatory fees received by the department shall be deposited into this fund and used to offset up to two years of the costs incurred by the board, and shall not be used for any purpose other than professional regulation and responsibilities of the board, as determined by the commissioner of health. To ensure that revenues derived by the department are adequate to offset the cost of regulation, the commissioner shall review fees from time to time, and present proposed fee changes to the general assembly;

(6) prepare and maintain a registry of all physicians licensed by the board; and

(7) make available an accounting of all fees and fines received by the board and all expenditures and costs of the board annually.

\* \* \*

#### § 1353. POWERS AND DUTIES OF THE BOARD

The board shall have the following powers and duties to:

(1) License and certify health professionals pursuant to this title.

(2) Investigate all complaints and charges of unprofessional conduct against any holder of a license or certificate, or any medical practitioner practicing pursuant to section 1313 of this title, and to hold hearings to determine whether such charges are substantiated or unsubstantiated.

~~(2)~~(3) Issue subpoenas and administer oaths in connection with any investigations, hearings, or disciplinary proceedings held under this chapter.

~~(3)~~(4) Take or cause depositions to be taken as needed in any investigation, hearing or proceeding.

(4)(5) Undertake any such other actions and procedures specified in, or required or appropriate to carry out, the provisions of this chapter and chapters 7, 29, 31, and 52 of this title.

~~(5)~~(6) Require a licensee or applicant to submit to a mental or physical examination, and an evaluation of medical knowledge and skill by individuals or entities designated by the board if the board has a reasonable basis to believe a licensee or applicant may be incompetent or unable to practice medicine with reasonable skill and safety. The results of the examination or evaluation shall be admissible in any hearing before the board. The results of an examination or evaluation obtained under this subsection and any information directly or indirectly derived from such examination or evaluation shall not be used for any purpose, including impeachment or cross-examination against the licensee or applicant in any criminal or civil case, except a prosecution for perjury or giving a false statement. The board shall bear the cost of any examination or evaluation ordered and conducted pursuant to this subdivision in whole or in part if the licensee demonstrates financial hardship or other good cause. The licensee or applicant, at his or her expense, shall have the right to present the results or reports of independent examinations and evaluations for the board's due consideration. An order by the board that a licensee or applicant submit to an examination, test or evaluation shall be treated as a discovery order for the purposes of enforcement under ~~sections 3 V.S.A. §§ 809a and 809b of Title 3.~~ The results of an examination or evaluation obtained under this subdivision shall be confidential except as provided in this subdivision.

(7) Investigate all complaints of illegal practice of medicine and refer any substantiated illegal practice of medicine to the office of the attorney general or the state's attorney in the county in which the violation occurred.

(8) Obtain, at the board's discretion, from the Vermont criminal information center a Vermont criminal history record, an out-of-state criminal history record, and a criminal history record from the Federal Bureau of Investigation, for any applicant, licensee, or holder of certification. The board may also inquire of Interpol for any information on criminal history records of

an applicant, licensee, or holder of certification. Each applicant, licensee, or holder of certification shall consent to the release of criminal history records to the board on forms substantially similar to the release forms developed in accordance with 20 V.S.A. § 2056c. When the board obtains a criminal history record, it shall promptly provide a copy of the record to the applicant, licensee, or holder of certification and inform him or her of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the Vermont criminal information center. When fingerprinting is required pursuant to this subdivision, the applicant, licensee, or holder of certification shall bear all costs associated with fingerprinting. The board shall comply with all laws regulating the release of criminal history records and the protection of individual privacy. No person shall confirm the existence or nonexistence of criminal history record information to any person who would not be eligible to receive the information pursuant to this chapter. For purposes of this subdivision, "criminal history record" is as defined in 20 V.S.A. § 2056a.

(9) Inquire, at the board's discretion, of the Vermont department for children and families or of the Vermont department of disabilities, aging, and independent living to determine whether any applicant, licensee, or holder of certification who may provide care or treatment to a child or a vulnerable adult is listed on the child protection registry or the vulnerable adult abuse, neglect, and exploitation registry.

#### § 1354. UNPROFESSIONAL CONDUCT

(a) The board shall find that any one of the following, or any combination of the following, whether or not the conduct at issue was committed within or outside the state, constitutes unprofessional conduct:

(1) ~~fraudulent fraud or deceptive procuring or use of a license~~ misrepresentation in applying for or procuring a medical license or in connection with applying for or procuring periodic renewal of a medical license;

\* \* \*

(5) ~~addiction to narcotics, habitual drunkenness or rendering professional services to a patient if the physician is intoxicated or under the influence of drugs~~ excessive use or abuse of drugs, alcohol, or other substances that impair the licensee's ability to practice medicine;

\* \* \*

(15) practicing medicine with a physician who is not legally practicing within the state, or aiding or abetting such physician in the practice of medicine; except that it shall be legal to practice in an accredited preceptorship or residency training program or pursuant to section 1313 of this title;

\* \* \*

(23) revocation of a license to practice medicine or surgery in another jurisdiction on one or more of the grounds specified in ~~subdivisions (1) (25)~~ of this section;

\* \* \*

(30) conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession, or failure to report to the board a conviction of any crime related to the practice of the profession or any felony in any court within 30 days of the conviction;

\* \* \*

(32) use of the services of a radiologist assistant by a radiologist in a manner that is inconsistent with the provisions of chapter 52 of this title;

(33)(A) providing, prescribing, dispensing or furnishing medical services or prescription medication or prescription-only devices to a person in response to any communication transmitted or received by computer or other electronic means, when the licensee fails to take the following actions to establish and maintain a proper physician-patient relationship:

(i) a reasonable effort to verify that the person requesting medication is in fact the patient, and is in fact who the person claims to be;

(ii) establishment of documented diagnosis through the use of accepted medical practices; and

(iii) maintenance of a current medical record.

(B) For the purposes of this subdivision (33), an electronic, on-line, or telephonic evaluation by questionnaire is inadequate for the initial evaluation of the patient.

(C) The following would not be in violation of this subdivision (33) if transmitted or received by computer or other electronic means:

(i) initial admission orders for newly hospitalized patients;

(ii) prescribing for a patient of another physician for whom the prescriber has taken the call;

(iii) prescribing for a patient examined by a licensed advanced practice registered nurse, physician assistant, or other advanced practitioner authorized by law and supported by the physician;

(iv) continuing medication on a short-term basis for a new patient, prior to the patient's first appointment; or

(v) emergency situations where life or health of the patient is in imminent danger;

(34) failure to provide to the board such information it may reasonably request in furtherance of its statutory duties. The patient privilege set forth in 12 V.S.A. § 1612 shall not bar the licensee's obligations under this subsection (a) and no confidentiality agreement entered into in concluding a settlement of a malpractice claim shall exempt the licensee from fulfilling his or her obligations under this subdivision;

(35) disruptive behavior which involves interaction with physicians, hospital personnel, office staff, patients, or support persons of the patient or others that interferes with patient care or could reasonably be expected to adversely affect the quality of care rendered to a patient;

(36) commission of any sexual misconduct which exploits the physician-patient relationship, including sexual contact with a patient, surrogates, or key third parties;

(37) prescribing, selling, administering, distributing, ordering, or dispensing any drug legally classified as a controlled substance for the licensee's own use or to an immediate family member as defined by rule;

(38) signing a blank or undated prescription form;

(39) use of the services of a physician assistant by a physician in a manner which is inconsistent with the provisions of chapter 31 of this title.

\* \* \*

#### § 1355. COMPLAINTS; HEARING COMMITTEE

(a) Any person, firm, corporation, or public officer may submit a written complaint to the ~~secretary charging~~ board alleging any person practicing medicine ~~or surgery~~ in the state with committed unprofessional conduct, specifying the grounds therefor. ~~If the board determines that such complaint merits consideration, or if the board shall have reason to believe, without a formal complaint, that any person practicing medicine or surgery in the state has been guilty of unprofessional conduct, and in the case of every formal complaint received, the chairman~~ The board shall initiate an investigation of the physician when a complaint is received or may act on its own initiative without having received a complaint. The chairperson shall designate four members, including one public member to serve as a committee to hear or investigate and report upon such charges.

\* \* \*

(c) A person or organization shall not be liable in a civil action for damages resulting from the good faith reporting of information to the board about alleged incompetent, unprofessional, or unlawful conduct of a licensee.

(d) The hearing committee may close portions of hearings to the public if the hearing committee deems it appropriate in order to protect the confidentiality of an individual or for medical and other protected health information pertaining to any identifiable person that is otherwise confidential by state or federal law.

(e) In any proceeding under this section which addresses an applicant's or licensee's alleged sexual misconduct, evidence of the sexual history of the victim of the alleged sexual misconduct shall neither be subject to discovery nor be admitted into evidence. Neither opinion evidence nor evidence of the reputation of the victim's sexual conduct shall be admitted. At the request of the victim, the hearing committee may close portions of hearings to the public if the board deems it appropriate in order to protect the identity of the victim and the confidentiality of his or her medical records.

\* \* \*

#### § 1357. TIME AND NOTICE OF HEARING

The time of hearing shall be fixed by the secretary as soon as convenient, but not earlier than 30 days after service of the charge upon the person complained against. The secretary shall issue a notice of hearing of the charges, which notice shall specify the time and place of hearing and shall notify the person complained against that he or she may file with the secretary a written response within 20 days of the date of service. ~~Such~~ The notice shall also notify the person complained against that a stenographic record of the proceeding will be kept, that he or she will have the opportunity to appear personally and to have counsel present, with the right to produce witnesses and evidence in his or her own behalf, to cross-examine witnesses testifying against him or her and to examine such documentary evidence as may be produced against him or her.

\* \* \*

#### § 1359. REPORT OF HEARING

Within 30 days after holding a hearing under the provisions of section 1357 ~~and section 1358~~ of this title, the committee shall make a written report of its findings of fact and its recommendations, and the same shall be forthwith transmitted to the secretary, with a transcript of the evidence.

#### § 1360. HEARING BEFORE BOARD

\* \* \*

(d) The board may close portions of hearings to the public if the board deems it appropriate in order to protect the confidentiality of an individual or for medical and other protected health information pertaining to any identifiable person that is otherwise confidential by state or federal law.

§ 1361. DECISION AND ORDER

\* \* \*

(b) In such order, the board may reprimand the person complained against, as it deems appropriate; condition, limit, suspend or revoke the license, certificate, or practice of the person complained against; or take such other action relating to discipline or practice as the board determines is proper, including imposing an administrative penalty not to exceed \$1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subsection shall be deposited into the board of medical practice regulatory fee fund for the purpose of providing education and training for board members and licensees. The commissioner shall detail in the annual report receipts and expenses from money received under this subsection.

(c) If the person complained against is found not guilty, or the proceedings against him or her are dismissed, the board shall forthwith order a dismissal of the charges and the exoneration of the person complained against.

\* \* \*

§ 1365. NOTICE OF CONVICTION OF CRIME; INTERIM SUSPENSION OF LICENSE

(a) The board shall treat a certified copy of the judgment of conviction of a crime for which a licensee may be disciplined under ~~subdivision~~ section 1354(a)(3) of this title as an unprofessional conduct complaint. The record of conviction shall be conclusive evidence of the fact that the conviction occurred. If a person licensed under this chapter is convicted of a crime by a court in this state, the clerk of the court shall within 10 days of such conviction transmit a certified copy of the judgment of conviction to the board.

\* \* \*

§ 1368. DATA REPOSITORY; LICENSEE PROFILES

(a) A data repository is created within the department of health which will be responsible for the compilation of all data required under this section and any other law or rule which requires the reporting of such information. Notwithstanding any provision of law to the contrary, licensees shall promptly report and the department shall collect the following information to create individual profiles on all health care professionals licensed, certified, or

registered by the department, pursuant to the provisions of this title, in a format created that shall be available for dissemination to the public:

\* \* \*

(6)(A) All medical malpractice court judgments and all medical malpractice arbitration awards in which a payment is awarded to a complaining party during the last 10 years, and all settlements of medical malpractice claims in which a payment is made to a complaining party within the last 10 years. Dispositions of paid claims shall be reported in a minimum of three graduated categories, indicating the level of significance of the award or settlement, if valid comparison data are available for the profession or specialty. Information concerning paid medical malpractice claims shall be put in context by comparing an individual health care professional's medical malpractice judgment awards and settlements to the experience of other health care professionals within the same specialty within the New England region or nationally. The commissioner may, in consultation with the Vermont medical society, report comparisons of individual health care professionals covered under this section to all similar health care professionals within the New England region or nationally.

(B) Comparisons of malpractice payment data shall be accompanied by:

(i) an explanation of the fact that ~~physicians~~ professionals treating certain patients and performing certain procedures are more likely to be the subject of litigation than others;

(ii) a statement that the report reflects data for the last 10 years, and the recipient should take into account the number of years the ~~physicians~~ professional has been in practice when considering the data;

\* \* \*

(iv) an explanation of the possible effect of treating high-risk patients on a ~~physician's~~ professional's malpractice history; and

\* \* \*

(C) Information concerning all settlements shall be accompanied by the following statement: "Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the health care professional. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred." Nothing herein shall be construed to limit or prevent the licensing authority from providing further explanatory information regarding the significance of categories in

which settlements are reported. Pending malpractice claims and actual amounts paid by or on behalf of a ~~physician~~ professional in connection with a malpractice judgment, award or settlement shall not be disclosed by the commissioner of health or by the licensing authority to the public. Nothing herein shall be construed to prevent the licensing authority from investigating and disciplining a health care professional on the basis of medical malpractice claims that are pending.

\* \* \*

(c) The profile shall include the following conspicuous statement: "This profile contains information which may be used as a starting point in evaluating the ~~physician~~ professional. This profile should not, however, be your sole basis for selecting a ~~physician~~ professional."

### Subchapter 3. Licenses

#### § 1391. ~~GENERAL PROVISIONS~~ QUALIFICATIONS FOR MEDICAL LICENSURE

\* \* \*

(b) If a person successfully completes the examination, he or she may then apply for licensure to practice medicine ~~and surgery~~ in the state of Vermont. In addition, each applicant ~~must appear for a personal interview with one or more members of the~~ may be interviewed by a board member.

\* \* \*

(e) An applicant for limited temporary license, who shall furnish the board with satisfactory proof that he or she has attained the age of majority, ~~and~~ is of good moral character, ~~that he or she~~ is a graduate of a legally chartered medical school of this country or of a foreign country ~~having~~ that is recognized by the board and which has power to grant degrees in medicine, that all other eligibility requirements for house officer status have been met, and that he or she has been appointed an intern, resident, fellow or medical officer in a licensed hospital or in a clinic which is affiliated with a licensed hospital, or in any hospital or institution maintained by the state, or in any clinic or outpatient clinic affiliated with or maintained by the state, may upon the payment of the required fee, be granted a limited temporary license by the board as a hospital medical officer for a period of up to 54 weeks and such license may be renewed or reissued, upon payment of the fee, for the period of the applicant's postgraduate training, internship, or fellowship program. Such limited temporary license shall entitle the said applicant to practice medicine only in the hospital or other institution designated on his or her certificate of limited temporary license and in clinics or outpatient clinics operated by or affiliated with such designated hospital or institution and only if such applicant is under

the direct supervision and control of a licensed physician. Such licensed physician shall be legally responsible and liable for all negligent or wrongful acts or omissions of the limited temporary licensee and shall file with the board the name and address both of himself or herself and the limited temporary licensee and the name of such hospital or other institution. Such limited temporary license shall be revoked upon the death or legal incompetency of the licensed physician or, upon ten days written notice, by withdrawal of his or her filing by such licensed physician. The limited temporary licensee shall at all times exercise the same standard of care and skill as a licensed physician, practicing in the same specialty, in the state of Vermont. Termination of appointment as intern, resident, fellow or medical officer of such designated hospital or institution shall operate as a revocation of such limited temporary license. An application for limited temporary license shall not be subject to ~~section~~ subsection 1391(d) of this title.

§ 1392. [Repealed.]

#### § 1393. EXAMINATIONS

The examinations shall be wholly or partly in writing, in the English language, and shall be of a practical character, sufficiently strict to test the qualifications of the applicant. In its discretion the board may use multiple choice style examinations provided by the National Board of Medical Examiners or by the Federation of State Medical Boards (~~The Federation Licensing Examination or FLEX~~), or as determined by rule. The ~~examinations~~ examination shall embrace the general subjects of anatomy, physiology, chemistry, pathology, bacteriology, hygiene, practice of medicine, surgery, obstetrics, gynecology, materia medica, therapeutics, and legal medicine. The subjects covered by the National Board or FLEX of Medical Examiners examination shall be considered to have met the requirements of this section. If the applicant passes the ~~National Board of Examiners test or FLEX examination~~ approved by the board and meets the other standards for licensure, he or she will qualify for licensure.

\* \* \*

#### § 1395. LICENSE WITHOUT EXAMINATION

(a) Without examination the board may, upon payment of the required fee, issue a license to a reputable physician ~~or surgeon~~ who personally appears and presents a certified copy of a certificate of registration or a license issued to him or her in a jurisdiction whose requirements for registration are deemed by the board as equivalent to those of this state, providing that such jurisdiction grants the same reciprocity to a Vermont physician or by the national board of medical examiners.

(b) Without examination the board may issue a license to a reputable physician ~~or surgeon~~ who is a resident of a foreign country and who shall furnish the board with satisfactory proof that he or she has been appointed to the faculty of a medical college accredited by the Liaison Committee on Medical Education (LCME) and located within the state of Vermont. An applicant for a license under this subsection shall furnish the board with satisfactory proof that he or she has attained the age of majority, is of good moral character, is licensed to practice medicine in his or her country of residence, and that he or she has been appointed to the faculty of an LCME accredited medical college located within the state of Vermont. The information submitted to the board concerning the applicant's faculty appointment shall include detailed information concerning the nature and term of the appointment and the method by which the performance of the applicant will be monitored and evaluated. A license issued under this subsection shall be for a period no longer than the term of the applicant's faculty appointment and may, in the discretion of the board, be for a shorter period. A license issued under this subsection shall expire automatically upon termination for any reason of the licensee's faculty appointment.

(c) Notwithstanding the provisions of subsection (a) of this section and any other provision of law, a physician who holds an unrestricted license in all jurisdictions where the physician is currently licensed, and who certifies to the Vermont board of medical practice that he or she will limit his or her practice in Vermont to providing pro bono services at a free or reduced fee health care clinic in Vermont and who meets the criteria of the board, shall be licensed by the board within 60 days of the licensee's certification without further examination, interview, fee, or any other requirement for board licensure. The physician shall file with the board, on forms provided by the board and based on criteria developed by the board, information on medical qualifications, professional discipline, criminal record, malpractice claims, or any other such information as the board may require. A license granted under this subsection shall authorize the licensee to practice medicine ~~or surgery~~ on a voluntary basis in Vermont.

#### § 1396. REQUIREMENTS FOR ADMISSION TO PRACTICE

(a) The standard of requirements for admission to practice in this state, under section 1395 of this title, shall be as follows:

\* \* \*

(4) Moral: Applicant shall present letters of reference as to moral character and professional competence from the chief of service and two other active physician staff members at the hospital where he or she was last

affiliated. In the discretion of the board, letters from different sources may be presented.

\* \* \*

(7) Practice: Applicant shall have practiced medicine within the last three years as defined in section 1311 of this title or shall comply with the requirements for updating knowledge and skills as defined by board rules.

\* \* \*

#### § 1398. REFUSAL OR REVOCATION OF LICENSES

The board may refuse to issue the licenses provided for in section 1391 of this title to persons who ~~have been convicted of the practice of criminal abortion, or who~~, by false or fraudulent representations, have obtained or sought to obtain practice in their profession, or by false or fraudulent representations of their profession, have obtained or sought to obtain money or any other thing of value, or who assume names other than their own, or for any other immoral, unprofessional or dishonorable conduct. ~~For like cause, or when a licensee has been admitted to a mental hospital or has become incompetent by reason of senility, the board may suspend or revoke any certificate issued by it.~~ However, a certificate shall not be suspended, revoked, or refused until the holder or applicant is given a hearing before the board. In the event of revocation, the holder of any certificate so revoked shall forthwith relinquish the same to the secretary of the board.

§ 1399. [Repealed.]

#### § 1400. RENEWAL OF LICENSE; CONTINUING MEDICAL EDUCATION

(a) Every person licensed to practice medicine ~~and surgery~~ by the board shall apply biennially for the renewal of his or her license. ~~One~~ At least one month prior to the date on which renewal is required, the board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee. The board shall register the applicant and issue the renewal license. Within one month following the date renewal is required, the board shall pay the license renewal fees into the medical practice board special fund ~~and shall file a list of licensees with the department of health.~~

(b) A licensee for renewal of an active license to practice medicine shall have completed continuing medical education which shall meet minimum criteria as established by rule, by the board, by August 31, 2012 and which shall be in effect for the renewal of licenses to practice medicine expiring after

August 31, 2014. The board shall require a minimum of ten hours of continuing medical education by rule. The training provided by the continuing medical education shall be designed to assure that the licensee has updated his or her knowledge and skills in his or her own specialties and also has kept abreast of advances in other fields for which patient referrals may be appropriate. The board shall require evidence of current professional competence in recognizing the need for timely appropriate consultations and referrals to assure fully informed patient choice of treatment options, including treatments such as those offered by hospice, palliative care, and pain management services.

(c) A licensee for renewal of an active license to practice medicine shall have practiced medicine within the last three years as defined in section 1311 of this title or have complied with the requirements for updating knowledge and skills as defined by board rules.

(d) All licensees shall demonstrate that the requirements for licensure are met.

(e) A licensee shall promptly provide the board with new or changed information pertinent to the information in his or her license and license renewal applications at the time he or she becomes aware of the new or changed information.

(f) A person who practices medicine ~~and surgery~~ and who fails to renew his or her license in accordance with the provisions of this section shall be deemed an illegal practitioner and shall forfeit the right to so practice or to hold himself or herself out as a person licensed to practice medicine ~~and surgery~~ in the state until reinstated by the board, but nevertheless a ~~person who was licensed to practice medicine and surgery at the time of his induction, call on reserve commission or enlistment into the armed forces of the United States, shall be entitled to practice medicine and surgery during the time of his service with the armed forces of the United States and for 60 days after separation from such service~~ physician while on extended active duty in the uniformed services of the United States or as a member of the national guard, state guard, or reserve component who is licensed as a physician at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the physician's return from activation or deployment, provided the physician notifies the board of his or her activation or deployment prior to the expiration of the current license and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license.

(e)(g) Any person who allows a license to lapse by failing to renew the same in accordance with the provisions of this section may be reinstated by the

board by payment of the renewal fee ~~and~~, the late renewal penalty, and if applicable, by completion of the required continuing medical education requirement as established in subsection (b) of this section and any other requirements for licensure as required by this section and board rule.

§ 1401. [Expired.]

§ 1401a. FEES

(a) The department of health shall collect the following fees:

(1) Application for licensure ~~\$565.00, in fiscal year 2009 \$600.00, and in fiscal year 2010 and thereafter,~~ \$625.00; the board shall use at least \$25.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a maintaining the~~ Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2) Biennial renewal ~~\$450.00 and in fiscal year 2009 and thereafter,~~ \$500.00; the board shall use at least \$25.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a maintaining the~~ Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

\* \* \*

§ 1403. PROFESSIONAL CORPORATIONS; MEDICINE ~~AND SURGERY~~

A person licensed to practice medicine ~~and surgery~~ under this chapter may own shares in a professional corporation created under chapter 4 of Title 11 which provides professional services in the medical and nursing professions.

\* \* \*

Subchapter 5. Quality Assurance Data

\* \* \*

§ 1446. DIRECTORS OF CORPORATION

The board of directors of the Vermont Program for Quality in Health Care, Inc. shall include ~~without limitation~~ the commissioner of the department of health, ~~the chair of the hospital data council~~ and two directors, each of whom represents at least one of the following populations: elderly, ~~handicapped~~ people with disabilities, or low income individuals.

\* \* \*

Sec. 3. 26 V.S.A. chapter 29 is amended to read:

CHAPTER 29. ANESTHESIOLOGIST ASSISTANTS

\* \* \*

§ 1654. ELIGIBILITY

To be eligible for certification as an anesthesiologist assistant, an applicant shall have:

(1) obtained a master's degree from a board-approved anesthesiologist assistant program at an institution of higher education accredited by the Committee on Allied Health Education and Accreditation, the Commission on Accreditation of Allied Health Education Programs, or their successor agencies, or graduated from a board-approved anesthesiologist assistant program at an institution of higher education accredited by the Committee on Allied Health Education and Accreditation or the Commission of Accreditation of Allied Health Education Programs, prior to January 1, 1984; ~~and~~

(2) satisfactorily completed the certification examination given by the NCCAA and be currently certified by the NCCAA; and

(3) if the applicant has not engaged in practice as an anesthesiologist assistant within the last three years, complied with the requirements for updating knowledge and skills as defined by board rules.

\* \* \*

§ 1656. RENEWAL OF CERTIFICATION

(a) ~~Certifications shall be renewable renewed every two years on payment of the required fee and submission of proof of current, active NCCAA certification. At least one month prior to the date on which renewal is required, the board shall send to each anesthesiologist assistant a renewal application form and notice of the date on which the existing certification will expire. On or before the renewal date, the anesthesiologist assistant shall file an application for renewal, pay the required fee and submit proof of current active NCCAA certification. The board shall register the applicant and issue the renewal certification. Within one month following the date renewal is required, the board shall pay the certification renewal fees into the medical practice board special fund.~~

(b) A certification that has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay back renewal fees for the periods when certification was lapsed. However, if such certification remains lapsed for a period of three years, the board may, ~~after notice and an opportunity for hearing, require reexamination as a~~

condition of renewal the applicant to update his or her knowledge and skills as defined by board rules.

\* \* \*

#### § 1658. UNPROFESSIONAL CONDUCT

(a) The following conduct and the conduct described in section 1354 of this title by a certified anesthesiologist assistant constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of certification:

(1) fraudulent procuring fraud or use of certification misrepresentation in applying for or procuring an anesthesiologist assistant certificate or in connection with applying for or procuring a periodic renewal of an anesthesiologist assistant certificate;

\* \* \*

(9) professional negligence failure to practice competently by reason of any cause on a single occasion or on multiple occasions constitutes unprofessional conduct. Failure to practice competently includes as determined by the board:

(A) performance of unsafe or unacceptable patient care; or

(B) failure to conform to the essential standards of acceptable and prevailing practice;

\* \* \*

(18) in the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful, and prudent professional engaged in similar practice under the same or similar conditions, whether or not actual injury to a patient has occurred; ~~or~~

(19) habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the anesthesiologist assistant's ability to provide medical services; or

~~(19)~~(20) revocation of certification to practice as an anesthesiologist assistant in another jurisdiction on one or more of the grounds specified in subdivisions ~~(1)-(18)~~(1)-(19) of this subsection.

\* \* \*

#### § 1659. DISPOSITION OF COMPLAINTS

\* \* \*

~~(b) The board shall accept complaints from a member of the public, a physician, a hospital, an anesthesiologist assistant, a state or federal agency, or the attorney general~~ Any person, firm, corporation, or public officer may submit a written complaint to the board alleging any anesthesiologist assistant practicing in the state is engaged in unprofessional conduct, specifying the grounds. The board shall initiate an investigation of an anesthesiologist assistant when a complaint is received or may act on its own initiative without having received a complaint.

(c) After giving opportunity for hearing, the board shall take disciplinary action described in subsection 1361(b) of this title against an anesthesiologist assistant or applicant found guilty of unprofessional conduct.

(d) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. That agreement may include any of the following conditions or restrictions which may be in addition to, or in lieu of, suspension:

\* \* \*

(4) a requirement that the scope of practice permitted be restricted to a specified extent;

(5) an administrative penalty not to exceed \$1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subsection shall be deposited into the board of medical practice regulatory fee fund and shall not be used for any other purpose other than professional regulation and other responsibilities of the board, as determined by the commissioner of health.

\* \* \*

#### § 1662. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1)(A)(i) Original application for certification, \$115.00;

(ii) Each additional application, \$50.00;

(B) The board shall use at least \$10.00 of these fees to support the ~~costs~~ cost of the ~~creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2)(A)(i) Biennial renewal, \$115.00;

(ii) Each additional renewal, \$50.00;

(B) The board shall use at least \$10.00 of these fees to support the ~~costs~~ cost of the ~~creation and maintenance of a~~ maintaining the Vermont practitioner recovery network ~~that will monitor~~ which monitors recovering chemically dependent licensees for the protection of the public. In addition to the fee, an applicant for certification renewal shall submit evidence in a manner acceptable to the board that he or she continues to meet the certification requirements of the NCCAA.

\* \* \*

#### § 1664. PENALTY

(a) A person who, not being certified, holds himself or herself out to the public as being certified under this chapter shall be liable for a fine of not more than ~~\$1,000.00~~ \$10,000.00.

\* \* \*

Sec. 4. 26 V.S.A. chapter 31 is amended to read:

#### CHAPTER 31. PHYSICIAN'S PHYSICIAN ASSISTANTS

\* \* \*

#### § 1732. DEFINITIONS

As used in this chapter:

(1) "Accredited physician assistant program" means a physician assistant educational program that has been accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA), or, prior to 2001, by either the Committee on Allied Health Education and Accreditation (CAHEA), or the Commission on Accreditation of Allied Health Education Programs (CAAHEP).

(2) "Board" means the state board of medical practice established by chapter 23 of this title.

~~(2)(3)~~ "Contract" means a legally binding agreement, expressed in writing, containing the terms of employment of a physician's assistant. "Delegation agreement" means a detailed description of the duties and scope of practice delegated by a primary supervising physician to a physician assistant that is signed by both the physician assistant and the supervising physicians.

~~(3)(4)~~ "Physician" means an individual licensed to practice medicine pursuant to ~~chapters~~ chapter 23 ~~and or~~ 33 of this title.

~~(4)(5)~~ "Physician's Physician assistant" means an individual certified licensed by the state of Vermont who is qualified by education, training,

experience, and personal character to provide medical ~~services under~~ care with the direction and supervision of a Vermont licensed physician.

~~(5) “Physician’s assistant trainee” means a person who is not certified as a “physician’s assistant” under this chapter but who assists a physician under the physician’s direct supervision for the purpose of acquiring the basic knowledge and skills of a physician’s assistant by the apprentice-preceptor mode of education.~~

~~(6) “Protocol” means a detailed description of the duties and scope of practice delegated by a physician to a physician’s assistant. “Supervising physician” means an M.D. or D.O. licensed by the state of Vermont who oversees and accepts responsibility for the medical care provided by a physician assistant.~~

~~(7) “Supervision” means the direction and review by the supervising physician, as determined to be appropriate by the board, of the medical services care provided by the physician’s physician assistant. The constant physical presence of the supervising physician is not required as long as the supervising physician and physician assistant are or easily can be in contact with each other by telecommunication.~~

~~(8) “Disciplinary action” means any action taken against a certified physician’s physician assistant, a registered physician’s assistant trainee or an applicant by the board, the appellate officer, or on appeal therefrom, when that action suspends, revokes, limits, or conditions certification or registration licensure in any way, and includes reprimands and administrative penalties.~~

#### § 1733. CERTIFICATION AND REGISTRATION LICENSURE

~~(a) The state board of medical practice is responsible for the certification licensure of physician’s physician assistants and the registration of physician’s assistant trainees, and the commissioner of health shall adopt, amend, or repeal rules regarding the training, practice and, qualification, and discipline of physician’s physician assistants.~~

~~(b) All applications for certification shall be accompanied by an application by the proposed supervising physician which shall contain a statement that the physician shall be responsible for all medical activities of the physician’s assistant. In order to practice, a licensed physician assistant shall have completed a delegation agreement as described in section 1735a of this title with a Vermont licensed physician signed by both the physician assistant and the supervising physician or physicians. The original shall be filed with the board and copies shall be kept on file at each of the physician assistant’s practice sites.~~

~~(c) All applications for certification shall be accompanied by a protocol signed by the supervising physician and a copy of the physician's assistant employment contract. All applicants and licensees shall demonstrate that the requirements for licensure are met.~~

~~(d) All physician's assistant trainees shall register biennially with the board. Registrants shall provide the board with such information as it may require, including a copy of an employment contract and description of the apprenticeship program involved.~~

#### § 1734. ELIGIBILITY

~~(a) To be eligible for certification as a physician's assistant, an applicant shall:~~

~~(1) have graduated from a board-approved physician's assistant program sponsored by an institution of higher education and have satisfactorily completed the certification examination given by the National Commission on the Certification of Physicians' Assistants (NCCPA); or~~

~~(2) have completed a board-approved apprenticeship program, including an evaluation conducted by the board. The requirements of apprenticeship programs shall be set by the board to ensure continuing opportunity for nonuniversity trained persons to practice as physician's assistants consistent with ensuring the highest standards of professional medical care. The board may grant a license to practice as a physician assistant to an applicant who:~~

~~(1) submits a completed application form provided by the board;~~

~~(2) pays the required application fee;~~

~~(3) has graduated from an accredited physician assistant program or has passed and maintained the certification examination by the National Commission on the Certification of Physician Assistants (NCCPA) prior to 1988;~~

~~(4) has passed the certification examination given by the NCCPA;~~

~~(5) is mentally and physically able to engage safely in practice as a physician assistant;~~

~~(6) does not hold any license, certification, or registration as a physician assistant in another state or jurisdiction which is under current disciplinary action, or has been revoked, suspended, or placed on probation for cause resulting from the applicant's practice as a physician assistant, unless the board has considered the applicant's circumstances and determines that licensure is appropriate;~~

~~(7) is of good moral character;~~

(8) submits to the board any other information that the board deems necessary to evaluate the applicant's qualifications; and

(9) has engaged in practice as a physician assistant within the last three years or has complied with the requirements for updating knowledge and skills as defined by board rules. This requirement shall not apply to applicants who have graduated from an accredited physician assistant program within the last three years.

~~(b) A person intending to practice as a physician's assistant and his or her supervising physician shall be responsible for designing and presenting an apprenticeship program to the board for approval. The program shall be approved in a timely fashion unless there is good reason to believe that the program would be inconsistent with the public health, safety and welfare.~~

~~(c) Evaluation procedures followed by the board shall be fair and reasonable and shall be designed and implemented to demonstrate competence in the skills required of a physician's assistant and to reasonably ensure that all applicants are certified unless there is good reason to believe that certification of a particular applicant would be inconsistent with the public health, safety and welfare. An evaluation shall include reviewing statements of the supervising physician who has observed the applicant conduct a physical examination, render a diagnosis, give certain tests to patients, prepare and maintain medical records and charts, render treatment, provide patient education and prescribe medication. The evaluation shall be of activities appropriate to the applicant's approved training program. They shall not be designed or implemented for the purpose of limiting the number of certified physician's assistants.~~

~~(d) When the board intends to deny an application for certification licensure, it shall send the applicant written notice of its decision by certified mail. The notice shall include a statement of the reasons for the action. Within 30 days of the date that an applicant receives such notice, the applicant may file a petition with the board for review of its preliminary decision. At the hearing, the burden shall be on the applicant to show that certification licensure should be granted. After the hearing, the board shall affirm or reverse its preliminary denial.~~

~~(e) Failure to maintain competence in the knowledge and skills of a physician's physician assistant, as determined by the board, shall be cause for revocation of certification licensure. Any person whose certification has been revoked for failure to maintain competence may practice for one year as a registered physician's assistant trainee, but shall be examined at the end of that period in the manner provided in subsection (a) of this section. Should the~~

~~person fail upon reexamination, the person shall be enjoined from practice until meeting all requirements for certification under this chapter.~~

\* \* \*

§ 1734b. RENEWAL OF CERTIFICATION LICENSE

(a) ~~Certifications Licenses~~ shall be ~~renewable~~ renewed every two years ~~without examination and~~ on payment of the required fee. At least one month prior to the date on which renewal is required, the board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee. The board shall register the applicant and issue the renewal license. Within one month following the date renewal is required, the board shall pay the license renewal fees into the medical practice board special fund. Any physician assistant while on extended active duty in the uniformed services of the United States or member of the national guard, state guard, or reserve component who is licensed as a physician assistant at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the physician assistant's return from activation or deployment, provided the physician assistant notifies the board of his or her activation or deployment prior to the expiration of the current license, and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license.

(b) A licensee shall demonstrate that the requirements for licensure are met.

(c) A licensee for renewal of an active license to practice shall have practiced as a physician assistant within the last three years or have complied with the requirements for updating knowledge and skills as defined by board rules.

(d) A licensee shall promptly provide the board with new or changed information pertinent to the information in his or her license and license renewal applications at the time he or she becomes aware of the new or changed information.

(e) A ~~certification~~ license which has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay renewal fees during periods when ~~certification~~ the license was lapsed. However, if ~~such certification~~ a license remains lapsed for a period of three years, the board may, ~~after notice and an opportunity for hearing,~~ require ~~reexamination as a condition of renewal~~ the licensee to update his or her knowledge and skills as defined by board rules.

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§ 1734c. EXEMPTIONS

Nothing herein shall be construed to require licensure under this chapter of:

(1) a physician assistant student enrolled in a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant;

(2) a physician assistant employed in the service of the U.S. military or national guard, including national guard in-state status, while performing duties incident to that employment; or

(3) a technician or other assistant or employee of a physician who performs physician-delegated tasks but who is not rendering services as a physician assistant or identifying himself or herself as a physician assistant.

\* \* \*

§ 1735a. SUPERVISION AND SCOPE OF PRACTICE

(a) It is the obligation of each team of physician and physician assistant to ensure that the physician assistant's scope of practice is identified; that delegation of medical care is appropriate to the physician assistant's level of competence; that the supervision, monitoring, documentation, and access to the supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established.

(b) The information required in subsection (a) of this section shall be included in a delegation agreement as required by the commissioner by rule. The delegation agreement shall be signed by both the physician assistant and the supervising physician or physicians, and a copy shall be kept on file at each of the physician assistant's practice sites and the original filed with the board.

(c) The physician assistant's scope of practice shall be limited to medical care which is delegated to the physician assistant by the supervising physician and performed with the supervision of the supervising physician. The medical care shall be within the supervising physician's scope of practice and shall be care which the supervising physician has determined that the physician assistant is qualified by education, training, and experience to provide.

(d) A physician assistant may prescribe, dispense, and administer drugs and medical devices to the extent delegated by a supervising physician. A physician assistant who is authorized by a supervising physician to prescribe controlled substances must register with the federal Drug Enforcement Administration.

(e) A supervising physician and physician assistant shall report to the board immediately upon an alteration or the termination of the delegation agreement.

§ 1736. UNPROFESSIONAL CONDUCT

(a) The following conduct ~~and the conduct described in section 1354 of this title~~ by a ~~certified physician's~~ licensed physician assistant ~~or registered physician's assistant trainee constitutes~~ shall constitute unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of ~~certification or registration licensure~~:

(1) ~~fraudulent procuring fraud or use of certification or registration misrepresentation in applying for or procuring a license or in applying for or procuring a periodic renewal of a license;~~

\* \* \*

(b) Unprofessional conduct includes the following actions by a ~~certified physician's~~ licensed physician assistant ~~or a registered physician's assistant trainee~~:

\* \* \*

(3) ~~professional negligence practicing the profession without having a delegation agreement meeting the requirements of this chapter on file at the primary location of the physician assistant's practice and the board;~~

\* \* \*

(7) performing otherwise than at the direction and under the supervision of a physician licensed by the board or an osteopath licensed by the Vermont board of osteopathic physicians and surgeons;

(8) ~~accepting the delegation of,~~ or performing or offering to perform a task or tasks beyond the individual's delegated scope as defined by the board of practice;

(9) administering, dispensing, or prescribing any controlled substance otherwise than as authorized by law;

(10) habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the ability to provide medical services;

(11) failure to practice competently by reason of any cause on a single occasion or on multiple occasions. Failure to practice competently includes as determined by the board:

(A) performance of unsafe or unacceptable patient care; or

(B) failure to conform to the essential standards of acceptable and prevailing practice.

\* \* \*

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§ 1737. DISPOSITION OF COMPLAINTS

\* \* \*

(b) ~~The board shall accept complaints from any member of the public, any physician, and any physician's assistant, any state or federal agency or the attorney general~~ Any person, firm, corporation, or public officer may submit a written complaint to the board alleging a physician assistant practicing in the state committed unprofessional conduct, specifying the grounds. The board may initiate disciplinary action in any complaint against a ~~physician's physician~~ assistant and may act without having received a complaint.

(c) After giving opportunity for hearing, the board shall take disciplinary action described in subsection 1361(b) of this title against a ~~physician's physician~~ assistant, ~~physician's assistant trainee~~, or applicant found guilty of unprofessional conduct.

(d) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. Such an agreement may include, ~~without limitation~~, any of the following conditions or restrictions which may be in addition to, or in lieu of, suspension:

(1) a requirement that the individual submit to care or counseling;

(2) a restriction that the individual practice only under supervision of a named person or a person with specified credentials;

(3) a requirement that the individual participate in continuing education in order to overcome specified practical deficiencies;

(4) a requirement that the scope of practice permitted be restricted to a specified extent;

(5) an administrative penalty not to exceed \$1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subdivision shall be deposited into the board of medical practice regulatory fee fund for the purpose of providing education and training for board members and the professions regulated by the board. The commissioner shall detail in the annual report receipts and expenses from money received under this subsection.

(e) Upon application, the board may modify the terms of an order under this section and, if ~~certification or registration~~ licensure has been revoked or suspended, order reinstatement on terms and conditions it deems proper.

§ 1738. USE OF TITLE

Any person who is ~~certified~~ licensed to practice as a ~~physician's~~ physician assistant in this state shall have the right to use the title "~~physician's~~ physician

assistant” and the abbreviation “P.A.” and “PA-C”. No other person may assume that title or use that abbreviation, or any other words, letters, signs, or devices to indicate that the person using them is a ~~physician’s~~ physician assistant. ~~A physician’s assistant shall not so represent himself or herself unless there is currently in existence, a valid contract between the physician’s assistant and his or her employer supervising physician, and unless the protocol under which the physician’s assistant’s duties are delegated is on file with, and has been approved by, the board.~~

#### § 1739. LEGAL LIABILITY

(a) The supervising physician delegating activities to a ~~physician’s~~ physician assistant shall be legally liable for such activities of the ~~physician’s~~ physician assistant, and the ~~physician’s~~ physician assistant shall in this relationship be the physician’s agent.

\* \* \*

#### § 1739a. INAPPROPRIATE USE OF SERVICES BY PHYSICIAN; UNPROFESSIONAL CONDUCT

Use of the services of a ~~physician’s~~ physician assistant ~~or a physician’s assistant trainee~~ by a physician in a manner which is inconsistent with the provisions of this chapter constitutes unprofessional conduct by the physician and such physician shall be subject to disciplinary action by the board in accordance with the provisions of chapter 23 or 33 of this title, as appropriate.

#### § 1740. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1) Original application for ~~certification and registration~~ \$115.00 with each additional application at \$50.00 licensure, \$170.00; the board shall use at least \$10.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2) Biennial renewal ~~\$115.00 with each additional renewal at \$50.00,~~ \$170.00; the board shall use at least \$10.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(3) ~~Transfer of certification or registration, \$15.00.~~

§ 1741. NOTICE OF USE OF ~~PHYSICIAN'S~~ PHYSICIAN ASSISTANT TO BE POSTED

A physician, clinic, or hospital that utilizes the services of a ~~physician's~~ physician assistant shall post a notice to that effect in a prominent place.

§ 1742. PENALTY

(a) Any person who, not being ~~certified or registered~~ licensed, holds himself or herself out to the public as being ~~so certified or registered~~ licensed under this chapter shall be liable for a fine of not more than ~~\$1,000.00~~ \$10,000.00.

\* \* \*

§ 1743. MEDICAID REIMBURSEMENT

The secretary of the agency of human services shall, pursuant to the Administrative Procedure Act, promulgate rules providing for a fee schedule for reimbursement under Title XIX of the Social Security Act and chapter ~~36~~ 19 of Title 33, relating to medical assistance which recognizes reasonable cost differences between services provided by physicians and those provided by ~~physician's~~ physician assistants under this chapter.

§ 1744. CERTIFIED PHYSICIAN ASSISTANTS

Any person who is certified by the board as a physician assistant prior to the enactment of this section shall be considered to be licensed as a physician assistant under this chapter immediately upon enactment of this section, and shall be eligible for licensure renewal pursuant to section 1734 of this title.

Sec. 5. 26 V.S.A. chapter 52 is amended to read:

CHAPTER 52. RADIOLOGIST ASSISTANTS

\* \* \*

§ 2854. ELIGIBILITY

To be eligible for certification as a radiologist assistant, an applicant shall:

\* \* \*

(3) be certified as a radiologic technologist in radiography by the ARRT; ~~and~~

(4) be licensed as a radiologic technologist in radiography in this state under chapter 51 of this title; and

(5) if the applicant has not engaged in practice as a radiologist assistant within the last three years, comply with the requirements for updating knowledge and skills as defined by board rules.

\* \* \*

## § 2856. RENEWAL OF CERTIFICATION

(a) ~~Certifications shall be renewable every two years upon payment of the required fee and submission of proof of current, active ARRT certification, including compliance with continuing education requirements~~ At least one month prior to the date on which renewal is required, the board shall send to each radiology assistant a renewal application form and notice of the date on which the existing certification will expire. On or before the renewal date, the radiologist assistant shall file an application for renewal, pay the required fee and submit proof of current active ARRT certification, including compliance with continuing education requirements. The board shall register the applicant and issue the renewal certification. Within one month following the date renewal is required, the board shall pay the certification renewal fees into the medical practice board special fund.

(b) A certification that has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay back renewal fees for the periods when certification was lapsed. However, if certification remains lapsed for a period of three years, the board may, ~~after notice and an opportunity for hearing, require reexamination as a condition of renewal~~ the applicant to update his or her knowledge and skills as defined by board rules.

\* \* \*

## § 2858. UNPROFESSIONAL CONDUCT

(a) The following conduct and the conduct described in section 1354 of this title by a certified radiologist assistant constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of certification:

(1) ~~fraudulent procuring fraud or use of certification~~ misrepresentation in applying for or procuring a certificate or in connection with applying for or procuring a periodic recertification as a radiologist assistant;

\* \* \*

(5) conviction of a crime related to the profession or conviction of a felony, whether or not related to the practice of the profession or failure to report to the board of medical practice a conviction of any crime related to the practice of the profession or any felony in any court within 30 days of the conviction;

\* \* \*

(9) ~~professional negligence~~ failure to practice competently by reason of any cause on a single occasion or on multiple occasions constitutes unprofessional conduct. Failure to practice competently includes as determined by the board:

(A) performance of unsafe or unacceptable patient care; or

(B) failure to conform to the essential standards of acceptable and prevailing practice;

\* \* \*

(18) in the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill, and proficiency that is commonly exercised by the ordinary skillful, careful, and prudent professional engaged in similar practice under the same or similar conditions, whether or not actual injury to a patient has occurred; ~~or~~

(19) habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the radiologist assistant's ability to provide medical services; or

(20) revocation of certification to practice as a radiologist assistant in another jurisdiction on one or more of the grounds specified in subdivisions ~~(1)-(18)~~(1)-(19) of this subsection.

\* \* \*

#### § 2859. DISPOSITION OF COMPLAINTS

\* \* \*

(b) ~~The board shall accept complaints from a member of the public, a physician, a hospital, a radiologist assistant, a state or federal agency, or the attorney general~~ Any person, firm, corporation, or public officer may submit a written complaint to the board alleging a radiologist assistant practicing in the state engaged in unprofessional conduct, specifying the grounds. The board shall initiate an investigation of a radiologist assistant when a complaint is received or may act on its own initiative without having received a complaint.

\* \* \*

(d) After giving an opportunity for hearing, the board shall take disciplinary action described in subsection 1361(b) of this title against a radiologist assistant or applicant found guilty of unprofessional conduct.

(e) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so.

That agreement may include any of the following conditions or restrictions which may be in addition to or in lieu of suspension:

\* \* \*

(4) a requirement that the scope of practice permitted be restricted to a specified extent;

(5) an administrative penalty not to exceed \$1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subdivision shall be deposited into the board of medical practice regulatory fee fund for the purpose of providing education and training for board members. The commissioner shall detail in the annual report receipts and expenses from money received under this subsection.

\* \* \*

#### § 2862. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

- |  |           |
|--|-----------|
| (1)(A)(i) Original application for certification | \$115.00; |
| (ii) Each additional application                 | \$ 50.00; |

(B) The board shall use at least \$10.00 of these fees to support the ~~eosts cost of the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

- |                              |           |
|------------------------------|-----------|
| (2)(A)(i) Biennial renewal   | \$115.00; |
| (ii) Each additional renewal | \$ 50.00; |

(B) The board shall use at least \$10.00 of these fees to support the ~~eosts cost of the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network ~~that will monitor~~ which monitors recovering chemically dependent licensees for the protection of the public. In addition to the fee, an applicant for certification renewal shall submit evidence in a manner acceptable to the board that he or she continues to meet the certification requirements of the ARRT and is licensed as a radiologic technologist under chapter 51 of this title.

\* \* \*

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§ 2864. PENALTY

(a) A person who, not being certified, holds himself or herself out to the public as being certified under this chapter shall be liable for a fine of not more than ~~\$1,000.00~~ \$10,000.00.

\* \* \*

Sec. 6. 20 V.S.A. § 2060 is amended to read:

§ 2060. RELEASE OF RECORDS

The center is authorized to release records or information requested under ~~section 309 or 6914 of Title 33 V.S.A. §§ 309 or 6914, 26 V.S.A. § 1353, section 4010 of Title 24 V.S.A. § 4010~~, or chapter 5, subchapter 4 of Title 16.

Sec. 7. 33 V.S.A. § 4919 is amended to read:

§ 4919. DISCLOSURE OF REGISTRY RECORDS

(a) The commissioner may disclose a registry record only as follows:

\* \* \*

(10) To the board of medical practice for the purpose of evaluating an applicant, licensee, or holder of certification pursuant to 26 V.S.A. § 1353.

\* \* \*

Sec. 8. 33 V.S.A. § 6911 is amended to read:

§ 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

\* \* \*

(c) The commissioner or the commissioner's designee may disclose registry information only to:

\* \* \*

(6) the commissioner of health, or the commissioner's designee, for purposes related to oversight and monitoring of persons who are served by or compensated with funds provided by the department of health, including persons to whom a conditional offer of employment has been made; ~~and~~

(7) upon request or when relevant to other states' adult protective services offices; and

(8) the board of medical practice for the purpose of evaluating an applicant, licensee, or holder of certification pursuant to 26 V.S.A. § 1353.

Sec. 9. REPEAL

The following sections of Title 26 are repealed:

- (1) § 322 (podiatrist as member of board of medical practice);
- (2) § 1352 (reports);
- (3) § 1397 (recording license);
- (4) § 1734a (temporary certification); and
- (5) § 1735 (supervision and scope of practice).

#### Sec. 10. ADOPTION OF RULES

The state board of medical practice shall adopt maintenance of licensure rules for podiatrists, physicians, and physician assistants by September 1, 2012.

#### Sec. 11. REPORT

By January 15, 2012, the Vermont board of medical practice shall review the process for licensing physicians who seek to provide only pro bono services pursuant to 26 V.S.A. § 1395(c) and report to the house committee on health care regarding any changes to the criteria developed by the board for licensing those physicians pursuant to that subsection or, if no changes are made to the criteria, the reasons therefor.

#### Sec. 12. EFFECTIVE DATES

This act shall take effect on passage, except that, in Title 26:

- (1) §§ 371(5) and 373(b) shall take effect 60 days after the adoption of the maintenance of licensure rule for podiatrists;
- (2) §§ 1396(7) and 1400(c) shall take effect 60 days after the adoption of the maintenance of licensure rule for physicians;
- (3) §§ 1654(3) and 1656(b) shall take effect 60 days after the adoption of the rule referenced in 26 V.S.A. § 1654(3);
- (4) § 1734b(c) shall take effect 60 days after the adoption of the maintenance of licensure rule for physician assistants; and
- (5) §§ 2854(5) and 2856(b) shall take effect 60 days after the adoption of the rule referenced in 26 V.S.A. § 2854(5).

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

Senator Fox, for the Committee on Finance, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on 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, and third reading of the bill was ordered.

**Proposal of Amendment; Third Reading Ordered**

**H. 448.**

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

An act relating to contributions to the state and municipal employees' retirement systems.

Reported recommending that the Senate propose to the House to amend the bill by striking out Secs. 1, 2, and 3 and by renumbering the remaining sections to be numerically correct.

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, and third reading of the bill was ordered.

**Proposal of Amendment; Third Reading Ordered**

**H. 153.**

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

An act relating to human trafficking.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that:

(1) According to the report of the Vermont Human Trafficking Task Force:

(A) the number of human beings estimated to be enslaved today has reached over 27 million worldwide, the highest in recorded history; and

(B) Vermont and all of its bordering states have seen elements of human trafficking, yet Vermont is the only remaining state in the Northeast and one of the remaining five in the nation lacking legislation on this issue. Vermont's geographical location bordering Canada makes it susceptible to human trafficking activity.

(2) As a result of the efforts of the Vermont Human Trafficking Task Force and numerous national organizations dedicated to combating human trafficking, Vermont will with the passage of this act make substantial progress toward protecting citizens of this state and persons everywhere from the dangers and tragic consequences of human trafficking.

Sec. 2. 13 V.S.A. chapter 60 is added to read:

#### CHAPTER 60. HUMAN TRAFFICKING

##### Subchapter 1. Criminal Acts

#### § 2651. DEFINITIONS

As used in this subchapter:

(1) "Blackmail" means the extortion of money, labor, commercial sexual activity, or anything of value from a person through use of a threat to expose a secret or publicize an asserted fact, whether true or false, that would tend to subject the person to hatred, contempt, ridicule, or prosecution.

(2) "Coercion" means:

(A) threat of serious harm, including physical or financial harm, to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious bodily or financial harm to or physical restraint of any person;

(C) the abuse or threatened abuse of law or the legal process;

(D) withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other government identification document of another person;

(E) providing a drug, including alcohol, to another person with the intent to impair the person's judgment or maintain a state of chemical dependence;

(F) wrongfully taking, obtaining, or withholding any property of another person;

(G) blackmail;

(H) asserting control over the finances of another person;

(I) debt bondage; or

(J) withholding or threatening to withhold food or medication.

(3) “Commercial sex act” means any sex act or sexually explicit performance on account of which anything of value is promised to, given to, or received by any person.

(4) “Debt bondage” means a condition or arrangement in which a person requires that a debtor or another person under the control of a debtor perform labor, services, sexual acts, sexual conduct, or a sexually explicit performance in order to retire, repay, or service a real or purported debt which the person has caused with the intent to defraud the debtor.

(5) “Family member” means a spouse, child, sibling, parent, next of kin, domestic partner, or legal guardian of a victim.

(6) “Human trafficking” means:

(A) to subject a person to a violation of section 2652 of this title; or

(B) “severe form of trafficking” as defined by 21 U.S.C. § 7105.

(7) “Labor servitude” means labor or services performed or provided by a person which are induced or maintained through force, fraud, or coercion. “Labor servitude” shall not include labor or services performed by a family member of a person who is engaged in the business of farming as defined in 10 V.S.A. § 6001(22) unless force, fraud, or coercion is used.

(8) “Serious bodily injury” shall have the same meaning as in subdivision 1021(2) of this title.

(9) “Sexual act” shall have the same meaning as in subdivision 3251(1) of this title.

(10) “Sexual conduct” shall have the same meaning as in subdivision 2821(2) of this title.

(11) “Sexually explicit performance” means a public, live, photographed, recorded, or videotaped act or show which:

(A) Depicts a sexual act or sexual conduct;

(B) Is intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers; and

(C) Lacks literary, artistic, political, or scientific value.

(12) “Venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

(13) “Victim of human trafficking” means a victim of a violation of section 2652 of this title.

§ 2652. HUMAN TRAFFICKING

(a) No person shall knowingly:

(1) recruit, entice, harbor, transport, provide, or obtain by any means a person under the age of 18 for the purpose of having the person engage in a commercial sex act;

(2) recruit, entice, harbor, transport, provide, or obtain a person through force, fraud, or coercion for the purpose of having the person engage in a commercial sex act;

(3) compel a person through force, fraud, or coercion to engage in a commercial sex act;

(4) benefit financially or by receiving anything of value from participation in a venture, knowing that force, fraud, or coercion was or will be used to compel any person to engage in a commercial sex act as part of the venture;

(5) subject a person to labor servitude;

(6) recruit, entice, harbor, transport, provide, or obtain a person for the purpose of subjecting the person to labor servitude; or

(7) benefit financially or by receiving anything of value from participation in a venture, knowing that a person will be subject to labor servitude as part of the venture.

(b) A person who violates subsection (a) of this section shall be imprisoned for a term up to and including life or fined not more than \$500,000.00, or both.

(c)(1)(A) A person who is a victim of sex trafficking in violation of subdivisions 2652(a)(1)–(4) of this title shall not be found in violation of or be the subject of a delinquency petition based on chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title for any conduct committed as a victim of sex trafficking.

(B) Notwithstanding any other provision of law, a person under the age of 18 charged with a violation of this section shall be immune from prosecution for a violation of chapter 59 (lewdness and prostitution) of this title and may be referred to the department for children and families for treatment under Chapter 53 of Title 33.

(2) If a person who is a victim of sex trafficking in violation of subdivisions 2652(a)(1)–(4) of this title is prosecuted for any offense or is the subject of any delinquency petition other than a violation of chapter 59

(lewdness and prostitution) or 63 (obscenity) of this title which arises out of the sex trafficking or benefits the sex trafficker, the person may raise as an affirmative defense that he or she committed the offense as a result of force, fraud, or coercion by a sex trafficker.

(d) In a prosecution for a violation of this section, the victim's alleged consent to the human trafficking is immaterial and shall not be admitted.

(e) If a person who is a victim of human trafficking is under 18 years of age at the time of the offense, the state may treat the person as the subject of a child in need of care or supervision proceeding.

#### § 2653. AGGRAVATED HUMAN TRAFFICKING

(a) A person commits the crime of aggravated human trafficking if the person commits human trafficking in violation of section 2652 of this title under any of the following circumstances:

(1) The offense involves a victim of human trafficking who is a child under the age of 18;

(2) The person has previously been convicted of a violation of section 2652 of this title;

(3) The victim of human trafficking suffers serious bodily injury or death; or

(4) The actor commits the crime of human trafficking under circumstances which constitute the crime of sexual assault as defined in section 3252 of this title, aggravated sexual assault as defined in section 3253 of this title, or aggravated sexual assault of a child as defined in section 3253a of this title.

(b) A person who violates this section shall be imprisoned not less than 20 years and a maximum term of life or fined not more than \$100,000.00, or both.

(c) The provisions of this section do not limit or restrict the prosecution for murder or manslaughter.

#### § 2654. PATRONIZING OR FACILITATING HUMAN TRAFFICKING

(a) No person shall knowingly:

(1) Permit a place, structure, or building owned by the person or under the person's control to be used for the purpose of human trafficking;

(2) Receive or offer or agree to receive or offer a person into a place, structure, or building for the purpose of human trafficking; or

(3) Permit a person to remain in a place, structure, building, or conveyance for the purpose of human trafficking.

(b) A person who violates this section shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

§ 2655. SOLICITATION

(a) No person shall knowingly solicit a commercial sex act from a victim of human trafficking.

(b) A person who violates this section shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

§ 2656. HUMAN TRAFFICKING BY A BUSINESS ENTITY; DISSOLUTION

If a business entity, including a corporation, partnership, association, or any other legal entity, is convicted of violating this chapter, the attorney general may commence a proceeding in the civil division of the superior court to dissolve the entity pursuant to 11A V.S.A. § 14.30–14.33.

§ 2657. RESTITUTION

(a) A person convicted of a violation of this subchapter shall be ordered to pay restitution to the victim pursuant to section 7043 of this title.

(b) If the victim of human trafficking to whom restitution has been ordered dies before restitution is paid, any restitution ordered shall be paid to the victim's heir or legal representative, provided that the heir or legal representative has not benefited in any way from the trafficking.

(c) The return of the victim of human trafficking to his or her home country or other absence of the victim from the jurisdiction shall not limit the victim's right to receive restitution pursuant to this section.

Subchapter 2. Resource Guide Posting; Private Cause  
of Action for Victims; Victim Protection

§ 2661. RESOURCE GUIDE POSTING

(a) A notice offering help to victims of human trafficking shall be accessible on the official website of the Vermont department of labor and may be posted in a prominent and accessible location in workplaces.

(b) The notice should provide contact information for at least one local law enforcement agency and provide information regarding the National Human Trafficking Resource Center (NHTRC) hotline as follows:

“If you or someone you know is being forced to engage in any activity and cannot leave – whether it is commercial sex, housework, farm work, or any other activity – call the toll-free National Human Trafficking

---

Resource Center Hotline at 1-888-373-7888 to access help and services. The toll-free hotline is:

- Available 24 hours a day, 7 days a week
- Operated by a nonprofit, nongovernmental organization
- Anonymous and confidential
- Accessible in 170 languages
- Able to provide help, referral to services, training, and general information.”

(c) The notice described in this section should be made available in English, Spanish, and, if requested by an employer, another language.

(d) The Vermont department of labor shall develop and implement an education plan to raise awareness among Vermont employers about the problem of human trafficking, about the hotline described in this section, and about other resources that may be available to employers, employees, and potential victims of human trafficking. On or before January 15, 2013, the department shall report to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare on the progress achieved in developing and implementing the notice requirement and education plan required by this section.

#### § 2662. PRIVATE CAUSE OF ACTION

(a) A victim of human trafficking may bring an action against the offender in the civil division of the superior court for damages, injunctive relief, punitive damages in the case of a willful violation, and reasonable costs and attorney’s fees. Actual damages may include any loss for which restitution is available under section 2657 of this chapter.

(b) If the victim is deceased or otherwise unable to represent himself or herself, the victim may be represented by a legal guardian, family member, or other representative appointed by the court, provided that the legal guardian, family member, or other representative appointed by the court has not benefited in any way from the trafficking.

(c) In a civil action brought under this section, the victim’s alleged consent to the human trafficking is immaterial and shall not be admitted.

#### § 2663. CLASSIFICATION OF VICTIMS; IMMIGRATION ASSISTANCE

(a) Classification of victims of human trafficking. As soon as practicable after the initial encounter with a person who reasonably appears to a law

enforcement agency, a state's attorneys' office, or the office of the attorney general to be a victim of human trafficking, such agency or office shall:

(1) notify the victim's compensation program at the center for crime victim services that such person may be eligible for services under this chapter; and

(2) make a preliminary assessment of whether such victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United States Code (Trafficking Victims Protection Act) or appears to be otherwise eligible for any federal, state, or local benefits and services. If it is determined that the victim appears to meet such criteria, the agency or office shall report the finding to the victim and shall refer the victim to services available, including legal service providers. If the possible victim is under the age of 18 or is a vulnerable adult, the agency or office shall also notify the family services division of the department for children and families or the office of adult protective services in the department of disabilities, aging, and independent living.

(b) Law enforcement assistance with respect to immigration. After the agency or office makes a preliminary assessment pursuant to subdivision (a)(2) of this section that a victim of human trafficking or a possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking in persons, as defined in section 7105 of Title 22 of the United States Code and upon the request of such victim, the agency or office shall provide the victim of human trafficking with a completed and executed United States citizenship and immigration service (USCIS) form I-914 supplement B declaration of law enforcement officer for victim of human trafficking in persons or a USCIS form I-918, supplement B, U nonimmigrant status certification, or both. These endorsements shall be completed by the certifying officer in accordance with the forms' instructions and applicable rules and regulations. The victim of human trafficking may choose which form to have the certifying officer complete.

### Sec. 3. SERVICES FOR VICTIMS OF HUMAN TRAFFICKING

(a) The Vermont center for crime victim services may convene a task force to assist social service providers, victim service providers, state agencies, law enforcement agencies, state's attorneys' offices, the office of the attorney general, and other agencies and nongovernmental organizations as necessary to develop a statewide protocol to provide services for victims of human trafficking in Vermont. The protocol may include a public awareness and education campaign.

(b) The Vermont center for crime victim services may enter into contracts with individuals and nongovernmental organizations in order to develop a statewide protocol and to coordinate services to victims of human trafficking, insofar as funds are available for that purpose. Such services may include:

- (1) Case management;
- (2) Emergency temporary housing;
- (3) Health care;
- (4) Mental health counseling;
- (5) Drug addiction screening and treatment;
- (6) Language interpretation and translation services;
- (7) English language instruction;
- (8) Job training and placement assistance;
- (9) Post-employment services for job retention; and

(10) Services to assist the victim of human trafficking and any of his or her family members to establish a permanent residence in Vermont or the United States.

(c) Nothing in this section precludes the Vermont center for crime victim services or any local social services organization from providing victims of human trafficking in Vermont with any benefits or services for which they may otherwise be eligible.

Sec. 4. 13 V.S.A. § 4501 is amended to read:

§ 4501. LIMITATION OF PROSECUTIONS FOR CERTAIN FELONIES

(a) Prosecutions for aggravated sexual assault, aggravated sexual assault of a child, human trafficking, aggravated human trafficking, murder, arson causing death, and kidnapping may be commenced at any time after the commission of the offense.

\* \* \*

Sec. 5. 13 V.S.A. § 9 is amended to read:

§ 9. ATTEMPTS

(a) A person who attempts to commit an offense and does an act toward the commission thereof, but by reason of being interrupted or prevented fails in the execution of the same, shall be punished as herein provided unless other express provision is made by law for the punishment of the attempt. If the offense attempted to be committed is murder, aggravated murder, kidnapping,

arson causing death, human trafficking, aggravated human trafficking, aggravated sexual assault, or sexual assault, a person shall be punished as the offense attempted to be committed is by law punishable.

\* \* \*

Sec. 6. 13 V.S.A. § 5301 is amended to read:

§ 5301. DEFINITIONS

\* \* \*

(7) For the purpose of this chapter, “listed crime” means any of the following offenses:

\* \* \*

(CC) aggravated sexual assault of a child in violation of section 3253a of this title; ~~and~~

(DD) ~~sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in section 2635a of this title~~ human trafficking in violation of section 2652 of this title; and

(EE) aggravated human trafficking in violation of section 2653 of this title.

Sec. 7. 13 V.S.A. § 7043 is amended to read:

§ 7043. RESTITUTION

(a)(1) Restitution shall be considered in every case in which a victim of a crime, as defined in subdivision 5301(4) of this title, has suffered a material loss.

(2) For purposes of this section, “material loss” means uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.

(3) In cases where restitution is ordered to the victim as a result of a human trafficking conviction under chapter 60 of this title, “material loss” shall also mean:

(A) attorney’s fees and costs; and

(B) the greater of either:

(i) the gross income or value of the labor performed for the offender by the victim; or

(ii) the value of the labor performed by the victim as guaranteed by the minimum wage and overtime provisions of 21 V.S.A. § 385.

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\* \* \*

Sec. 8. 13 V.S.A. § 3255 is amended to read:

§ 3255. EVIDENCE

(a) In a prosecution for a crime defined in this chapter and in sections 2601 and 2602 of this title, for human trafficking or aggravated human trafficking under chapter 60 of this title, or for abuse of ~~an~~ a vulnerable adult under chapter 28 of this title or chapter 69 of Title 33:

(1) Neither opinion evidence of, nor evidence of the reputation of the complaining witness' sexual conduct shall be admitted.

(2) Evidence shall be required as it is for all other criminal offenses and additional corroborative evidence heretofore set forth by case law regarding sexual assault shall no longer be required.

(3) Evidence of prior sexual conduct of the complaining witness shall not be admitted; provided, however, where it bears on the credibility of the complaining witness or it is material to a fact at issue and its probative value outweighs its private character, the court may admit:

(A) Evidence of the complaining witness' past sexual conduct with the defendant;

(B) Evidence of specific instances of the complaining witness' sexual conduct showing the source of origin of semen, pregnancy or disease;

(C) Evidence of specific instances of the complaining witness' past false allegations of violations of this chapter.

(b) In a prosecution for a crime defined in this chapter and in a prosecution pursuant to sections 2601 and 2602 of this title, for human trafficking or aggravated human trafficking under chapter 60 of this title, or for abuse or exploitation of ~~an~~ a vulnerable adult under subsection 6913(b) of Title 33, if a defendant proposes to offer evidence described in subdivision (a)(3) of this section, the defendant shall prior to the introduction of such evidence file written notice of intent to introduce that evidence, and the court shall order an in camera hearing to determine its admissibility. All objections to materiality, credibility and probative value shall be stated on the record by the prosecutor at the in camera hearing, and the court shall rule on the objections forthwith, and prior to the taking of any other evidence.

(c) In a prosecution for a crime defined in this chapter and in sections 2601 and 2602 of this title or for human trafficking or aggravated human trafficking under chapter 60 of this title, if the defendant takes the deposition of the

complaining witness, questions concerning the evidence described in subdivisions (a)(1) and (3) of this section shall not be permitted.

Sec. 9. 13 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

\* \* \*

(10) “Sex offender” means:

(A) A person who is convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court of any of the following offenses:

(i) sexual assault as defined in 13 V.S.A. § 3252.

(ii) aggravated sexual assault as defined in 13 V.S.A. § 3253.

(iii) lewd and lascivious conduct as defined in 13 V.S.A. § 2601.

(iv) sexual abuse of a vulnerable adult as defined in 13 V.S.A. § 1379.

(v) second or subsequent conviction for voyeurism as defined in 13 V.S.A. § 2605(b) or (c).

(vi) kidnapping with intent to commit sexual assault as defined in 13 V.S.A. § 2405(a)(1)(D).

(vii) aggravated sexual assault of a child in violation of section 3253a of this title; ~~and~~

(viii) human trafficking in violation of subdivisions 2652(a)(1)–(4) of this title;

(ix) aggravated human trafficking in violation of subdivision 2653(a)(4) of this title; and

(x) a federal conviction in federal court for any of the following offenses:

(I) Sex trafficking of children as defined in 18 U.S.C. § 1591.

(II) Aggravated sexual abuse as defined in 18 U.S.C. § 2241.

(III) Sexual abuse as defined in 18 U.S.C. § 2242.

(IV) Sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243.

(V) Abusive sexual contact as defined in 18 U.S.C. § 2244.

(VI) Offenses resulting in death as defined in 18 U.S.C. § 2245.

(VII) Sexual exploitation of children as defined in 18 U.S.C. § 2251.

(VIII) Selling or buying of children as defined in 18 U.S.C. § 2251A.

(IX) Material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252.

(X) Material containing child pornography as defined in 18 U.S.C. § 2252A.

(XI) Production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. § 2260.

(XII) Transportation of a minor for illegal sexual activity as defined in 18 U.S.C. § 2421.

(XIII) Coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422.

(XIV) Transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. § 2423.

(XV) Transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. § 2425.

(XVI) Trafficking in persons as defined in 18 U.S.C. sections 2251–2252(a), 2260, or 2421–2423 if the violation included sexual abuse, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse.

~~(ix)~~(xi) an attempt to commit any offense listed in this subdivision (A).

\* \* \*

Sec. 10. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding 20 V.S.A. §§ 2056a-2056e, the department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon their release from confinement:

(1) Sex offenders who have been convicted of:

(A) Aggravated sexual assault of a child (13 V.S.A. § 3253a).

(B) Aggravated sexual assault (13 V.S.A. § 3253).

- (C) Sexual assault (13 V.S.A. § 3252).
- (D) Kidnapping with intent to commit sexual assault (13 V.S.A. § 2405(a)(1)(D)).
- (E) Lewd or lascivious conduct with child (13 V.S.A. § 2602).
- (F) A second or subsequent conviction for voyeurism (13 V.S.A. § 2605(b) or (c)).
- (G) Slave traffic if a registrable offense under subdivision 5401(10)(B)(iv) of this title (13 V.S.A. § 2635).
- (H) Sex trafficking of children or sex trafficking by force, fraud, or coercion (13 V.S.A. § 2635a).
- (I) Sexual exploitation of a minor (13 V.S.A. § 3258(b)).
- (J) Any offense regarding the sexual exploitation of children (chapter 64 of this title).
- (K) Sexual abuse of a vulnerable adult (13 V.S.A. § 1379).
- (L) Human trafficking as defined in subdivisions 2652(a)(1)–(4) of this title.
- (M) Aggravated human trafficking as defined in subdivision 2653(a)(4) of this title.
- (N) A federal conviction in federal court for any of the following offenses:
  - (i) Sex trafficking of children as defined in 18 U.S.C. § 1591.
  - (ii) Aggravated sexual abuse as defined in 18 U.S.C. § 2241.
  - (iii) Sexual abuse as defined in 18 U.S.C. § 2242.
  - (iv) Sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243.
  - (v) Abusive sexual contact as defined in 18 U.S.C. § 2244.
  - (vi) Offenses resulting in death as defined in 18 U.S.C. § 2245.
  - (vii) Sexual exploitation of children as defined in 18 U.S.C. § 2251.
  - (viii) Selling or buying of children as defined in 18 U.S.C. § 2251A.
  - (ix) Material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252.

(x) Material containing child pornography as defined in 18 U.S.C. § 2252A.

(xi) Production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. § 2260.

(xii) Transportation of a minor for illegal sexual activity as defined in 18 U.S.C. § 2421.

(xiii) Coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422.

(xiv) Transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. § 2423.

(xv) Transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. § 2425.

(xvi) Trafficking in persons as defined in 18 U.S.C. sections 2251–2252(a), 2260, or 2421–2423 if the violation included sexual abuse, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse.

~~(M)(O)~~ An attempt to commit any offense listed in this subdivision (a)(1).

\* \* \*

#### Sec. 11. STATE'S ATTORNEYS; FORFEITURE ATTORNEY; REPORT

On or before January 15, 2012, the department of state's attorneys and sheriffs shall report to the general assembly a plan for funding and hiring a forfeiture attorney in this state.

Sec. 12. 13 V.S.A. § 5322 is added to read:

#### § 5322. CONFIDENTIALITY

When responding to a request for public records, or on any state website or state payment report, the state of Vermont shall not disclose to the public the name or any other identifying information, including the town of residence or the type or purpose of the payment, of an applicant to the victim's compensation program, a victim named in a restitution judgment order, or a recipient of the domestic and sexual violence survivors' transitional employment program.

Sec. 13. 13 V.S.A. § 5363 is amended to read:

#### § 5363. CRIME VICTIMS' RESTITUTION SPECIAL FUND

\* \* \*

(d)(1) The restitution unit is authorized to advance up to \$10,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

(A) was first ordered by the court to receive restitution on or after July 1, 2004;

(B) is a natural person or the natural person's legal representative; and

(C) has not been reimbursed under subdivision (2) of this subsection.

(2) The restitution unit may make advances of up to \$10,000.00 under this subsection to the following persons or entities:

(A) A victim service agency approved by the restitution unit if the agency has advanced monies which would have been payable to a victim under subdivision (1) of this subsection.

(B) A victim who is a natural person or the natural person's legal representative in a case where the defendant, before or after an adjudication of guilt, enters into a drug court contract requiring payment of restitution.

(3) An advance under this subsection shall not be made to the government or to any governmental subdivision or agency.

(4) An advance under this subsection shall not be made to a victim who:

(A) fails to provide the restitution unit with the documentation necessary to support the victim's claim for restitution; or

(B) violated a criminal law of this state which caused or contributed to the victim's material loss.

(5) An advance under this subsection shall not be made for the amount of cash loss included in a restitution judgment order.

\* \* \*

Sec. 14. 13 V.S.A. § 7043(n) is amended to read:

~~(n)(1) All restitution orders made or modified on or after January 1, 2008 shall include an order for wage withholding unless the court in its discretion finds good cause not to order wage withholding or the parties have entered into an alternative arrangement by written agreement which is affirmatively stated in the order. The wage withholding order shall direct current and subsequent employers of the offender to pay a portion of the offender's wages directly to the restitution unit until the offender's restitution obligation is satisfied. The wages of the offender shall be exempt as follows:~~

~~(A) to the extent provided under Section 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)); or~~

~~(B) if the court finds the weekly expenses reasonably incurred by the debtor for his or her maintenance and that of dependents exceed the amounts exempted by subdivision (1)(A) of this subsection, such greater amount of earnings as the court shall order.~~

~~(2) The court shall transmit all wage withholding orders issued under this section to the restitution unit, which shall forward the orders to the offender's employers. Upon receipt of a wage withholding order from the restitution unit, an employer shall:~~

~~(A) withhold from the wages paid to the offender the amount specified in the order for each wage period;~~

~~(B) forward the withheld wages to the restitution unit within seven working days after wages are withheld, specifying the date the wages were withheld;~~

~~(C) retain a record of all withheld wages;~~

~~(D) cease withholding wages upon notice from the restitution unit;~~  
and

~~(E) notify the restitution unit within 10 days of the date the offender's employment is terminated.~~

~~(3) In addition to the amounts withheld pursuant to this section, the employer may retain not more than \$5.00 per month from the offender's wages as compensation for administrative costs incurred.~~

~~(4) Any employer who fails to withhold wages pursuant to a wage withholding order within 10 working days of receiving actual notice or upon the next payment of wages to the employee, whichever is later, shall be liable to the restitution unit in the amount of the wages required to be withheld.~~

~~(5) An employer who makes an error in the amount of wages withheld shall not be held liable if the error was made in good faith.~~

~~(6) For purposes of this subsection, "wages" means any compensation paid or payable for personal services, whether designated as wages, salary, commission, bonuses, or otherwise, and shall include periodic payments under pension or retirement programs and workers' compensation or insurance policies of any type.~~

After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure shall include copies of the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.

Sec. 15. 13 V.S.A. § 7043(d)(3) is added to read:

(3) An order of restitution may require the offender to pay restitution for an offense for which the offender was not convicted if the offender knowingly and voluntarily executes a plea agreement which provides that the offender pay restitution for that offense.

Sec. 16. PILOT PROJECT; REPORT

(a) The restitution unit shall develop and implement a pilot project in Chittenden County which permits the unit to require a crime victim who may be eligible for an advance payment of restitution from the crime victims' restitution special fund pursuant to section 5363(d) of this title to submit a request for restitution to the restitution unit prior to sentencing. The unit shall investigate the victim's request and may require that the victim submit supporting documentation in order to verify the claimed material loss. If the unit determines that the victim appears to be eligible for an advance payment, the unit shall notify the victim and the court of the amount that appears eligible to be advanced to the victim from the fund.

(b) The restitution unit shall report the results of the pilot project established by this section to the senate and house committees on judiciary on or before January 15, 2012.

Sec. 17. REPEALS

(a) Sec. 9 (repeal of 13 V.S.A. § 7282(a)(9), 15 percent assessment on criminal penalties for the crime victims' restitution special fund) and Sec. 13 (July 1, 2012 effective date of repeal of 13 V.S.A. § 7289(a)(9)) of No. 40 of the Acts of 2007 are repealed.

(b) Sec. 27a of No. 1 of the Acts of 2009 (July 1, 2011 sunset of amendment to Rule 15 of Vermont Rules of Criminal Procedure related to depositions of minors in sexual assault cases) is repealed.

(c) Sec. 1 (amendment to Rule 15 of Vermont Rules of Criminal Procedure) and Sec. 5(a) (July 1, 2011 effective date of amendment to Rule 15 of Vermont Rules of Criminal Procedure) of No. 66 of the Acts of the 2009 Adj. Sess. (2010) are repealed.

(d) 13 V.S.A. § 2635a (sex trafficking of children; sex trafficking of any person by force, fraud, or coercion) is repealed.

Sec. 18. EFFECTIVE DATE

This act 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 the proposal of amendment of the Committee on Judiciary was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Sears moved to amend the Senate proposal of amendment in Sec.2, 13V.S.A. § 2652(c)(1), by striking out subdivision (B) in its entirety and inserting in lieu thereof a new subdivision (B) to read as follows:

(B) Notwithstanding any other provision of law, a person under the age of 18 shall be immune from prosecution in the criminal division of the superior court for a violation of section 2632 of this title (prohibited acts; prostitution), but may be treated as a juvenile under chapter 52 of Title 33 or referred to the department for children and families for treatment under chapter 53 of Title 33.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Flory moved to amend the Senate proposal of amendment as follows:

First: In Sec. 17, by striking out subsection (a) in its entirety and relettering the remaining subsections to be alphabetically correct.

Second: By adding a new section to be numbered Sec. 19 to read as follows:

Sec. 19. Sec. 13 of No. 40 of the Acts of 2007 is amended to read:

Sec. 13. EFFECTIVE DATE

Sec. 9 of this act shall take effect on ~~July 1, 2012~~ July 1, 2014.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

### **Recess**

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

### **Called to Order**

The Senate was called to order by the President.

**Rules Suspended; Proposal of Amendment; Third Reading Ordered;  
Rules Suspended; Bill Passed in Concurrence with Proposals of  
Amendment; Bill Messaged**

**H. 56.**

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

An act relating to the Vermont Energy Act of 2011.

Was taken up for immediate consideration.

Senator Lyons, for the Committee on Natural Resources and Energy, to which the bill was referred reported recommended that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, 30 V.S.A. § 219a (self-generation and net metering), in subsection (h) (electric company obligations), in subdivision (1)(K)(i), in the first sentence, by striking out the following: “paid” and inserting in lieu thereof the following: charged

Second: In Sec. 11, 30 V.S.A. § 8009, by striking out subdivision (f)(1) in its entirety and inserting in lieu thereof a new subdivision (f)(1) to read as follows:

(1) The SPEED facilitator shall purchase the baseload renewable power, and the electricity purchased and any associated costs shall be allocated by the SPEED facilitator to the Vermont retail electricity providers based on their pro rata share of total Vermont retail kWh sales for the previous calendar year, and the Vermont retail electricity providers shall accept and pay those costs.

Third: By adding a new section to be numbered Sec. 20a to read as follows:

\* \* \* Woody Biomass Heating; Energy Efficiency \* \* \*

Sec. 20a. FINDINGS; INTENT; WOODY BIOMASS HEATING

(a) The general assembly finds that:

(1) Installation of woody biomass heating systems will provide multiple benefits to Vermont homes, businesses, and the Vermont economy.

(2) These benefits will include reducing Vermont’s dependence on foreign oil and other fossil fuels, supporting locally harvested fuel resources, reducing emissions of greenhouse gases, and supporting local biomass equipment and fuel manufacturers and distributors.

(3) These benefits also will include the retention and potential expansion of significant in-state economic resources that would otherwise flow out of the state and the nation.

(b) The general assembly intends to clarify that an energy efficiency entity appointed pursuant to 30 V.S.A. § 209(d)(2) that delivers energy efficiency services to heating and fuel process consumers in Vermont is fully authorized to offer incentives for installation of woody biomass heating systems in a manner that promotes deployment of such systems.

Fourth: By adding a new section to be numbered Sec. 20b to read as follows:

Sec. 20b. 30 V.S.A. § 209(d)(7) and (8) are amended to read:

(7) Net revenues above costs associated with payments from the New England Independent System Operator (ISO-NE) for capacity savings resulting from the activities of the energy efficiency utility designated under subdivision (2) of this subsection shall be deposited into the electric efficiency fund established by this section and be used by the entity appointed under subdivision (2) of this subsection to deliver ~~fossil-fuel heating and process-fuel~~ energy efficiency services to Vermont ~~heating and process-fuel~~ consumers of such fuel on a whole-buildings basis to help meet the state's building efficiency goals established by 10 V.S.A. § 581. In delivering such services with respect to heating systems, the entity shall give priority to incentives for the installation of woody biomass heating systems and shall have a goal of offering an incentive that is equal to 25 percent of the installed cost of such a system. For the purpose of this subdivision (7), "woody biomass" means organic nonfossil material from trees or woody plants constituting a source of renewable energy within the meaning of subdivision 8002(2) of this title.

(8) Effective January 1, 2010, such revenues from the sale of carbon credits under the cap and trade program as provided for in section 255 of this title shall be deposited into the electric efficiency fund established by this section. Such revenues shall be used by the entity appointed under subdivision (2) of this subsection to support delivery of the services described in subdivision (7) of this subsection.

Fifth: By adding a new section to be numbered Sec. 20c to read as follows:

Sec. 20c. 30 V.S.A. § 255 is amended to read:

§ 255. REGIONAL COORDINATION TO REDUCE GREENHOUSE GASES

\* \* \*

(d) Appointment of consumer trustees. The public service board, by rule, order, or competitive solicitation, may appoint one or more consumer trustees to receive, hold, bank, and sell tradable carbon credits created under this program. Trustees may include Vermont electric distribution utilities, the

fiscal agent collecting and disbursing funds to support the statewide efficiency utility, or a financial institution or other entity with the expertise and financial resources to manage a portfolio of carbon credits for the long-term benefit of Vermont energy consumers. Fifty percent of the net proceeds above costs from the sale of carbon credits shall be deposited into the fuel efficiency fund established under section 203a of this title. These funds shall be used to provide expanded fossil fuel energy efficiency services to residential consumers who have incomes up to and including 80 percent of the median income in the state. The remaining 50 percent of the net proceeds above costs shall be deposited into the electric efficiency fund established under subdivision 209(d)(3) of this title. These funds shall be used by the entity or entities appointed under subdivision 209(d)(2) of this title to help meet the building efficiency goals established under 10 V.S.A. § 581 by delivering ~~fossil fuel~~ heating and process-fuel energy efficiency services to Vermont ~~heating and process-fuel~~ consumers who use such fuel and are businesses or are residential consumers whose incomes exceed 80 percent of the median income in the state.

Sixth: By adding a new section to be numbered Sec. 20d to read as follows:

\* \* \* Building Energy Disclosure; Working Group \* \* \*

#### Sec. 20d. WORKING GROUP ON BUILDING ENERGY DISCLOSURE

(a) Creation of working group. There is created a working group on building energy disclosure to study whether and how to require disclosure of the energy efficiency of commercial and residential buildings in order to make data on building energy performance visible in the marketplace for real property and inform the choices of those who may purchase or rent such property.

(b) Membership. The building energy disclosure working group (the working group) shall be composed of the following members:

(1) A member of the senate appointed by the committee on committees.

(2) A member of the house appointed by the speaker of the house.

(3) The commissioner of public service or designee.

(4) The secretary of commerce and community development or designee.

(5) A real estate broker licensed in Vermont appointed by the governor from a list of three names recommended by the Vermont association of realtors.

(6) A representative of an entity appointed pursuant to 30 V.S.A. § 209(d)(2) to deliver energy efficiency services to multiple utility service territories, designated by the entity.

(7) A real estate appraiser licensed in Vermont appointed by the governor.

(8) A building construction contractor appointed by the governor.

(9) A representative of the Vermont homebuilders and remodelers association designated by the association.

(10) A person who is an accredited provider of energy rating services under the process adopted by the department of public service pursuant to 21 V.S.A. § 267, appointed by the governor.

(11) A person with expertise in energy policy appointed by the governor.

(12) A person who is an active member of a local energy committee that is part of the Vermont energy and climate action network, appointed by the governor from a list of three names recommended by that network.

(13) A representative of a financial institution appointed by the governor from a list of three names submitted by the Vermont bankers association and the association of Vermont credit unions.

(14) A representative of the Vermont housing finance agency designated by the agency.

(c) Structure; decision-making. The working group shall elect two co-chairs from its membership, one of whom shall be a legislative member. The provisions of 1 V.S.A. § 172 (joint authority to three or more) shall apply to the meetings and decision-making of the working group.

(d) Issues. The working group shall consider the following:

(1) Whether there should be requirements to disclose building energy performance, that is, to disclose the energy use of buildings in a standardized manner that allows comparison and assessment of energy use among multiple buildings.

(2) Requirements for disclosure of building energy performance that have been adopted in other jurisdictions and model codes or statutes that have been published relating to such disclosure.

(3) If requirements to disclose building energy performance as described in subdivision (1) of this subsection were to be adopted:

(A) To whom should such disclosure be made (e.g., prospective buyers, prospective renters, the general public, the state).

(B) When such disclosure, if any, should be required (e.g., time of offer for sale, execution of contract for sale, at regular intervals).

(C) Which properties, if any, should be exempt from such requirements.

(D) For which markets (e.g., residential property, commercial property, purchase of property, rental of property) such disclosure, if any, should be required, and whether there should be a phase-in of any requirements for disclosure.

(E) What type or types of building energy ratings and audits should be employed.

(F) Whether the state should subsidize the cost of energy audits (e.g., for low income housing) and what sources of funding would be used to support the subsidy.

(4) Any other issue relevant to the question of disclosing building energy performance as described in subdivision (1) of this subsection.

(e) Report. On or before December 15, 2011, the working group shall submit to the general assembly its recommendation on whether the state of Vermont should adopt requirements on disclosure of building energy performance and recommended legislation on such disclosure if the general assembly were to choose to adopt such requirements.

(f) Assistance. For the purpose of its study of the issues identified in subsection (d) of this section and the preparation of its recommendation pursuant to subsection (e) of this section on whether the state should adopt requirements on building energy performance, the working group shall have the administrative, technical, and legal assistance of the department of public service and of the agency of commerce and community development. For the purpose of scheduling meetings and preparing its recommended legislation pursuant to subsection (e) of this section, the working group shall have the assistance of the office of legislative council.

(g) Meetings; term of working group; reimbursement. The working group may meet no more than four times during adjournment of the general assembly, and shall cease to exist on July 1, 2012.

(h) Reimbursement. For attendance at meetings during adjournment of the general assembly, legislative members of the working group shall be entitled to compensation and reimbursement for expenses as provided in 2 V.S.A. § 406; and other members of the working group who are not employees of the state of

Vermont shall be reimbursed at the per diem rate set in 32 V.S.A. § 1010. The costs of reimbursement of members of the working group who are not legislative members shall be allocated among the budgets of the department of public service and the agency of commerce and community development.

(i) Appointments. Within 30 days of this section's effective date, each entity required to submit a list of names to the governor pursuant to subsection (b) of this section shall make such submission. Within 60 days of this section's effective date, the appointing or designating authority shall appoint or designate each member of the working group under subsection (b) of this section and shall report the member so appointed or designated to the office of legislative council.

Seventh: By adding a new section to be numbered Sec. 20e to read as follows:

\* \* \* Energy Planning \* \* \*

Sec. 20e. ENERGY PLAN

(a) The general assembly finds that the department of public service is presently in the process of updating the electrical energy and comprehensive energy plans issued pursuant to 30 V.S.A. §§ 202 and 202b, with an intent to reissue such plans in October 2011.

(b) In the first update immediately following the effective date of this section by the department of public service of the plans described in subsection (a) of this section, the department shall consider each of the following:

(1) After considering the report of the public service board required by Sec. 13 of No. 159 of the Acts of the 2009 Adj. Sess. (2010), whether the best interests of the state are served by implementing a renewable portfolio standard (RPS) or by continued use and potential expansion of the Sustainably Priced Energy Enterprise Development (SPEED) Program under 30 V.S.A. § 8005; whether, should an RPS come into effect in the state, energy efficiency should be a resource that could be used to satisfy an RPS; and whether there should be tiers of resources used to satisfy an RPS based on the characteristics and qualities of the resources, such as the environmental impacts of their procurement, siting, or use. In the event that, due to the timing of the public service board's report, the department is unable to consider the matters in this subdivision (1) in the energy plan it intends to issue in October 2011, the department may propose any relevant recommendations in an addendum to the energy plan issued on or before January 15, 2012.

(2) The relationship of energy use and land use, including land devoted now or in the future to cultivating biomass energy resources and the

interrelationship among modes of transportation (such as single-occupancy or low efficiency vehicles), energy consumption, and settlement patterns.

(3) The work of the agency of agriculture, food and markets on 25 x 25, which may include:

(A) The cultivation of land for biomass energy resources in a manner that is carbon-neutral or carbon-negative, that is, a net reduction in carbon emissions over the life cycle of the cultivation, harvesting, and use of such resources.

(B) The use of buffer zones on properties to counter the carbon impacts of fossil fuel use or to cultivate land for biomass energy resources and on potential incentives to encourage landowners to set aside such buffer zones.

(C) The use of grass as a source of energy.

(D) Energy end uses of biomass in the state, including residential heating and transportation.

(4) The appropriate energy conversion efficiency requirements that should be applicable to woody biomass energy plants, with particular emphasis on encouraging woody biomass for combined heat and power applications.

(5) The potential development of a land capability map for the purpose of guiding and accomplishing coordinated, efficient, and environmentally and economically sound development of renewable energy plants in the state, including particularly wind and woody biomass energy generation plants and any recommendations concerning the siting of wind energy plants to assure adequate protection of ridgeline environments.

(6) Obtaining additional funds from available sources to be used within the clean energy development fund (CEDF) established under 10 V.S.A. § 6523 to establish one or more revolving loan funds to support the purposes of the CEDF and of increasing the use of existing CEDF moneys to support such revolving loan funds.

(7) Citizen participation in decision-making on energy generation projects, including mechanisms in other states for so-called "intervenor funding" with respect to participation in permit processes for proposed electric generation plants and of the advantages and disadvantages of adopting in Vermont a system for funding intervenor participation in permit processes for such plants.

(8) Mechanisms to assure that electric energy consumers receive the benefits of so-called "smart grid" technology, also known as advanced metering infrastructure, taking into consideration the reports and orders previously issued by the public service board on such technology.

(9) The residential building and commercial building energy standards required to be adopted pursuant to 21 V.S.A. §§ 266 and 268, including their adequacy in advancing the efficient use of energy and in reducing carbon impacts, including consideration of incentives or other means to encourage energy-efficient upgrades of rental property.

(10) Measures to control or mitigate the effects of fuel price volatility on Vermonters, including heating, process, and transportation fuel, including the role of entities appointed pursuant to Title 30 to deliver energy efficiency services to heating and process-fuel consumers and to consumers of electric energy.

(11) Development of a timeline for full implementation of the recommendations issued in October 2007 by the Governor's Commission on Climate Change pursuant to executive order no. 10-33 dated December 5, 2005.

(c) In making any recommendations concerning woody biomass, the department of public service shall consider the 2011 interim report of the biomass energy development working group filed pursuant to No. 37 of the Acts of 2009.

(d) In this section:

(1) "Biomass" means organic nonfossil material of biological origin constituting a source of renewable energy.

(2) "Renewable energy" shall have the same meaning as under 30 V.S.A. § 8002(2).

Eighth: By adding a new section to be numbered Sec. 20f to read as follows:

\* \* \* Energy Efficiency; Street Lighting \* \* \*

Sec. 20f. 30 V.S.A. § 218(g) is added to read:

(g) Each company subject to the public service board's jurisdiction that distributes electrical energy shall have in place a rate schedule for street lighting that provides an option under which efficient streetlights, including light-emitting diode (LED) lights, are installed on company-owned fixtures. These rate schedules also shall include a separate option under which customers may own street lighting and install efficient streetlights, including LED lights, on customer-owned fixtures.

Ninth: By adding a new section to be numbered Sec. 20g to read as follows:

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**Sec. 20g. RATE SCHEDULES; STREET LIGHTING; IMPLEMENTATION**

No later than 60 days after the effective date of this section, each company subject to the public service board's jurisdiction that distributes electrical energy shall file with the public service board a proposed modification to its rate schedules that complies with Sec. 20f of this act, 30 V.S.A. § 218(g). However, a company shall not be required to file such a proposed modification if its rate schedules, as of the date on which such filing is due, include an approved street lighting rate schedule that complies with Sec. 20f of this act, 30 V.S.A. § 218(g).

Tenth: In Sec. 21 (effective dates), in subsection (b) (sections effective on passage), at the end of the subsection, by inserting a new subdivision to be numbered subdivision (4) to read as follows:

(4) Secs. 20a through 20g of this act.

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

Senator MacDonald, for the Committee on Finance, to which the bill was referred, reported recommending that the 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: In Sec. 2 (implementation; retroactive application), in subsection (e), in the second sentence, after the following: "the board is authorized to" by striking out the following "and shall"

Second: In Sec. 5, 30 V.S.A. § 248 (new gas and electric purchases, investments, and facilities; certificate of public good), at the end of the section, after the ellipsis, by inserting the following:

(c)(1) Except as otherwise provided in subdivision (j)(3) of this section, in the case of a municipal plant or department formed under local charter or chapter 79 of this title or a cooperative formed under chapter 81 of this title, any proposed investment, construction or contract which is subject to this section shall be approved by a majority of the voters of a municipality or the members of a cooperative voting upon the question at a duly warned annual or special meeting to be held for that purpose. However, in the case of a cooperative formed under chapter 81 of this title, an investment in or construction of an in-state electric transmission facility shall not be subject to the requirements of this subsection if the investment or construction is solely for reliability purposes and does not include new construction or upgrades to serve a new generation facility.

(2) The municipal department or cooperative shall provide to the voters or members, as the case may be, written assessment of the risks and benefits of the proposed investment, construction, or contract which were identified by the public service board in the certificate issued under this section. The municipal department or cooperative also may provide to the voters an assessment of any other risks and benefits.

\* \* \*

Third: In Sec. 11, 30 V.S.A. § 8009 (baseload renewable power portfolio requirement), in subsection (d), in the fourth sentence, after the following: “obtain from a” by striking out the following: “new”

Fourth: In Sec. 11, 30 V.S.A. § 8009 (baseload renewable power portfolio requirement), by adding a new subsection to be subsection (i) to read as follows:

(i) The state and its instrumentalities shall not be liable to a plant owner or retail electricity provider with respect to any matter related to the baseload renewable power portfolio requirement or a plant used to satisfy such requirement, including costs associated with a contract related to such a plant or any damages arising from the breach of such a contract, the flow of power between a plant and the electric grid, or the interconnection of a plant to that grid. For the purpose of this section, the board and the SPEED facilitator constitute instrumentalities of the state.

Fifth: By adding 10 new sections to be numbered Secs. 18a through 18j to read as follows:

\* \* \* Property Assessed Clean Energy \* \* \*

Sec. 18a. 24 V.S.A. § 3255 is amended to read:

§ 3255. COLLECTION OF ASSESSMENTS; LIENS

(a) Special assessments under this chapter shall constitute a lien on the property against which the assessment is made in the same manner and to the same extent as taxes assessed on the grand list of a municipality, and all procedures and remedies for the collection of taxes shall apply to special assessments.

(b) Notwithstanding subsection (a) of this section, a lien for an assessment under subchapter 2 of this chapter shall be subordinate to all liens on the property in existence at the time the lien for the assessment is filed on the land records, shall be subordinate to a first mortgage on the property recorded after such filing, and shall be superior to any other lien on the property recorded after such filing. In no way shall this subsection affect the status or priority of

any municipal lien other than a lien for an assessment under subchapter 2 of this chapter.

Sec. 18b. REDESIGNATION

24 V.S.A. chapter 87, subchapter 2 is redesignated to read:

Subchapter 2. Property-Assessed Clean Energy Assessments

Sec. 18c. 24 V.S.A. § 3261 is amended to read:

§ 3261. PROPERTY-ASSESSED CLEAN ENERGY ASSESSMENT DISTRICTS; APPROVAL OF VOTERS

(a)(1) In this subchapter, “district” means a property-assessed clean energy district.

(2) The legislative body of a town, city, or incorporated village may submit to the voters of the municipality the question of whether to designate the municipality as a property-assessed clean energy assessment district. In a ~~clean energy assessment~~ district, only those property owners who have entered into written agreements with the municipality under section 3262 of this title would be subject to a special assessment, as set forth in section 3255 of this title.

(b) Upon a vote of approval by a majority of the qualified voters of the municipality voting at an annual or special meeting duly warned for that purpose, the municipality may incur indebtedness for or otherwise finance projects relating to renewable energy, as defined in 30 V.S.A. § 8002(2), or to eligible projects relating to energy efficiency as defined by section 3267 of this title, undertaken by owners of ~~real property dwellings~~, as defined in Section 103(v) of the federal Truth in Lending Act, within the boundaries of the town, city, or incorporated village.

Sec. 18d. 24 V.S.A. § 3262 is amended to read:

§ 3262. WRITTEN AGREEMENTS; CONSENT OF PROPERTY OWNERS; ENERGY SAVINGS ANALYSIS

(a) Upon an affirmative vote made pursuant to section 3261 of this title and the performance of an energy savings analysis pursuant to subsection (b) of this section, an owner of ~~real property~~ a dwelling, as defined in Section 103(v) of the federal Truth in Lending Act, within the boundaries of a ~~clean energy assessment~~ district may enter into a written agreement with the municipality that shall constitute the owner’s consent to be subject to a special assessment, as set forth in section 3255 of this title. Entry into such an agreement may occur only after January 1, 2012. A participating municipality shall follow underwriting criteria, ~~consistent with responsible underwriting and credit~~

~~standards as~~ established by the department of banking, insurance, securities, and health care administration, and shall establish other qualifying criteria to provide an adequate level of assurance that property owners will have the ability to meet assessment payment obligations. A participating municipality shall refuse to enter into a written agreement with a property owner who fails to meet the underwriting or other qualifying criteria.

\* \* \*

(c) A written agreement shall provide that:

\* \* \*

(2) ~~At~~ Notwithstanding any other provision of law:

(A) At the time of a transfer of property ownership ~~excepting~~ including foreclosure, the past due balances of any special assessment under this subchapter shall be due for payment, but future payments shall continue as a lien on the property.

(B) In the event of a foreclosure action, the past due balances described in subdivision (A) of this subdivision (2) shall include all payments on an assessment under this subchapter that are due and unpaid as of the date the action is filed, and all payments on the assessment that become due after that date and that accrue up to and including the date title to the property is transferred to the mortgage holder, the lien holder, or a third party in the foreclosure action. The person or entity acquiring title to the property in the foreclosure action shall be responsible for payments on the assessment that become due after the date of such acquisition.

(3) A participating municipality shall disclose to participating property owners ~~the~~ each of the following:

(A) The risks associated with participating in the program, including risks related to the failure of participating property owners to make payments and the risk of foreclosure.

(B) The provisions of subsection (h) of this section that pertain to prepayment of the assessment.

(d) A written agreement or notice of such agreement and the analysis performed pursuant to subsection (b) of this section shall be filed with the clerk of the applicable municipality for recording in the land records of ~~the~~ that municipality and shall be disclosed to potential buyers prior to transfer of property ~~of~~ ownership. Personal financial information provided to a municipality by a participating property owner or potential participating property owner shall not be subject to disclosure as set forth in 1 V.S.A. § 317(c)(7). If a notice of agreement is filed instead of the full written

agreement, the notice shall attach the analysis performed pursuant to subsection (b) of this section and shall include at least each of the following:

- (1) The name of the property owner as grantor.
- (2) The name of the municipality as grantee.
- (3) The date of the agreement.
- (4) A legal description of the real property against which the assessment is made pursuant to the agreement.
- (5) The amount of the assessment and the period during which the assessment will be made on the property.
- (6) A statement that the assessment will remain a lien on the property until paid in full or released.
- (7) The location at which the original or a true, legible copy of the agreement may be examined.

\* \* \*

(g) ~~In the case of~~ With respect to an agreement ~~with the resident owner of a dwelling, as defined in Section 103(v) of the federal Truth in Lending Act under this section:~~

- (1) the assessments to be repaid under the agreement, when calculated as if they were the repayment of a loan, shall not violate ~~chapter 4 of Title 9~~ 9 V.S.A. §§ 41a, 43, 44, and 46-50.
- (2) the maximum length of time for the owner to repay the ~~loan~~ assessment shall not exceed 20 years; and
- (3) the maximum amount to be repaid for the project, including the participating property owner's contribution to the reserve fund under subsection 3269(c) of this title, shall not exceed \$30,000.00 or 15 percent of the assessed value of the property, whichever is less.

(h) There shall be no penalty or premium for prepayment of the outstanding balance of an assessment under this subchapter if the balance is prepaid in full.

Sec. 18e. 24 V.S.A. § 3267 is amended to read:

§ 3267. ELIGIBLE ENERGY EFFICIENCY PROJECTS; ASSISTANCE TO MUNICIPALITIES

Those entities appointed as energy efficiency utilities under 30 V.S.A. § 209(d) shall:

- (1) Shall develop a list of eligible energy efficiency projects and shall make the list available to the public on or before July 1 of each year; and

(2) Shall provide information concerning implementation of this subchapter to each municipality, within the area in which the entity delivers efficiency services, that requests such information, and shall contact each such municipality that votes to establish a district to offer this information.

Sec. 18f. 24 V.S.A. § 3268 is amended to read:

§ 3268. RELEASE OF LIEN

(a) A municipality shall release a participating property owner of the lien on the property against which the assessment under this subchapter is made upon:

~~(1) Full full payment of the value of the assessment; or~~

~~(2) Demand from a party who has filed an action for foreclosure on a participating property.~~

~~(b) If a municipality releases a participating property owner of a lien upon demand from a party who has filed an action for foreclosure and the participating property owner redeems the property, the municipality shall reinstate the lien on the property against which the assessment under this subchapter is made.~~

~~(c) Notice of the a release or reinstatement of the a lien for an assessment under this subchapter shall be filed with the clerk of the applicable municipality for recording in the land records of the that municipality.~~

Sec. 18g. 24 V.S.A. § 3269 is amended to read:

§ 3269. RESERVE FUND

(a) ~~A participating municipality may create a reserve fund~~ is created for use in paying the past due balances of an assessment under this subchapter in the event of that there is a foreclosure upon an assessed the property subject to the assessment and the proceeds resulting from the foreclosure are, after all superior liens have been satisfied, insufficient to pay those past due balances. The reserve fund shall comply with the provisions of subsections (b) through (e) of this section and shall be administered by and in the custody of the entity described in subsection (f) of this section. Each municipality that establishes a district under this subchapter shall participate in the reserve fund created by this subsection.

(b) ~~The reserve fund shall be funded by participating property owners at a level sufficient to provide for the payment of any past due balances on assessments under this subchapter and any remaining principal balances on those assessments described in subdivision 3262(c)(2) of this title in the event of a foreclosure upon a participating property and the costs of administering~~

the reserve fund and shall only be used to provide for such payment and administration.

(c) The contribution of each participating property owner to the reserve fund shall be included in the special assessment applicable to the property and shall be subject to section 3255 of this title. From time to time, the commissioner of banking, insurance, securities, and health care administration shall determine the appropriate contribution to the fund in accordance with subsection (d) of this section. A determination by the commissioner under this subsection shall apply to the reserve fund contribution for an assessment concerning which a written agreement under section 3262 is signed after the date of the commissioner's determination and shall not affect the reserve fund contribution for an assessment concerning which such an agreement was signed on or before the date of the commissioner's determination.

(b)(d) The reserve fund shall be capitalized in accordance with standards and procedures approved by the commissioner of banking, insurance, securities, and health care administration to cover expected foreclosures and fund administration costs based on good lending practice experience. Interest earned shall remain in the fund. The administrator of the reserve fund shall invest and reinvest the moneys in the fund and hold, purchase, sell, assign, transfer, and dispose of the investments in accordance with the standard of care established by the prudent investor rule under chapter 147 of Title 9. The administrator shall apply the same investment objectives and policies adopted by the Vermont state employees' retirement system, where appropriate, to the investment of moneys in the fund.

(e)(e) The municipality shall disclose in advance to each interested property owner the amount of that property owner's required payment into the reserve fund. Once disclosed, the amount of the reserve fund payment shall not change over the life of the assessment.

(f) An entity appointed under 30 V.S.A. § 209(d)(2) to deliver energy efficiency programs to multiple service territories shall administer the reserve fund created under subdivision (a)(1) of this section.

(1) The entity's costs of administering the reserve fund shall be considered costs of operating the districts under section 3263 of this title.

(2) In the event of foreclosure on a property that is subject to a special assessment and is in a district that participates in the reserve fund administered by the entity, the entity's obligation shall be to disburse, at the direction of the municipality, moneys from the reserve fund to apply to the past due balances of the assessment. In no event shall other moneys received or held by the entity be available to meet this obligation or the payment of balances on an assessment.

(3) The entity shall keep an accurate account of all activities and receipts and expenditures under this subsection. An independent audit of the reserve fund shall be conducted annually. The cost of such an audit shall be considered a cost of administering the reserve fund. Where feasible, the entity shall cause this audit to be conducted in conjunction with other independent audits of its accounts, receipts, and expenditures. An audit conducted under this subdivision shall be available, on request, to the auditor of accounts and the commissioners of banking, insurance, securities, and health care administration and of public service.

Sec. 18h. 24 V.S.A. § 3270 is added to read:

§ 3270. STATE PACE RESERVE FUND

(a) The state PACE reserve fund is established to be held in the custody of and administered by the state treasurer. The purpose of the state PACE reserve fund shall be to reduce, for those districts for which the entity described in subsection 3269(f) of this title administers the loss reserve fund, the risk faced by an investor making an agreement with a municipality to finance such a district.

(b) The treasurer may invest monies in the fund in accordance with 32 V.S.A. § 434. All balances in the fund at the end of the fiscal year shall be carried forward and shall not revert to the general fund. Interest earned shall remain in the fund. The treasurer's annual financial report to the general assembly under 32 V.S.A. § 434 shall contain an accounting of receipts, disbursements, and earnings of the fund.

(c) At the direction of the treasurer, a sum shall be transferred to the fund from moneys deposited into the energy efficiency fund pursuant to 30 V.S.A. § 209(d)(7) (net capacity savings payments) and (8) (net revenues from the sale of carbon credits).

(1)(A) For a given year, the sum transferred under this subsection shall be:

(i) Five percent of the total amount of those assessments concerning which owners of real property, in the districts described in subsection (a) of this section, are expected to enter into written agreements pursuant to section 3262 of this title during the year; and

(ii) Such additional amount, if any, that is necessary to meet the full amount of payments reasonably expected to be made from the state PACE reserve fund during that year.

(B) In no event shall the sum transferred under this subsection exceed the limits on the total amount of funding from the state PACE reserve fund set forth under subsection (f) of this section.

(2) When directing a transfer under this subsection, the treasurer shall notify the commissioners of finance and management and of public service, the chair of the public service board, and the entity described in subsection 3269(f) of this title. Monies shall not be disbursed from the state PACE reserve fund until necessary resources are transferred to the fund.

(d) Moneys deposited to the state PACE reserve fund and any interest on moneys in that fund shall be used for the sole purpose of paying claims as described in subsections (e) and (f) of this section. In no event shall any moneys received or held by the state of Vermont, other than moneys deposited into the state PACE reserve fund or interest on moneys in that fund, be available to meet this obligation or the payment of a remaining past due balance or any other obligation under this subchapter.

(e) In this section, "remaining past due balance" means that amount, if any, of a past due balance on an assessment under this subchapter that exists:

(1) Immediately following foreclosure on a property in a district that participates in the loss reserve fund administered by the entity described in subsection 3269(f) of this title; and

(2) After the application, to the past due balances of the assessment on that property, of the proceeds available from the foreclosure, net of superior liens, and of the assets of that loss reserve fund.

(f) The obligation of the state PACE reserve fund shall be to fund 90 percent of a remaining past due balance, upon presentation of a claim and application acceptable to the treasurer and the entity described in subsection 3269(f) of this title, provided that the total amount of all such funding from the state PACE reserve fund shall not exceed the smallest of the following:

(1) \$1,000,000.00.

(2) The funds available pursuant to subsection (d) of this section.

(3) Five percent of the total of all assessments under this subchapter in the districts that participate in the loss reserve fund administered by the entity described in subsection 3269(f) of this title.

Sec. 18i. 24 V.S.A. § 3271 is added to read:

§ 3271. MONITORING; COMPLIANCE; UNDERWRITING CRITERIA

The department of public service created under 30 V.S.A. § 1 shall monitor and evaluate, for compliance with the underwriting criteria, standards, and

procedures established under subsections 3262(a) (underwriting criteria for assessments) and 3269(c) and (d) (underwriting standards and procedures; loss reserve fund) of this title, all activities to which those criteria, standards, and procedures apply that are undertaken by an entity appointed under 30 V.S.A. § 209(d)(2) to deliver energy efficiency programs. The department shall consult with the department of banking, insurance, securities, and health care administration in performing these tasks. The department of public service may combine its tasks under this section with monitoring and evaluation of an energy efficiency entity conducted pursuant to 30 V.S.A. § 209(d) or (e).

Sec. 18j. UNDERWRITING CRITERIA; ADOPTION

On or before December 31, 2011, the commissioner of banking, insurance, securities, and health care administration shall adopt criteria and standards pursuant to Sec. 18d of this act, 24 V.S.A. § 3262(a), and determine the participating property owner's contribution to the loss reserve fund and adopt standards and procedures pursuant to Sec. 18g of this act, 24 V.S.A. § 3269(c) and (d). Prior to adoption, the commissioner of banking, insurance, securities, and health care administration shall consult with the commissioner of public service concerning the development of such criteria, standards, and procedures.

Sixth: By adding a new section to be numbered Sec. 19a to read as follows:

\* \* \* Propane Regulation \* \* \*

Sec. 19a. 9 V.S.A. § 2461b is amended to read:

§ 2461b. REGULATION OF LIQUIFIED PETROLEUM GAS PROPANE

(a)(1) In this section:

(A) "Consumer" means any person who purchases propane for consumption and not for resale, through a meter or has propane delivered to one or more storage tanks of 2000 gallons or less.

(B) "Seller" means a person who sells or offers to sell propane to a consumer.

(2) The attorney general shall investigate irregularities, complaints, and unfair or deceptive acts in commerce by sellers of liquefied petroleum gas.

(b) For the purpose of promoting business practices which are uniformly fair to sellers and which protect consumers, the attorney general shall promulgate necessary rules and regulations, including, ~~but not limited to,~~ notice prior to disconnection, repayment agreements, minimum delivery, discrimination, security deposits and the assessment of fees and charges.

(c)(1) A violation of this section, or a rule or regulation promulgated under this section not inconsistent with this section, shall constitute an unfair and deceptive act in commerce in violation of section 2453 of this title.

(2) No contract for propane services shall contain any provision which conflicts with the obligations and remedies established by this section or by any rule or regulation promulgated under this section, and any conflicting provision shall be unenforceable and void.

(d) A seller shall not:

(1) assess a minimum usage fee;

(2) assess a fee for propane that is not actually delivered to a consumer;

or

(3) require a consumer to purchase a minimum number of gallons of propane per year, except as part of a guaranteed price plan that meets the requirements of section 2461e of this title.

(e) When terminating service to a consumer, a seller shall comply with the following requirements.

(1)(A) If the propane storage tank has been located on the consumer's premises, regardless of ownership of the premises, for 12 months or more, the seller may not assess a fee related to termination of propane service, including a fee

(i) to remove the seller's storage tank from the premises;

(ii) to pump out or restock propane; or

(iii) to terminate service.

(B) If a consumer has received propane service from the seller for less than 12 months, any fee related to termination of service may not exceed the disclosed price of labor and materials.

(2)(A) Within 20 days of the date when the seller disconnects propane service or is notified by the consumer in writing that service has been disconnected, whichever is earlier, the seller shall refund to the consumer the amount paid by the consumer for any propane remaining in the storage tank, less any payments due the seller from the consumer.

(B) If the quantity of propane remaining in the storage tank cannot be determined with certainty, the seller shall, within the 20 days described in subdivision (2)(A) of this subsection, refund to the consumer the amount paid by the consumer for 80 percent of the seller's best reasonable estimate of the quantity of propane remaining in the tank, less any payments due from the consumer. The seller shall refund the remainder of the amount due as soon as

the quantity of propane left in the tank can be determined with certainty, but no later than 14 days after the removal of the tank or restocking of the tank at the time of reconnection.

(3)(A) Any refund to the consumer shall be by cash, check, direct deposit, credit to a credit card account, or in the same method or manner of payment that the consumer, or a third party on the consumer's behalf, used to make payments to the seller.

(B) Unless requested by the consumer, a seller shall not provide a refund in the form of a reimbursement or credit to any account with the seller.

(4) If the seller fails to mail or deliver a refund to the consumer in accordance with this subsection, the seller shall within one business day make a penalty payment to the consumer, in addition to the refund, of \$250.00 on the first day after the refund was due, and \$75.00 per day for each day thereafter until the refund and penalty payment have been mailed or delivered.

(5) Termination of service does not void any guaranteed price plan that meets the requirements of section 2461e of this title that has not expired by its own terms.

(f)(1) A seller of propane shall not refuse to deliver propane to a storage tank owned by a consumer if the consumer provides proof of ownership of the tank and the seller has conducted a safety check of the tank in accordance with NFPA 54 (National Fuel Gas Code) and NFPA 58 (Storage and Handling of Liquefied Petroleum Gas Code) of the National Fire Protection Association and complies with rules adopted by the attorney general governing propane.

(2) If a seller of propane chooses to finance a consumer's purchase of a storage tank, the financing shall be a retail installment sale as provided in chapter 61 of this title.

(g) Nonpayment of the following charges may be the only basis for an interruption or disconnection of service: propane, leak or pressure test, safety check, restart of equipment, after-hours delivery, special trip for delivery, and meter read.

Seventh: By striking out Sec. 20 (utility payment; credit or debit card; report) and inserting in lieu thereof a new section to be numbered Sec. 20 to read as follows:

Sec. 20. UTILITY BILL PAYMENT; CREDIT OR DEBIT CARD; REPORT

On or before January 15, 2012, the commissioner of public service shall submit to the general assembly a report on whether, in the commissioner's opinion, it is in the public interest for the cost of service of a company subject to jurisdiction under 30 V.S.A. § 203 to include fees and expenses incurred by

the company in accepting payments from customers of retail charges by credit or debit card. In the report, the commissioner shall consider and discuss the advantages and disadvantages of including these fees and expenses in a company's cost of service, including the extent to which allowing inclusion of such fees and expenses may avoid or reduce costs that would otherwise be incurred by the company; shall quantify on a statewide basis the expected cost impacts of requiring all ratepayers to bear the cost of these fees and expenses, including the amount, if any, of cross-subsidy that would occur from customers who do not pay utility bills by credit or debit card to customers who do pay utility bills by credit or debit card; and shall propose a draft statute or a statutory amendment to effect the commissioner's recommendation.

Eighth: By striking out Sec. 20b in its entirety and inserting in lieu thereof a new section to be numbered Sec. 20b to read as follows:

Sec. 20b. 30 V.S.A. § 209(d)(7) and (8) are amended to read:

(7) Net revenues above costs associated with payments from the New England Independent System Operator (ISO-NE) for capacity savings resulting from the activities of the energy efficiency utility designated under subdivision (2) of this subsection shall be deposited into the electric efficiency fund established by this section ~~and~~. Any such net revenues not transferred to the state PACE reserve fund under 24 V.S.A. § 3270(c) shall be used by the entity appointed under subdivision (2) of this subsection to deliver fossil-fuel heating and process-fuel energy efficiency services to Vermont heating and process-fuel consumers of such fuel on a whole-buildings basis to help meet the state's building efficiency goals established by 10 V.S.A. § 581. In delivering such services with respect to heating systems, the entity shall give priority to incentives for the installation of woody biomass heating systems and shall have a goal of offering an incentive that is equal to 25 percent of the installed cost of such a system. For the purpose of this subdivision (7), "woody biomass" means organic nonfossil material from trees or woody plants constituting a source of renewable energy within the meaning of subdivision 8002(2) of this title.

(8) Effective January 1, 2010, such net revenues above costs from the sale of carbon credits under the cap and trade program as provided for in section 255 of this title shall be deposited into the electric efficiency fund established by this section. Such revenues shall be used by the entity appointed under subdivision (2) of this subsection to support delivery of the services described in subdivision (7) of this subsection.

Ninth: In Sec. 20d (working group on building energy disclosure), in subsection (b) (membership), at the end of the subsection, by inserting two new subdivisions to be numbered subdivisions (15) and (16) to read as follows:

(15) A member of the Vermont Bar Association with experience in the conveyance of real property designated by the association.

(16) A representative of the heating service industry designated by the Vermont Fuel Dealers Association.

Tenth: By adding a new section to be numbered Sec. 20h to read as follows:

\* \* \* Clean Energy Development Fund; Solar Tax Credits \* \* \*

Sec. 20h. 32 V.S.A. § 5930z is amended to read:

§ 5930z. SOLAR ENERGY TAX CREDIT

\* \* \*

(f) In lieu of a solar energy tax credit certified by the board under this section, a taxpayer may in accordance with this subsection convert such a credit into a grant to the taxpayer from the clean energy development fund established under 10 V.S.A. § 6523.

(1) To qualify for a grant-in-lieu-of-credit under this subsection, the taxpayer shall comply with the provisions of this subsection and subdivision (c)(1) (solar plant of 2.2 MW or less) or (2) (solar plant of 150 kW or less) of this section. However, in the case of a taxpayer who complies with the provisions of this subsection and of subdivision (c)(1) of this section except for subdivision (c)(1)(C) (commissioning by Sep. 1, 2011), the taxpayer may qualify for such a grant if, by September 1, 2011, construction begins on the plant in accordance with Sec. IV.C (beginning of construction) of "Payments for Specified Energy Property in Lieu of Tax Credits under the American Recovery and Reinvestment Act of 2009" issued by the U.S. Department of the Treasury, Office of the Fiscal Assistant Secretary, as revised April 2011.

(2) The dollar amount of a grant-in-lieu-of-credit under this subsection shall be the lesser of the following:

(A) 50 percent of the dollar amount of the credit as contained in the certification issued by the board to the taxpayer.

(B) 15 percent of the actual costs of the plant.

(3) No later than 30 days after the effective date of this subdivision (2), the clean energy development fund shall provide notice of this option to obtain a grant-in-lieu-of-credit to all taxpayers for which the clean energy development board has certified tax credits under this section.

(4) On or before August 1, 2011, a taxpayer to which the board has issued a certification of a solar energy tax credit under this section shall submit

to the fund the taxpayer's request, if any, to obtain a grant-in-lieu-of-credit under this subsection.

(5) To a taxpayer making a timely request under subdivision (4) of this subsection, a grant-in-lieu-of-credit shall be paid from the clean energy development fund within 30 days of:

(A) The date on which the taxpayer provides proof to the clean energy development fund that the plant for which the taxpayer seeks a grant-in-lieu-of-credit under this subsection has received from the U.S. Department of the Treasury, pursuant to 26 U.S.C. §§ 46 and 48, a grant in lieu of the federal investment tax credit and proof of the dollar amount of such federal grant; or

(B) If the taxpayer has not received a grant from the U.S. Department of the Treasury described in subdivision (5)(A) of this subsection, the date on which the taxpayer provides to the clean energy development fund proof that the solar energy plant for which the taxpayer seeks a grant-in-lieu-of-credit under this subsection has been commissioned and proof of the plant's actual costs.

(g) 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)~~(h) The clean energy development board and the department shall collaborate in implementing the certification of credits under this section.

Eleventh: By adding a new section to be numbered Sec. 20i to read as follows:

**Sec. 20i. GRANT IN LIEU OF CREDIT; TAX TREATMENT**

The amount of a clean energy development fund grant made pursuant to 32 V.S.A. § 5930z(f) in lieu of a solar energy tax credit certified under 32 V.S.A. § 5930z(c) shall not be included as Vermont net income under 32 V.S.A. § 5811(18) and shall not be included as taxable income under 32 V.S.A. § 5811(21). This section shall apply to tax years 2010, 2011, and 2012.

Twelfth: By adding a new section to be numbered Sec. 20j to read as follows:

Sec. 20j. 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.

\* \* \*

(2) If during a particular year, the ~~clean energy development board~~ commissioner of public service determines that there is a lack of high value projects eligible for funding, as identified in the five-year plan, or as otherwise identified, the ~~clean energy development board may~~ commissioner shall consult with the ~~public service~~ clean energy development board, and shall consider transferring funds to the energy efficiency fund established under the provisions of 30 V.S.A. § 209(d). Such a transfer may take place only in response to an opportunity for a particularly cost-effective investment in energy efficiency, and only as a temporary supplement to funds collected under that subsection, not as replacement funding.

(3) A grant in lieu of a solar energy tax credit in accordance with 32 V.S.A. § 5930z(f). Of any fund moneys unencumbered by such grants, the first \$2.3 million shall fund the small-scale renewable energy incentive program described in subdivision (1)(E)(ii) of this subsection.

(4) A sum equal to the cost for the 2010 and preceding tax years of the business solar energy income tax credits authorized in 32 V.S.A. § §§ 5822(d) and 5930z(a), net of any such costs for which a transfer has already been made under this subdivision and of the cost of any credits in lieu of which the taxpayer elects to receive a grant, shall be transferred annually from the clean energy development fund to the general fund.

(e) Management of fund.

~~(1) There is created the clean energy development board, which shall consist of the following nine directors:~~

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

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

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

~~(D) The state treasurer, ex officio. This fund shall be administered by the department of public service to facilitate the development and implementation of clean energy resources. The department is authorized to expend moneys from the clean energy development fund in accordance with this section. The commissioner of the department shall make all decisions necessary to implement this section and administer the fund except those decisions committed to the clean energy development board under this subsection. The department shall assure an open public process in the administration of the fund for the purposes established in this subchapter.~~

~~(2) During fiscal years after FY 2006, up to five percent of amounts appropriated to the public service department from the fund may be used for administrative costs related to the clean energy development fund and after FY 2007, another five percent of amounts appropriated to the public service department from the fund not to exceed \$300,000.00 in any fiscal year shall be transferred to the secretary of the agency of agriculture, food and markets for agricultural and farm based energy project development activities.~~

~~(3) A quorum of the clean energy development board shall consist of five directors. The directors of the board shall select a chair and vice chair. There is created the clean energy development board, which shall consist of seven persons appointed in accordance with subdivision (4) of this subsection.~~

~~(A) The clean energy development board shall have decision-making and approval authority with respect to the plans, budget, and program designs described in subdivisions (7)(B)–(D) of this subsection. The clean energy development board shall function in an advisory capacity to the commissioner on all other aspects of this section’s implementation.~~

~~(B) During a board member’s term and for a period of one year after the member leaves the board, the clean energy development fund shall not make any award of funds to and shall confer no financial benefit on a company or corporation of which the member is an employee, officer, partner, proprietor, or board member or of which the member owns more than 10 percent of the outstanding voting securities. This prohibition shall not~~

apply to a financial benefit that is available to any person and is not awarded on a competitive basis or offered only to a limited number of persons.

~~(4) In making appointments of at large directors to the clean energy development board, the appointing authorities shall give consideration to citizens of the state with knowledge of relevant technology, regulatory law, infrastructure, finance, and environmental permitting. A director shall recuse himself or herself from all matters and decisions pertaining to a company or corporation of which the director is an employee, officer, partner, proprietor, or board member. The at large directors of the board shall serve terms of four years beginning July 1 of the year of appointment. However, one at large director appointed by the speaker and one at large director appointed by the president pro tempore shall serve an initial term of two years. Any vacancy occurring among the at large directors shall be filled by the respective appointing authority and shall be filled for the balance of the unexpired term. A director may be reappointed. The commissioner of public service shall appoint three members of the clean energy development board, and the chairs of the house and senate committees on natural resources and energy each shall appoint two members of the clean energy development board. The terms of the members of the clean energy development board shall be four years, except that when appointments to this board are made for the first time after the effective date of this act, each appointing authority shall appoint one member for a two-year term and the remaining members for four-year terms. When a vacancy occurs in the board during the term of a member, the authority who appointed that member shall appoint a new member for the balance of the departing member's term.~~

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

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

~~(7) In performing its duties, the clean energy development board may utilize the legal and technical resources of the department of public service or, alternatively, may utilize reasonable amounts from the clean energy~~

~~development fund to retain qualified private legal and technical service providers.~~ The department of public service shall provide the clean energy development board ~~and its fund manager~~ with administrative services.

~~(8)~~(7) The ~~clean energy development board~~ department shall perform each of the following:

(A) By January 15 of each year, ~~commencing in 2010,~~ provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce and economic development a report for the fiscal year ending the preceding June 30 detailing the activities undertaken, the revenues collected, and the expenditures made under this subchapter.

(B) Develop, and submit to the clean energy development board for review and approval, a five-year strategic plan and an annual program plan, both of which shall be developed with input from a public stakeholder process and shall be consistent with state energy planning principles.

(C) Develop, and submit to the clean energy development board for review and approval, an annual operating budget.

(D) Develop, and submit to the clean energy development board for review and approval, proposed program designs to facilitate clean energy market and project development (including use of financial assistance, investments, competitive solicitations, technical assistance, and other incentive programs and strategies). Prior to any approval of a new program or of a substantial modification to a previously approved program of the clean energy development fund, the department of public service shall publish online the proposed program or modification, shall provide an opportunity for public comment of no less than 30 days, and shall provide to the clean energy development board copies of all comments received on the proposed program or modification. For the purpose of this subdivision (D), "substantial modification" shall include a change to a program's application criteria or application deadlines and shall include any change to a program if advance knowledge of the change could unfairly benefit one applicant over another applicant. For the purpose of 3 V.S.A. § 831(b) (initiating rulemaking on request), a new program or substantial modification of a previously approved program shall be treated as if it were an existing practice or procedure.

~~(9)~~(8) At least ~~quarterly~~ annually, the clean energy development board and the commissioner or designee jointly shall hold a public meeting to review and discuss the status of the fund, fund projects, the performance of the fund manager, any reports, information, or inquiries submitted by the fund manager or the public, and any additional matters ~~the clean energy development board deems they deem~~ necessary to fulfill ~~its~~ their obligations under this section.

~~(10) The clean energy development board shall administer and is authorized to expend monies from the clean energy development fund in accordance with this section.~~

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

(g) Bonds. The commissioner of public service, in consultation with the clean energy development board, may explore use of the fund to establish one or more loan-loss reserve funds to back issuance of bonds by the state treasurer otherwise authorized by law, including clean renewable energy bonds, that support the purposes of the fund.

(h) ARRA funds. All American Recovery and Reinvestment Act (ARRA) funds described in section 6524 of this title shall be disbursed, administered, and accounted for in a manner that ensures rapid deployment of the funds and is consistent with all applicable requirements of ARRA, including requirements for administration of funds received and for timeliness, energy savings, matching, transparency, and accountability. These funds shall be expended for the following categories listed in this subsection, provided that no single project directly or indirectly receives a grant in more than one of these categories. ~~The~~ After consultation with the clean energy development board, the commissioner of public service shall have discretion to use non-ARRA moneys within the fund to support all or a portion of these categories and shall direct any ARRA moneys for which non-ARRA moneys have been substituted to the support of other eligible projects, programs, or activities under ARRA and this section.

\* \* \*

(4) \$2 million for a public-serving institution efficiency and renewable energy program that may include grants and loans and create a revolving loan fund. For the purpose of this subsection, “public-serving institution” means government buildings and nonprofit public and private universities, colleges, and hospitals. In this program, awards shall be made through a competitive bid process. ~~On or before January 15, 2011, the clean energy development board shall report to the general assembly on the status of this program, including each award made and, for each such award, the expected energy savings or generation and the actual energy savings or generation achieved.~~

\* \* \*

(8) Concerning the funds authorized for use in subdivisions (4)–(7) of this subsection:

(A) To the extent permissible under ARRA, up to five percent may be spent for administration of the funds received.

(B) In the event that the ~~clean energy development board~~ commissioner of public service determines that a recipient of such funds has insufficient eligible projects, programs, or activities to fully utilize the authorized funds, then after consultation with the clean energy development board, the commissioner shall have discretion to reallocate the balance to other eligible projects, programs, or activities under this section.

(9) The ~~clean energy development board~~ commissioner of public service is authorized, to the extent allowable under ARRA, to utilize up to 10 percent of ARRA funds received for the purpose of administration. The ~~board~~ commissioner shall allocate a portion of the amount utilized for administration to retain permanent, temporary, or limited service positions or contractors and the remaining portion to the oversight of specific projects receiving ARRA funding ~~through the board~~ pursuant to section 6524 of this title.

(i) Rules. The department and the clean energy development board each may adopt rules pursuant to 3 V.S.A. chapter 25 to carry out its functions under this section. ~~The board and~~ shall consult with ~~the commissioner of public service~~ each other either before or during the rulemaking process.

~~(j) Governor disapproval. The governor shall have the authority within 30 days of approval or adoption to disapprove a project, program, or other activity approved by the clean energy development board if the source of the funds is ARRA; and any rules adopted under subsection (i) of this section. The governor may at any time waive his or her authority to disapprove any project, program, or other activity or rule under this subsection.~~

Thirteenth: By adding a new section to be numbered Sec. 20k to read as follows:

Sec. 20k. CLEAN ENERGY DEVELOPMENT BOARD; TRANSITION; TERM EXPIRATION; NEW APPOINTMENTS

(a) The terms of all members of the clean energy development board under 10 V.S.A. § 6523 appointed prior to the effective date of this section shall expire 44 days after such effective date.

(b) No later than 30 days after the effective date of this section, the appointing authorities under Sec. 20j of this act, 10 V.S.A. § 6523(e)(4), shall appoint the members of the clean energy development board created by Sec. 20j, 10 V.S.A. § 6523(e)(3). The terms of the members so appointed shall commence on the 45th day following the effective date of this section. The appointing authorities may appoint members of the clean energy development board as it existed prior to the effective date of this section. The provisions of

10 V.S.A. § 6523(e)(3)(B) (board members; prohibition; financial benefits) shall apply only to members of the clean energy development board appointed to terms commencing on the 45th day after such effective date.

(c) With respect to the clean energy development fund established under 10 V.S.A. § 6523, as of the 45th day following the effective date of this section:

(1) The department of public service shall be the successor to the clean energy development board as it existed on the 44th day after the effective date of this act, and any legal obligations incurred by the clean energy development board as of such 44th day shall become legal obligations of the department of public service.

(2) The clean energy development board shall exercise prospectively such functions and authority as this act confers on that board.

Fourteenth: By adding a new section to be numbered Sec. 20l to read as follows:

Sec. 20l. 10 V.S.A. § 6524 is amended to read:

§ 6524. ARRA ENERGY MONEYS

The expenditure of each of the following shall be subject to the direction and approval of the commissioner of public service, after consultation with the clean energy development board established under subdivision ~~6523(e)(1)~~ 6523(e)(4) of this title, and shall be made in accordance with subdivisions 6523(d)(1)(expenditures authorized), ~~(e)(3)(quorum), (e)(4)(appointments; recusal), (e)(5)(compensation), (e)(7)(assistance, administrative support), and (e)(8)(A)(reporting)~~ and subsections 6523(f)(fund manager), (h)(ARRA funds), and (i)(rules), and (j)(governor disapproval) of this title and applicable federal law and regulations:

(1) The amount of \$21,999,000.00 in funds received by the state under the appropriation contained in the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, to the state energy program authorized under 42 U.S.C. § 6321 et seq.

(2) The amount of \$9,593,500.00 received by the state under ARRA from the United States Department of Energy through the energy efficiency and conservation block grant program.

Fifteenth: By adding a new section to be numbered Sec. 20m to read as follows:

Sec. 20m. RECODIFICATION; REDESIGNATION

(a) 10 V.S.A. §§ 6523 and 6524 are recodified respectively as 30 V.S.A. §§ 8015 and 8016. The office of legislative council shall revise accordingly any references to these statutes contained in the Vermont Statutes Annotated. Any references in session law to these statutes as previously codified shall be deemed to refer to the statutes as recodified by this act.

(b) Within 30 V.S.A. chapter 89 (renewable energy programs):

(1) §§ 8001–8014 shall be within subchapter 1 and designated to read:

Subchapter 1. General Provisions

(2) §§ 8015–8016 shall be within subchapter 2 and designated to read:

Subchapter 2. Clean Energy Development Fund

Sixteenth: By adding a new section to be numbered Sec. 20n to read as follows:

\* \* \* Cost Allocation \* \* \*

Sec. 20n. 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:

(i) to assist the board or department in any proceeding listed in subsection (b) of this section; ~~and~~

(ii) to monitor compliance with any formal opinion or order of the board; ~~and~~

(iii) in proceedings under section 248 of this title, to assist other state agencies that are named parties to the proceeding where the board or department determines that they are essential to a full consideration of the petition, or for the purpose of monitoring compliance with an order resulting from such a petition; ~~and~~

(iv) in addition to the above, in proceedings under subsection 248(h) of this title, by contract with the regional planning commission of the region or regions affected by a proposed facility, to assist in determining conformance with local and regional plans and to obtain the commissions data, analysis and recommendations on the economic, environmental, historic, or other impact of the proposed facility in the region; and

---

(v) to assist in monitoring the ongoing and future reliability and the postclosure activities of any nuclear generating plant within the state. For the purpose of this subdivision, "postclosure activities" includes planning for and implementation of any action within the state's jurisdiction that shall or will occur when the plant permanently ceases generating electricity.

\* \* \*

(b) Proceedings, including appeals therefrom, for which additional personnel may be retained are:

\* \* \*

(12) proceedings at the United States Bankruptcy Court which involve Vermont utilities or which may affect the interests of the state of Vermont. Costs under this subdivision shall be charged to the involved ~~electric companies~~ utilities pursuant to subsection 21(a) of this title. In cases where the proceeding is generic in nature, the costs shall be allocated to ~~electric companies~~ utilities in proportion to the benefits sought for the customers of such companies from such advocacy;

\* \* \*

(14) proceedings before the Federal Communications Commission or related forums which involve a company that owns a cable television system holding a certificate of public good and delivering services in Vermont or which may affect the interests of the state of Vermont. Costs under this subdivision shall be charged to the company pursuant to subsection 21(a) of this title. In cases where the proceeding is generic in nature, the costs shall be allocated to companies in proportion to the benefits sought for their customers from such advocacy;

(15) proceedings before any state or federal court concerning a company holding or a facility subject to a certificate issued under this title if the proceedings may affect the interests of the state of Vermont. Costs under this subdivision (15) shall be charged to the involved company pursuant to subsection 21(a) of this title. In cases where the proceeding is generic in nature, the costs shall be allocated to companies in proportion to the benefits sought for their customers from such advocacy.

Seventeenth: By adding a new section to be numbered Sec. 20o to read as follows:

Sec. 20o. 30 V.S.A. § 21 is amended to read:

§ 21. PARTICULAR PROCEEDINGS; ASSESSMENT OF COSTS

(a) The board, 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. Nothing in this section shall confer authority on the board to select or decide the personnel, the expenses of whom are being allocated, unless such personnel are retained by the board. 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, 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, the department, or the agency of natural resources may reasonably direct.

\* \* \*

(f) With the approval of the governor, the department of public service may allocate the expense incurred under 10 V.S.A. § 7063 in compensating members and alternate members of the commission among the generators of low-level radioactive waste in the state. Any such allocation shall be in proportion to the volume of waste generated by each such generator.

(g) The board, or the department with the approval of the governor, may allocate such portion of expense incurred or authorized by it in compensating persons retained pursuant to subdivision 20(a)(1)(v) of this title to the nuclear generating plant whose activities are being monitored.

(h) Under subsections (f) and (g) of this section, the manner of assessment and making payments shall be as provided in subsection (a) of this section. A generator or plant to which expense is allocated under subsection (f) or (g) of this section may petition the board in accordance with the procedures of subsection (a) of this section.

Eighteenth: By adding a new section to be numbered Sec. 20p to read as follows:

Sec. 20p. Sec. 5.012.2 of No. 192 of the Acts of the 2007 Adj. Sess. (2008), as amended by Sec. E.127.1 of No. 156 of the Acts of the 2009 Adj. Sess. (2010), 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 or resources to assist the general assembly;

(1) ~~in~~ In any legislative proceeding under or related to 30 V.S.A. § 248(e) or chapter 157 of Title 10; or

(2) With respect to any proceedings before any state or federal court concerning a nuclear generating plant in the state and related issues.

(b) ~~Consultants~~ Persons 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.

Nineteenth: By adding a new section to be numbered Sec. 20q to read as follows:

Sec. 20q. CODIFICATION

The office of legislative council shall codify, as 30 V.S.A. § 254a, the catchline and provisions of Sec. 5.012.2 of No. 192 of the Acts of the 2007 Adj. Sess. (2008), as amended by Sec. E.127.1 of No. 156 of the Acts of the 2009 Adj. Sess. (2010) and this act.

Twentieth: By adding a new section to be numbered Sec. 20r to read as follows:

\* \* \* Texas–Vermont Compact \* \* \*

Sec. 20r. 10 V.S.A. § 7062 is amended to read:

§ 7062. ~~MEMBER OF THE~~ COMMISSION MEMBERSHIP

The governor shall appoint ~~a person~~ one or more persons with relevant knowledge and experience to represent the state on the commission established by Article III of the compact. The governor may appoint an alternate for ~~the~~

each commission member appointed under this section. ~~The~~ Each commission member and alternate, if appointed, shall serve at the pleasure of the governor.

Twenty-first: By adding a new section to be numbered Sec. 20s to read as follows:

Sec. 20s. 10 V.S.A. § 7063 is amended to read:

§ 7063. COMPENSATION OF ~~THE COMMISSION MEMBER~~ MEMBERS;  
REPORT

~~The~~ Each commission member and alternate ~~are~~ is entitled to compensation at ~~the~~ a rate established ~~under 32 V.S.A. § 1010~~ by the governor, and for reimbursement for actual and necessary expenses incurred in the performance of their duties. If a state employee is appointed as a commission member or an alternate, that state employee is not entitled to ~~per diem~~ compensation in addition to such employee's regular pay. At least annually by December 31, commission members and alternates appointed under this section shall report to the governor and the commissioner of public service on their activities conducted in representing the state on the commission. The report shall include an itemization of compensation paid and expenses incurred. Compensation and expenses of commission members and alternates shall be included in the annual budget of the department of public service and shall be specifically identified in the budget report filed pursuant to 32 V.S.A. §§ 306 and 307.

Twenty-second: In Sec. 21 (effective dates), in subsection (b) (sections effective on passage), at the end of the subsection, by inserting:

(5) Secs. 20h (business solar energy tax credits), 20i (grant in lieu of credit; tax treatment), and 20k (clean energy development; transition; term expiration; new appointments) of this act.

(6) In Sec. 20j (clean energy development fund) of this act: 10 V.S.A. § 6523(d)(3) and (4) (solar tax credit; grant in lieu of and general fund reimbursement) and, for the purpose of Sec. 20k of this act, 10 V.S.A. § 6523(e)(3) (clean energy development board) and (4) (appointments to clean energy development board).

(7) Secs. 20n–20s of this act.

Twenty-third: In Sec. 21 (effective dates), by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) The following shall take effect on July 1, 2011: Secs. 5 (new gas and electric purchases); 11 (baseload renewable power portfolio requirement); 18 (statutory revision); 19 (heating oil), except for 10 V.S.A. § 585(c) (heating oil; biodiesel requirement); and 20m (recodification; redesignation) of this act.

Twenty-fourth: In Sec. 21 (effective dates), at the end of the section, by inserting:

(e)(1) Secs. 18c (property-assessed clean energy districts) and 18j (underwriting criteria; adoption) of this act shall take effect on passage.

(2) Secs. 18a, 18b, and 18d–18i of this act shall take effect on January 1, 2012, except that in Sec. 18d, 24 V.S.A. § 3262(a) (written agreements) shall take effect on passage.

(f)(1) Sec. 19a (regulation of propane) of this act shall take effect on passage.

(2) A provision of an existing contract that specifies an amount for any fee that would otherwise be prohibited by Sec. 19a this act shall remain valid and enforceable until:

(A) the date the contract expires or April 1, 2012, whichever is sooner; or,

(B) in the case of the termination of service to an underground storage tank, the earlier of:

(i) 30 days after the date the contract expires, or as soon thereafter as weather and access to the tank allow; or

(ii) April 1, 2014.

(g) Except as provided under subdivision (b)(6) of this section, Secs. 20j (clean energy development fund) and 20l (ARRA energy moneys) of this act shall take effect 45 days after the act's passage.

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

Senator Nitka, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committees on Natural Resources and Energy and on Finance and be further amended as follows:

In Sec. 20d (working group on building energy disclosure,) in subsection (h) (reimbursement), in the first sentence, after the following: "who are not employees of the state of Vermont" by inserting the following: and whose participation is not supported by their employment or association

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

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

Thereupon, the question, Shall the proposal of amendment as recommended by the Committee on Natural Resources and Energy be amended as recommended by the Committee on Finance?, was agreed to.

Thereupon, the question, Shall the proposal of amendment as recommended by the Committee on Natural Resources and Energy, as amended be amended as recommended by the Committee on Appropriations?, was agreed to.

Thereupon, the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Natural Resources and Energy, as amended?, was agreed to.

Thereupon, pending the question, Shall the bill be read third time?, Senator Nitka moved to amend the Senate proposal of amendment as follows:

First: By adding a new section to be numbered Sec. 20t to read as follows:

Sec. 20t. 21 V.S.A. § 266(c) is amended to read:

(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 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~~ three months after final adoption and shall apply to construction commenced on and after the date they become effective. 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.

\* \* \*

Second: By adding a new section to be numbered Sec. 20u to read as follows:

Sec. 20u. 21 V.S.A. § 268(c) is amended to read:

(c) Revision and interpretation of energy standards. No later than January 1, 2011, the commissioner shall complete rulemaking to amend the commercial building energy standards to ensure that commercial building construction must be designed and constructed in a manner that complies with ANSI/ASHRAE/IESNA standard 90.1-2007 or the 2009 edition of the IECC, whichever provides the greatest level of energy savings. These amendments shall be effective ~~on~~ three months after final adoption and shall apply to construction commenced on and after the date they become effective. At least every three years after January 1, 2011, the commissioner of public service shall amend and update the CBES by means of administrative rules adopted in accordance with 3 V.S.A. chapter 25. The commissioner shall ensure that appropriate revisions are made promptly after the issuance of updated standards for commercial construction under the IECC or ASHRAE/ANSI/IESNA standard 90.1, whichever provides the greatest level of energy savings. Prior to final adoption of each required revision of the CBES, the department of public service shall convene an advisory committee to include one or more mortgage lenders; builders; building designers; architects; civil, mechanical, and electrical engineers; utility representatives; and other persons with experience and expertise, such as consumer advocates and energy conservation experts. The advisory committee may provide the commissioner of public service with additional recommendations for revision of the CBES.

\* \* \*

Third: In Sec. 21 (effective dates), in subsection (b) (sections effective on passage), at the end of the subsection, by inserting:

(8) Secs. 20t (revision and interpretation of residential building energy standards) and 20u (revision and interpretation of commercial building energy standards) of this act.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read third time?, Senator Ashe moved to amend the Senate proposal of amendment in Sec. 1, 30 V.S.A. § 219a (self-generation and net metering), in subdivision (h)(1)(K), by adding a new subdivision to be numbered subdivision (vii) to read:

(vii) Not later than 30 days after board approval of an electric company's first rate schedule proposed to comply with this subdivision (1)(K), the company shall offer the amount of the credit contained in such rate schedule to each solar net metering system placed into service prior to the date on which the company submitted the proposed schedule to the board. Each

system that accepts this offer shall receive the credit for not less than 10 years after the date of such acceptance, provided that the system remains in service, and regardless of any subsequent modification to the credit as contained in the company's rate schedules. Should an additional meter at the premises of the net metering customer be necessary to implement this subdivision (vii), the net metering customer shall bear the cost of the additional meter.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read third time?, Senator Illuzzi moved to amend the Senate proposal of amendment in Sec. 20b, 30 V.S.A. § 209(d)(7) (net capacity savings revenues) and (8) (revenues from carbon credits), in subdivision (7), at the end of the subdivision, by inserting:

Provision of an incentive under this subdivision (7) for a woody biomass heating system shall not be contingent on the making of other energy efficiency improvements at the property on which the system will be installed.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Thereupon, pending entry on the Calendar for action tomorrow, on motion of Senator Campbell, the rules were suspended and the bill 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.

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

**Rules Suspended; Bills Passed in Concurrence with Proposals of Amendment; Bills Messaged**

**H. 153.**

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

An act relating to human trafficking.

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

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

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

**H. 369.**

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

An act relating to health professionals regulated by the board of medical practice.

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

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

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

**H. 420.**

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

An act relating to the office of professional regulation.

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

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

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

**H. 438.**

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

An act relating to the department of banking, insurance, securities, and health care administration.

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

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

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

**H. 448.**

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

An act relating to contributions to the state and municipal employees' retirement systems.

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

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

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

**House Proposal of Amendment Concurred In****S. 90.**

House proposal of amendment to Senate bill entitled:

An act relating to respectful language in state statutes in referring to people with disabilities.

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. RESPECTFUL LANGUAGE STUDY**

(a) The agency of human services shall convene a working group to recommend guidelines for using respectful language when referring to people with disabilities. In convening the working group, the agency shall designate at least one employee of the agency to serve on the working group and shall invite the participation of two representatives from the Vermont coalition for disability rights, two representatives from Green Mountain self-advocates, one representative from the Vermont center for independent living, one representative from Vermont psychiatric survivors, one representative from the human rights commission, one representative from the disability law project, one representative from disability rights Vermont, and two people appointed by the governor, at least one of whom shall be a high school student. The agency shall provide administrative services to the working group. In preparing its recommendations, the working group shall:

(1) identify words that should not be used in Vermont statutes, regulations, and policies and suggest in their place words that reflect positive views of people with disabilities;

(2) avoid using any language that changes the meaning or intent of state statutes;

(3) identify specific statutes that should be addressed by the general assembly;

(4) select wording that does not conflict with federal law; and

(5) recommend guidelines to support state government agencies and departments to use respectful language.

(b) By November 1, 2011, the working group shall report to the house committees on government operations and on human services and the senate committees on government operations and on health and welfare the group's findings and recommendations, including any recommended legislation to address its findings and recommendations.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

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

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

#### **S. 94.**

House proposal of amendment to Senate bill entitled:

An act relating to miscellaneous amendments to the motor vehicle laws.

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:

\* \* \* Dealer Records Custodian \* \* \*

Sec. 1. 23 V.S.A. § 466 is amended to read:

#### § 466. RECORDS; CUSTODIAN

(a) On a form prescribed or approved by the commissioner, every licensed dealer shall maintain and retain for six years a record containing the following information, which shall be open to inspection by any law enforcement officer or motor vehicle inspector or other agent of the commissioner during reasonable business hours:

(1) Every motor vehicle which is bought, sold, or exchanged by the licensee or received or accepted by the licensee for sale or exchange;

(2) Every motor vehicle which is bought or otherwise acquired and dismantled by the licensee;

(3) The name and address of the person from whom such motor vehicle was purchased or acquired, the date thereof, name and address of the person to whom any such motor vehicle was sold or otherwise disposed of and the date thereof, a sufficient description of every such motor vehicle by name and identifying numbers thereon to identify the same;

(4) If the motor vehicle is sold or otherwise transferred to a consumer, the cash price. For purposes of this section, "consumer" shall be as defined in ~~subsection 2451a(a) of Title 9 V.S.A. § 2451a(a)~~ and "cash price" shall be as defined in ~~subdivision 2351(6) of Title 9 V.S.A. § 2351(6)~~.

(b) Every licensed dealer shall designate a custodian of documents who shall have primary responsibility for administration of documents required to be maintained under this title. In the absence of the designated custodian, the dealer shall have an ongoing duty to make such records available for inspection by any law enforcement officer or motor vehicle inspector or other agent of the commissioner during reasonable business hours.

\* \* \* Surrender of License or Registration \* \* \*

Sec. 2. 23 V.S.A. § 204 is amended to read:

§ 204. ~~PROCEDURE FOR REVOCATION~~ SURRENDER OF LICENSE OR REGISTRATION

(a) A person whose license to operate a motor vehicle, nondriver identification card, or motor vehicle registration has been issued in error ~~or is suspended or revoked by the commissioner under the provisions of this title~~ shall surrender forthwith his or her license or registration upon demand of the commissioner or his or her authorized inspector or agent. The demand shall be made in person or by notice in writing sent by first class mail to the last known address of the person.

(b) The commissioner or his or her authorized inspector or agent, and all enforcement officers are authorized to take possession of any certificate of title, nondriver identification card, registration, or license issued by this or any other jurisdiction, which has been revoked, canceled, or suspended, or which is fictitious, stolen, or altered.

\* \* \*

\* \* \* Vanity and Other Special Plates \* \* \*

Sec. 3. 23 V.S.A. § 304 is amended to read:

§ 304. REGISTRATION CERTIFICATES; NUMBER PLATES;  
VANITY AND OTHER SPECIAL PLATES

\* \* \*

(b) The authority to issue ~~special~~ vanity motor vehicle number plates or ~~receive applications or petitions for~~ special number plates for safety organizations and service organizations shall reside with the commissioner. Determination of compliance with the criteria contained in this ~~subsection~~ section shall be within the discretion of the commissioner. Series of number plates for safety and service organizations which are authorized by the commissioner shall be issued in order of approval, subject to the operating considerations in the department as determined by the commissioner. The commissioner shall issue vanity and special organization number plates ~~marked with initials, letters, or combination of numerals and letters,~~ in the following manner:

(1) ~~Except as otherwise provided,~~ Vanity plates. Subject to the restrictions of this section, vanity plates shall be issued at the request of the registrant of any motor vehicle, a vehicle registered at the pleasure car rate or of a truck registered for less than 26,001 pounds (but excluding trucks registered under the International Registration Plan) upon application and upon payment of an annual fee of \$38.00 in addition to the annual fee for registration. He or she may The commissioner shall not issue two sets of ~~special number~~ plates bearing the same initials or letters unless the plates also contain a distinguishing number. ~~Special number~~ Vanity plates are subject to reassignment if not renewed within 60 days of expiration of the registration.

(2) Special organization plates.

(A) For the purposes of this ~~subdivision,~~ “safety section:

(i) ~~“Safety organizations” shall include groups which have at least 100 in-state members in good standing and are groups that provide police and fire protection, rescue squads, the Vermont national guard, together with those organizations required to respond to public emergencies. It shall include, and amateur radio operators licensed by the U.S. Federal Communications Commission. For purposes of this subdivision, To qualify for a special organization plate, safety organizations must have at least 100 in-state members in good standing.~~

~~(ii)~~ “Service organization” includes congressionally chartered or noncongressionally chartered United States military service veterans’ groups, and any group which:

~~(i)~~(I) has as a primary purpose, service to the community through specific programs for the improvement of public health, education, or environmental awareness and conservation, and ~~are~~ is not limited to social activities;

~~(ii)~~(II) has nonprofit status under Section 501(c)(3) or (10) of the United States Internal Revenue Code, as amended;

~~(iii)~~(III) is registered as a nonprofit corporation with the office of the secretary of state; and

~~(iv)~~(IV) except for a military veterans group, has at least 100 in-state in-state members in good standing. “Service organization” also includes congressionally chartered and noncongressionally chartered United States military service veterans groups.

~~(A) At the request of the leader (B) The officer of a safety organization or service organization, upon application and payment of a fee of \$15.00 for each set of plates in addition to the annual fee for registration, may apply to the commissioner to approve special plates indicating membership in one of the “safety organizations” or “service organizations” may be issued to registrants of vehicles registered at the pleasure car rate and of trucks registered for less than 26,001 pounds and excluding vehicles registered under the International Registration Plan, who are members of these organizations. The applicant must provide a written statement from the appropriate official of the organization, authorizing the issuance of the plates a qualifying organization to be issued to organization members for a \$15.00 special fee for each set of plates in addition to the annual fee for registration. The application shall include designation of an officer or member to serve as the principal contact with the department and a distinctive name or emblem or both for use on the proposed special plate. The name and emblem shall not be objectively obscene or confusing to the general public and shall not promote, advertise, or endorse a product, brand, or service provided for sale. The organization’s name and emblem must not infringe on or violate a trademark, trade name, service mark, copyright, or other proprietary or property right, and the organization must have the right to use the name and emblem. After consulting with the principal contact, the commissioner shall determine the design of the special plate on the basis that the primary purpose of motor vehicle number plates is vehicle identification. An organization may have only one design, regardless of the number of individual organizational units, squads,~~

or departments within the state that may conduct the same or substantially similar activities.

~~(B) At the time that an organization requests the plates, it~~ (C) After the plate design is finalized and an officer or the principal contact provides the commissioner a written statement authorizing issuance of the plates, the organization shall deposit \$2,000.00 with the commissioner. Of this deposit, \$500.00 shall be retained by the department to recover costs of developing the organization plate. Notwithstanding 32 V.S.A. § 502, the commissioner may charge the actual costs of production of the plates against the fees collected and the balance shall be deposited in the transportation fund. Upon application, special plates shall be issued to a registrant of a vehicle registered at the pleasure car rate or of a truck registered for less than 26,001 pounds (but excluding trucks registered under the International Registration Plan) who furnishes the commissioner satisfactory proof that he or she is a member of an organization that has satisfied the requirements of this subdivision (b)(2). For each of the first 100 applicants to whom sets of plates are issued, the \$15.00 special plate fee shall not be collected and shall be subtracted from the balance of this the deposit shall be deemed to be the safety organization or service organization special plate fee for each authorized applicant. Of this deposit, \$500.00 shall be retained by the department to recover costs of developing the organization plate. When the ~~initial deposit of \$1,500.00~~ balance of the deposit is depleted, applicants shall be required to pay the \$15.00 fee as provided for in subdivision ~~(1)(2)(B)~~ of this subsection. ~~Notwithstanding 32 V.S.A. § 502, the commissioner may charge the actual costs of production of the plates against the fees collected and shall remit the balance to the transportation fund.~~ No organization shall charge its members any additional fee or premium charge for the authorization, right, or privilege to display these special number plates. ~~This provision shall not prevent, but~~ any organization ~~from recovering~~ may recover up to \$1,500.00 from applicants for the special plates.

~~(C) After consulting with representatives of the safety or service organization, the commissioner shall determine the design of the special plates, on the basis that the primary purpose of motor vehicle number plates is vehicle identification. An organization applying for a special plate under this subsection shall present the commissioner with a name and emblem that is not obscene, offensive or confusing to the general public and does not promote, advertise or endorse a product, brand, or service provided for sale, or promote any specific religious belief or political party. The organization's name and emblem must not infringe or violate trademarks, trade names, service marks, copyrights, or other proprietary or property rights and the organization must have the right to use the name and emblem. The organization shall designate~~

~~an officer or member to act as the principal contact and to submit a distinctive emblem for use on a special number plate, if authorized. An organization may have only one design, regardless of the number of individual organizational units within the state that may provide the same or substantially similar services. Nothing herein shall be construed as authorizing any individual squad, department, or unit to request a unique or specially designed plate different than the plate designed by the commissioner.~~

(D) When an individual's membership in a qualifying organization ceases or is terminated, the individual shall surrender any special registration plates issued under this subsection to the commissioner forthwith. However, a retired member of the Vermont national guard may ~~retain~~ renew or, upon payment of a \$10.00 fee, acquire, the special guard plates after notification of eligibility for retired pay has been received.

\* \* \*

(d) ~~Special Vanity or special organization~~ number plates, whether new or renewed, shall be issued in any combination or succession of numerals and letters, provided the total of the numbers and letters on any plate taken together does not exceed seven, and further provided the requested combination of letters and numerals does not duplicate or resemble a regular issue registration plate. The commissioner may adopt rules for the issuance of vanity or special organization number plates to ensure that all plates serve the primary purpose of vehicle identification. The commissioner may revoke any plate described in ~~subdivisions (1) through (7) of this subsection~~ and shall not issue ~~special number~~ plates with ~~the following combination~~ combinations of letters or numbers that objectively, in any language:

(1) ~~Combinations of letters or numbers with any connotation, in any language, that is~~ are vulgar, derogatory, profane, racial epithets, scatological, or obscene, or constitute racial or ethnic epithets, or are "fighting words" inherently likely to provoke violent reaction when addressed to an ordinary citizen;

(2) ~~Combinations of letters or numbers that connote, in any language, breast, genitalia, pubic area, or buttocks or relate to sexual or eliminatory functions. Additionally, "69" formats are prohibited unless used in combination with the vehicle make, for example, "69 CHEV.";~~

(3) ~~Combinations of letters or numbers that connote, in any language:~~

(A) ~~any illicit drug, narcotic, intoxicant, or related paraphernalia;~~

(B) ~~the sale, the user, or the purveyor of such substance;~~

~~(C) the physiological state produced by such a substance. refer to any intoxicant or drug; to the use, nonuse, distribution, or sale of an intoxicant or drug; or to a user, nonuser, or purveyor of an intoxicant or drug;~~

~~(4) Combinations of letters or numbers that refer, in any language, to a race, religion, color, deity, ethnic heritage, gender, gender identity, sexual orientation, or disability status, or political affiliation; provided, however, the commissioner shall not refuse a combination of letters or numbers that is a generally accepted reference to a race or ethnic heritage (for example, IRISH);~~

~~(5) Combinations of letters or numbers that suggest, in any language, a government or governmental agency;~~

~~(6) Combinations of letters or numbers that suggest, in any language, a privilege not given by law in this state; or~~

~~(7) Combinations of letters or numbers that form, in any language, a slang term, abbreviation, phonetic spelling, or mirror image of a word described in subdivisions (1) through (6) of this subsection.~~

\* \* \*

(j) The commissioner of motor vehicles shall, upon proper application, issue special plates to Vermont veterans, as defined in 38 U.S.C. § 101(2), and to members of the United States Armed Forces, as defined in 38 U.S.C. § 101(10), for use ~~only~~ on vehicles registered at the pleasure car rate, on vehicles registered at the motorcycle rate, and on trucks registered for less than 26,001 pounds and excluding vehicles registered under the International Registration Plan. The type and style of the ~~veterans'~~ plate shall be determined by the commissioner, except that an American flag, or a veteran- or military-related emblem selected by the commissioner and the Vermont office of veterans' affairs shall appear on one side of the plate. At a minimum, emblems shall be available to recognize recipients of the Purple Heart, Pearl Harbor survivors, former prisoners of war, and disabled veterans. An applicant shall apply on a form prescribed by the commissioner, and the applicant's ~~status both as a veteran and~~ eligibility as a member of one of the groups recognized will be certified by the office of veterans' affairs. The plates shall be reissued only to the original holder of the plates or the surviving spouse. The commissioner may adopt rules to implement the provisions of this subsection. Except for new or renewed registrations, applications for the issuance of ~~veterans'~~ plates under this subsection shall be processed in the order received by the department subject to normal workflow considerations. The costs associated with developing new emblems shall be borne by the department of motor vehicles.

\* \* \*

## \* \* \* Replacement Number Plates \* \* \*

Sec. 4. 23 V.S.A. § 514 is amended to read:

## § 514. REPLACEMENT NUMBER PLATES

\* \* \*

(b) Any replacement number plate shall be issued at a fee of \$10.00. However, if the commissioner, in his or her discretion, determines that a plate has become illegible as a result of deficiencies in the manufacturing process or by use of faulty materials, the replacement fee shall be waived.

## \* \* \* Issuance of Licenses to Foreign Citizens \* \* \*

Sec. 5. 23 V.S.A. § 603 is amended to read:

## § 603. APPLICATION FOR AND ISSUANCE OF LICENSE

\* \* \*

(d) In addition to any other requirement of law or rule, a citizen of a foreign country shall produce his or her passport and visa, alien registration receipt card (green card), or other proof of legal presence for inspection and copying as a part of the application process for an operator license, junior operator license, or learner permit. Notwithstanding any other law or rule to the contrary, an operator license, junior operator license, or learner permit issued to a citizen of a foreign country shall expire coincidentally with his or her authorized duration of stay. ~~A license or permit issued under this section may not be issued to be valid for a period of less than 180 days.~~

## \* \* \* Penalty for Failure to Maintain Financial Responsibility \* \* \*

Sec. 6. 23 V.S.A. § 800 is amended to read:

## § 800. MAINTENANCE OF FINANCIAL RESPONSIBILITY

(a) No owner ~~of a motor vehicle required to be registered,~~ or operator ~~of a motor vehicle~~ required to be licensed or issued a learner's permit, shall operate or permit the operation of the vehicle upon the highways of the state without having in effect an automobile liability policy or bond in the amounts of at least \$25,000.00 for one person and \$50,000.00 for two or more persons killed or injured and \$10,000.00 for damages to property in any one accident. In lieu thereof, evidence of self-insurance in the amount of \$115,000.00 must be filed with the commissioner of motor vehicles. ~~Such financial responsibility, and~~ shall be maintained and evidenced in a form prescribed by the commissioner. The commissioner may require that evidence of financial responsibility be produced before motor vehicle inspections are performed pursuant to the requirements of section 1222 of this title.

(b) A person who violates this section shall be assessed a civil penalty of not ~~less than \$250.00 and not more than \$100.00~~ \$500.00, and such violation shall be a traffic violation within the meaning of chapter 24 of this title.

\* \* \* Proof of Financial Responsibility \* \* \*

Sec. 7. 23 V.S.A. § 801 is amended to read:

§ 801. PROOF OF FINANCIAL RESPONSIBILITY REQUIRED

(a) The commissioner shall require proof of financial responsibility to satisfy any claim for damages, by reason of personal injury to or the death of any person, of at least \$25,000.00 for one person and \$50,000.00 for two or more persons killed or injured and \$10,000.00 for damages to property in any one accident, as follows:

\* \* \*

(3) From the operator of a motor vehicle involved in an accident which has resulted in bodily injury or death to any person or whereby the motor vehicle then under his or her control or any other property is damaged in an aggregate amount to the extent of ~~\$1,000.00~~ \$3,000.00 or more, excepting, however;

(A) an operator furnishing the commissioner with satisfactory proof that a standard provisions automobile liability insurance policy, issued by an insurance company authorized to transact business in this state insuring the person against public liability and property damage, in the amounts required under this section with respect to proof of financial responsibility, was in effect at the time of the accident; or

(B) ~~if the operator was~~ a nonresident operator holding a valid license issued by the state of his or her residence at the time of the accident, who furnishes satisfactory proof, in the form of a certificate issued by an insurance company authorized to transact business in the state of his or her residence, when accompanied by a power of attorney authorizing the commissioner to accept service on its behalf of notice or process in any action upon the policy arising out of the accident, certifying that insurance covering the legal liability of the operator to satisfy any claim or claims for damage to person or property, in an amount equal to the amounts required under this section with respect to proof of financial responsibility, was in effect at the time of the accident.

\* \* \* Civil Suspensions for DUI Violations \* \* \*

Sec. 8. 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 chapter:

\* \* \*

(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, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, 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.

(b) Form of officer's affidavit. A law enforcement officer's affidavit in support of a suspension under this section shall be in a standardized form for use throughout the state and shall be sufficient if it contains the following statements:

\* \* \*

(5) The officer obtained an evidentiary test (noting the time and date the test was taken) and the test indicated that the person's alcohol concentration was 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, or the person refused to submit to an evidentiary test.

\* \* \*

(c) Notice of suspension. On behalf of the commissioner of motor vehicles, a law enforcement officer requesting or directing the administration of an evidentiary test shall serve notice of intention to suspend and of suspension on a person who refuses to submit to an evidentiary test or on a person who submits to a test the results of which indicate that the person's alcohol concentration was 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, at the time of operating, attempting to operate or being in actual physical control of a vehicle in violation of section 1201 of this title. The notice shall be signed by the law enforcement officer requesting

~~the test. The notice shall also serve as a temporary operator's license and shall be valid until the effective date of suspension indicated on the notice. At the time the notice is given to the person, the person shall surrender, and the law enforcement officer shall take possession and custody of, the person's license or permit and forward it to the commissioner. A copy of the notice shall be sent to the commissioner of motor vehicles and a copy shall be mailed or given to the defendant within three business days of the date the officer receives the results of the test. If mailed, the notice is deemed received three days after mailing to the address provided by the defendant to the law enforcement officer. A copy of the affidavit of the law enforcement officer shall also be mailed first class mail or given to the defendant within seven days of the date of notice.~~

\* \* \*

(h) Final hearing.

(1) If the defendant requests a hearing on the merits, the court shall schedule a final hearing on the merits to be held within 21 days of the date of the preliminary hearing. In no event may a final hearing occur more than 42 days after the date of the alleged offense without the consent of the defendant or for good cause shown. The final hearing may only be continued by the consent of the defendant or for good cause shown. The issues at the final hearing shall be limited to the following:

\* \* \*

(D) whether the test was taken and the test results indicated that the person's alcohol concentration was 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, at the time of operating, attempting to operate or being in actual physical control of a vehicle in violation of section 1201 of this title, whether the testing methods used were valid and reliable and whether the test results were accurate and accurately evaluated. Evidence that the test was taken and evaluated in compliance with rules adopted by the department of health shall be prima facie evidence that the testing methods used were valid and reliable and that the test results are accurate and were accurately evaluated;

\* \* \*

(i) Finding by the court. The court shall electronically forward a report of the hearing to the commissioner. Upon a finding by the court that the law enforcement 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, or upon a finding by the court that the law enforcement 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, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, at the time the person was operating, attempting to operate or in actual physical control, the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle shall be suspended or shall remain suspended for the required term and until the person complies with section 1209a of this title. Upon a finding in favor of the person, the commissioner shall cause the suspension to be canceled and removed from the record, without payment of any fee.

\* \* \*

(n) Presumption. In a proceeding under this section, if ~~there was~~ at any time within two hours of operating, attempting to operate, or being in actual physical control of a vehicle a person had an alcohol concentration of 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, it shall be a rebuttable presumption that the person's alcohol concentration was 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, respectively, at the time of operating, attempting to operate, or being in actual physical control.

\* \* \*

(p) Suspensions to run concurrently. Suspensions imposed under this section or any comparable statute of any other jurisdiction and sections 1206 ~~and~~, 1208, and 1216 of this title or any comparable statutes of any other jurisdiction, or any suspension resulting from a conviction for a violation of section 1091 of this title from the same incident, shall run concurrently and a person shall receive credit for any elapsed period of a suspension served in Vermont against a later suspension imposed in this state. In order for suspension credit to be available against a later suspension, the suspension issued under this section must appear and remain on the individual's motor vehicle record.

\* \* \*

~~(s) A person who has received a notice of suspension under this section shall not apply for or receive a duplicate operator's license while the matter is pending. A person who violates this subsection shall be fined not more than \$500.00. [Repealed.]~~

\* \* \*

\* \* \* Civil and Criminal Suspensions – Same Incident \* \* \*

Sec. 9. 23 V.S.A. § 1216 is amended to read:

§ 1216. PERSONS UNDER 21; ALCOHOL CONCENTRATION OF 0.02 OR MORE

\* \* \*

(i) Suspensions imposed under this section or any comparable statute of any other jurisdiction shall run concurrently with suspensions imposed under sections 1205, 1206, and 1208 of this title or any comparable statutes of any other jurisdiction or with any suspension resulting from a conviction for a violation of section 1091 of this title from the same incident, and a person shall receive credit for any elapsed period of a suspension served in Vermont against a later suspension imposed in this state. In order for suspension credit to be available against a later suspension, the suspension issued under this section must appear and remain on the individual's motor vehicle record.

\* \* \* Prohibition on Reaffixing Inspection Stickers \* \* \*

Sec. 10. 23 V.S.A. § 1223 is amended to read:

§ 1223. PROHIBITIONS

A person shall not affix or cause to be affixed to a motor vehicle, trailer, or semi-trailer a certification of inspection that was not assigned by an official inspection station to such motor vehicle, trailer, or semi-trailer. No person shall reaffix or cause to be reaffixed an official sticker once removed; instead, replacement stickers shall be affixed as prescribed by the rules for replacement sticker agents. A person shall not knowingly operate a motor vehicle, trailer, or semi-trailer to which a certification of inspection is affixed if the certification of inspection was not assigned by an official station to that vehicle, trailer, or semi-trailer.

\* \* \* Titling Exemptions \* \* \*

Sec. 11. 23 V.S.A. § 2012 is amended to read:

§ 2012. EXEMPTED VEHICLES

No certificate of title need be obtained for:

\* \* \*

(6) A motorcycle which has less than 300 cubic centimeters of engine displacement or a motorcycle powered by electricity with less than 20 kilowatts of engine power;

\* \* \*

Sec. 12. 23 V.S.A. § 3807 is amended to read:

§ 3807. EXEMPTED VESSELS, SNOWMOBILES, AND ALL-TERRAIN VEHICLES

No certificate of title need be obtained for:

- (1) any vessel under 16 feet in length;
- (2) any snowmobile or all-terrain vehicle of a model year prior to 2004 or that is more than 15 years old;

\* \* \*

\* \* \* Satisfaction and Release of Security Interests \* \* \*

Sec. 13. 23 V.S.A. § 2023 is amended to read:

§ 2023. TRANSFER OF INTEREST IN VEHICLE

(a) ¶ If an owner transfers his or her interest in a vehicle, other than by the creation of a security interest, he or she shall, at the time of delivery of the vehicle, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate or as the commissioner prescribes, and of the odometer reading or hubometer reading or clock meter reading of the vehicle at the time of delivery in the space provided therefor on the certificate, and cause the certificate and assignment to be mailed or delivered to the transferee or to the commissioner. Where title to a vehicle is in the name of more than one person, the nature of the ownership must be indicated by one of the following on the certificate of title:

- (1) TEN ENT (tenants by the entirety);
- (2) JTEN (joint tenants);
- (3) TEN COM (tenants in common);
- (4) PTNRS (partners); or
- (5) TOD (transfer on death).

(b) Upon request of the owner or transferee, a lienholder in possession of the certificate of title shall, unless the transfer was a breach of his or her security agreement, either deliver the certificate to the transferee for delivery to the commissioner or, upon receipt of notice from the transferee of the owner's assignment, the transferee's application for a new certificate, and the required

fee, mail or deliver ~~them~~ the certificate, application, and fee to the commissioner. The delivery of the certificate does not affect the rights of the lienholder under his or her security agreement. If a dealer accepts a vehicle with a preexisting security interest as part of the consideration for a sale or trade from the dealer, the dealer shall mail or otherwise tender payment to satisfy the security interest within five days of the sale or trade.

\* \* \*

(e) Notwithstanding other provisions of the law, whenever the estate of an individual who dies intestate consists principally of an automobile, the surviving spouse shall be deemed to be the owner of the motor vehicle and title to the same shall automatically and by virtue hereof pass to said surviving spouse. Registration and titling of the vehicle in the name of the surviving spouse shall be effected by payment of a transfer fee of \$7.00. This transaction is exempt from the provisions of the purchase and use tax on motor vehicles.

(1) Notwithstanding other provisions of the law, and except as provided in subdivision (2) of this subsection, whenever the estate of an individual consists in whole or in part of a motor vehicle, and the person's will or other testamentary document does not specifically address disposition of motor vehicles, the surviving spouse shall be deemed to be the owner of the motor vehicle and title to the motor vehicle shall automatically pass to the surviving spouse. Registration and title titling of the motor vehicle in the name of the surviving spouse shall be effected by payment of a transfer fee of \$7.00. This transaction is exempt from the provisions of the purchase and use tax on motor vehicles.

(2) This subsection shall apply to no more than two motor vehicles, and shall not apply if the motor vehicle is titled in the name of one or more persons other than the decedent and the surviving spouse.

\* \* \*

Sec. 14. 23 V.S.A. § 2045 is amended to read:

§ 2045. RELEASE OF SECURITY INTEREST

(a) Upon ~~the~~ satisfaction of a security interest in a vehicle for which the lienholder possesses the certificate of title ~~is in the possession of the lienholder, he or she the lienholder~~ shall, within ~~10~~ 15 business days after ~~demand and, in any event, within 30 days, a request for release of the security interest, fully~~ execute a release of ~~his or her~~ the security interest; in the space provided therefor on the certificate or as in the form the commissioner prescribes, and mail or deliver the certificate and release to the next lienholder named therein, or, if none, to the owner or any person ~~who delivers to the lienholder an authorization from~~ authorized by the owner to receive the certificate (hereafter,

“owner’s designee”). The owner or the owner’s designee, other than a dealer holding the vehicle for resale, shall promptly cause the certificate and release to be mailed or delivered to the commissioner, who shall release the lienholder’s rights on the certificate or issue a new certificate.

(b) ~~Upon the satisfaction of a the security interest in a vehicle for which of a subordinate lienholder who does not possess the certificate of title is in the possession of a prior lienholder, the subordinate lienholder whose security interest is satisfied shall, within 10 15 business days after demand and, in any event, within 30 days, a request for release of the security interest, fully execute a release in the form the commissioner prescribes and deliver the release to the owner or any person who delivers to the lienholder an authorization from the owner to receive it owner’s designee. The lienholder in possession of the certificate of title shall either deliver the certificate to the owner, or the person authorized by him, owner’s designee for delivery to the commissioner or, upon receipt of if the lienholder in possession receives the release, mail or deliver it with the certificate to the commissioner, who shall release the subordinate lienholder’s rights on the certificate or issue a new certificate. A subordinate lienholder whose security interest is fully satisfied but receives the certificate of title pursuant to subsection (a) of this section shall, within three business days of its receipt, mail or deliver the title to the owner or the owner’s designee.~~

(c) For purposes of subsections (a) and (b) of this section, a release not sent by electronic means is deemed fully executed when it is completed and placed in the United States mail postage prepaid or delivered to the person requesting the release as shown on the form so requesting it.

(d) A lienholder that fails to satisfy the requirements of subsection (a) or (b) of this section shall, upon written demand sent by certified mail, be liable to pay the owner or the owner’s designee \$25.00 per day for each day that the requirements of subsection (a) or (b) remain unsatisfied, up to a maximum of \$2,500.00, in addition to any other remedies that may be available at law or equity. If the lienholder fails to pay the amount owed under this subsection within 60 days following the written demand, the owner or the owner’s designee may bring a civil action and, if the lienholder is found to have violated subsection (a) or (b) of this section, the amount owed under this subsection shall be trebled, resulting in an award of up to \$7,500.00, and reasonable attorney’s fees and costs shall be awarded.

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\* \* \* Title-related Offenses \* \* \*

Sec. 15. 23 V.S.A. § 2083 is amended to read:

§ 2083. OTHER OFFENSES

(a) A person who:

(1) ~~With fraudulent intent, permits another, who~~ Knowing that another person is not entitled, to use or ~~have possession of~~ possess a certificate of title, knowingly permits that person to use or possess the certificate, shall be subject to the penalties prescribed in subdivision (5) of this subsection;

(2) ~~Willfully~~ Knowingly fails to mail or deliver a certificate of title or application for a certificate of title to the commissioner within 20 days after the transfer or creation or satisfaction of a security interest shall be subject to the penalties prescribed in subdivision (5) of this subsection;

(3) ~~Willfully~~ Knowingly fails to deliver to his or her transferee a certificate of title within 20 days after the transfer shall be subject to the penalties prescribed in subdivision (5) of this subsection;

(4) ~~Willfully~~ Knowingly and without authority signs a name other than his or her own on any title, or ~~inaccurately states or~~ knowingly alters or inaccurately states the chain of ownership or other information required on any title, or knowingly fails to return a certificate of title that has been fraudulently made, or knowingly has unauthorized possession of blank certificates of title or manufacturer's certificates of origin, shall be subject to the penalties prescribed in subdivision (5) of this subsection;

(5) ~~Willfully~~ Knowingly violates any provision of this chapter, except as provided in subdivision (6) of this subsection or section 2082 of this title, shall be fined not more than \$2,000.00, or imprisoned for not more than two years, or both; or

(6) ~~Willfully~~ Knowingly represents as his or her own, or sells or transfers a motor vehicle or vessel ~~on to~~ to which he or she does not hold legal title ~~to~~ or is not authorized ~~to sell or transfer the vehicle or vessel~~ by the titleholder to sell or transfer shall be fined not more than \$5,000.00, or imprisoned for not more than five years, or both, for each offense.

(b) ~~A~~ Absent a showing of a knowing failure to deliver as provided in subdivision (a)(3) of this section, a person shall not willfully fail who fails to deliver to his or her transferee a certificate of title within 10 days after the transfer. ~~A person who violates this subsection~~ commits a traffic violation and shall be assessed a civil penalty of not more than \$1,000.00.

## \* \* \* Taxable Cost Definition \* \* \*

Sec. 16. 32 V.S.A. § 8902 is amended to read:

§ 8902. DEFINITIONS

Unless otherwise expressly provided, the words and phrases used in this chapter shall be construed to mean:

\* \* \*

(5) “Taxable cost” means the purchase price as defined in subdivision (4) of this section or the taxable cost as determined under section 8907 of this title. For any purchaser who has paid tax on the purchase or use of a motor vehicle that was sold or traded by the purchaser or for which the purchaser received payment under a contract of insurance, the taxable cost of the replacement motor vehicle other than a leased vehicle shall exclude:

\* \* \*

(B) the amount received from the sale of a motor vehicle last registered in his or her name, the amount not to exceed the average book value of the same make, type, model, and year of manufacture as designated by the manufacturer and as shown in the Official Used Car Guide, National Automobile Dealers Association (New England edition), or any comparable publication, provided such sale occurs within three months of the taxable purchase. However, this three-month period shall be extended day-for-day for any time that a member of a guard unit or of the United States Armed Forces, as defined in 38 U.S.C. § 101(10), spends outside Vermont due to activation or deployment, and an additional 60 days following the person’s return from activation or deployment. Such amount shall be reported on forms supplied by the commissioner of motor vehicles;

\* \* \*

## \* \* \* Repeal of Zone Registration \* \* \*

Sec. 17. REPEAL

23 V.S.A. § 412a (zone registration) is repealed.

\* \* \* Renewal Notice for Nondriver Identification Cards \* \* \*

Sec. 18. 23 V.S.A. § 115 is amended to read:

§ 115. NONDRIVER IDENTIFICATION CARDS

(a) Any Vermont resident may make application to the commissioner and be issued an identification card which is attested by the commissioner as to true name, correct age, and any other identifying data as the commissioner may require which shall include, in the case of minor applicants, the written consent

of the applicant's parent, guardian, or other person standing in loco parentis. Every application for an identification card shall be signed by the applicant and shall contain such evidence of age and identity as the commissioner may require. The commissioner shall require payment of a fee of \$17.00 at the time application for an identification card is made.

(b) Every identification card shall expire, unless earlier canceled, on the fourth birthday of the applicant following the date of original issue, and may be renewed every four years upon payment of a \$20.00 fee. At least 30 days before an identification card will expire, the commissioner shall mail first class to the cardholder an application to renew the identification card.

\* \* \*

\* \* \* Record Retention and Record Formats \* \* \*

Sec. 19. 23 V.S.A. § 102(c) is amended to read:

(c) ~~The original records enumerated in subsection (a) of this section shall be maintained for two years and may thereafter be maintained on microfilm or by electronic imaging.~~ [Repealed.]

Sec. 20. 23 V.S.A. § 2027(c) is amended to read:

(c) The commissioner shall file and retain for five years every surrendered certificate of title, the file to be maintained so as to permit the tracing of title of the vehicle designated therein. ~~The original records shall be maintained for two years and may thereafter be maintained on microfilm.~~

Sec. 21. 23 V.S.A. § 3810(b) is amended to read:

(b)(1) The commissioner shall maintain at his or her central office, a record of all certificates of title issued by him or her:

(A) under a distinctive title number assigned to the vessel, snowmobile, or all-terrain vehicle;

(B) under the identification number of the vessel, snowmobile, or all-terrain vehicle;

(C) alphabetically, under the name of the owner; and, in the discretion of the commissioner, by any other method he or she determines.

(2) ~~The original records may be maintained on microfilm.~~ [Repealed.]

Sec. 22. 23 V.S.A. § 3820(c) is amended to read:

(c) The commissioner shall file and retain every surrendered certificate of title for five years. The file shall be maintained so as to permit the tracing of title of the vessel, snowmobile, or all-terrain vehicle designated. ~~The records may be maintained on microfilm.~~

\* \* \* Ignition Interlock Restricted Driver's Licenses; Fees \* \* \*

Sec. 23. 23 V.S.A. § 1213(a), (b), and (c) are added to read:

(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 section 1205(a)(2), 1206(a), or 1216(a)(1) of this title upon receipt of a \$125.00 application fee, 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 section 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. The renewal fee shall be \$125.00.

(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 section 1205(m), 1208(a), or 1216(a)(2) of this title upon receipt of a \$125.00 application fee, 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 section 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. The renewal fee shall be \$125.00.

(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 section 1205(m), 1208(b), or 1216(a)(2) of this title upon receipt of a \$125.00 application fee, 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 section 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. The renewal fee shall be \$125.00.

Sec. 24. REPEAL

23 V.S.A. § 1213(a), (b), and (c) within Sec. 9 of No. 126 of the Acts of the 2009 Adj. Sess. (2010) are repealed.

Sec. 25. EFFECTIVE DATES

(a) This section and Sec. 16 (taxable cost definition) of this act shall take effect on passage. Sec. 16 shall apply retroactively to October 1, 2009.

(b) Sec. 24 (repeal of ignition interlock subsections (a)–(c)) shall take effect on June 30, 2011.

(c) Sec. 5 (foreign citizen licenses) shall take effect on January 1, 2012.

(d) Secs. 8 (DUI civil suspension) and 9 (under age 21 civil violation) shall take effect on July 2, 2011.

(e) Sec. 18 (nondriver identification renewal) shall take effect on July 1, 2012.

(f) All other sections shall take effect on July 1, 2011.

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.

### **Rules Suspended; Bills on Notice Calendar for Immediate Consideration**

On motion of Senator Campbell, the rules were suspended, and the following bills, appearing on the Calendar for notice, were ordered to be brought up for immediate consideration:

**S. 30, S. 37, S. 73, S. 101, S. 105.**

### **House Proposal of Amendment Concurred In**

#### **S. 30.**

House proposal of amendment to Senate bill entitled:

An act relating to assault of a health care worker.

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. 13 V.S.A. § 1028 is amended to read:

§ 1028. ASSAULT OF LAW ENFORCEMENT OFFICER, FIREFIGHTER, ~~EMERGENCY ROOM PERSONNEL, OR~~ EMERGENCY MEDICAL PERSONNEL MEMBER, OR HEALTH CARE WORKER; ASSAULT WITH BODILY FLUIDS

(a) A person convicted of a simple or aggravated assault against a law enforcement officer, a firefighter, ~~emergency room personnel~~ a health care worker, or a member of emergency services medical personnel as defined in ~~subdivision 24 V.S.A. § 2651(6) of Title 24~~ while the officer, firefighter, health care worker, or emergency medical personnel member is performing a lawful duty, in addition to any other penalties imposed under sections 1023 and 1024 of this title, shall:

(1) For the first offense, be imprisoned not more than one year;

(2) For the second offense and subsequent offenses, be imprisoned not more than 10 years.

(b)(1) No person shall intentionally cause blood, vomitus, excrement, mucus, saliva, semen, or urine to come in contact with a ~~law enforcement officer~~ person designated in subsection (a) of this section while the ~~officer~~ person is performing a lawful duty.

(2) A person who violates this subsection shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

(c) In imposing a sentence under this section, the court shall take into consideration whether the defendant was a patient at the time of the offense

and had a psychiatric illness, the symptoms of which were exacerbated by the surrounding circumstances, irrespective of whether the illness constituted an affirmative defense to the charge.

(d) For purposes of this section:

(1) "Health care facility" shall have the same meaning as defined in 18 V.S.A. § 9432(8)

(2) "Health care worker" means an employee of a health care facility or a licensed physician who is on the medical staff of a health care facility who provides direct care to patients or who is part of a team-response to a patient or visitor incident involving real or potential violence.

## Sec. 2. LAW ENFORCEMENT ADVISORY BOARD

The law enforcement advisory board shall adopt a model policy to address enforcement of the criminal code as it relates to an assault of a health care worker while he or she is engaged in his or her official duties providing patient care.

## Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

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

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

#### **S. 37.**

House proposal of amendment to Senate bill entitled:

An act relating to expungement of a nonviolent misdemeanor criminal history record.

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. 13 V.S.A. chapter 230 is added to read:

### CHAPTER 230. EXPUNGEMENT AND SEALING OF CRIMINAL RECORDS

#### § 7601. DEFINITIONS

As used in this subchapter:

(1) "Court" means the criminal division of the superior court.

(2) “Charge or conviction record” means data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

(3) “Investigation or prosecution record” means all information documenting the investigation or prosecution of the case that is maintained by law enforcement, the prosecuting attorney, or the defense attorney.

(4) “Predicate offense” means a criminal offense that can be used to enhance a sentence levied for a later conviction, and includes operating a vehicle under the influence of intoxicating liquor or other substance in violation of 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and stalking in violation of section 1062 of this title.

(5) “Qualifying misdemeanor” means a misdemeanor offense which is not a listed crime as defined in subdivision 5301(7) of this title, an offense involving sexual exploitation of children in violation of chapter 64 of this title, an offense involving violation of a protection order in violation of section 1030 of this title, a prohibited act as defined in section 2632 of this title, or a predicate offense.

§ 7602. EXPUNGEMENT AND SEALING OF RECORD, POST-CONVICTION; PROCEDURE

(a) A person who was convicted of a qualifying misdemeanor or qualifying misdemeanors arising out of the same incident or occurrence may file a petition with the court requesting expungement of the charge or conviction record and sealing of the investigation or prosecution record related to the conviction. The state’s attorney or attorney general shall be the respondent in the matter.

(b) The court shall grant the petition without hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the court, and the court shall issue the petitioner a certificate and provide notice of the order in accordance with this section.

(c) The court shall grant the petition, after hearing, if all of the following conditions are met:

(1) At least 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction. If the person has successfully completed the terms and conditions of an indeterminate term of probation, the court may waive this 10-year wait period.

(2) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted of the qualifying misdemeanor.

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(3) Any restitution ordered by the court has been paid in full.

(4) In the totality of the circumstances, the court finds that expungement of the charge or conviction record and sealing of the investigation or prosecution record for the qualifying misdemeanor serve the interest of justice.

(d) The court may grant the petition, after hearing, if the following conditions are met:

(1) At least 20 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction.

(2) The person has not been convicted of a felony arising out of a new incident or occurrence since the person was convicted of the qualifying misdemeanor.

(3) The person has not been convicted of a misdemeanor during the past 15 years.

(4) Any restitution ordered by the court for any misdemeanor of which the person has been convicted has been paid in full.

(5) After considering the particular nature of any subsequent offense, the court finds that expungement of the charge or conviction record and sealing of the investigation or prosecution record for the qualifying misdemeanor serve the interest of justice.

(e) At the time the petition is filed, the respondent shall give notice of the petition to any victim of the offense who is known to the respondent. The victim shall have the right to offer the respondent a statement prior to any stipulation or to offer the court a statement at any hearing on the petition. The respondent's inability to locate a victim after a reasonable effort has been made shall not be a bar to granting a petition.

(f) Upon granting a petition pursuant to this section, the court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence.

(g) An order granting a petition pursuant to this section shall direct the recipient to expunge the charge or conviction record and to seal the investigation or prosecution record as provided in section 7604 of this title.

§ 7603. EXPUNGEMENT AND SEALING OF RECORD, NO CONVICTION; PROCEDURE

(a) A person who was cited or arrested for a criminal offense may petition the court to expunge the charge or conviction record, and seal the investigation or prosecution record, related to the citation or arrest if:

(1) No criminal charge is filed by the state and the statute of limitations has expired.

(2) The court does not make a determination of probable cause at the time of arraignment or dismisses the charge at the time of arraignment and the statute of limitations has expired.

(3) The charge is dismissed before trial:

(A) without prejudice and the statute of limitations has expired.

(B) with prejudice.

(4) The defendant and the respondent stipulate that the court may grant the petition to expunge and seal the record.

(b) The state's attorney or attorney general shall be the respondent in the matter. At the time the petition is filed, the respondent shall give notice of the petition to any victim of the offense who is known to the respondent. The victim shall have the right to offer the respondent a statement prior to any petition being granted. The petitioner and the respondent shall be the only parties in the matter.

(c) The court may grant the petition if it finds, in the totality of the circumstances, that expungement of the charge or conviction record and sealing of the investigation or prosecution record, serve the interest of justice.

(d) An order granting a petition pursuant to this section shall direct the recipient to expunge the charge or conviction record and to seal the investigation or prosecution record as provided in section 7604 of this title.

(e) An arresting or investigating agency's records are subject only to sealing, not expungement, under this section.

§ 7604. EFFECT OF EXPUNGEMENT AND SEALING

(a) Upon entry of an order of expungement of a charge or conviction record:

(1) The court shall provide a copy of the order of expungement to the respondent, Vermont criminal information center (VCIC), center for crime victim services, and any other entity that may possess a portion of the charge or conviction record of the criminal offense which is the subject of the order.

The Vermont criminal information center shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

(2) The person whose record is expunged shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous charge or conviction record only with respect to arrests or convictions that have not been expunged. Upon receiving an inquiry from any person regarding an expunged record, any person or entity that has received a copy of the order of expungement shall respond that "NO RECORD EXISTS."

(3) The court may keep a special index of cases that have been expunged together with the order for expungement and the certificate issued pursuant to section 7602 of this title. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the expungement.

(4) The special index and related documents specified in subdivision (3) of this section shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access only to authorized persons.

(5) Inspection of the expungement order or the certificate may be permitted only upon petition by the person who is the subject of the case or by the court if the court finds that inspection of the documents is necessary to serve the interest of justice. The administrative judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.

(6) All other court documents in a case that is subject to an expungement order shall be destroyed.

(7) The court administrator shall establish policies for implementing subdivisions (3) – (6) of this subsection.

(b) Upon entry of an order to seal an investigation or prosecution record:

(1) The court shall provide a copy of the sealing order to the respondent, Vermont criminal information center (VCIC), center for crime victim services, the arresting agency, the investigating agency, and any other entity that may possess a portion of the investigation or prosecution record of the qualifying misdemeanor which is the subject of the order. The Vermont criminal information center shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

(2) The person whose record is sealed shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous investigation or prosecution record only with respect to investigations, arrests, or convictions that have not been sealed.

(c) Upon receiving a sealing order, an entity shall:

(1) Seal the investigation or prosecution record;

(2) Enter a copy of the sealing order into the record;

(3) Flag the record as "SEALED" to prevent inadvertent disclosure of sealed information; and

(4) Upon receiving an inquiry from any person regarding a sealed record, respond that "NO RECORD EXISTS."

(d)(1) Notwithstanding a sealing order:

(A) An entity that possesses a sealed record may continue to use it for any litigation or claim arising out of the same incident or occurrence or involving the same defendant.

(B) An entity may use an investigation or a prosecution record sealed in accordance with section 7603 of this title, regarding a person who was cited or arrested, for future criminal investigations or prosecutions without limitation.

(2) An entity may use an investigation or prosecution record sealed in accordance with section 7602 of this title, regarding a person who was convicted, for future criminal investigations or prosecutions only upon an order of a superior court judge in the criminal division. The hearing on an application for such an order may be conducted in a confidential and nonadversarial manner substantially similar to procedures for obtaining a search warrant.

(e) The person whose record has been sealed shall maintain his or her right to access the sealed record as if the record had not been sealed.

#### § 7605. NEW CHARGE

If a person is charged with a criminal offense after he or she has filed a petition pursuant to this chapter, the court shall not act on the petition until disposition of the new charge.

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§ 7606. DENIAL OF PETITION

If a petition is denied by the court pursuant to this chapter, no further petition on that same matter shall be brought for at least five years.

## Sec. 2. REPORT; COURT ADMINISTRATOR

On or before January 15, 2015, the court administrator shall report to the general assembly the total number of court orders for expungement of charge or conviction records and sealing of investigation or prosecution records which have been issued by the courts of this state and the types of offenses for which a court ordered expungement of charge or conviction records and sealing of investigation or prosecution records pursuant to this act.

## Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Sears, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

**House Proposal of Amendment Concurred In****S. 73.**

House proposal of amendment to Senate bill entitled:

An act relating to raising the penalties for eluding a police officer.

Was taken up.

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

Sec. 1. 23 V.S.A. § 1133 is amended to read:

§ 1133. ~~ATTEMPTING TO ELUDE~~ ELUDING A POLICE OFFICER

(a) No operator of a motor vehicle shall fail to bring his or her vehicle to a stop when signaled to do so by an enforcement officer:

(1) displaying insignia identifying him or her as such; or

(2) operating a law enforcement vehicle sounding a siren and displaying a flashing blue or blue and white signal lamp.

(b)(1) A person who violates subsection (a) of this section shall be imprisoned for not more than one year or fined not more than \$1,000.00, or both.

(2)(A) A person who violates subsection (a) of this section while operating a vehicle in a negligent or grossly negligent manner in violation of section 1091 of this title shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.

(3)(A) In the event that ~~death or~~ serious bodily injury to any person other than the operator is proximately caused by the operator's knowing violation of subsection (a) of this section, the operator shall be imprisoned for not more than ~~five~~ 15 years or fined not more than ~~\$3,000.00~~ \$5,000.00, or both.

(B) If ~~death or~~ serious bodily injury to more than one person other than the operator is proximately caused by the operator's knowing violation of subsection (a) of this section, the operator may be convicted of a separate violation of this subdivision for each decedent or person injured.

(4)(A) In the event that death to any person other than the operator is proximately caused by the operator's knowing violation of subsection (a) of this section, the operator shall be imprisoned for not less than one year nor more than 15 years or fined not more than \$10,000.00, or both.

(B) If death to more than one person other than the operator is proximately caused by the operator's knowing violation of subsection (a) of this section, the operator may be convicted of a separate violation of this subdivision for each decedent.

\* \* \*

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. 101.**

House proposal of amendment to Senate bill entitled:

An act relating to child support enforcement.

Was taken up.

The House proposes to the Senate to amend the bill in Sec. 1, 15 V.S.A. § 606(d), in subdivision (2), by striking out "the obligated parent lacked the ability" and inserting in lieu thereof "since that date, the obligated parent became unable"

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

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**House Proposal of Amendment Concurred In****S. 105.**

House proposal of amendment to Senate bill entitled:

An act relating to miscellaneous agricultural subjects.

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. 6 V.S.A. chapter 151 is amended to read:

CHAPTER 151. SUPERVISION, INSPECTION AND LICENSING OF  
DAIRY OPERATIONS

\* \* \*

§ 2672. DEFINITIONS

As used in this part, the following terms have the following meanings:

\* \* \*

(5) “Milk handler” or “handler” is a person, firm, unincorporated association or corporation engaged in the business of buying, selling, assembling, packaging, or processing milk or other dairy products, for sale within or without the state of Vermont. “Milk handler” or “handler” shall not mean a milk producer.

\* \* \*

(7) “Milk”: Unless preceded or succeeded by an explanatory term, means the pure lacteal secretion of a type of dairy livestock listed in this subdivision. Such milk may be standardized by the addition of pure, fresh skim milk or cream as defined by regulation.

(A) “Cows’ milk” is the colostrum-free, pure, lacteal product of healthy ~~eows~~ cattle which contains not less than 11.50 percentum of total milk solids (to which nothing has been added or taken away). Cows’ milk sold in retail packages shall contain not less than 3.25 percent milk fat, and not less than 8.25 percent nonfat milk solids. ~~The secretary may, in accordance with chapter 25 of Title 3, promulgate a list of food grade additives which may be added to cows’ milk. The additives used in cows’ milk sold in retail packages shall be conspicuously stated in descending order of importance on the label of the package in a manner approved by the secretary. Such milk may be standardized by the addition of pure, fresh skim milk or cream as defined by regulation.~~

(B) “Goats’ milk” is the colostrum-free, pure, lacteal product of healthy ~~dairy~~ goats which contains not less than 10 percentum of total milk solids (to which nothing has been added or taken away). Goats’ milk sold in retail packages shall contain not less than 2.5 percent milk fat and not less than 7.5 percent nonfat milk solids. ~~The secretary may, in accordance with chapter 25 of Title 3, promulgate a list of food grade additives which may be added to goats’ milk. The additives used in goats’ milk sold in retail packages shall be conspicuously stated in descending order of importance on the label of the package in a manner approved by the secretary. Such milk may be standardized by the addition of pure, fresh skim milk or cream as defined by regulation.~~

(C) “Sheep’s milk” is the colostrum-free, pure, lacteal product of healthy ~~dairy~~ sheep which contains no less than 11.50 percent of total milk solids (to which nothing has been added or taken away).

(D) “Water buffalo’s milk” is the colostrum-free, pure, lacteal product of healthy ~~dairy~~ water buffalo which contains no less than 11.50 percent of total milk solids (to which nothing has been added or taken away).

~~(8) “Imitation dairy products” are those products containing no milk which by their texture, flavor, color, packaging, or other characteristics, could be confused by consumers with established and defined dairy products or are sold or offered for sale as substitutes for milk or fluid dairy products.~~

~~(9) “An imitation dairy product handler” is a person, firm, unincorporated association or corporation engaged in the business of buying, selling, packaging or processing imitation dairy products for sale within or without the state of Vermont.~~

~~(10) “An imitation dairy product handler’s license” is a license issued by the secretary which authorizes the licensee to carry on the business of an imitation dairy products handler.~~

~~(11)~~(8) “Retail package of dairy product ~~or imitation dairy product~~” is a package to be sold to a consumer.

~~(12)~~(9) “Dairy ~~products~~ product” ~~are~~ is milk, or ~~the products~~ a product derived therefrom, which ~~conform~~ conforms to the appropriate legal standard or definition for the specific product as defined in this part and regulations made under this part.

~~(13)~~(10) “Fluid dairy products” are milk and fluid dairy products derived from milk, including cultured products, as defined by regulations made under this part.

~~(14)~~(11) “Licensed technician” is a person who has demonstrated by appropriate tests, to the satisfaction of the secretary, that he or she has the skill, experience, ability, and integrity to perform tests that are used as a basis for payment or acceptance of dairy products ~~or imitation dairy products~~, and who holds one or more licenses issued by the secretary authorizing ~~him~~ the person to carry on one or more of these activities.

~~(15)~~(12) “Approved dairy laboratory” is any place or premise which has been inspected and approved by the secretary or, those premises outside Vermont approved and listed by the National Conference on Interstate Milk Shipments in accordance with the most recent evaluation of milk laboratories as published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, where tests are made on milk, or dairy products, ~~or imitation dairy products~~, to determine the quality or acceptance of the products. The laboratory shall meet recommendations as set forth in the latest edition of APHA “standard methods for the examination of dairy products.” The secretary may terminate approval for cause.

~~(16)~~(13) “Adulteration” means an adulterated dairy product ~~or adulterated imitation dairy product~~ containing noxious, unwholesome, or deleterious material, preservative, drugs, or chemical in a quantity injurious to health; or which does not conform to the definition of the product; or which is not produced, processed, or distributed according to the provisions of this part.

~~(17)~~(14) “Commission” means the Vermont milk commission as constituted in section 2922 of this title.

~~(18)~~(15) “Charitable ~~uses~~ use” means the distribution of milk among poor and needy persons without charge or compensation therefor.

~~(19)~~(16) “Distributor” means any person who sells milk ~~or imitation dairy products~~ to consumers within the state, except those who sell milk ~~or imitation dairy products~~ for consumption on the premises. ~~A producer or person who delivers or sells milk to a distributor only shall not be deemed a distributor.~~

~~(20)~~(17) “Market” means any area designated by the board as a natural marketing area.

~~(21)~~(18) “School lunch milk” means milk sold, offered for sale, or distribution at school buildings, grounds, or other places used for school purposes.

~~(22)~~(19) “Person” means individuals, corporations, partnerships, trusts, associations, cooperatives, and any and all other business units or entities.

~~(23)~~(20) “Additional definitions”: The secretary may, (after due notice and public hearing) in accordance with chapter 25 of Title 3, promulgate, amend, or rescind definitions of other dairy products ~~and imitation dairy products~~, including modified milk, dairy processes, and rules relating to specially trained personnel.

~~(24)~~(21) “Drug” or “drugs” mean:

(A) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or supplement thereto; and

(B) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and

(C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

(D) articles intended for use as a component of any articles specified in subdivision ~~(24)~~(A), (B), or (C); of this ~~section~~ subdivision (21), but not including devices or their components, parts, or accessories.

~~(25)~~(22) Definitions and standards of milk products not herein defined shall be those established by federal agencies and published in the Code of Federal Regulations.

~~(26)~~(23) “Vermont fresh milk” means milk consisting entirely of fresh milk produced in Vermont.

~~(27)~~(24) “Northeastern fresh milk” means milk consisting entirely of fresh milk produced in Delaware, Maryland, New Jersey, Pennsylvania, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, or Maine.

(25) “National Conference on Interstate Milk Shipments” means the national nonprofit organization of that same name, or its successor in interest, that deliberates and votes on proposals submitted by individuals from state or local regulatory agencies, the U.S. Food and Drug Administration, the U.S. Department of Agriculture, producers, processors, and consumers who have an interest in the safety of dairy products.

\* \* \*

#### § 2677. FLUID DAIRY PRODUCTS FOR LIVESTOCK FEED

A milk plant or handler shall not dispense or deliver fluid dairy products other than whey for livestock feed including poultry except under regulations as may be promulgated by the secretary.

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§ 2681. ADDITIVES

The secretary may, in accordance with chapter 25 of Title 3, promulgate a list of food grade additives which may be added to milk. The additives used in milk sold in retail packages shall be conspicuously stated in descending order of volume on the label of the package in a manner approved by the secretary.

\* \* \*

§ 2701. REGULATIONS

(a) The secretary, in accordance with chapter 25 of Title 3, shall promulgate, and may amend and rescind, dairy sanitation regulations relating to dairy products ~~and imitation dairy products~~ to enforce this chapter, including but not limited to: labeling, weighing, measuring and testing facilities, buildings, equipment, methods, procedures, health of animals, health and capability of personnel, and quality standards. In addition, the uniform regulation for sanitation requirements, as adopted by the National Conference on Interstate Milk Shippers, and published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Grade A Pasteurized Milk Ordinance (PMO), together with amendments, supplements and revisions thereto, are adopted as part of this chapter, except as modified or rejected by regulation. When adherence to the PMO is deemed unreasonable by the agency for non-Grade "A" products, the most current version of the Recommended Requirements of the United States Department of Agriculture, Agricultural Marketing Service, Milk for Manufacturing Purposes and its Production and Processing may be used.

\* \* \*

§ 2721. HANDLERS' LICENSES

\* \* \*

~~(c) An imitation dairy products handler shall not transact business in the state unless he or she secures and holds an imitation dairy product handler's license from the secretary. The license shall terminate September 1 each year and shall be procured by August 15 of each year. The secretary shall furnish all forms for applications, licenses and bonds. The imitation dairy products handler shall pay a license fee of \$200.00 for an initial application or a license fee of \$50.00 for a renewal application at the time the application is delivered to the secretary.~~

\* \* \*

## § 2722a. HEARINGS, AND ACTION UPON APPLICATIONS

(a) Upon receipt of an application for a milk handler's license the secretary shall examine it. If the application is deficient the secretary shall so notify the applicant and return the application together with one-half of the application fee within 30 days of the receipt of the application. If the application is not deficient, the secretary shall ~~set a date for a hearing on the application, shall notify the applicant of that date and shall cause public notice of the hearing to be published in three newspapers of general circulation within the state.~~ The publish notice of the application in one or more publications of general circulation within the state's dairy community at the applicant's expense. The secretary shall also publish notice of the handler's application on the agency's website. An interested party shall have 14 calendar days from the date of publication to request a hearing on the application. The secretary shall grant a request for a hearing when an interested party can demonstrate a reasonable belief that the applicant will not promote the general good of the dairy industry and the consuming public pursuant to Vermont rule 20-021-001 adopted by the agency of agriculture, food and markets. Where such a showing is made, a hearing ~~must~~ shall be held within 60 days of receipt of an application but not less than 10 days after public notice has been published the request. In the absence of such a showing or where no request for a hearing is received, the secretary may hold a hearing at his or her discretion.

(b) ~~In the case of a new application event a hearing is convened,~~ the hearing shall be held in central Vermont unless requested by the applicant to be in the specific area which the applicant intends principally to serve where the applicant will be located. Additional hearings may be held at the discretion of the secretary.

## § 2723. EXEMPTIONS

Handlers' licenses shall not be required from the following persons:

(1) Producers, except producers who sell fluid dairy products at retail in Vermont.

(2) A hotel, restaurant, or other public eating place that sells ~~fluid~~ dairy products for consumption on the premises, or a store which sells packaged dairy products, provided the entire supply of ~~fluid~~ dairy products is purchased from licensed milk handlers.

(3) A person producing unpasteurized milk under chapter 152 of this title, with respect to the sale of that unpasteurized milk only.

(4) A person who holds a frozen dessert license that only utilizes pasteurized frozen dessert mix.

\* \* \*

§ 2741. MILK PLANTS AND ~~IMITATION DAIRY PRODUCTS PLANTS~~

Before issuing a milk handler's license ~~or an imitation dairy products handler's license~~ and at least twice a year thereafter, the secretary shall inspect or cause to be inspected all milk plants ~~and imitation dairy products plants~~ as to their premises, equipment, procedures, and sanitary conditions. ~~He~~ The secretary may enter into reciprocal agreements with or accept the inspection reports of appropriate dairy sanitation agencies of other states, municipalities, or the federal government in lieu of inspection by the secretary, provided their standards and administration are substantially equal to the standards established by the secretary under the provisions of this chapter.

\* \* \*

## § 2743. DAIRY LABORATORIES

(a) The secretary shall, at least annually, inspect or cause to be inspected all premises where dairy products are tested to determine the basis of payment or acceptance. Each handler shall notify the secretary of the place in which tests of producer's dairy products are conducted. Such tests shall be performed only by licensed technicians. Approved dairy laboratories located outside Vermont are exempt from this inspection.

(b) The secretary shall at least annually inspect ~~approved~~ all in-state dairy laboratories and those out-of-state dairy laboratories not approved by the National Conference on Interstate Milk Shipments and if qualified, they shall be ~~so certified~~ approved by the secretary.

\* \* \*

(d) In case the producer's milk is transported from the farm to a milk plant in another state, the ~~purchaser shall keep the samples and test them at some approved place within the state of Vermont, or if the purchaser elects and agrees to pay the additional cost of supervision by the secretary or his agent, he may test the samples in another state in the plant where the milk is first received from the farm. All testing shall be done by persons holding a testing license issued by the secretary. The secretary may enter the premises of a milk handler and take possession of any or all samples including those from milk producers' deliveries and test them~~ samples shall be tested in an approved dairy laboratory.

## § 2744. ENFORCEMENT

\* \* \*

(d) Right of entry. The secretary or his or her agent may for the purpose of inspection enter at all reasonable times the premises, except the residence, of all milk handlers and producers and examine all pertinent records and personnel and may use reasonable means of determining the sanitary condition of the entire milk producing and handling process. Refusal to permit inspection shall be grounds for revoking a license or ability to ship milk pursuant to chapter 25 of Title 3.

§ 2744a. DRUGS

(a) No producer shall sell or offer for sale milk which contains any drug or drugs in excess of tolerances established by the United States Food and Drug Administration in the Code of Federal Regulations.

~~(b)~~(1) In the event that milk from a dairy farm contains a drug, no more milk produced by that producer shall be received by any milk dealer, or handler, for a period of up to two days until a sample of at least one complete milking has been collected and found negative. In the event of a second violation within a 12-month period, no more milk produced by that producer shall be received by any milk dealer, or handler, for a period of up to ~~four~~ two days and until a sample of at least one complete milking has been collected and found negative. In the event of a third violation within a 12-month period, the secretary shall, at a minimum, take the same action as required for a second violation and may prohibit the producer from selling milk in this state. No handler, or dealer, shall accept milk from a producer whose ability to sell milk is suspended or terminated.

~~(c)~~(2) In lieu of suspending a producer's ability to sell milk, the secretary may issue an administrative penalty. The amount of the penalty shall not exceed the value of the milk which could have been prohibited from sale. A producer who fails to pay an administrative penalty, after opportunity for hearing, shall have his, or her, ability to sell milk suspended until the penalty is paid. In lieu of suspending a producer's ability to sell milk, the secretary may accept the assessment by the milk dealer or handler, against the producer, of damages beyond the milk dealer's, or handler's control which occurred as a result of purchasing the contaminated milk, as an equivalent penalty.

(3) Notwithstanding the provisions of subsection (c) of this section, the secretary may at any time issue an emergency order prohibiting a producer from selling and a handler from accepting any milk until the milk tests negative for drugs.

(b)(1) No producer shall sell livestock for slaughter which contains any drug or drugs in excess of tolerances established by the United States Food and Drug Administration in the Code of Federal Regulations.

(2) In the event that livestock intended for slaughter is found to contain a drug or drugs in excess of levels established by the United States Food and Drug Administration in the Code of Federal Regulations at the time of sale, the secretary may assess an administrative penalty not to exceed \$1,000.00 for each violation.

~~(d)(c)~~ Before issuing an order or administrative penalty under this section, the secretary shall provide the producer and the handler, or dealer, an opportunity for hearing. ~~Notwithstanding this requirement, the secretary may at any time issue an emergency order prohibiting a producer from selling, and a handler from accepting, any milk until the milk tests negative for drugs.~~

\* \* \*

## Sec. 2. REPEAL

6 V.S.A. § 2753 (segregation of products) is repealed.

Sec. 3. 6 V.S.A. chapter 152 is amended to read:

### CHAPTER 152. SALE OF UNPASTEURIZED (RAW) MILK

#### § 2775. LIMITED SALE OF UNPASTEURIZED (RAW) MILK PERMISSIBLE

~~The~~ Notwithstanding section 2701 of this title, the production and sale of unpasteurized milk to a consumer for fluid personal consumption is permitted within the state of Vermont only when produced, marketed, and sold in conformance with this chapter.

#### § 2776. DEFINITIONS

~~For the purposes of~~ In this chapter,:

(1) “Consumer” means a customer who purchases, barter for, or otherwise acquires unpasteurized milk from the farm or delivered from the farm.

(2) “Personal consumption” means the use by a consumer of unpasteurized milk for food or to create a food product made with or from unpasteurized milk which is intended to be ingested by the consumer, members of his or her household, or any nonpaying guests.

(3) “Unpasteurized milk” or “unpasteurized (raw) milk” means unpasteurized milk sold for fluid consumption and does not include unpasteurized milk to be pasteurized or unpasteurized milk produced for use in manufacturing of milk products other than fluid milk that is unprocessed.

(4) “Unprocessed” means milk that has not been modified from the natural state it was in as it left the animal, other than filtering, packaging, and cooling.

§ 2777. STANDARDS FOR THE SALE OF UNPASTEURIZED (RAW) MILK

(a) Unpasteurized milk ~~for fluid consumption~~ shall be sold directly from the producer to the ~~end-user~~ consumer for personal consumption only and shall not be resold.

\* \* \*

Sec. 4. 6 V.S.A. chapter 153 is amended to read:

CHAPTER 153. STANDARDS AND PURITY

§ 2801. ADULTERATION PROHIBITED

It is prohibited to sell, transfer, or offer for sale any adulterated dairy product ~~or adulterated imitation dairy product~~ which does not conform to Vermont statutes and regulations adopted thereunder. Nothing herein shall be construed to prohibit the salvage of milk solids for human consumption under regulations adopted by the secretary.

§ 2802. FOREIGN FATS PROHIBITED

A person, firm, or corporation, by himself or herself, his or her servant or agent, or as the servant or agent of another, shall not manufacture, sell, or exchange, or have in possession with intent to sell or exchange, any dairy products or any of the fluid or solid derivatives of any of them to which has been added any fat or oil other than milk fat, except chocolate ice cream and chocolate milk which may contain the amount of fats other than milk fat normally contained in the chocolate or cocoa used in the manufacture of chocolate ice cream and chocolate milk. This section does not prohibit a fat substitute if it is approved for insertion into a dairy product by the U.S. Food and Drug Administration and is clearly identified in the list of ingredients on the label.

\* \* \*

§ 2811. MARKING OF RETAIL PACKAGES

(a)(1) All retail packages of dairy products; and fluid dairy products ~~and imitation dairy products~~ sold or offered for sale shall be plainly and conspicuously marked with:

(~~1~~)(A) The true name of the product as defined by statute or regulation.

~~(2)(B)~~ The true name of all ingredients in descending order of importance if it is not a single defined product.

~~(3)(C)~~ The name and address of the producer or handler.

~~(4)(D)~~ The net weight or volume of package contents.

~~(2)~~ The secretary may assign identifying numbers for milk plants ~~and imitation dairy products plants~~, which may appear on the package.

(b) The following situations are exempted from the operation of subsection (a) of this section:

(1) Milk sold by a producer to a handler.

(2) A producer who ~~does not deliver and who does not sell or offer for sale more than 25 quarts of milk to the public in any one day~~ sells unpasteurized (raw) milk pursuant to chapter 152 of this title.

\* \* \*

Sec. 5. 6 V.S.A. chapter 155 is amended to read:

#### CHAPTER 155. FROZEN DESSERTS

\* \* \*

#### § 2856. EXEMPTIONS

A person who holds a valid milk handler's license shall be exempt from all licensing provisions of this chapter.

Sec. 6. 6 V.S.A. chapter 157 is amended to read:

#### CHAPTER 157. BONDS

#### § 2881. CONDITIONS AND AMOUNT; FAILURE TO FILE

(a) Except as provided in section 2882 of this title, no handler shall purchase milk from a Vermont ~~producers~~ producer or milk ~~cooperatives~~ cooperative, either directly or through a marketing service owned by one or more cooperatives, and the secretary shall not issue a handler's license, unless the handler furnishes the secretary a good and sufficient surety bond, executed by a surety company duly authorized to transact business in this state in an amount equal to 50 percent for all species other than cattle, and 100 percent for cattle, of the maximum amount due all milk producers in the state who ~~sell~~ sold milk to the handler for a 41-day period during the previous 12 months. ~~He or she~~ The secretary may accept, in lieu of such bond, a guaranteed irrevocable letter of credit. The bonds shall be taken for the benefit of Vermont milk producers and milk cooperatives in this state. At any time in his or her discretion, the secretary may require such handlers to file detailed

statements of the business transacted by them in this state, and at any time may require them to give such additional bonds as he or she deems necessary. If the handler refuses or neglects to file the detailed statements or to give bonds required by the secretary, the secretary may suspend the license of the handler until he or she complies with the secretary's orders. The secretary shall report to the attorney general the name of any handler doing business in this state without a license or after suspension of its license by the secretary and the attorney general shall forthwith bring injunction proceedings against the handler. Renewals of bonds specified in this section shall be furnished the secretary 60 days before the effective date of the bond. If the handler fails to file the bonds as required, the secretary shall forthwith publish the name of the handler in four newspapers of general circulation in the state for a period of three consecutive days and notify, by registered mail, producers supplying such handler.

(b) ~~{Deleted.}~~ A milk cooperative that sells milk from a Vermont producer either directly or through a marketing service owned by one or more cooperatives shall file a monthly detailed report that states where the milk from each bulk tank unit served is sold and shall specify the volume of milk that is sold by Vermont cooperative members and independent producers who market their milk through a milk cooperative either directly or through a marketing service owned by one or more cooperatives.

#### § 2882. EXEMPTIONS FROM FILING BOND

\* \* \*

(b) A handler who does not purchase milk from Vermont producers or milk cooperatives either directly or through a marketing service owned by one or more cooperatives shall not be required to furnish surety as provided under section 2881 of this title.

(c) A handler who pays ~~a milk cooperative~~ for milk in advance or at the time of delivery shall not be required to furnish surety as provided under section 2881 of this title. Every producer, or milk cooperative either directly or through a marketing service owned by the cooperatives, selling milk to handlers who pay for milk in advance or at the time of delivery shall, on ~~January 1 and~~ July 1 of each year, notify the secretary in writing of the identity of each handler and shall promptly notify the secretary, in writing, of any changes to the most recent notification.

(d) A handler who purchases fewer than 150,000 pounds of milk per month from a milk cooperative, either directly or through a marketing service owned by one or more cooperatives, shall not be required to furnish surety as provided under section 2881 of this title.

\* \* \*

## § 2884. PROCEEDINGS FOR RECOVERY ON BOND

~~Upon breach of the condition of a bond or other security, upon application by the~~ When the condition of a bond or other security is breached, if a producer of or milk cooperative applies to a handler; for payment of products furnished to that handler whose account for ~~products furnished such handler~~ remains unpaid as provided in section 2883 of this title, the secretary shall institute appropriate proceedings thereon in his name as trustee for the benefit of all the producers ~~of such~~ or milk cooperatives in this state supplying the handler in this state and to whom such handler may be indebted at the time the proceedings are instituted. The proceedings may be commenced in any county in this state where a producer of the handler resides.

Sec. 7. 6 V.S.A. chapter 163 is amended to read:

CHAPTER 163. VERMONT DAIRY PROMOTION COUNCIL;  
PRODUCER TAX

## § 2971. CREATION OF COUNCIL

\* \* \*

(b) The milk cooperatives shall provide the secretary of agriculture, food and markets with two nominees for each entitlement of whom one shall be appointed by the secretary. The second nominee shall become an alternate to serve in the absence of the appointee. The secretary of agriculture, food and markets shall appoint three producer members to the council and one alternate to serve in the absence of any one of these three members to represent those producers not members of a milk cooperative and those cooperatives not eligible under the terms of this section, and one distributor representative, after seeking the advice of producer associations, distributor associations and individual producers and distributors within the state. During the month of February, six members shall be appointed for a one-year term and the balance for a two-year term. Thereafter one-half of the members shall be appointed annually. The council shall serve at the discretion of the secretary. A milk producer who is serving on the Vermont dairy promotion council shall not be a member of the agency disbursing the funds. The appointive members shall each receive ~~\$50.00~~ \$75.00 per day for each day spent in actual attendance at meetings of the council, but not exceeding a total compensation of ~~\$500.00~~ \$750.00 per annum for each member, and they also shall receive their actual necessary expenses and mileage while attending to their duties. The secretary shall serve as chair of the council and administer and enforce the provisions of this act.

\* \* \*

## § 2988. REFERENDUM

\* \* \*

(f) All administration costs associated with the referendum vote shall be assessed against the ~~state dairy council~~ Vermont dairy promotion fund.

\* \* \*

Sec. 8. 9 V.S.A. chapter 73 is amended to read:

## CHAPTER 73. WEIGHTS AND MEASURES

\* \* \*

## § 2692. BULK MILK TANKS

(a) When installing a farm bulk tank or reconstructing a floor area supporting a bulk tank, the tank shall not be placed in service and used as a commercial measuring device unless a foundation has been constructed with due consideration of frost penetration and of sufficient strength to support the completely liquid-laden tank without change of level, and a steel plate not less than six inches square and not less than one-quarter inch thick is placed under each leg and the steel plate and the tank legs are cemented to the floor. Bulk tanks shall be calibrated using accepted practices approved by the weights and measures division consumer protection section as soon as possible after the milk house and bulk tank installation has been approved by the dairy ~~division~~ section.

\* \* \*

(c) If the secretary determines the bulk milk tank is not an accurate measure for milk, (or because of continued movement of the tank caused by a poor foundation) ~~he, the secretary~~ may condemn the tank and forbid its use as a measuring device. Any person who alters a bulk tank weight conversion chart, uses other than latest conversion chart issued, uses a condemned tank as a measure, uses a tank without the legs cemented to the floor or changes the level position of a bulk milk tank without immediately notifying the secretary of agriculture, food and markets shall be fined not more than ~~\$200.00~~ \$500.00 for each offense.

(d) The first handler receiving milk from a producer shall furnish competent personnel licensed by the consumer protection section to ~~assist in the calibration of~~ calibrate the producer's bulk milk tank. The word "handler" as used in this subsection shall mean a person, firm, unincorporated association, or corporation engaged in the business of buying, selling, assembling, packaging, or processing milk or other dairy products, for sale

within or ~~without~~ outside the state of Vermont. ~~The handler shall pay \$75.00 if the capacity of the tank being calibrated is 0-500 gallons, and another \$25.00 for each additional 500 gallons capacity or part thereof.~~

\* \* \*

Sec. 9. AGENCY OF AGRICULTURE, FOOD AND MARKETS  
EDUCATIONAL MATERIALS REGARDING THE REGULATION OF  
COMPOSTING ON FARMS

(a) The agency of agriculture, food and markets and the agency of natural resources, after consultation with the regional planning commissions and the compost association of Vermont, shall develop educational materials regarding the regulatory requirements for the operation of a compost facility on a farm. The educational materials shall include a summary of the state regulations for the operation of a compost facility, including the accepted composting practices, the solid waste management rules, and state land use planning under 10 V.S.A. chapter 151.

(b) The agency of agriculture, food and markets and the agency of natural resources shall post the educational materials required by this section on each agency's website and shall conduct outreach activities to inform farmers of the materials produced under this section.

Sec. 10. EFFECTIVE DATE

This act shall take effect on passage.

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

**Message from the House No. 64**

A message was received from the House of Representatives by Mr. William M. MaGill, its First Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

**H. 53.** An act relating to the Interstate Wildlife Violator Compact.

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. 100.** An act relating to making miscellaneous amendments to education laws.

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

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

**H. 6.** An act relating to powers and immunities of the liquor control investigators.

And has severally concurred therein.

**Proposal of Amendment; Point of Order Sustained; Third Reading Ordered**

**H. 264.**

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

An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles .

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. PURPOSE

This act is intended to help prevent the harm caused to Vermonters and their families and friends by chronic DUI offenders who repeatedly operate motor vehicles while under the influence of alcohol or other drugs.

\* \* \* Permitting Unlicensed or Impaired Person to Operate \* \* \*

Sec. 2. 23 V.S.A. § 1130 is amended to read:

§ 1130. PERMITTING UNLICENSED OR IMPAIRED PERSON TO OPERATE

(a) No person shall knowingly employ, ~~as operator of a motor vehicle, a~~ another person as an operator of a motor vehicle knowing that the other person is not licensed as provided in this title.

(b) No person shall knowingly permit a motor vehicle owned by him or her or under his or her control to be operated by a another person who if the person who owns or controls the vehicle knows that the other person has no legal right to do so, or in violation of a provision of this title operate the vehicle.

(c)(1) No person who owns or is under control of a vehicle shall intentionally enable another person to operate the vehicle if the person who owns or controls the vehicle has actual knowledge that the operator is:

(A) under the influence of intoxicating liquor; or

(B) under the influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely.

(2) In a prosecution under this section, the state shall have the burden of proving beyond a reasonable doubt that the defendant was not placed under duress or subjected to coercion by the other person at the time the defendant enabled the other person to operate the motor vehicle.

(3) As used in this section, "intentionally enable another person to operate the motor vehicle" means to intentionally create a direct and immediate opportunity for another person to operate the motor vehicle.

(d)(1) A person who violates subsection (c) of this section shall be fined not more than \$1,000.00 or imprisoned for not more than six months, or both.

(2) If the death or if serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of subsection (c) of this section, the person convicted of the violation shall be fined not more than \$5,000.00 or imprisoned not more than two years, or both. The provisions of this subdivision do not limit or restrict prosecutions for manslaughter.

\* \* \* DUI penalties, alternative sanctions, and innovative responses \* \* \*

Sec. 3. 23 V.S.A. § 1201 is amended to read:

§ 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR OTHER SUBSTANCE; CRIMINAL REFUSAL

(a) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway:

(1) when the person's alcohol concentration is 0.08 or more, or 0.02 or more if the person is operating a school bus as defined in subdivision 4(34) of this title or has been convicted of a violation of this section within the preceding three years when the person's alcohol concentration was 0.16 or greater; or

(2) when the person is under the influence of intoxicating liquor; or

(3) when the person is under the influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely; or

(4) when the person's alcohol concentration is 0.04 or more if the person is operating a commercial motor vehicle as defined in subdivision 4103(4) of this title.

\* \* \*

Sec. 4. 23 V.S.A. § 1210 is amended to read:

§ 1210. PENALTIES

\* \* \*

(d) ~~Third or subsequent~~ offense. A person convicted of violating section 1201 of this title who has ~~twice~~ previously been convicted two times of a violation of that section shall be fined not more than \$2,500.00 or imprisoned not more than five years, or both. ~~At least 400 hours of community service shall be performed, or 100~~ 96 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed. The court may impose a sentence that does not include a term of imprisonment or that does not require that the 96 hours of imprisonment be served consecutively only if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

(e) ~~Fourth or subsequent~~ offense. A person convicted of violating section 1201 of this title who has previously been convicted three times of a violation of that section shall be fined not more than \$5,000.00 or imprisoned not more than ten years, or both. At least 192 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed. The court shall not impose a sentence that does not include a term of imprisonment unless the court makes written findings on the record that there are compelling reasons why such a sentence will serve the interests of justice and public safety.

~~(e)(1)(f)(1)~~ Death resulting. If the death of any person results from a violation of section 1201 of this title, the person convicted of the violation shall be fined not more than \$10,000.00 or imprisoned not less than one year nor more than 15 years, or both. The provisions of this subsection do not limit or restrict prosecutions for manslaughter.

(2) If the death of more than one person results from a violation of section 1201 of this title, the operator may be convicted of a separate violation of this subdivision for each decedent.

(3)(A) If the death of any person results from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of that section, a sentence ordered pursuant to this subsection shall, except as provided in subdivision (B) of this subdivision (3), include at least a five-year term of imprisonment. The five-year minimum term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year term of imprisonment.

(B) Notwithstanding subdivision (A) of this subdivision (3), if the death of any person results from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of that section, the court may impose a sentence that does not include a term of imprisonment or which includes a term of imprisonment of less than five years if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

~~(f)(1)~~(g)(1) Injury resulting. If serious bodily injury, as defined in 13 V.S.A. § 1021(2), results to any person other than the operator from a violation of section 1201 of this title, the person convicted of the violation shall be fined not more than \$5,000.00, or imprisoned not more than 15 years, or both.

(2) If serious bodily injury as defined in 13 V.S.A. § 1021(2) results to more than one person other than the operator from a violation of section 1201 of this title, the operator may be convicted of a separate violation of this subdivision for each person injured.

(3)(A) If serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of section 1201, a sentence ordered pursuant to this subsection shall, except as provided in subdivision (B) of this subdivision (3), include at least a five-year term of imprisonment. The five-year minimum term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year term of imprisonment.

(B) Notwithstanding subdivision (A) of this subdivision (3), if serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of section 1201, the court may impose a sentence that does not

include a term of imprisonment or which includes a term of imprisonment of less than five years if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

~~(g)~~(h) Determination of fines. In determining appropriate fines under this section the court may take into account the total cost to a defendant of alcohol screening, participation in the alcohol and driving education program and therapy and the income of the defendant.

~~(h)~~(i) A person convicted of violating section 1201 of this title shall be assessed a surcharge of \$60.00, which shall be added to any fine imposed by the court. The court shall collect and transfer such surcharge to the department of ~~health~~ public safety for deposit in the health department's laboratory services special fund.

~~(i)~~(j) A person convicted of violating section 1201 of this title shall be assessed a surcharge of \$50.00, which shall be added to any fine or surcharge imposed by the court. The court shall collect and transfer the surcharge assessed under this subsection to the office of defender general for deposit in the public defender special fund specifying the source of the monies being deposited. The collection procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of this surcharge.

~~(j)~~(k) A person convicted of violating section 1201 of this title shall be assessed a surcharge of \$50.00, which shall be added to any fine or surcharge imposed by the court. The court shall collect and transfer the surcharge assessed under this subsection to be credited to the DUI enforcement fund. The collection procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of this surcharge.

#### Sec. 5. REPEAL

23 V.S.A. § 1213(a),(b), and (c) within Sec. 9 of No. 126 of the Acts of 2009 Adj. Sess. (2010) are repealed.

Sec. 6. 23 V.S.A. § 1213(a), (b), and (c) are added to read:

(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 section 1205(a)(2), 1206(a), or 1216(a)(1) of this title upon receipt of a \$125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock RDL 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

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expiration of the applicable shortened period specified in section 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. The renewal fee shall be \$125.00.

(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 section 1205(m), 1208(a), or 1216(a)(2) of this title upon receipt of a \$125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock RDL 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 section 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. The renewal fee shall be \$125.00.

(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 section 1205(m), 1208(b), or 1216(a)(2) of this title upon receipt of a \$125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock RDL 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 section 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. The renewal fee shall be \$125.00.

Sec. 7. 23 V.S.A. § 1220a is amended to read:

§ 1220a. DUI ENFORCEMENT SPECIAL FUND

(a) There is created a DUI enforcement special fund which shall be a special fund established and managed pursuant to 32 V.S.A. chapter 7 subchapter 5. The DUI enforcement special fund shall be a continuation of and successor to the DUI enforcement special fund established under subsection 1205(r) of this title.

(b) The DUI enforcement special fund shall consist of:

(1) receipts from the surcharges assessed under section 206 and subsections 674(i), 1091(d), 1094(f), 1128(d), 1133(d), 1205(r), and 1210(j) of this title;

(2) beginning in fiscal year 2000 and thereafter, the first \$150,000.00 of revenues collected from fines imposed under subchapter 13 of chapter 13 of this title pertaining to DUI related offenses;

(3) beginning in fiscal year 2000 and thereafter, two percent of the revenues raised by the motor fuel tax on gasoline imposed by chapter 28 of this title; and

(4) any additional funds transferred or appropriated by the general assembly.

(c) The DUI enforcement special fund shall be used for the implementation and enforcement of this subchapter for purposes specified and in amounts appropriated by the general assembly. At least 40 percent of the money collected by the fund each year shall be awarded as grants to municipalities or law enforcement agencies for innovative programs designed to reduce DUI offenses. Priority shall be given to grants requested jointly by more than one law enforcement agency or municipality.

Sec. 8. DEDICATED BEDS FOR CHRONIC REPEAT DUI OFFENDERS

The department of corrections shall report to the joint committee on corrections oversight on or before November 15, 2011 on the feasibility of dedicating 25 beds at the southeast state correctional facility exclusively for chronic repeat DUI offenders. As used in this section, "chronic repeat DUI offender" means a person convicted three or more times of a violation of 23 V.S.A. § 1201.

Sec. 9. COMPREHENSIVE SYSTEM TO REDUCE REPEAT DUI OFFENSES

On or before January 15, 2012, the director of the governor's highway safety program, in consultation with the defender general and the departments of motor vehicles, of public safety, of health and of corrections shall report to the house and senate committees on judiciary a plan for implementation of a comprehensive system of penalties, alternative sanctions, and treatment to reduce the number of persons with repeat offenses of operating motor vehicles while under the influence of alcohol or other drugs. The system may include, among other measures, the following:

(1) a mandatory sobriety program for repeat DUI offenders similar to South Dakota's "24/7 Sobriety Program";

(2) increased penalties for operating a vehicle with an alcohol concentration substantially greater than the legal limit;

(3) methods of responding to DUI offenders who fail to complete the alcohol and driving education program (CRASH) required by 23 V.S.A. § 1209a(a)(1);

(4) enhanced use of ignition interlock devices, with respect to which the ignition interlock effectiveness study required by Sec. 14 of No. 126 of the Acts of 2009 shall be considered;

(5) mandatory alcohol and drug counseling and treatment for persons convicted of operating a motor vehicle while under the influence of alcohol or other drugs;

(6) establishment of a secure facility for housing and treatment of persons convicted of operating a motor vehicle while under the influence of alcohol or drugs;

(7) the circumstances under which the operator of a motor vehicle may be required to submit to a blood test to determine whether he or she has been operating the vehicle while under the influence of a drug other than alcohol;

(8) revisions that may be appropriate to the DUI statutes when the circumstances involve operating a motor vehicle under the influence of a drug that has been legally prescribed to the operator; and

(9) a proposal to permit conditional operator's licenses, which may be issued to a person who has been convicted of DUI for travel to limited places such as work, drug or alcohol treatment, school, or a doctor's office.

\* \* \* Detention of operator \* \* \*

Sec. 10. 23 V.S.A. § 1212 is amended to read:

§ 1212. CONDITIONS OF RELEASE AND PAROLE; ARREST UPON VIOLATION

\* \* \*

(d) A law enforcement officer who observes a person violating a condition of parole requiring that the person not operate a motor vehicle may promptly arrest the person for violating the condition and may detain the person pursuant to 28 V.S.A. § 551. The officer shall immediately notify the parole board of the suspected violation. If the parole board determines pursuant to 28 V.S.A. § 552 that a parole violation has occurred, the board shall notify the state's attorney in the county where the violation occurred.

\* \* \* Miscellaneous \* \* \*

Sec. 11. REPORTS; STUDIES

(a) The court administrator shall report to the senate and house committees on judiciary on or before January 15, 2012 on the number of persons convicted of violating 23 V.S.A. § 1130(c) (permitting impaired person to operate motor vehicle) since the passage of this act.

(b) Notwithstanding any other provision of law, the court administrator shall conduct a weighted caseload study and analysis or equivalent study within the probate division of the superior court for use by the senate and house committees on appropriations during development of the fiscal year 2013 budget. The results of the study shall be reported to the senate and house committees on judiciary and on appropriations on or before January 15, 2012. The study may be used to review and consider adjustments to the compensation of probate judges.

(c)(1) A committee is established to study modifying the number of interested parties who must be served with notice when a probate proceeding is commenced involving a decedent's estate and reducing the amount of time notice by publication is required to be published in newspapers. The committee shall consider whether reducing the number of interested parties would reduce costs to the estate without unduly prejudicing the rights of potential beneficiaries, and whether constitutional issues would be raised if such changes were made. The committee shall report its findings, together with any recommendations for legislative action, to the senate and house committees on judiciary no later than December 15, 2011.

(2) The committee established by this subsection shall consist of the following members:

(A) one member appointed by the Vermont Probate Judges Association;

(B) one member with experience in probate practice appointed by the Vermont Bar Association; and

(C) one member appointed by the Committee on Vermont Elders.

(3) Members of the committee who are not employees of the state of Vermont shall be entitled to reimbursement at the per diem rate set in 32 V.S.A. § 1010.

Sec. 12. Sec. 22(a) of No. 157 of the Acts of the 2009 Adj. Sess. (2010), as amended by Sec. 1 of No. 5 of the Acts of 2011, is amended to read:

(a) Sec. 18 of this act shall take effect on ~~July 1, 2011~~ July 1, 2012.

Sec. 13. 13 V.S.A. § 5241 is added to read:

§ 5241. MALPRACTICE CLAIM AGAINST DEFENDER GENERAL;  
SUCCESSFUL INEFFECTIVE ASSISTANCE CLAIM REQUIRED

No action shall be brought for professional negligence against a criminal defense attorney under contract with or providing ad hoc legal services for the office of the defender general unless the plaintiff has first successfully prevailed in a claim for post-conviction relief based upon ineffective assistance of counsel against that criminal defense attorney in the same or a substantially related matter. Failure to prevail in a claim for post-conviction relief based upon ineffective assistance of counsel against a criminal defense attorney under contract with or providing ad hoc legal services for the office of the defender general shall bar any claim against the attorney based upon the attorney's representation in the same or a substantially related matter.

Sec. 14. 23 V.S.A. § 1203 is amended to read:

§ 1203. ADMINISTRATION OF TESTS; RETENTION OF TEST AND  
VIDEOTAPE

\* \* \*

(c) When a breath test which is intended to be introduced in evidence is taken with a crimper device or when blood is withdrawn at an officer's request, a sufficient amount of breath or blood, as the case may be, shall be taken to enable the person to have made an independent analysis of the sample, and shall be held for at least 45 days from the date the sample was taken. At any time during that period the person may direct that the sample be sent to an independent laboratory of the person's choosing for an independent analysis. The department of ~~health~~ public safety shall adopt rules providing for the security of the sample. At no time shall the defendant or any agent of the

defendant have access to the sample. A preserved sample of breath shall not be required when an infrared breath-testing instrument is used. A person tested with an infrared breath-testing instrument shall have the option of having a second infrared test administered immediately after receiving the results of the first test.

(d) In the case of a breath test administered using an infrared breath testing instrument, the test shall be analyzed in compliance with rules adopted by the department of ~~health~~ public safety. The analyses shall be retained by the state. A sample is adequate if the infrared breath testing instrument analyzes the sample and does not indicate the sample is deficient. Analysis of the person's breath or blood which is available to that person for independent analysis shall be considered valid when performed according to methods approved by the department of ~~health~~ public safety. The analysis performed by the state shall be considered valid when performed according to a method or methods selected by the department of ~~health~~ public safety. The department of ~~health~~ public safety shall use rule making procedures to select its method or methods. Failure of a person to provide an adequate breath sample constitutes a refusal.

(e) [Repealed.]

(f) When a law enforcement officer has reason to believe that a person may be violating or has violated section 1201 of this title, the officer may request the person to provide a sample of breath for a preliminary screening test using a device approved by the commissioner of ~~health~~ public safety for this purpose. The person shall not have the right to consult an attorney prior to submitting to this preliminary breath alcohol screening test. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made and whether to request an evidentiary test and shall not be used in any court proceeding except on those issues. Following the screening test additional tests may be required of the operator pursuant to the provisions of section 1202 of this title.

\* \* \*

(i) The commissioner of ~~health~~ public safety shall adopt emergency rules relating to the operation, maintenance and use of preliminary alcohol screening devices for use by law enforcement officers in enforcing the provisions of this title. The commissioner shall consider relevant standards of the National Highway Traffic Safety Administration in adopting such rules. Any preliminary alcohol screening device authorized for use under this title shall be on the qualified products list of the National Highway Traffic Safety Administration.

\* \* \*

Sec. 15. 23 V.S.A. § 1203a is amended to read:

§ 1203a. INDEPENDENT CHEMICAL TEST; BLOOD TESTS

\* \* \*

(d) The physician, licensed nurse, medical technician, physician's assistant, medical technologist, or laboratory assistant drawing a sample of blood shall use a sample collection kit provided by the department of ~~health~~ public safety or another type of collection kit. The sample shall be identified as to donor, date, and time, sealed and mailed to the department of ~~health~~ public safety where it shall be held for a period of at least 45 days from the date the sample was taken. At any time during that period the person may direct that the sample be sent to an independent laboratory of the person's choosing for an independent analysis. The department of ~~health~~ public safety may recover its costs of supplies, handling and storage.

\* \* \*

Sec. 16. 23 V.S.A. § 1205(h)(1)(D) is amended to read:

(D) whether the test was taken 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 of a vehicle in violation of section 1201 of this title, whether the testing methods used were valid and reliable and whether the test results were accurate and accurately evaluated. Evidence that the test was taken and evaluated in compliance with rules adopted by the department of ~~health~~ public safety shall be prima facie evidence that the testing methods used were valid and reliable and that the test results are accurate and were accurately evaluated;

Sec. 17. 23 V.S.A. § 1216 is amended to read:

§ 1216. PERSONS UNDER 21; ALCOHOL CONCENTRATION OF 0.02 OR MORE

\* \* \*

(d) If a law enforcement officer has reasonable grounds to believe that a person is violating this section, the officer may request the person to submit to a breath test using a preliminary screening device approved by the commissioner of ~~health~~ public safety. A refusal to submit to the breath test shall be considered a violation of this section. Notwithstanding any provisions to the contrary in sections 1202 and 1203 of this title:

\* \* \*

Sec. 18. BLOOD ALCOHOL TESTING AND ALCOHOL SCREENING DEVICES; AUTHORITY OF DEPARTMENT OF PUBLIC SAFETY; RULEMAKING

(a) Notwithstanding any other provision of law, authority and supervision over operation, maintenance, and use of blood alcohol testing and alcohol screening devices shall be transferred from the department of health to the department of public safety. The department of public safety shall adopt emergency rules to establish a processes for the authority granted by this section, and to provide for transfer of the authority this section requires.

(b) The administration shall, in consultation with the Vermont state employees association, ensure that no reduction in positions occurs as a result of the transfer required by this section.

(c) On or before January 15, 2012, and on or before January 15 of each of the following two years, the department of public safety shall report to the senate and house committees on judiciary on progress toward identifying and implementing an accreditation process for the blood alcohol testing and alcohol screening program transferred to the department by this section.

Sec. 19. EFFECTIVE DATES

This act shall take effect on passage, except as follows:

(1) Sec. 5 shall take effect on June 30, 2011.

(2) Sec. 6 shall take effect on July 1, 2011.

(3) Secs. 14, 15, 16, and 17 shall take effect on March 1, 2012.

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.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Judiciary? Senator Illuzzi raised a *point of order* under Sec. 402 of Mason's Manual of Legislative Procedure on the grounds that Sec. 13 of the recommendation of proposal of amendment was *not germane* to the bill and therefore could not be considered by the Senate.

Thereupon, the President sustained the point of order and ruled that Sec. 13 of the proposal of amendment recommended by the Committee on Judiciary was *not germane* to the bill as it did not satisfy the criteria of Mason's Rule 402 regarding germaneness in that it was not naturally related to and did not follow in a logical sequence the subject matter of the original proposal.

The President thereupon declared that Sec. 13 of the proposal of amendment recommended by the Committee on Judiciary could *not* be considered by the Senate and Sec. 13 of the proposal of amendment was ordered stricken.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Judiciary without Sec. 13?

Which was agreed to.

Thereupon, the pending question, Shall the bill be read a third time?, Senator Sears moved to amend the Senate proposal of amendment in Sec.18, after the word "blood" by inserting the words and breath

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Sears moved to amend the Senate proposal of amendment by striking out Sec.3 in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

Sec. 3. 23 V.S.A. § 1201 is amended to read:

§ 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR OTHER SUBSTANCE; CRIMINAL REFUSAL

(a) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway:

(1) when the person's alcohol concentration is 0.08 or more, or 0.02 or more if the person is operating a school bus as defined in subdivision 4(34) of this title; or

(2) when the person is under the influence of intoxicating liquor; or

(3) when the person is under the influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely; or

(4) when the person's alcohol concentration is 0.04 or more if the person is operating a commercial motor vehicle as defined in subdivision 4103(4) of this title; or

(5) when the person's alcohol concentration is 0.02 or more if the person has previously been convicted of a second or subsequent violation of this section within the preceding three years and the person's alcohol concentration for the second or subsequent violation was 0.16 or greater.

\* \* \*

Which was agreed to.

Thereupon, third reading of the bill was ordered.

**Proposal of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed; Bill Messaged**

**H. 73.**

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

An act relating to establishing a government transparency office to enforce the public records act.

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. 1 V.S.A. § 315 is amended to read:

§ 315. STATEMENT OF POLICY

It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the general assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed ~~with the view towards carrying out the above declaration of public policy to implement this policy, and the burden of proof shall be on the public agency to sustain its action.~~

Sec. 2. 1 V.S.A. § 316 is amended to read:

§ 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS

(a) Any person may inspect or copy any public record ~~or document~~ of a public agency, as follows:

(1) For any agency, board, department, commission, committee, branch, instrumentality, or authority of the state, a person may inspect a public record on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and 12 o'clock in the forenoon and between one o'clock and four o'clock in the afternoon; ~~provided, however, if the public agency is~~

~~not regularly open to the public during those hours, inspection or copying may be made~~

(2) For any agency, board, committee, department, instrumentality, commission, or authority of a political subdivision of the state, a person may inspect a public record during customary office business hours.

(b) If copying equipment maintained for use by a public agency is used by the agency to copy the public record or document requested, the agency may charge and collect from the person requesting the copy the actual cost of providing the copy. The agency may also charge and collect from the person making the request, the costs associated with mailing or transmitting the record by facsimile or other electronic means. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

(c) In the following instances an agency may also charge and collect the cost of staff time associated with complying with a request for a copy of a public record: (1) the time directly involved in complying with the request exceeds 30 minutes; (2) the agency agrees to create a public record; or (3) the agency agrees to provide the public record in a nonstandard format and the time directly involved in complying with the request exceeds 30 minutes. The agency may require that requests subject to staff time charges under this subsection be made in writing and that all charges be paid, in whole or in part, prior to delivery of the copies. Upon request, the agency shall provide an estimate of the charge.

(d) The secretary of state, after consultation with the secretary of administration, shall establish the actual cost of providing a copy of a public record that may be charged by state agencies. The secretary shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine "actual cost" the secretary shall consider the following only: the cost of the paper or the electronic media onto which a public record is copied, a prorated amount for maintenance and replacement of the machine or equipment used to copy the record and any utility charges directly associated with copying a record. The secretary of state shall adopt, by rule, a uniform schedule of public record charges for state agencies.

(e) After public hearing, the legislative body of a political subdivision shall establish actual cost charges for copies of public records. The legislative body shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine actual cost charges, the legislative body shall use the same factors used by the secretary of state. If a

legislative body fails to establish a uniform schedule of charges, the charges for that political subdivision shall be the uniform schedule of charges established by the secretary of state until the local legislative body establishes such a schedule. A schedule of public records charges shall be posted in prominent locations in the town offices.

\* \* \*

Sec. 3. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS

(a) As used in this subchapter:

(1) “Business day” means a day that a public agency is open to provide services.

(2) ~~“public~~ Public agency” or “agency” means any agency, board, department, commission, committee, branch, instrumentality, or authority of the state or any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the state.

(b) As used in this subchapter, “public record” or “public document” means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business. Individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies shall not be exempt from public inspection and copying.

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(5) records dealing with the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal or disciplinary investigation by any police or professional licensing agency; provided, however, that records relating to management and direction of a law enforcement agency ~~and~~; records reflecting the initial arrest of a person, including any ticket, citation, or complaint issued for a traffic violation, as that term is defined in 23 V.S.A. § 2301; and records reflecting the charge of a person shall be public;

\* \* \*

Sec. 4. 1 V.S.A. § 318 is amended to read:

§ 318. PROCEDURE

(a) Upon request, the custodian of a public record shall promptly produce the record for inspection, except that:

(1) if the record is in active use or in storage and therefore not available for use at the time the person asks to examine it, the custodian shall so certify this fact in writing to the applicant and set a date and hour within one calendar week of the request when the record will be available for examination;

(2) if the custodian considers the record to be exempt from inspection under the provisions of this subchapter, the custodian shall so certify in writing. Such certification shall identify the records withheld and the basis for the denial. The A record shall be produced for inspection or a certification shall be made that a record is exempt within two three business days of receipt of the request, unless otherwise provided in subdivision (5) of this subsection. The certification shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial. The custodian shall also notify the person of his or her right to appeal to the head of the agency any adverse determination;

(3) if appealed to the head of the agency, the head of the agency shall make a determination with respect to any appeal within five business days, ~~excepting Saturdays, Sundays, and legal public holidays,~~ after the receipt of such appeal. If an appeal of the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under section 319 of this title;

(4) if a record does not exist, the custodian shall certify in writing that the record does not exist under the name given to the custodian by the applicant or by any other name known to the custodian;

(5) in unusual circumstances as herein specified the time limits prescribed in this subsection may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten ~~working~~ business days from receipt of the request. As used in this subdivision, "unusual circumstances" means to the extent reasonably necessary to the proper processing of the particular request:

(A) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(B) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(C) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein, or with the attorney general.

(b) Any person making a request to any agency for records under subsection (a) of this section shall be deemed to have exhausted the person's administrative remedies with respect to each request if the agency fails to comply within the applicable time limit provisions of this section. Upon any determination by an agency to comply with a request for records, the records shall be made available promptly to the person making such request. Any notification of denial of any request for records under this section shall set forth the names and titles or positions of each person responsible for the denial of such request.

(c)(1) Any denial of access by the custodian of a public record may be appealed to the head of the agency. The head of the agency shall make a written determination on an appeal within five business days after the receipt of the appeal. A written determination shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial.

(2) If the head of the agency reverses the denial of a request for records, the records shall be promptly made available to the person making the request. A failure by the agency to comply with any of the time limit provisions of this section shall be deemed a final denial of the request for records by the agency.

(d) In responding to a request to inspect or copy a record under this subchapter, a public agency shall consult with the person making the request in order to clarify the request or to obtain additional information that will assist the public agency in responding to the request and, when authorized by this subchapter, in facilitating production of the requested record for inspection or copying. In unusual circumstances, as that term is defined in subdivision (a)(5) of this section, a public agency may request that a person seeking a voluminous amount of separate and distinct records narrow the scope of a public records request.

(e) A public agency shall not withhold any record in its entirety on the basis that it contains some exempt content if the record is otherwise subject to disclosure; instead, the public agency shall redact the information it considers to be exempt and produce the record accompanied by an explanation of the basis for denial of the redacted information.

(f) If a person making the request has a disability which requires accommodation to gain equal access to the public record sought, the person shall notify the public agency of the type of accommodation requested. The public agency shall give primary consideration to the accommodation choice expressed by the requestor, but may propose an alternative accommodation so long as it achieves equal access. The public agency shall provide accommodation to the person making the request unless the agency can demonstrate that accommodation would result in a fundamental alteration in the nature of its service, programs, activities, or in undue financial and administrative burden.

(g) The secretary of state may provide municipal public agencies and members of the public information and advice regarding the requirements of the public records act and may utilize informational websites, toll-free telephone numbers, or other methods to provide such information and advice.

Sec. 5. 1 V.S.A. § 319 is amended to read:

§ 319. ENFORCEMENT

(a) Any person aggrieved by the denial of a request for public records under this subchapter may apply to the civil division of the superior court in the county in which the complainant resides, or has his or her personal place of business, or in which the public records are situated, or in the civil division of the superior court of Washington County, to enjoin the public agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case, the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 317 of this title, and the burden ~~is~~ of proof shall be on the public agency to sustain its action.

(b) Except as to cases the court considers of greater importance, proceedings before the civil division of the superior court, as authorized by this section, and appeals there from, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(c) If the public agency can show the court that exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.

(d)(1) ~~The~~ Except as provided in subdivision (2) of this section, the court may shall assess against the public agency reasonable attorney fees and other

litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(2) The court may, in its discretion, assess against a public agency reasonable attorney fees and other litigation costs reasonably incurred in a case under this section in which the complainant has substantially prevailed provided that the public agency, within the time allowed for service of an answer under Rule 12(a)(1) of the Vermont Rules of Civil Procedure:

(A) concedes that a contested record or contested records are public; and

(B) provides the record or records to the complainant.

(3) The court may assess against the complainant reasonable attorney fees and other litigation costs reasonably incurred in any case under this section when the court finds that the complainant has violated Rule 11 of the Vermont Rules of Civil Procedure.

Sec. 6. 1 V.S.A. § 320(b) is amended to read:

(b) In the event of noncompliance with the order of the court, the civil division of the superior court may punish for contempt the responsible employee or official, and in the case of a uniformed service, the responsible member.

Sec. 7. 1 V.S.A. § 313(a)(6) is amended to read:

(6) Discussion or consideration of records or documents excepted from the access to public records provisions of ~~subsection~~ section 317(b) of this title. Discussion or consideration of the excepted record or document shall not itself permit an extension of the executive session to the general subject to which the record or document pertains;

Sec. 8. 3 V.S.A. § 218(d) is amended to read:

(d) The head of each state agency or department shall designate a member of his or her staff as the records officer for his or her agency or department, and shall notify the Vermont state archives and records administration in writing of the name and title of the person designated, and shall post the name and contact information of the person on the agency or department website, if one exists.

Sec. 9. 9 V.S.A. § 4113(b) is amended to read:

(b) Reports filed pursuant to this section shall be an exempt record and confidential pursuant to ~~subdivision 317(b)(1) of Title 1~~ 1 V.S.A. § 317(c)(1) and shall be maintained for the sole and confidential use of the commissioner, except that the reports may be disclosed to the federal government or to the

appropriate energy agency or department of another state with substantially similar confidentiality statutes for regulations with respect to such reports. However, the commissioner shall make available to appropriate committees of the general assembly statistical information derived from the reports required by this section, provided that this may be done in a manner which preserves the confidentiality of the reports submitted by particular persons.

Sec. 10. 32 V.S.A. § 3755(e) is amended to read:

(e) Any applicant for appraisal under this subchapter bears the burden of proof as to his or her qualification. Any documents submitted by an applicant as evidence of income shall be held in confidence by any person accepting or reviewing them pursuant to provisions of this subchapter, and shall not be made available for public examination, whether or not such person is subject to the provisions of ~~subdivision 317(a)(6) of Title 1~~ 1 V.S.A. § 317(c)(6).

Sec. 11. PUBLIC RECORDS LEGISLATIVE STUDY COMMITTEE

(a) There is established a legislative study committee to review the requirements of the public records act and the numerous exemptions to that act in order to assure the integrity, viability, and the ultimate purposes of the act. The review committee shall consist of:

(1) Three members of the house of representatives, appointed by the speaker of the house; and

(2) Three members of the senate, appointed by the committee on committees.

(b) The review committee shall review the exemptions set forth in 1 V.S.A. § 317 or elsewhere in the Vermont Statutes Annotated to the inspection and copying of public records under the public records act, 1 V.S.A. chapter 5, subchapter 3. Prior to each legislative session, the committee shall submit to the house and senate committees on government operations and the house and senate committees on judiciary recommendations concerning whether the public records act and exemptions under the act from inspection and copying of a public record should be repealed, amended, or remain unchanged. The report of the committee may take the form of draft legislation.

(c) In reviewing and making a recommendation under subsection (b) of this section, the study committee may review:

(1) Whether the public records act requires revision;

(2) Whether an exemption to inspection or copying under the public records act is necessary, antiquated, or in need of revision;

(3) Whether an exemption to inspection or copying under the public records act is as narrowly tailored as possible, including the need to clarify the term “personal documents” referenced in 1 V.S.A. § 317(c)(7) in order to ensure that it does not unintentionally limit access to public records that are not personnel records; and

(4) Whether the public records act should be amended to clarify application of the act to contracts between a public agency and a private entity for the performance of a governmental function;

(5) Whether or not to authorize a public agency to charge for staff time associated with responding to a request to inspect or copy a public record, including whether an agency should be authorized to charge for the staff time incurred in locating, reviewing, or redacting a public record; and

(6) Any other criteria that assist the review committee in determining the value of an exemption as compared to the public’s interest in the public record protected by the exemption.

(d) In developing recommendations authorized under subsection (a) of this section, the study committee shall consult with the secretary of administration, the secretary of state, the office of the attorney general, representatives of municipal interests, representatives of school or education interests, representatives of the media, and advocates for access to public records.

(e) The study committee shall elect co-chairs from among its members. For attendance at a meeting when the general assembly is not in session, legislative members of the commission shall be entitled to the same per diem compensation and reimbursement for actual and necessary expenses as provided members of standing committees under 2 V.S.A. § 406. The study committee is authorized to meet no more than three times each year during the interim between sessions of the general assembly.

(f) Legislative council shall provide legal and administrative services to the study committee. The study committee may utilize the legal, research, and administrative services of other entities, such as educational institutions and, when necessary for the performance of its duties, the Vermont state archives and records administration.

#### Sec. 12. LEGISLATIVE COUNCIL; LIST OF PUBLIC RECORDS ACT EXEMPTIONS

The legislative council, under its statutory revision authority set forth in 2 V.S.A. § 421, shall compile a list of all known Vermont statutory exemptions to the inspection and copying of public records under the public records act, 1 V.S.A. chapter 5, subchapter 3. Legislative council shall publish the list of

exemptions compiled under this section as a statutory revision note to 1 V.S.A. § 317 and shall update the list as necessary.

Sec. 13. STATE AGENCY PUBLIC RECORDS REQUEST SYSTEM

(a) Beginning July 1, 2011, all state agencies that receive a request to inspect or copy a public record shall catalogue the request in the public records request system that the secretary of administration established in response to the requirements of Sec. 3 of No. 132 of the Acts of the 2005 Adj. Sess. (2006).

(b) The secretary of administration shall revise and update the public records request system so that it includes: the date a public records request is received; the state agency that received the request; the organization or individual that made the request, including a contact name; the status of the request, including whether the request was fulfilled in whole, fulfilled in part, or denied; if the request was fulfilled in part or denied, the exemption or other grounds asserted as the basis for partial fulfillment or denial; the estimated hours necessary to respond to the request; the date the state agency closed the request; and the elapsed time between receipt of the request and the date the agency closed the request.

(c) On or before January 15, 2012, and annually thereafter, the secretary of administration shall submit to the senate and house committees on government operations a copy of the records requests catalogued in the public records request system in the preceding calendar year.

(d)(1) As a part of the report issued on or before January 15, 2012 to the senate and house committees on government operations under subsection (c) of this section, the secretary of administration, after consultation with the department of information and innovation and the Vermont state archives and records administration, shall submit a report regarding implementation by state agencies of an electronic documents management system for the creation, management, archiving, redaction, and confidential designation of records produced or acquired by state agencies. The report shall include a recommendation as to whether a documents management system should be implemented by state agencies.

(2) If the secretary recommends implementation of a document management system, the recommendation shall:

(A) identify a specific document management system for implementation by state agencies. The report shall summarize the operation or application of the system, provide a short explanation of the basis for selection of the system, and describe how the system will improve efficiency of state agencies in managing public records;

(B) estimate the cost of implementation by state agencies of the recommended document system;

(C) propose a schedule for implementation of the recommended document management system by all state agencies.

#### Sec. 14. PUBLIC RECORDS REQUESTS; MUNICIPALITIES

(a) The secretary of state, after consultation with the Vermont League of Cities and Towns, annually shall survey municipalities in the state regarding whether municipalities are receiving an increased number of requests to inspect records, whether requests for inspection of public records are being used to circumvent copying of a record by a municipality, and whether requests to inspect records pose any administrative burdens on municipalities. For purposes of this subsection, "municipality" shall mean a city, town, village, or school district of the state. On or before January 15, 2012 and annually thereafter, the secretary of state shall submit the results of the survey to the senate and house committees on government operations.

(b) As part of the report required under subsection (a) of this section to be submitted to the senate and house committees on government operations on January 15, 2012, the secretary of state, after consultation with the Vermont League of Cities and Towns and other interested parties, shall submit a recommendation for increasing municipal understanding and compliance with the requirements of the Public Records Act, as set forth in 1 V.S.A. chapter 5, subchapter 4.

#### Sec. 15. COURT ADMINISTRATOR REPORT ON PUBLIC RECORDS CASES

On or before January 15, 2012 and annually thereafter, the Vermont court administrator's office shall report to the senate and house committees on government operations regarding contested cases filed in the civil division of the superior court involving disputes under the Public Records Act, as set forth in 1 V.S.A. chapter 5, subchapter 4. The report shall include the number of Public Records Act contested cases filed annually in the civil division of the superior court, the disposition of such cases, and whether attorney's fees were awarded in any of the cases. The court administrator shall submit a copy of a report required under this section to the secretary of state at the same time the report is submitted to the senate and house committees on government operations.

#### Sec. 16. REPEAL

Sec. 11 of this act (public records legislative study committee) is repealed on January 15, 2015.

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**Sec. 17. EFFECTIVE DATE**

This act shall take effect on July 1, 2011.

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

Senator Nitka, 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, 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 with proposal of amendment.

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

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

**Rules Suspended; House Proposal of Amendment Not Concurred In;  
Committee of Conference Requested; Committee of Conference  
Appointed; Bill Messaged**

**S. 100.**

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

An act relating to making miscellaneous amendments to education laws.

Was taken up for immediate consideration.

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

\* \* \* Technical Corrections; Miscellaneous \* \* \*

Sec. 1. 16 V.S.A. § 563(12) is amended to read:

(12) Shall employ such persons as may be required to carry out the work of the school district ~~and dismiss any employee when necessary. The school board shall consider the recommendation of the superintendent before~~

~~employing or dismissing any person pursuant to the provisions of subdivision 242(3) of this title.~~

Sec. 2. 16 V.S.A. § 1122 is amended to read:

§ 1122. PUPILS OVER ~~SIXTEEN~~ 16

A person having the control of a child over ~~sixteen~~ 16 years of age who allows ~~such the~~ the child to become enrolled in a public school, shall cause ~~such the~~ the child to attend ~~such the~~ the school continually for the full number of the school days of the term in which he or she is ~~so~~ enrolled, unless ~~such the~~ the child is mentally or physically unable to continue, or is excused in writing by the superintendent or a majority of the school directors. In case of such enrollment, ~~such the~~ the person, and the teacher, child, superintendent, and school directors shall be under the laws and subject to the penalties relating to the attendance of children between the ages of ~~seven~~ six and ~~sixteen~~ 16 years.

Sec. 3. 16 V.S.A. § 1221 is amended to read:

~~§ 1221. CONTROL AND REGULATION~~

~~The board of school directors shall control and regulate the transportation and board of pupils in the schools under its charge as hereinafter provided, and contracts therefor shall be made by it. To transport such pupils properly, the board may purchase, maintain and operate the necessary equipment in the name of the school district pursuant to section 559 of this title.~~

\* \* \* Special Education \* \* \*

Sec. 4. 16 V.S.A. § 2945(a) and (b) are amended to read:

(a) There is created an advisory council on special education ~~which that~~ shall consist of 17 members. All members of the council shall serve for a term of three years or until their successors are appointed. Terms shall begin on April 1 of the year of appointment. A majority of the members shall be either individuals with disabilities or parents of children with disabilities.

(1) Fifteen of the members shall be appointed by the governor with the advice of the commissioner of education. Among the gubernatorial appointees shall be:

(A) ~~teachers of children with disabilities;~~

(B) representatives of ~~other~~ state agencies involved in the financing or delivery of related services to children with disabilities, ~~representatives;~~

(C) a representative of independent schools;

(D) at least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities, ~~representatives~~;

(E) a representative from the state juvenile and adult corrections agency, ~~handicapped~~;

(F) individuals, ~~with disabilities~~;

(G) parents of children with disabilities, ~~provided the child shall be younger than 26 years old at the time his or her parent is appointed to the council~~;

(H) state and local education ~~administrators~~ officials, ~~including officials who carry out activities under the McKinney-Vento Homeless Assistance Act~~;

(I) a representative of higher education who prepares special education and related services personnel;

(J) a representative from the state child welfare department responsible for foster care; and

(K) special education ~~program~~ administrators. ~~A majority of the members must be either individuals with disabilities or parents of children with disabilities.~~

(2) In addition, two members of the general assembly shall be appointed, one from the house of representatives and one from the senate. The ~~speaker shall appoint the~~ house member ~~shall be appointed by the speaker~~, and the ~~committee on committees shall appoint the~~ senate member ~~shall be appointed by the committee on committees~~. All members of the council shall serve for a term of three years, beginning from April 1 of the year of appointment or until their successors are appointed. For the purpose of implementing this section, the governor shall make initial appointments as follows: Approximately one third of the members shall be appointed to one-year terms, one third to two-year terms, and one third to three-year terms. As the terms expire, the new appointees shall be appointed to fill three-year terms.

(b) The council shall elect its own ~~chairman~~ chair from among its membership. The council shall meet annually at the call of the ~~chairman~~ chair, and other meetings may be called by the ~~chairman~~ chair at such times and places as he or she may determine to be necessary.

Sec. 5. 16 V.S.A. § 2967(b) is amended to read:

(b) The total expenditures made by the state in any fiscal year pursuant to this chapter shall be 60 percent of the statewide total special education

expenditures of funds ~~which~~ that are not derived from federal sources. Special education expenditures shall include:

- (1) costs eligible for grants and reimbursements under sections 2961 through 2963a of this title;
- (2) costs for services for the visually ~~handicapped~~ impaired and hearing impaired;
- (3) costs for the interdisciplinary team program;
- (4) costs for regional ~~multi-handicapped~~ specialists in multiple disabilities;
- (5) funds expended for training and programs to meet the needs of students with emotional behavioral problems under subsection 2969(c) of this title; and
- (6) funds expended for training under subsection 2969(d) of this title.

Sec. 6. 16 V.S.A. § 4014(d) is amended to read:

(d) The commissioner shall evaluate proposals based on the following criteria:

(1) The program will serve additional children with special needs, such as those who are economically disadvantaged, those who have limited English language skills, those with ~~handicapping~~ disabling conditions or those who have suffered from or are at risk of, abuse or neglect.

\* \* \*

(8) The program enables children with ~~handicapping~~ disabling conditions to be served in settings with ~~their nonhandicapped~~ peers who do not have a disability.

(9) The program includes voluntary training for parents.

\* \* \* Data Corrections \* \* \*

Sec. 7. 16 V.S.A. § 4030 is amended to read:

§ 4030. DATA SUBMISSION; CORRECTIONS

(a) Upon discovering an error or change in data submitted to the commissioner for the purpose of determining payments to or from the education fund, a school district shall report the error or change to the commissioner as soon as possible. Any budget deficit or surplus due to the error or change shall be carried forward to the following year.

(b) The commissioner shall use data submitted on or before January 15 prior to the fiscal year which begins the following July 1, in order to calculate the amounts due each school district for any fiscal year for the following:

- (1) ~~the adjusted education payments due under section 4011 of this title;~~
- (2) ~~transportation aid due under Sec. 98 of Act No. 71 of 1998~~ section 4016 of this title; and
- (3)~~(2)~~ the small school support grant due under section 4015 of this title.

(c) The commissioner shall use data corrections regarding local education budget amounts submitted on or before June 15 prior to the fiscal year which begins the following July 1, in order to calculate the ~~amounts due each school district~~ education payments due under section ~~4027~~ 4011 of this title. However, the commissioner may use data submitted after June 15 and prior to July 15 due to unusual or exceptional circumstances as determined by the commissioner.

(d) The commissioner shall not use data corrected due to an error submitted following the deadlines to recalculate the equalized pupil ratio under subdivision 4001(3) of this title. The commissioner shall not adjust ~~payments to or from the education fund~~ average daily membership counts if an error or change is reported more than three fiscal years following the date that the original data was due. ~~Adjustments to payments to or from the education fund under this section shall be made on the earliest date possible after the fiscal year in which the error was reported, and in accordance with the schedules set forth in subsection 4028(a) of this title and section 5402 of Title 32, and after the necessary appropriation by the general assembly.~~

(e) The board may adopt rules as necessary to implement the provisions of this section.

\* \* \* Agency of Human Services \* \* \*

Sec. 8. 16 V.S.A. § 212(13) is amended to read:

(13) Ensure the provision of services to children and adolescents with a severe emotional disturbance in coordination with the ~~departments of mental health and mental retardation and social and rehabilitation services in accordance with the provisions of chapter 2 of Title 3~~ department of mental health, the department for children and families, and the department of disabilities, aging, and independent living pursuant to the provisions of chapter 43 of Title 33.

Sec. 9. 16 V.S.A. § 910 is amended to read:

§ 910. COORDINATION OF SERVICES TO CHILDREN AND ADOLESCENTS WITH A SEVERE EMOTIONAL DISTURBANCE

Each town, city, interstate, incorporated, unified, or union school district shall cooperate with the ~~departments of mental health and mental retardation, social and rehabilitation services~~ department of mental health, the department for children and families, the department of disabilities, aging, and independent living, and the department of education in coordinating educational services to children and adolescents with a severe emotional disturbance, ~~in accordance with the provisions of chapter 2 of Title 3~~ pursuant to the provisions of chapter 43 of Title 33.

Sec. 10. 16 V.S.A. § 1075(i) is amended to read:

(i) The commissioner ~~of social and rehabilitation services~~ for children and families shall continue to provide social services and financial support in accordance with ~~16 V.S.A. § section 2950 of this title~~ on behalf of individuals under his or her care and custody while in a residential placement, until they reach their ~~nineteenth~~ 19th birthday.

Sec. 11. 16 V.S.A. § 1166(b)(1) is amended to read:

(1) A provision that any student who brings a firearm to or possesses a firearm at school shall be referred to a law enforcement agency. In addition to any other action the law enforcement agency may take, it may report the incident to the department ~~of social and rehabilitation services~~ for children and families.

Sec. 12. 16 V.S.A. § 2845 is amended to read:

§ 2845. TRUST FUND; GRANTS; STUDENTS IN ~~SRS~~ DCF CUSTODY

(a) The board shall establish a trust fund to be used to provide grants for students who do not have parental support and are or have been under the custody of the commissioner ~~of social and rehabilitation services~~ for children and families. The board may draw up to 90 percent of the assets in the fund for these purposes.

\* \* \*

(e) A child who is under the custody of the commissioner ~~of social and rehabilitation services~~ for children and families, or a young adult between the ages of 18 and 24 who was under the custody of the commissioner ~~of social and rehabilitation services~~ for children and families for at least six months when that person was between the ages of 16 and 18, and who is accepted for degree study at the Vermont state colleges, the University of Vermont, or a

Vermont independent college, is eligible for an annual grant under this section, to the extent that funds are available in the trust fund. Upon certification by the Vermont state colleges, the University of Vermont, or a Vermont independent college that a Vermont resident student who is eligible under this section has matriculated in a degree program at a Vermont college or university, the student may receive a grant if the student's financial aid eligibility leaves remaining financial need following the student and the family contributions, if any, and the availability of all other sources of gift aid. Each grant, together with the student and the family contributions, if any, and all other sources of gift aid, shall not exceed the full cost of tuition, fees, room and board, and no individual annual grant may exceed \$3,000.00. The board may prorate the funds appropriated for use under this section where the collective need of the eligible applicants exceeds the funds appropriated. In addition, the board may prorate a grant based on a student's full- or part-time enrollment status.

\* \* \*

(g) The board shall coordinate implementation of this section with the commissioner of ~~social and rehabilitation services for children and families~~, the president of the association of Vermont independent colleges, the chancellor of the Vermont state colleges, and the president of the University of Vermont. The board may establish procedures and policies or adopt rules to implement this section.

Sec. 13. 16 V.S.A. § 2943 is amended to read:

§ 2943. COMMISSIONER OF EDUCATION FOR CHILDREN WITH DISABILITIES; POWERS

The commissioner of education, by virtue of ~~his~~ the office, shall be commissioner of education for children with disabilities; and, ~~as such commissioner~~ shall superintend all matters relating to the essential early education and special education of children with disabilities, ~~and~~. In addition, the commissioner, in coordination with the ~~departments of mental health and mental retardation and social and rehabilitation services~~ department of mental health, the department of disabilities, aging, and independent living, and the department for children and families, shall ensure that appropriate educational services are provided to children and adolescents with a severe emotional disturbance in accordance with the provisions of chapter 43 of Title 33 and may accept gifts, grants, or other donations to carry out the purpose of this chapter.

Sec. 14. 16 V.S.A. § 2948(f) is amended to read:

(f) If a student is being provided education or special education or both in a school operated by the department of corrections ~~or the department of mental health and mental retardation~~, the agency department of corrections shall serve the student as if the agency department were the school district of residence of the student.

Sec. 15. 16 V.S.A. § 2948(n) is amended to read:

(n) If a student is being provided education or special education, or both in a school operated by the department ~~of social and rehabilitation services~~ for children and families, the funding and provision of services shall be the responsibility of the department ~~of social and rehabilitation services~~ for children and families and special education procedural responsibility shall be the responsibility of the district of residence of the student's parent, parents, or guardian.

Sec. 16. 16 V.S.A. § 2950(b) is amended to read:

(b) Residential payments.

(1) For a student in the care and custody of the commissioner ~~of social and rehabilitation services~~ for children and families who is placed in a 24-hour residential facility within or outside Vermont, the commissioner of education shall pay the education costs, and the commissioner ~~of social and rehabilitation services~~ for children and families shall arrange for the payment of the remainder of the costs. However, ~~where~~ if the state interagency team, as defined in ~~section 33 V.S.A. § 4302 of Title 33, has found~~ finds such placement inappropriate for the student's education needs, then the commissioner of education shall pay none of the education costs of the placement and the commissioner ~~of social and rehabilitation services~~ for children and families shall arrange for the payment of the full cost of the placement.

(2) For a student who is placed in a 24-hour residential facility within or outside Vermont by a Vermont licensed child placement agency, a designated community mental health agency, any other agency as defined by the commissioner of education, or a Vermont state agency or department other than the department of corrections or the department ~~of social and rehabilitation services~~ for children and families, the commissioner of education shall pay the education costs and the agency or department in whose care the student is placed shall arrange for the payment of the remainder of the costs. However, ~~where~~ if the state interagency team, as defined in ~~section 33 V.S.A. § 4302 of Title 33, has found~~ finds such placement inappropriate for the student's education needs, then the commissioner of education shall pay none

of the education costs of the placement and the agency or department in whose care the student is placed shall arrange for payment of the full cost of the placement. This subdivision does not apply to a student for whom a residential placement is:

- (A) specified in the student's individualized education program; and
- (B) funded in collaboration with another agency.

Sec. 17. 16 V.S.A. § 4001(8) is amended to read:

(8) "Poverty ratio" means the number of persons in the school district who are aged six through 17 and who are from economically deprived backgrounds, divided by the long-term membership of the school district. A person from an economically deprived background means a person who resides with a family unit receiving ~~Food Stamps~~ nutrition benefits. A person who does not reside with a family unit receiving ~~Food Stamps~~ nutrition benefits but for whom English is not the primary language shall also be counted in the numerator of the ratio. The commissioner shall use a method of measuring the ~~Food Stamps~~ nutrition benefits population which produces data reasonably representative of long-term trends. Persons for whom English is not the primary language shall be identified pursuant to subsection 4010(e) of this title.

\* \* \* Supervisory Union Duties; Transportation Employees;

Transitional Language \* \* \*

Sec. 18. Sec. 18 of No. 153 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

#### Sec. 18. TRANSITION

Each supervisory union shall provide for any transition of employment of special education and transportation staff by member districts to employment by the supervisory union, pursuant to Sec. 9 of this act, 16 V.S.A. § 261a(a)(6) and (8)(E), 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 and their transportation 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 and with its transportation employees, will address issues of seniority, reduction in force, layoff, and recall.

\* \* \* Postsecondary Approval; Fees \* \* \*

Sec. 19. 16 V.S.A. § 176 is amended to read:

§ 176. POSTSECONDARY SCHOOLS CHARTERED IN VERMONT

(a) Applicability. ~~All postsecondary schools whose primary operation is in the state of Vermont are~~ Except as provided in subsection (d) of this section, any postsecondary school that operates primarily or exclusively in the state of Vermont is subject to this section.

(b) Definitions. As used in this section:

(1) "Postsecondary school" means any person who offers or operates a program of college or professional education for credit or a degree and enrolls or intends to enroll students.

(2) ~~"Offer" means, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person in this state, directly or indirectly, in any form, to perform the act described.~~ "Offer" includes the use in the name of an institution or in its promotional material; of a term such as "college," "university," or "institute" which that is intended to indicate that ~~the business it~~ is an institution which that offers postsecondary education.

(3) "Degree" means any award ~~which that~~ is given by a postsecondary school for completion of a program or course and ~~which that~~ is designated by the term degree, associate, bachelor, baccalaureate, masters, or doctorate, or any similar award which that the state board includes by rule.

(4) "Operate" means to establish, keep, or maintain any facility or location from or through which education is offered or given, or educational degrees are offered or granted. The term includes contracting with any person to perform any such act.

(5) “Accredited” means accredited by any regional ~~or~~, national, or programmatic institutional accrediting agency recognized by the ~~state board~~ U.S. Department of Education.

(c) State board approval.

(1) Every postsecondary school ~~which~~ that is subject to this section shall:

(A) apply for a certificate of approval from state board prior to registering its name with the secretary of state pursuant to Title 11, Title 11A, or Title 11B;

(B) apply for and receive a certificate of approval from the state board prior to offering postsecondary credit-bearing courses or programs and prior to admitting the first student; and

(C) ~~notify~~ provide written notification to each applicant for admission or enrollment ~~in writing~~, on an application, enrollment, or registration form to be signed by the applicant, that credits earned at the school are transferable at the discretion of the receiving school.

(2) Every postsecondary school shall secure a certificate of degree-granting authority from the state board before it confers or offers to confer a degree.

(d) Exemptions. The following are exempt from ~~all~~ the requirements of this section except for the requirements of subdivision (c)(1)(C) of this section:

(1) Programs of education sponsored by a ~~bona fide~~ trade, labor, business, or professional organization ~~recognized by the state board if they are:~~

~~(A) that are~~ conducted solely for that organization’s membership or for members of the particular industries or professions served by that organization; ~~and~~

~~(B) not available to the public on a fee basis.~~

(2) The University of Vermont and the Vermont State Colleges.

(3) Postsecondary schools currently licensed or approved by a Vermont state occupational licensing board.

(4) Postsecondary schools ~~which~~ that are accredited. The following postsecondary institutions are accredited, meet the criteria for exempt status, and are authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate: Bennington College, Burlington College, Champlain College, College of St. Joseph, Goddard College, Green Mountain College, Landmark College, Marlboro College, Middlebury College, New England Culinary Institute, Norwich

University, Saint Michael's College, SIT, Southern Vermont College, Sterling College, Vermont College of Fine Arts, and Vermont Law School. This authorization is provided solely to the extent necessary to ensure institutional compliance with federal financial aid-related regulations, and it does not affect, rescind, or supersede any preexisting authorizations, charters, or other forms of recognition or authorization.

(5) Nondegree-granting and noncredit-granting postsecondary schools ~~which that~~ offer only training in the specific trades or vocations.

(6) Religious instruction ~~which that~~ does not result in earning credits or a degree.

(e) Issuance. On proper application, the state board shall issue a certificate of approval or a certificate of degree-granting authority, or both, to an applicant whose goals, objectives, programs, and resources, including personnel, curriculum, finances, and facilities, are found by the state board to be adequate and appropriate for the stated purpose and for the protection of students and the public interest. ~~In the case of a course or program offered by correspondence, the applicant shall provide proof of application for a license pursuant to chapter 85 of this title.~~ The certificate shall be for a term not exceeding five years. The certificate may be subject to conditions, terms, or limitations.

\* \* \*

Sec. 20. 16 V.S.A. § 176a is amended to read:

§ 176a. POSTSECONDARY SCHOOLS NOT CHARTERED IN VERMONT

(a) Applicability. ~~All~~ Except as provided in subsection (e) of this section, a postsecondary school whose primary operation lies outside the state of Vermont, offers or operates a program of college or professional education for credit or a degree, and wishes to operate in Vermont is subject to this section and to subsections 176(g) through (l) of this title.

(b) Definitions. All words and phrases defined in section 176 of this title shall have the same meanings in this section.

(c) ~~State board approval.~~ Every Requirements. A postsecondary school subject to this section shall:

(1) ~~apply for a certificate of approval from the state board prior to registering~~ register its name with the secretary of state pursuant to Title 11, Title 11A, or Title 11B;

(2) secure accreditation by any regional, national, or programmatic institutional accrediting agency recognized by the U.S. Department of Education;

(3) apply for and receive a certificate of approval or a certificate of degree-granting authority or both pursuant to subsection 176(e) of this title prior to offering postsecondary credit-bearing courses or programs and prior to, admitting the first student;

~~(3) secure a certificate of degree-granting authority from the state board before it confers or offers to confer, or conferring or offering to confer a degree to a student enrolled in its Vermont school;~~

(4) meet any requirements for approval in its state of primary operation for the specific degree or credit-bearing course or program that it intends to offer in Vermont as a condition of approval to operate in Vermont;

(5) register with the department of education pursuant to state board rule; and

(6) provide written notification to each applicant for admission or enrollment, on an application, enrollment, or registration form to be signed by the applicant, that credits earned at the school are transferable at the discretion of the receiving school.

(d) Renewal. After receiving initial approval, a postsecondary school subject to this section shall register annually with the state board of education by providing evidence of accreditation and approval by the state in which it primarily operates and any other documentation the board requires. The state board may refuse or revoke registration at any time for good cause.

(e) Exemptions. The following are exempt from all the requirements of this section except for the requirements of subdivision (e)(2) of this section the provisions of this section:

(1) Programs of education sponsored by a ~~bona fide~~ trade, labor, business, or professional organization ~~recognized by the state board if they that~~ are:

~~(A)~~ conducted solely for that organization's membership or for members of the particular industries or professions served by that organization; ~~and~~

~~(B) not available to the public on a fee basis.~~

(2) Postsecondary schools currently licensed or approved by a Vermont occupational licensing board.

(3) ~~Nondegree-granting or noncredit-granting postsecondary schools~~ which that offer only training in the specific trades or vocations.

(4) ~~Religious instruction~~ which that does not result in earning credits or a degree.

(5) Programs of education offered solely via correspondence, the Internet, or electronic media, provided that the postsecondary school has no physical presence in Vermont. Evidence of a "physical presence" includes the existence of administrative offices, seminars conducted by a person who is physically present at the seminar location, the provision of direct services to students, and required physical gatherings.

~~(e) Other provisions:~~

~~(1) All provisions of subsections (e) through (1) of 16 V.S.A. § 176 shall apply to all postsecondary schools subject to this section.~~

~~(2) All postsecondary schools subject to this section shall notify each applicant for enrollment in writing, on an application, enrollment, or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.~~

Sec. 21. 16 V.S.A. § 177 is amended to read:

~~§ 177. COSTS OF APPROVAL POSTSECONDARY APPROVAL; FEES~~

~~(a) Fees for certification of postsecondary schools shall be \$2,000.00, except that certification for degree-granting schools shall be \$2,500.00. A postsecondary school subject to section 176 of this title shall pay:~~

~~(1) a fee of \$4,000.00 for an application for approval to offer credit-bearing courses;~~

~~(2) a fee of \$5,000.00 for an application for degree-granting authority if the postsecondary school is approved to offer credit-bearing courses; and~~

~~(3) a fee of \$7,500.00 if the school seeks approval under subdivisions (1) and (2) of this subsection simultaneously.~~

~~(b) Fees for~~ If a postsecondary school that is subject to section 176 of this title seeking and is operating within an unexpired certification period files an application to offer a new degree at the same level as a degree previously approved by the state board, while operating within a certification period previously granted by the state board, then the fee shall be based upon the actual costs to the department but shall not be less than \$1,000.00 for each new degree.

~~(c) A postsecondary school subject to section 176a of this title shall pay:~~

(1) the fees set forth in subsection (a) of this section for initial review and approval pursuant to subdivision 176a(c)(3) of this title;

(2) a fee of \$1,000.00 for initial registration with the department pursuant to subdivision 176a(c)(5) of this title; and

(3) an annual fee of \$500.00 to renew its registration to operate in Vermont pursuant to subsection 176a(d) of this title.

(d) Fees assessed under this section are not refundable.

(e) These fees Fees assessed under this section shall be credited to a special fund established and managed pursuant to chapter 7, subchapter 5 of Title 32, and shall be available to the department to offset the costs of ~~approvals~~ approval.

\* \* \* School Food Services \* \* \*

Sec. 22. 16 V.S.A. chapter 27, subchapter 2 is amended to read:

#### Subchapter 2. School Lunches

##### § 1261a. DEFINITIONS

For the purposes of this subchapter:

(1) “Food programs” means provisions of food to persons under programs meeting standards for assistance under the National School Lunch Act, 42 U.S.C. § 1751 et seq., and any amendment thereto, and in the Child Nutrition Act, 42 U.S.C. § 1779 et seq., and any amendments thereto.

(2) “School board” means the governing body responsible for the administration of a public school, ~~or~~.

(3) “Independent school board” means a governing body responsible for the administration of a nonprofit independent school exempt from United States income taxes.

##### § 1262a. AWARD OF GRANTS

(a)(1) The state board of education may, from funds appropriated for this subsection to the department of education, award grants to:

(A) supervisory unions for the use of member school boards which that establish and operate food programs, ~~provided the~~

(B) independent school boards that establish and operate food programs; and

(C) approved education programs, as defined in subdivision 11(a)(34) of this title and operating under private nonprofit ownership as defined in the National School Lunch Act, that establish and operate food

programs for students engaged in a teen parent education program or students enrolled in a Vermont public school.

(2) The amount of any grant awarded under this subsection shall not be more than the amount necessary, in addition to the charge made for the meal and any reimbursement from federal funds, to pay the actual cost of the meal.

(b) The state board may, from funds available to the department of education for this subsection, award grants to supervisory unions consisting of one or more school districts ~~which that~~ need to initiate or expand food programs in order to meet the requirements of section 1264 of this title and ~~which that~~ seek assistance in meeting the cost of initiation or expansion. The amount of the grants shall be limited to ~~seventy-five~~ 75 percent of the cost deemed necessary by the commissioner to construct, renovate or acquire additional facilities and equipment to provide lunches to all pupils, and shall be reduced by the amount of funds available from federal or other sources, including those funds available under section 3448 of this title. The state board, upon recommendation of the commissioner, shall direct ~~school districts~~ supervisory unions seeking grants under this section to share facilities and equipment within the supervisory union and with other supervisory unions for the provision of lunches wherever more efficient and effective operation of food programs can be expected to result.

(c) On a quarterly basis, from state funds appropriated to the department of education for this subsection, the state board shall award to each ~~school district~~ supervisory union, independent school board, and approved education program as described in subsection (a) of this section a sum equal to the amount that would have been the student share of the cost of all breakfasts actually provided in the district during the previous quarter to students eligible for a reduced price breakfast under the federal school breakfast program.

#### § 1262b. REGULATIONS

The state board of education shall adopt regulations governing grants under section 1262a of this title. Such regulations shall provide for grants ~~to local school programs~~ from state funds in accordance with guidelines of food programs as defined under federal law. The state board of education may adopt such other rules and regulations as are necessary to carry out the provisions of this subchapter.

#### § 1264. FOOD PROGRAM

(a)(1) Each school board operating a public school shall cause to operate within the school district a food program that makes available a school lunch, as provided in the National School Lunch Act as amended, and a school

breakfast, as provided in the National Child Nutrition Act as amended, to each attending pupil every school day.

(2) Each school board operating a public school shall offer a summer snack or meals program funded by the Summer Food Service program or the National School Lunch Program for participants in a summer educational or recreational program or camp if:

(A) At least 50 percent of the students in a school in the district were eligible for free or reduced-price meals under subdivision (1) of this subsection for at least one month in the preceding academic year;

(B) The district operates or funds the summer educational or recreational program or camp; and

(C) The summer educational or recreational program or camp is offered 15 or more hours per week.

(b) In the event of an emergency, the school board may apply to the department for a temporary waiver of the requirements in subsection (a) of this section. The commissioner shall grant the requested waiver if he or she finds that it is unduly difficult for the school district to provide a school lunch, breakfast, or summer meals program, or any combination of the three, and if he or she finds that the school district ~~has~~ and supervisory union have exercised due diligence ~~in its efforts~~ to avoid the emergency situation that gives rise to the need for the requested waiver. In no event shall the waiver extend for a period to exceed 20 school days or, in the case of a summer meals program, the remainder of the summer vacation.

(c) The state shall be responsible for the student share of the cost of breakfasts provided to all students eligible for a reduced price breakfast under the federal school breakfast program.

#### § 1265. EXEMPTION; PUBLIC DISCUSSION

(a) The school board of a public school district ~~which that~~ wishes to be exempt from the provisions of section 1264 of this title may vote at a meeting warned and held for that purpose to exempt itself from the requirement to ~~operate~~ offer either the school lunch program or the school breakfast program, or both, for a period of one year.

(b) If a public school board is exempt from ~~operating~~ offering a breakfast or lunch program, ~~annually it~~ its school board shall conduct a discussion annually on whether to continue the exemption. The pending discussion shall be included on the agenda at a regular or special school board meeting publicly noticed in accordance with ~~subsection 1~~ V.S.A. § 312(c) of Title 1, and citizens shall be provided an opportunity to participate in the discussion. The school

board shall send a copy of the notice to the commissioner and to the superintendent of the supervisory union at least ten days prior to the meeting. Following the discussion, the school board shall vote on whether to continue the exemption for one additional year.

(c) On or before the first day of November 1, previous prior to the date on which an exemption voted under this section is due to expire, the commissioner shall notify the ~~school board~~ boards of the affected school district and supervisory union in writing that the exemption will expire.

(d) Following a meeting held pursuant to subsection (b) of this section, the school board shall send a copy of the agenda and minutes to the commissioner and the superintendent of the supervisory union.

(e) The commissioner may grant a supervisory union or a school district a waiver from duties required of it under this subchapter upon a demonstration that the duties would be performed more efficiently and effectively in another manner.

\* \* \* Secondary Credits; Dual Enrollment \* \* \*

Sec. 23. 16 V.S.A. § 913 is added to read:

§ 913. SECONDARY CREDIT; POSTSECONDARY COURSES

(a) Each public school and approved independent school offering secondary education shall award credit toward graduation requirements to a student who receives prior approval from the school and successfully completes a course offered by an accredited postsecondary institution. The secondary school shall determine the number and nature of credits it will award to the student for successful completion of the course, including whether the course will satisfy one or more requirements of the school, and shall inform the student prior to enrollment. Credits awarded shall be based on performance and not solely on Carnegie units; provided, however, that unless the school determines otherwise, a three-credit postsecondary course shall be presumed to equal one-half of a Carnegie unit. A school shall not withhold approval or credit without reasonable justification. A student may request that the superintendent review the school's determination regarding course approval or credits. The superintendent's decision shall be final.

(b) For purposes of this section:

(1) “Accredited postsecondary institution” means a postsecondary institution that has been accredited by the New England Association of Schools and Colleges or a similar national or regional accrediting agency recognized by the U.S. Department of Education.

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(2) “Carnegie unit” means a time-based unit of measuring secondary student attainment under which one unit equals 50 minutes of class time if the class is taken five days per week for 30 weeks.

Sec. 24. EXPANDED LEARNING OPPORTUNITIES; DUAL ENROLLMENT; POLICY

(a) It is the policy of the state of Vermont to:

(1) encourage increased access to expanded learning opportunities for publicly funded students enrolled in public and approved independent secondary schools, including dual enrollment, flexible learning pathways, and personalized learning;

(2) encourage increased dual enrollment opportunities for a wide range of students, particularly those from groups who attend college at disproportionately low rates, which will contribute to the statewide intent to increase the rigor of high school coursework, improve high school graduation rates, raise postsecondary aspiration rates, and better prepare more secondary students for the transition to college and career;

(3) encourage increased opportunities for secondary students to enroll in dual enrollment courses and earn both transcribed high school credit and transcribed postsecondary credit for successful completion of the course;

(4) recognize that instructors for dual enrollment courses are selected by the postsecondary institution and may include qualified high school faculty;

(5) recognize that dual enrollment courses may be taught at the secondary school, on the postsecondary campus, or by means of electronic or other distance media; and

(6) encourage collaborative partnerships among the New England states to create sustainable strategies to close the achievement gap among students.

(b) For purposes of this section, “dual enrollment” means enrollment by a secondary student in a course offered by an accredited postsecondary institution as defined in 16 V.S.A. § 913 and for which, upon successful completion of the course, the student will receive:

(1) credit toward graduation from the secondary school in which the student is enrolled; and

(2) postsecondary credit from the institution that offered the course if the course is a credit-bearing course at that institution.

\* \* \* Reports \* \* \*

Sec. 25. DRIVER EDUCATION; RESTRUCTURING

(a) The department of education, in consultation with the department of motor vehicles, the Vermont Driver and Traffic Safety Education Association, the Vermont Superintendents Association, and other interested entities, shall explore options for restructuring the delivery of driver education to Vermonters between the ages of 15 and 20, including consideration of:

(1) the development, implementation, evaluation, and enforcement of standards for teen driver education programs and instructors;

(2) the development and public dissemination of information regarding teen driver education issues;

(3) the creation of an advisory board to oversee all teen driver education programs, program instructors, and public communication efforts; and

(4) available funding sources for driver education programs and advisory board responsibilities.

(b) On or before January 15, 2012, the department shall present a detailed restructuring proposal to the house and senate committees on education and on transportation.

Sec. 26. TECHNOLOGY IN SCHOOLS; REPORT

On or before January 15, 2012, the department of education shall report to the senate and house committees on education regarding the current and planned use of technology and Internet service in public schools designed to increase educational opportunities for students, including:

(1) each school's type of Internet service, speed of connection, service provider, and projected upgrades available or planned before July 1, 2015;

(2) efforts to increase the availability of individual learning opportunities, dual enrollment, online, and other alternative learning programs;

(3) expansion of flexible learning environments, including efforts to develop and increase opportunities with out-of-state providers;

(4) results of the department's research concerning the possible development of a statewide open document format that could be standardized across the K-12 structure in Vermont, including consideration of tools available, security risk inherent in each, and the viability of state agencies to join efforts to help standardize systems and reduce costs on proprietary software and solutions;

(5) implementation of the department's communication and collaboration tool during the summer of 2011, focusing on uses of the tool by both schools and department staff and addressing incentives and value-added aspects of the tool; and

(6) review by the department and the state board of education of the school quality standards and consideration of amendments focusing on the continued evolution of teaching and learning supported by technology.

Sec. 27. SPECIAL EDUCATION INFORMATION MANAGEMENT SYSTEM; REPORT AND PROPOSAL

(a) The department of education, in consultation with the Vermont Superintendents Association, the Vermont School Boards Association, the Vermont Principals' Association, the Vermont-National Education Association, the Vermont council of special education administrators, the advisory council on special education created in 16 V.S.A. § 2945, and the Vermont association for school business officials, shall investigate, evaluate, and develop proposals for a statewide special education information management system designed to improve the delivery of special education services and student outcomes and to support:

(1) the department's mandated auditing responsibilities;

(2) the development and implementation of individualized education plans pursuant to 16 V.S.A. § 261a(a)(6) and chapter 101;

(3) the integration and dissemination of financial and educational information to supervisory unions and school districts necessary for effective operation of the new management system; and

(4) a uniform approach to Medicaid reimbursement.

(b) On or before January 15, 2012, the department shall provide a report to the senate and house committees on education detailing its proposal for the information system designed pursuant to subsection (a) of this section and identifying all statutory amendments necessary to implement the system.

Sec. 28. EARLY EDUCATION OFFERED BY AND THROUGH PUBLIC SCHOOLS; REGULATION; REPORT

(a) The departments of education and for children and families, in consultation with the Vermont Superintendents Association, the Vermont School Boards Association, the Vermont Principals' Association, the Vermont-National Education Association, the Vermont council of special education administrators, Pre-K Vermont, the Vermont community preschool collaborative, the Vermont Business Roundtable, Kids Are Priority One Coalition, the Building Bright Futures Council, and other interested entities,

shall review the statutes and rules regarding prekindergarten education programs offered by and through school districts and supervisory unions and shall determine ways in which the regulation of these programs can be simplified.

(b) On or before January 15, 2012, the departments shall report jointly to the senate and house committees on education detailing their proposal for simplified regulations and identifying all statutory amendments necessary to implement the proposal.

\* \* \* Elementary School Tuition Inconsistencies \* \* \*

Sec. 29. 16 V.S.A. § 821(d) is amended to read:

(d) Notwithstanding subsection (a) of this section, the electorate of a school district that does not maintain an elementary school may grant general authority to the school board to pay tuition for an elementary pupil at an approved independent elementary school or an independent school meeting school quality standards pursuant to sections 823 and 828 of this chapter upon notice given by the pupil's parent or legal guardian before April 15 for the next academic year; provided the board shall pay tuition for the pupil in an amount not to exceed the least of:

~~(1) The statewide average announced tuition of Vermont union elementary schools.~~

~~(2) The average per-pupil tuition the district pays for its other resident elementary pupils in the year in which the pupil is enrolled in the approved independent school.~~

~~(3) The tuition charged by the approved independent school in the year in which the pupil is enrolled.~~

Sec. 30. 16 V.S.A. § 823(b) is amended to read:

~~(b) The~~ Unless the electorate of a school district authorizes payment of a higher amount at an annual or special meeting warned for the purpose, the tuition paid to an approved independent elementary school or an independent school meeting school quality standards shall not exceed the lesser least of:

(1) the average announced tuition of Vermont union elementary schools for the year of attendance; ~~or~~

(2) the tuition charged by the approved independent school for the year of attendance; or

(3) the average per-pupil tuition the district pays for its other resident elementary pupils in the year in which the pupil is enrolled in the approved independent school. ~~However, the electorate of a school district may authorize~~

~~the payment of a higher amount at an annual or special meeting warned for the purpose.~~

\* \* \* Educational Films \* \* \*

Sec. 31. REPEAL

16 V.S.A. § 144a (appropriation for visual educational films) is repealed.

\* \* \* Energy Financing \* \* \*

Sec. 32. 16 V.S.A. § 562 is amended to read:

§ 562. POWERS OF ELECTORATE

At a school district meeting, the electorate:

\* \* \*

(11) ~~[Repealed.]~~ May grant general authority to the school board, at the request of the board, to incur debt at any time within the subsequent five years to finance the cost of school-building energy improvements not to exceed \$200,000.00 per building in any three-year period and payable over a maximum term coextensive with the useful life of the financed improvements, but not to exceed ten years, provided that the avoided costs attributable to the financed improvements exceed the annual payment of principal and interest of the indebtedness. No indebtedness shall be incurred under this subdivision unless the entity appointed as an energy efficiency utility under 30 V.S.A. § 209(d)(2), an independent licensed engineer, or an independent licensed architect has certified to the district the cost of the improvements to be financed, the avoided costs attributable to the improvements, and the adequacy of debt service coverage from the avoided costs over the term of the proposed indebtedness.

Sec. 33. [Deleted.]

\* \* \* SU Duties; Effective Date Extension \* \* \*

Sec. 34. Sec. 23(b) of No. 153 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

(b) Secs. 9 through 12 of this act shall take effect on passage and shall be fully implemented on July 1, ~~2012~~ 2013, subject to the provisions of existing contracts.

## \* \* \* Harassment and Bullying;

## Electronic and Nonschool Activities \* \* \*

Sec. 35. 16 V.S.A. § 11(a)(26)(A) is amended to read:

(26)(A) “Harassment” means an incident or incidents of verbal, written, visual, or physical conduct, including any incident conducted by electronic means, based on or motivated by a student’s or a student’s family member’s actual or perceived race, creed, color, national origin, marital status, sex, sexual orientation, gender identity, or disability that has the purpose or effect of objectively and substantially undermining and detracting from or interfering with a student’s educational performance or access to school resources or creating an objectively intimidating, hostile, or offensive environment.

Sec. 36. 16 V.S.A. § 11(a)(32) is amended to read:

(32) “Bullying” means any overt act or combination of acts, including an act conducted by electronic means, directed against a student by another student or group of students and which:

(A) is repeated over time;

(B) is intended to ridicule, humiliate, or intimidate the student; and

(C)(i) occurs during the school day on school property, on a school bus, or at a school-sponsored activity, or before or after the school day on a school bus or at a school-sponsored activity; or

(ii) does not occur during the school day on school property, on a school bus, or at a school-sponsored activity and can be shown to pose a clear and substantial interference with another student’s right to access educational programs.

Sec. 37. 16 V.S.A. § 1162 is amended to read:

## § 1162. SUSPENSION OR EXPULSION OF PUPILS

(a) A superintendent or principal may, pursuant to policies adopted by the school board that are consistent with state board rules, suspend a pupil for up to 10 school days or, with the approval of the board of the school district, expel a pupil for up to the remainder of the school year or up to 90 school days, whichever is longer, for misconduct;

(1) on school property, on a school bus, or at a school-sponsored activity when the misconduct makes the continued presence of the pupil harmful to the welfare of the school ~~or for misconduct~~;

(2) not on school property, on a school bus, or at a school-sponsored activity where direct harm to the welfare of the school can be demonstrated; or

(3) not on school property, on a school bus, or at a school-sponsored activity where the misconduct can be shown to pose a clear and substantial interference with another student's equal access to educational programs.

(b) Nothing contained in this section shall prevent a superintendent or principal, subject to subsequent due process procedures, from removing immediately from a school a pupil who poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process of the school, or from expelling a pupil who brings a weapon to school pursuant to section 1166 of this title.

~~(b)~~(c) Principals, superintendents, and school boards are authorized and encouraged to provide alternative education services or programs to students during any period of suspension or expulsion authorized under this section.

\* \* \* Food Processing \* \* \*

#### Sec. 38. CAREER AND TECHNICAL CENTERS; INTEGRATION WITH FOOD PROCESSING SECTORS

The department of education, in consultation with the agency of agriculture, food and markets, the Vermont association of career and technical center directors, the workforce development council, slaughterhouse operators, meat processors, chefs, and livestock farmers shall integrate the value added food processing sectors, including meat cutting and processing, into the programs of study offered at the state's regional career and technical education centers.

#### Sec. 39. FINDINGS

The general assembly finds:

(1) A concussion is a disturbance to brain function that can range from mild to severe and can disrupt the way the brain normally works.

(2) A concussion is caused by a blow to or motion of the head or body that causes the brain to move rapidly inside the skull.

(3) A concussion can occur with or without loss of consciousness, but most concussions occur without loss of consciousness.

(4) The risks of catastrophic injuries or death are significant when a concussion or other head injury is not properly evaluated and managed.

(5) Concussions can occur during any organized or unorganized sport or recreational activity and can result from a fall or from a person colliding with one or more other people, with the ground, or with other obstacles.

(6) The Centers for Disease Control and Prevention estimates that as many as 3,900,000 sports-related and recreation-related concussions occur in the United States each year.

(7) Concussions are one of the most commonly reported injuries in children and adolescents who participate in athletic and recreational activities.

(8) Continuing to participate in athletic and recreational activities with a concussion or symptoms of a head injury causes children and adolescents to be vulnerable to greater injury or even death.

(9) Despite the existence of recognized return-to-play standards for concussions and other head injuries, some children and adolescents in Vermont with a concussion or symptoms of a head injury are prematurely permitted to participate in athletic and recreational activities, resulting in actual or potential physical injury or death.

Sec. 40. 16 V.S.A. chapter 31, subchapter 3 is added to read:

Subchapter 3. Health and Safety Generally

§ 1431. CONCUSSIONS AND OTHER HEAD INJURIES

(a) Definitions. For purposes of this subchapter:

(1) "School athletic team" means an interscholastic athletic team or club sponsored by a public or approved independent school for elementary or secondary students.

(2) "Coach" means a person who instructs or trains students on a school athletic team.

(3) "Youth athlete" means an elementary or secondary student who is a member of a school athletic team.

(4) "Licensed health care provider" means:

(A) a physician licensed pursuant to chapter 23 or 33 of Title 26;

(B) an advanced practice registered nurse licensed pursuant to chapter 28 of Title 26;

(C) a physician's assistant licensed pursuant to chapter 31 of Title 26;

(D) an athletic trainer licensed pursuant to chapter 83 of Title 26; or

(E) a physical therapist licensed pursuant to chapter 38 of Title 26.

(b) Guidelines and other information. The commissioner of education or designee, assisted by members of the Vermont Principals' Association and the Vermont School Boards Association selected by those associations, shall develop statewide guidelines, forms, and other materials, and update them when necessary, that are designed to educate coaches, youth athletes, and the parents and guardians of youth athletes regarding:

(1) the nature and risks of concussions and other head injuries;

(2) the risks of premature participation in athletic activities after receiving a concussion or other head injury; and

(3) the importance of obtaining a medical evaluation of a suspected concussion or other head injury and receiving treatment when necessary.

(c) Notice and training. The principal or headmaster of each public and approved independent school in the state, or a designee, shall ensure that:

(1) the information developed pursuant to subsection (b) of this section is provided annually to each youth athlete and the athlete's parents or guardians;

(2) each youth athlete and a parent or guardian of the athlete annually sign a form acknowledging receipt of the information provided pursuant to subdivision (1) of this subsection and return it to the school prior to the athlete's participation in training or competition associated with a school athletic team;

(3)(A) each coach of a school athletic team receive training no less frequently than every two years on how to recognize the symptoms of a concussion or other head injury; and

(B) each coach who is new to coaching at the school receive training prior to beginning his or her first coaching assignment for the school.

(d) Participation in athletic activity.

(1) A coach shall not permit a youth athlete to continue to participate in any training session or competition associated with a school athletic team if the coach has reason to believe that the athlete has sustained a concussion or other head injury during the training session or competition.

(2) A coach shall not permit a youth athlete who has been prohibited from training or competing pursuant to subdivision (1) of this subsection to train or compete with a school athletic team until the athlete has been examined by and received written permission to participate in athletic activities from a licensed health care provider trained in the evaluation and management of concussions and other head injuries.

\* \* \* Effective Date \* \* \*

#### Sec. 41. EFFECTIVE DATE; IMPLEMENTATION

This act shall take effect on passage, provided that:

(1) Section 3 of this act shall be fully implemented by July 1, 2013, subject to the provisions of existing contracts;

(2) the guidelines, forms, and other materials required by Sec. 40 of this act, 16 V.S.A. § 1431(b), shall be developed and published on the websites of the Vermont Principals' Association and the department of education no later than July 1, 2011; and

(3) the requirements of Sec. 40 of this act, 16 V.S.A. § 1431(c) (notice and training) and (d) (participation), shall be in effect beginning in the autumn 2011 sports season.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment? On motion of Senator Mullin, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

Thereupon, pursuant to the request of the Senate, the President announced the appointment of

Senator Mullin  
Senator Baruth  
Senator Kittell

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

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

### **Committees of Conference Appointed**

#### **S. 37.**

An act relating to expungement of a nonviolent misdemeanor criminal history record.

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

Senator Nitka  
Senator Sears  
Senator Snelling

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

#### **S. 94.**

An act relating to miscellaneous amendments to the motor vehicle laws.

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

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Senator Flory  
Senator Kitchel  
Senator Mazza

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

**H. 287.**

An act relating to job creation and economic development.

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

Senator Illuzzi  
Senator Ashe  
Senator Carris

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

**Rules Suspended; Bills Messaged**

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

**S. 37, S. 94.**

**Rules Suspended; Action Messaged**

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

**H. 287.**

**Rules Suspended; Bills Delivered**

On motion of Senator Campbell, the rules were suspended, and the following bills were severally ordered delivered to the Governor forthwith:

**S. 30, S. 73, S. 90, S. 101, S. 105.**

**Adjournment**

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

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**TUESDAY, MAY 3, 2011**

The Senate was called to order by the President.

**Devotional Exercises**

A moment of silence was observed in lieu of devotions.

**Recess**

On motion of Senator Mazza the Senate recessed until one o'clock and thirty minutes in the afternoon.

**Message from the House No. 65**

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

Mr. President:

I am directed to inform the Senate that:

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. 37.** An act relating to expungement of a nonviolent misdemeanor criminal history record.

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

Rep. Koch of Barre Town  
Rep. Wizowaty of Burlington  
Rep. French of Shrewsbury.

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. 94.** An act relating to miscellaneous amendments to the motor vehicle laws.

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

Rep. Lanpher of Vergennes  
Rep. Bissonnette of Winooski  
Rep. Burke of Brattleboro.

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. 100.** An act relating to making miscellaneous amendments to education laws.

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

Rep. Crawford of Burke  
Rep. Donovan of Burlington  
Rep. Gilbert of Fairfax.

**Called to Order**

The Senate was called to order by the President.

**Bill Referred**

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

**H. 53.**

An act relating to the Interstate Wildlife Violator Compact.

To the Committee on Rules.

**Point of Order Sustained; Bill Passed in Concurrence with Proposal of Amendment**

**H. 11.**

House bill entitled:

An act relating to the discharge of pharmaceutical waste to state waters.

Was taken up.

Thereupon, pending third reading of the bill, Senator Campbell moved that the Senate propose to the House to amend the Senate proposal of amendment by adding a new section to be numbered Sec. 4 to read as follows:

Sec. 4. 18 V.S.A. § 4284 is amended to read:

§ 4284. PROTECTION AND DISCLOSURE OF INFORMATION

\* \* \*

(b) The department shall be authorized to provide data to only the following persons:

\* \* \*

(6) The commissioner of public safety, personally, if the commissioner of health personally makes the disclosure, has consulted with at least one of the patient's health care providers, and believes that the disclosure is necessary to avert a serious and imminent threat to a person or the public.

(7) A trained law enforcement officer employed by the department of public safety who is requesting data relating to a patient for the purpose of a bona fide investigation of that patient.

(8) Personnel or contractors, as necessary for establishing and maintaining the VPMS.

\* \* \*

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as moved by Senator Campbell? Senator Sears raised a *point of order* under Sec. 402 of Mason's Manual of Legislative Procedure on the grounds that the proposal of amendment offered by Senator Campbell was *not germane* to the bill and therefore could not be considered by the Senate.

Thereupon, the President *sustained* the point of order and ruled that the proposal of amendment recommended by Senator Campbell was *not germane* to the bill as it did not satisfy the criteria of Mason's Rule 402 regarding germaneness in that it was not naturally related to and did not follow in a logical sequence the subject matter of the original proposal.

The President thereupon declared that the proposal of amendment offered by Senator Campbell could *not* be considered by the Senate and the proposal of amendment was ordered stricken.

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

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

**H. 201.**

House bill entitled:

An act relating to hospice and palliative care.

Was taken up.

Thereupon, pending third reading of the bill, Senator Miller moved that the Senate propose to the House to amend the *Eighth* Senate proposal of amendment in Sec. 11(c) by inserting a new subdivision to be subdivision (4) to read as follows:

(4) an examination of the relationship between the wishes expressed in an advance directive and the DNR/COLST order.

And by making the subsection grammatically correct.

Which was agreed to.

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

**Rules Suspended; Committee Relieved of Further Consideration; Bills Committed**

**H. 451.**

On motion of Senator Campbell, the rules were suspended, and H. 451 was taken up for immediate consideration, for the purpose of relieving the Committee on Rules from further consideration of the bill. Thereupon, on motion of Senator Campbell, the Committee on Rules was relieved of House bill entitled:

An act relating to amending the charter of the town of Shelburne,  
and the bill was committed to the Committee on Government Operations.

**H. 455.**

On motion of Senator Campbell, the rules were suspended, and H. 455 was taken up for immediate consideration, for the purpose of relieving the Committee on Rules from further consideration of the bill. Thereupon, on motion of Senator Campbell, the Committee on Rules was relieved of House bill entitled:

An act relating to the enhanced 911 emergency response system,  
and the bill was committed to the Committee on Government Operations.

**Bill Amended; Third Reading Ordered**

**S. 95.**

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

An act relating to exemptions for newspaper deliverers from the unemployment statutes; relieving an employer's experience rating record of charges; studying the receipt of unemployment compensation between academic terms; allowing school employees to be paid wages over the course of a year; and requiring employers to furnish required work apparel.

Reported recommending that the bill be amended as follows:

First: By striking out Sec. 2 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 2 to read as follows:

Sec. 2. STUDY

(a) The commissioner of labor in consultation with the Vermont school boards association and any other interested parties shall study the issue of

allowing the receipt of unemployment benefits between academic terms for noninstructional employees. The study shall consider the costs of allowing receipt of such benefits, the employees who would be eligible for benefits, and any other relevant issues. In addition, the study shall consider the potential benefit to those employees of school-district-coordinated job placement services for the months between academic terms.

(b) The commissioner shall also study the issue of whether wages paid by an elderly individual for in-home assistance should be subject to the unemployment insurance statutes.

(c) The commissioner shall report his or her findings and any recommendations to the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development by January 15, 2012.

Second: By striking out Sec. 3 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 3 to read as follows:

Sec. 3. 21 V.S.A. § 1301 is amended to read:

§ 1301. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings unless the context clearly requires otherwise:

\* \* \*

(6)(A)(i) “Employment,” subject to the other provisions of this subdivision (6), means service within the jurisdiction of this state, performed prior to January 1, 1978, which was employment as defined in this subdivision prior to such date and, subject to the other provisions of this subdivision, service performed after December 31, 1977, by an employee, as defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Services partly within and partly without this state may by election as hereinbefore provided be treated as if wholly within the jurisdiction of this state. And whenever an employing unit shall have elected to come under the provisions of a similar act of a state where a part of the services of an employee are performed, the commissioner, upon his or her approval of said election as to any such employee, may treat the services covered by said approved election as having been performed wholly without the jurisdiction of this state.

\* \* \*

(C) The term “employment” shall not include:

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\* \* \*

(xxi) Service performed by a direct seller if the individual is in compliance with all the following:

(I) The individual is engaged in:

(aa) the trade or business of selling or soliciting the sale of consumer products, including services or other intangibles, in the home or a location other than in a permanent retail establishment, including whether the sale or solicitation of a sale is to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person.

(bb) the trade or business of the delivery or distribution of weekly or monthly newspapers, including any services directly related to such trade or business.

(II) Substantially all the remuneration, whether or not received in cash, for the performance of the services described in subdivision (I) of this subdivision (C)(xxi) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

(III) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee for federal and state tax purposes.

\* \* \*

Third: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 7 to read as follows:

Sec. 7. 21 V.S.A. § 385a is added to read:

§ 385a. REQUIRED APPAREL

An employer that requires its employees to wear apparel which displays the employer's trademark, logo, or other identifying characteristic, or that requires its employees to wear apparel sold or produced by the employer shall furnish and replace as necessary at least one week's worth of apparel free of charge to the employees. An employee shall be responsible for maintaining the apparel in good condition.

Fourth: By adding a new section to be numbered Sec. 8 to read as follows:

Sec. 8. 21 V.S.A. § 1453 is amended to read:

§ 1453. APPROVAL OR REJECTION; RESUBMISSION

The commissioner shall approve or reject a plan in writing within ~~15~~ 30 days of its receipt, and in the case of rejection shall state the reasons therefor. The reasons for rejection shall be final and nonappealable, but the employer shall be allowed to submit another plan for approval.

And that when so amended the bill ought to pass.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Finance?, on motion of Senator Galbraith the question was divided so that the *third* proposal of amendment be considered separately.

Thereupon, the question, Shall the bill be amended as recommended by the Committee on Finance in the *first*, *second* and *fourth* proposals of amendment?, were decided in the affirmative.

Thereupon, the question, Shall the bill be amended as recommended by the Committee on Finance in the *third* proposal of amendment?, was decided in the affirmative.

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

Thereupon, pending the question, Shall the bill be read a third time?, Senator Sears moved that the bill be amended by striking out Sec. 6 in its entirety.

Which was disagreed to on a roll call, Yeas 7, Nays 23.

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

**Roll Call**

**Those Senators who voted in the affirmative were:** Brock, Carris, Flory, Hartwell, Mazza, Mullin, Sears.

**Those Senators who voted in the negative were:** Ashe, Ayer, Baruth, Benning, Campbell, Cummings, Doyle, Fox, Galbraith, Giard, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, McCormack, Miller, Nitka, Pollina, Snelling, Starr, Westman, White.

Thereupon, the question, Shall the bill be read a third time?, was agreed to on a roll call, Yeas 29, Nays 1.

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

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**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Fox, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

**The Senator who voted in the negative was:** Flory.

**Third Reading Ordered****H. 428.**

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

An act relating to requiring supervisory unions to perform common duties.

Reported that the bill ought to pass in concurrence.

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

Thereupon, pending the question, Shall the bill be read a third time?, Senator Illuzzi moved that the Senate propose to the House to amend the bill by striking out Sec. 3 in its entirety and inserting in lieu thereof two new sections to be numbered Sec. 3 and Sec. 4 to read as follows:

**Sec. 3. SUPERINTENDENT VACANCY; STRUCTURAL CHANGES**

(a) The state board of education shall require that any supervisory union, including a supervisory district, that wishes to hire a superintendent shall:

(1) operate without a superintendent or hire a superintendent for a period that does not extend beyond the last day of the next fiscal year; and

(2) explore structural changes that will result in real dollar efficiencies, operational efficiencies, expanded student learning opportunities, and improved student outcomes. The supervisory union shall report the results of its exploration to the state board within 24 months after the meeting at which the board instructs the supervisory union to begin the exploration.

**Sec. 4. EFFECTIVE DATES**

Sec. 1 and Sec. 2 shall take effect on passage. Sec. 3 shall take effect on passage and shall apply to all supervisory unions that are not employing a permanent superintendent on that date.

Which was disagreed to.

Thereupon, pending the question, Shall the bill be read third time?, Senator Sears moved to amend bill in Sec. 2, 16 V.S.A. § 1431, by striking out

subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

(d) Participation in athletic activity. A coach shall not permit a youth athlete to train or compete with a school athletic team if the athlete has been removed, prohibited, or otherwise discontinued from participating in any training session or competition associated with a school athletic team due to symptoms of a concussion or other head injury, until the athlete has been examined by and received written permission to participate in athletic activities from a licensed health care provider trained in the evaluation and management of concussions and other head injuries.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as proposed by Senator Sears?, Senator Sears requested and was granted leave to withdraw the proposal of amendment.

Thereupon, third reading of the bill was ordered.

#### **Rules Suspended; Bills on Notice Calendar for Immediate Consideration**

On motion of Senator Campbell, 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. 108, H. 26, H. 202, H. 443, J.R.H. 19.**

#### **Report of Committee of Conference Accepted and Adopted on the Part of the Senate; Rules Suspended; Bill Messaged**

##### **H. 202.**

Senator Ayer, 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 a universal and unified health system.

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

##### **Sec. 1. INTENT**

(a) It is the intent of the general assembly to create Green Mountain Care to contain costs and to provide, as a public good, comprehensive, affordable, high-quality, publicly financed health care coverage for all Vermont residents

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in a seamless manner regardless of income, assets, health status, or availability of other health coverage. It is the intent of the general assembly to achieve health care reform through the coordinated efforts of an independent board, state government, and the citizens of Vermont, with input from health care professionals, businesses, and members of the public.

(b) It is also the intent of the general assembly to maximize the receipt of federal funds, including those available pursuant to the Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and to create a reasonable plan to implement Green Mountain Care as set forth in this act.

#### Sec. 1a. PRINCIPLES FOR HEALTH CARE REFORM

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

(1) The state of Vermont must ensure universal access to and coverage for high-quality, medically necessary health services for all Vermonters. Systemic barriers, such as cost, 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.

(2) Overall health care costs must be contained and growth in health care spending in Vermont must balance the health care needs of the population with the ability to pay for such care.

(3) 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 of the health care system.

(4) 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, including the educational and research missions of the state's academic medical center and other postsecondary educational institutions, the nonprofit missions of the community hospitals, and the critical access designation of rural hospitals, must be supported in such a way that all Vermonters, including those in rural areas, have access to necessary health services and that these health services are sustainable.

(5) Every Vermonter should be able to choose his or her health care providers.

(6) Vermonters should be aware of the costs of the health services they receive. Costs should be transparent and easy to understand.

(7) Individuals have a personal responsibility to maintain their own health and to use health resources wisely, and all individuals should have a financial stake in the health services they receive.

(8) The health care system must recognize the primacy of the relationship between patients and their health care practitioners, respecting the professional judgment of health care practitioners and the informed decisions of patients.

(9) Vermont's health delivery system must seek continuous improvement of health care quality and safety and of the health of the population and promote healthy lifestyles. The system therefore must be evaluated regularly for improvements in access, quality, and cost containment.

(10) Vermont's health care system must include mechanisms for containing all system costs and eliminating unnecessary expenditures, including by reducing administrative costs and by reducing costs that do not contribute to efficient, high-quality health services or improve health outcomes. Efforts to reduce overall health care costs should identify sources of excess cost growth.

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

(12) The system must consider the effects of payment reform on individuals and on health care professionals and suppliers. It must enable health care professionals to provide, on a solvent basis, effective and efficient health services that are in the public interest.

(13) Vermont's health care system must operate as a partnership between consumers, employers, health care professionals, hospitals, and the state and federal government.

(14) State government must ensure that the health care system satisfies the principles expressed in this section.

Sec 1b. 3 V.S.A. § 2222a is amended to read:

§ 2222a. HEALTH CARE SYSTEM REFORM; IMPROVING QUALITY AND AFFORDABILITY

(a) The ~~secretary~~ director of health care reform in the agency of administration shall be responsible for the coordination of health care system reform ~~initiatives~~ efforts among executive branch agencies, departments, and

offices, and for coordinating with the Green Mountain Care board established in 18 V.S.A. chapter 220.

(b) The ~~secretary~~ director shall ensure that those executive branch agencies, departments, and offices responsible for the development, improvement, and implementation of Vermont's health care system reform do so in a manner that is coordinated, timely, equitable, patient-centered, and evidence-based, and that seeks to inform and improve the quality and affordability of patient care and public health, contain costs, and attract and retain well-paying jobs in this state.

(c) Vermont's health care system reform ~~initiatives~~ efforts include:

(1) The state's chronic care infrastructure, disease prevention, and management program contained in the blueprint for health established by ~~chapter 13 of Title 18 V.S.A. chapter 13,~~ the goal of which is to achieve a unified, comprehensive, statewide system of care that improves the lives of all Vermonters with or at risk for a chronic condition or disease.

(2) The Vermont health information technology project pursuant to ~~chapter 219 of Title 18 V.S.A. chapter 219.~~

(3) The multi-payer data collection project pursuant to 18 V.S.A. § 9410.

(4) The common claims administration project pursuant to 18 V.S.A. § 9408.

(5) The consumer price and quality information system pursuant to 18 V.S.A. § 9410.

(6) ~~Any~~ The information technology work done by the quality assurance system pursuant to 18 V.S.A. § 9416.

(7) The public health promotion programs of the agency of human services, including primary prevention for chronic disease, community assessments, school wellness programs, public health information technology, data and surveillance systems, healthy retailers, healthy community design, and alcohol and substance abuse treatment and prevention programs.

(8) ~~Medicaid, the Vermont health access plan, Dr. Dynasaur, premium assistance programs for employer-sponsored insurance, VPharm, and Vermont Rx, which are established in chapter 19 of Title 33 and provide health care coverage to elderly, disabled, and low to middle income Vermonters. The creation of a universal health care system to provide affordable, high-quality health care coverage to all Vermonters and to include federal funds to the maximum extent allowable under federal law and waivers from federal law.~~

(9) ~~Catamount Health, established in 8 V.S.A. § 4080f, which provides a comprehensive benefit plan with a sliding scale premium based on income to uninsured Vermonters. A reformation of the payment system for health services to encourage quality and efficiency in the delivery of health care as set forth in 18 V.S.A. chapter 220.~~

(10) ~~The uniform hospital uncompensated care policies. A strategic approach to workforce needs set forth in 18 V.S.A. chapter 222, including retraining programs for workers displaced through increased efficiency and reduced administration in the health care system and ensuring an adequate health care workforce to provide access to health care for all Vermonters.~~

(11) ~~A plan for public financing of health care coverage for all Vermonters.~~

(d) ~~The secretary shall report to the commission on health care reform, the health access oversight committee, the house committee on health care, the senate committee on health and welfare, and the governor on or before December 1, 2006, with a five-year strategic plan for implementing Vermont's health care system reform initiatives, together with any recommendations for administration or legislation. Annually, beginning January 15, 2007, the secretary shall report to the general assembly on the progress of the reform initiatives.~~

(e) ~~The secretary of administration~~ director of health care reform or designee shall provide information and testimony on the activities included in this section to the health access oversight committee, ~~the commission on health care reform,~~ and to any legislative committee upon request.

\* \* \* Road Map to a Universal and a Unified Health System \* \* \*

## Sec. 2. STRATEGIC PLAN; UNIVERSAL AND UNIFIED HEALTH SYSTEM

(a) Vermont must begin to plan now for health care reform, including simplified administration processes, payment reform, and delivery reform, in order to have a publicly financed program of universal and unified health care operational after the occurrence of specific events, including the receipt of a waiver from the federal Exchange requirement from the U.S. Department of Health and Human Services. A waiver will be available in 2017 under the provisions of existing law in the Patient Protection and Affordable Care Act (Public Law 111-148) ("Affordable Care Act"), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and may be available in 2014 under the provisions of two bills, H.R. 844 and S.248, introduced in the 112<sup>th</sup> Congress. In order to begin the planning efforts, the director of health care reform in the agency of administration shall

establish a strategic plan, which shall include time lines and allocations of the responsibilities associated with health care system reform, to further the containment of health care costs, to further Vermont's existing health care system reform efforts as described in 3 V.S.A. § 2222a and to further the following:

(1) As provided in Sec. 4 of this act, all Vermont residents shall be eligible for Green Mountain Care, a universal health care program that will provide health benefits through a single payment system. To the maximum extent allowable under federal law and waivers from federal law, Green Mountain Care shall include health coverage provided under the health benefit exchange established under 33 V.S.A. chapter 18, subchapter 1; under Medicaid; under Medicare; by employers that choose to participate; and to state employees and municipal employees, including teachers. In the event of a modification to the Affordable Care Act by congressional, judicial, or federal administrative action which prohibits implementation of the health benefit exchange; eliminates federal funds available to individuals, employees, or employers; or eliminates the waiver under Section 1332 of the Affordable Care Act, the director of health care reform shall continue, and adjust as appropriate, the planning and cost-containment activities provided in this act related to Green Mountain Care and to creation of a unified, simplified administration system for health insurers offering health benefit plans, including identifying the financing impacts of such a modification on the state and its effects on the activities proposed in this act.

(2)(A) As provided in Sec. 4 of this act, no later than November 1, 2013, the Vermont health benefit exchange established in 33 V.S.A. chapter 18, subchapter 1 shall begin enrolling individuals and small employers for coverage beginning January 1, 2014. The intent of the general assembly is to establish the Vermont health benefit exchange in a manner such that it may become the foundation for Green Mountain Care.

(B) No later than February 15, 2012, the director of health care reform or designee shall provide the house committee on health care and the senate committees on finance and on health and welfare the following information related to the Vermont health benefit exchange, to the extent available:

(i) a list of the federal health benefits required under the Affordable Care Act as defined in 33 V.S.A. chapter 18, subchapter 1, including covered services and cost-sharing;

(ii) a comparison of the federal health benefits with the Vermont health insurance benefit requirements provided for in 8 V.S.A. chapter 108;

(iii) information relating to the silver, gold, and platinum benefit levels of qualified health benefit plans that may be available in the Vermont health benefit exchange;

(iv) a draft of qualified health benefit plan choices that may be available in the Vermont health benefit exchange;

(v) in collaboration with the three insurers with the largest number of lives, premium estimates for draft plan choices described in subdivision (iv) of this subdivision (B); and

(vi) the status of related tax credits, including small employer tax credits, and of cost-sharing subsidies.

(C) The director shall deliver to the general assembly by January 15, 2015 a report including:

(i) the qualified health benefit plans available in and outside the exchange, current and projected premiums, and enrollment data;

(ii) recommendations for any statutory changes needed to improve the functioning of the exchange, including those needed to reduce premiums and administrative costs for qualified health benefit plans and others the director determines are necessary to achieve cost-effectiveness; and

(iii) Vermont's efforts to obtain a waiver from the exchange requirement under Section 1332 of the Affordable Care Act.

(3) As provided in Sec. 4 of this act, no later than November 1, 2016, the Vermont health benefit exchange established in 33 V.S.A. chapter 18, subchapter 1 shall begin enrolling large employers for coverage beginning January 1, 2017.

(4) The director shall supervise and oversee, as appropriate, the planning efforts, reports of which are due on January 15, 2012, as provided in Secs. 8 and 10 through 13 of this act, including integration of multiple payers into the Vermont health benefit exchange; a continuation of the planning necessary to ensure an adequate, well-trained primary care workforce; necessary retraining for any employees dislocated from health care professionals or from health insurers due to the simplification in the administration of health care; and unification of health system planning, regulation, and public health.

(5) The director shall supervise the planning efforts, reports of which are due January 15, 2013, as provided in Sec. 9 of this act, to establish the financing necessary for Green Mountain Care, for recruitment and retention programs for health care professionals, and for covering the uninsured and underinsured through Medicaid and the Vermont health benefit exchange.

(6) The director, in collaboration with the agency of human services, shall obtain waivers, exemptions, agreements, legislation, or a combination thereof to ensure that, to the extent possible under federal law, all federal payments provided within the state for health services are paid directly to Green Mountain Care. Green Mountain Care shall assume responsibility for the benefits and services previously paid for by the federal programs, including Medicaid, Medicare, and, after implementation, the Vermont health benefit exchange. In obtaining the waivers, exemptions, agreements, legislation, or combination thereof, the secretary shall negotiate with the federal government a federal contribution for health care services in Vermont that reflects medical inflation, the state gross domestic product, the size and age of the population, the number of residents living below the poverty level, the number of Medicare-eligible individuals, and other factors that may be advantageous to Vermont and that do not decrease in relation to the federal contribution to other states as a result of the waivers, exemptions, agreements, or savings from implementation of Green Mountain Care.

(7) No later than January 15, 2012, the secretary of administration or designee shall submit to the house committees on health care and on judiciary and the senate committees on health and welfare and on judiciary a proposal for potential improvement or reforms to the medical malpractice system for Vermont. The proposal shall be designed to address any findings of defensive medicine, reduce health care costs and medical errors, and protect patients' rights, and shall include the secretary's or designee's consideration of a no-fault system and of confidential pre-suit mediation. In designing the proposal, the secretary or designee shall consider the findings and recommendations contained in the majority and minority reports of the medical malpractice study committee established by Sec. 292 of No. 122 of the Acts of the 2003 Adj. Sess. (2004).

(b) The Green Mountain Care board established in 18 V.S.A. chapter 220, in collaboration with the director of health care reform in the agency of administration, shall develop a work plan for the board, which may include any necessary processes for implementation of the board's duties, a time line for implementation of the board's duties, and a plan for ensuring sufficient staff to implement the board's duties. The work plan shall be provided to the house committee on health care and the senate committee on health and welfare no later than January 15, 2012.

\* \* \* Cost Containment, Budgeting, and Payment Reform \* \* \*

Sec. 3. 18 V.S.A. chapter 220 is added to read:

CHAPTER 220. GREEN MOUNTAIN CARE BOARD

Subchapter 1. Green Mountain Care Board

§ 9371. PRINCIPLES FOR HEALTH CARE REFORM

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

(1) The state of Vermont must ensure universal access to and coverage for high-quality, medically necessary health services for all Vermonters. Systemic barriers, such as cost, 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.

(2) Overall health care costs must be contained and growth in health care spending in Vermont must balance the health care needs of the population with the ability to pay for such care.

(3) 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 of the health care system.

(4) 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, including the educational and research missions of the state's academic medical center and other postsecondary educational institutions, the nonprofit missions of the community hospitals, and the critical access designation of rural hospitals, must be supported in such a way that all Vermonters, including those in rural areas, have access to necessary health services and that these health services are sustainable.

(5) Every Vermonter should be able to choose his or her health care providers.

(6) Vermonters should be aware of the costs of the health services they receive. Costs should be transparent and easy to understand.

(7) Individuals have a personal responsibility to maintain their own health and to use health resources wisely, and all individuals should have a financial stake in the health services they receive.

(8) The health care system must recognize the primacy of the relationship between patients and their health care practitioners, respecting the

professional judgment of health care practitioners and the informed decisions of patients.

(9) Vermont's health delivery system must seek continuous improvement of health care quality and safety and of the health of the population and promote healthy lifestyles. The system therefore must be evaluated regularly for improvements in access, quality, and cost containment.

(10) Vermont's health care system must include mechanisms for containing all system costs and eliminating unnecessary expenditures, including by reducing administrative costs and by reducing costs that do not contribute to efficient, high-quality health services or improve health outcomes. Efforts to reduce overall health care costs should identify sources of excess cost growth.

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

(12) The system must consider the effects of payment reform on individuals and on health care professionals and suppliers. It must enable health care professionals to provide, on a solvent basis, effective and efficient health services that are in the public interest.

(13) Vermont's health care system must operate as a partnership between consumers, employers, health care professionals, hospitals, and the state and federal government.

(14) State government must ensure that the health care system satisfies the principles expressed in this section.

#### § 9372. PURPOSE

It is the intent of the general assembly to create an independent board to promote the general good of the state by:

- (1) improving the health of the population;
- (2) reducing the per-capita rate of growth in expenditures for health services in Vermont across all payers while ensuring that access to care and quality of care are not compromised;
- (3) enhancing the patient and health care professional experience of care;
- (4) recruiting and retaining high-quality health care professionals; and
- (5) achieving administrative simplification in health care financing and delivery.

§ 9373. DEFINITIONS

As used in this chapter:

(1) “Board” means the Green Mountain Care board established in this chapter.

(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 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.

(3) “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 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.

(4) “Global payment” means a payment from a health insurer, Medicaid, Medicare, or other payer for the health services of a defined population of patients for a defined period of time. Such payments may be adjusted to account for the population’s underlying risk factors, including severity of illness and socioeconomic factors that may influence the cost of health care for the population.

(5) “Green Mountain Care” means the public–private universal health care program designed to provide health benefits through a simplified, uniform, single administrative system pursuant to 33 V.S.A. chapter 18, subchapter 2.

(6) “Health care professional” means an individual, partnership, corporation, facility, or institution licensed or certified or otherwise authorized by Vermont law to provide professional health services.

(7) “Health care system” means the local, state, regional, or national system of delivering health services, including administrative costs, capital expenditures, preventive care and wellness services.

(8) “Health insurer” means any health insurance company, nonprofit hospital and medical service corporation, managed care organization, and, to the extent permitted under federal law, any administrator of a health benefit plan offered by a public or a private entity. The term does not include

Medicaid, the Vermont health access plan, or any other state health care assistance program financed in whole or in part through a federal program.

(9) “Health service” means any treatment or procedure delivered by a health care professional to maintain an individual’s physical or mental health or to diagnose or treat an individual’s physical or mental health condition, including services ordered by a health care professional, chronic care management, preventive care, wellness services, and medically necessary services to assist in activities of daily living.

(10) “Integrated delivery system” means a group of health care professionals, associated either through employment by a single entity or through a contractual arrangement, that provides health services for a defined population of patients and is compensated through a global payment.

(11) “Manufacturers of prescribed products” shall have the same meaning as “manufacturers” in section 4631a of this title.

(12) “Payment reform” means modifying the method of payment from a fee-for-service basis to one or more alternative methods for compensating health care professionals, health care provider bargaining groups created pursuant to section 9409 of this title, integrated delivery systems, and other health care professional arrangements, manufacturers of prescribed products, medical supply companies, and other companies providing health services or health supplies for the provision of high-quality and efficient health services, products, and supplies while measuring quality and efficiency. The term may include shared savings agreements, bundled payments, episode-based payments, and global payments.

(13) “Preventive care” means health services provided by health care professionals to identify and treat asymptomatic individuals who have risk factors or preclinical disease, but in whom the disease is not clinically apparent, including immunizations and screening, counseling, treatment, and medication determined by scientific evidence to be effective in preventing or detecting a condition.

(14) “Wellness services” means health services, programs, or activities that focus on the promotion or maintenance of good health.

#### § 9374. BOARD MEMBERSHIP; AUTHORITY

(a)(1) On July 1, 2011, the Green Mountain Care board is created and shall consist of a chair and four members. The chair and all of the members shall be state employees and shall be exempt from the state classified system. The chair shall receive compensation equal to that of a superior judge, and the compensation for the remaining members shall be two-thirds of the amount received by the chair.

(2) The chair and the members of the board shall be nominated by the Green Mountain Care board nominating committee established in subchapter 2 of this chapter using the qualifications described in section 9392 of this chapter and shall be otherwise appointed and confirmed in the manner of a superior judge. The governor shall not appoint a nominee who was denied confirmation by the senate within the past six years.

(b)(1) The initial term of the chair shall be seven years, and the term of the chair shall be six years thereafter.

(2) The term of each member other than the chair shall be six years, except that of the members first appointed, one each shall serve a term of three years, four years, five years, and six years.

(3) Subject to the nomination and appointment process, a member may serve more than one term.

(4) Members of the board may be removed only for cause. The board shall adopt rules pursuant to 3 V.S.A. chapter 25 to define the basis and process for removal.

(c)(1) No board member shall, during his or her term or terms on the board, be an officer of, director of, organizer of, employee of, consultant to, or attorney for any person subject to supervision or regulation by the board; provided that for a health care practitioner, the employment restriction in this subdivision shall apply only to administrative or managerial employment or affiliation with a hospital or other health care facility, as defined in section 9432 of this title, and shall not be construed to limit generally the ability of the health care practitioner to practice his or her profession.

(2) No board member shall participate in creating or applying any law, rule, or policy or in making any other determination if the board member, individually or as a fiduciary, or the board member's spouse, parent, or child wherever residing or any other member of the board member's family residing in his or her household has an economic interest in the matter before the board or has any more than a de minimus interest that could be substantially affected by the proceeding.

(3) The prohibitions contained in subdivisions (1) and (2) of this subsection shall not be construed to prohibit a board member from, or require a board member to recuse himself or herself from board activities as a result of, any of the following:

(A) being an insurance policyholder or from receiving health services on the same terms as are available to the public generally;

(B) owning a stock, bond, or other security in an entity subject to supervision or regulation by the board that is purchased by or through a mutual fund, blind trust, or other mechanism where a person other than the board member chooses the stock, bond, or security; or

(C) receiving retirement benefits through a defined benefit plan from an entity subject to supervision or regulation by the board.

(4) No board member shall, during his or her term or terms on the board, solicit, engage in negotiations for, or otherwise discuss future employment or a future business relationship of any kind with any person subject to supervision or regulation by the board.

(5) No board member may appear before the board or any other state agency on behalf of a person subject to supervision or regulation by the board for a period of one year following his or her last day as a member of the Green Mountain Care board.

(d) The chair shall have general charge of the offices and employees of the board but may hire a director to oversee the administration and operation.

(e)(1) The board shall establish a consumer, patient, business, and health care professional advisory group to provide input and recommendations to the board. Members of such advisory group who are not state employees or whose participation is not supported through their employment or association shall receive per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010, provided that the total amount expended for such compensation shall not exceed \$5,000.00 per year.

(2) The board may establish additional advisory groups and subcommittees as needed to carry out its duties. The board shall appoint diverse health care professionals to the additional advisory groups and subcommittees as appropriate.

(f) In carrying out its duties pursuant to this chapter, the board shall seek the advice of the state health care ombudsman established in 8 V.S.A. § 4089w. The state health care ombudsman shall advise the board regarding the policies, procedures, and rules established pursuant to this chapter. The ombudsman shall represent the interests of Vermont patients and Vermont consumers of health insurance and may suggest policies, procedures, or rules to the board in order to protect patients' and consumers' interests.

#### § 9375. DUTIES

(a) The board shall execute its duties consistent with the principles expressed in 18 V.S.A. § 9371.

(b) The board shall have the following duties:

(1) Oversee the development and implementation, and evaluate the effectiveness, of health care payment and delivery system reforms designed to control the rate of growth in health care costs and maintain health care quality in Vermont, including ensuring that the payment reform pilot projects set forth in chapter 13, subchapter 2 of this title are consistent with such reforms.

(A) Implement by rule, pursuant to 3 V.S.A. chapter 25, methodologies for achieving payment reform and containing costs, which may include the creation of health care professional cost-containment targets, global payments, bundled payments, global budgets, risk-adjusted capitated payments, or other uniform payment methods and amounts for integrated delivery systems, health care professionals, or other provider arrangements.

(B) Prior to the initial adoption of the rules described in subdivision (A) of this subdivision (1), report the board's proposed methodologies to the house committee on health care and the senate committee on health and welfare.

(C) In developing methodologies pursuant to subdivision (A) of this subdivision (1), engage Vermonters in seeking ways to equitably distribute health services while acknowledging the connection between fair and sustainable payment and access to health care.

(D) Nothing in this subdivision (1) shall be construed to limit the authority of other agencies or departments of state government to engage in additional cost-containment activities to the extent permitted by state and federal law.

(2) Review and approve Vermont's statewide health information technology plan pursuant to section 9351 of this title to ensure that the necessary infrastructure is in place to enable the state to achieve the principles expressed in section 9371 of this title.

(3) Review and approve the health care workforce development strategic plan created in chapter 222 of this title.

(4) Review the health resource allocation plan created in chapter 221 of this title.

(5) Set rates for health care professionals pursuant to section 9376 of this title, to be implemented over time, and make adjustments to the rules on reimbursement methodologies as needed.

(6) Review and approve recommendations from the commissioner of banking, insurance, securities, and health care administration, within 10 business days of receipt of such recommendations and taking into consideration the requirements in the underlying statutes, changes in health

care delivery, changes in payment methods and amounts, and other issues at the discretion of the board, on:

(A) any insurance rate increases pursuant to 8 V.S.A. chapter 107, beginning January 1, 2012;

(B) hospital budgets pursuant to chapter 221, subchapter 7 of this title, beginning July 1, 2012; and

(C) certificates of need pursuant to chapter 221, subchapter 5 of this title, beginning July 1, 2012.

(7) Prior to the adoption of rules, review and approve, with recommendations from the commissioner of Vermont health access, the benefit package or packages for qualified health benefit plans pursuant to 33 V.S.A. chapter 18, subchapter 1 no later than January 1, 2013. The board shall report to the house committee on health care and the senate committee on health and welfare within 15 days following its approval of the initial benefit package and any subsequent substantive changes to the benefit package.

(8) Develop and maintain a method for evaluating systemwide performance and quality, including identification of the appropriate process and outcome measures:

(A) for determining public and health care professional satisfaction with the health system;

(B) for utilization of health services;

(C) in consultation with the department of health and the director of the Blueprint for Health, for quality of health services and the effectiveness of prevention and health promotion programs;

(D) for cost-containment and limiting the growth in health care expenditures;

(E) for determining the adequacy of the supply and distribution of health care resources in this state;

(F) to address access to and quality of mental health and substance abuse services; and

(G) for other measures as determined by the board.

(c) The board shall have the following duties related to Green Mountain Care:

(1) Prior to implementing Green Mountain Care, consider recommendations from the agency of human services; and define the Green

Mountain Care benefit package within the parameters established in 33 V.S.A. chapter 18, subchapter 2, to be adopted by the agency by rule.

(2) When providing its recommendations for the benefit package pursuant to subdivision (1) of this subsection, the agency of human services shall present a report on the benefit package proposal to the house committee on health care and the senate committee on health and welfare. The report shall describe the covered services to be included in the Green Mountain Care benefit package and any cost-sharing requirements. If the general assembly is not in session at the time that the agency makes its recommendations, the agency shall send its report electronically or by first class mail to each member of the house committee on health care and the senate committee on health and welfare.

(3) Prior to implementing Green Mountain Care and annually after implementation, recommend to the general assembly and the governor a three-year Green Mountain Care budget pursuant to 32 V.S.A. chapter 5, to be adjusted annually in response to realized revenues and expenditures, that reflects any modifications to the benefit package and includes recommended appropriations, revenue estimates, and necessary modifications to tax rates and other assessments.

(d) Annually on or before January 15, the board shall submit a report of its activities for the preceding state fiscal year to the house committee on health care and the senate committee on health and welfare. The report shall include any changes to the payment rates for health care professionals pursuant to section 9376 of this title, any new developments with respect to health information technology, the evaluation criteria adopted pursuant to subdivision (b)(8) of this section and any related modifications, the results of the systemwide performance and quality evaluations required by subdivision (b)(8) of this section and any resulting recommendations, the process and outcome measures used in the evaluation, any recommendations for modifications to Vermont statutes, and any actual or anticipated impacts on the work of the board as a result of modifications to federal laws, regulations, or programs. The report shall identify how the work of the board comports with the principles expressed in section 9371 of this title.

(e) All reports prepared by the board shall be available to the public and shall be posted on the board's website.

#### § 9376. PAYMENT AMOUNTS; METHODS

(a) It is the intent of the general assembly to ensure payments to health care professionals that are consistent with efficiency, economy, and quality of care and will permit them to provide, on a solvent basis, effective and efficient health services that are in the public interest. It is also the intent of the general

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assembly to eliminate the shift of costs between the payers of health services to ensure that the amount paid to health care professionals is sufficient to enlist enough providers to ensure that health services are available to all Vermonters and are distributed equitably.

(b)(1) The board shall set reasonable rates for health care professionals, health care provider bargaining groups created pursuant to section 9409 of this title, manufacturers of prescribed products, medical supply companies, and other companies providing health services or health supplies based on methodologies pursuant to section 9375 of this title, in order to have a consistent reimbursement amount accepted by these persons. In its discretion, the board may implement rate-setting for different groups of health care professionals over time and need not set rates for all types of health care professionals. In establishing rates, the board may consider legitimate differences in costs among health care professionals, such as the cost of providing a specific necessary service or services that may not be available elsewhere in the state, and the need for health care professionals in particular areas of the state, particularly in underserved geographic or practice shortage areas.

(2) Nothing in this subsection shall be construed to limit the ability of a health care professional to accept less than the rate established in subdivision (1) of this subsection from a patient without health insurance or other coverage for the service or services received.

(c) The board shall approve payment methodologies that encourage cost-containment; provision of high-quality, evidence-based health services in an integrated setting; patient self-management; access to primary care health services for underserved individuals, populations, and areas; and healthy lifestyles. Such methodologies shall be consistent with payment reform and with evidence-based practices, and may include fee-for-service payments if the board determines such payments to be appropriate.

(d) To the extent required to avoid federal antitrust violations and in furtherance of the policy identified in subsection (a) of this section, the board shall facilitate and supervise the participation of health care professionals and health care provider bargaining groups in the process described in subsection (b) of this section.

#### § 9377. PAYMENT REFORM; PILOTS

(a) It is the intent of the general assembly to achieve the principles stated in section 9371 of this title. In order to achieve this goal and to ensure the success of health care reform, it is the intent of the general assembly that payment reform be implemented and that payment reform be carried out as described in this section. It is also the intent of the general assembly to ensure

sufficient state involvement and action in the design and implementation of the payment reform pilot projects described in this section to comply with federal and state antitrust provisions by replacing competition between payers and others with state-supervised cooperation and regulation.

(b)(1) The board shall be responsible for payment and delivery system reform, including setting the overall policy goals for the pilot projects established in chapter 13, subchapter 2 of this title.

(2) The director of payment reform in the department of Vermont health access shall develop and implement the payment reform pilot projects in accordance with policies established by the board, and the board shall evaluate the effectiveness of such pilot projects in order to inform the payment and delivery system reform.

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

(A) payment reform pilot projects should align with the Blueprint for Health strategic plan and the statewide health information technology plan;

(B) health care 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 and a sustained focus on disease prevention and promotion of wellness that includes individuals, employers, and communities;

(C) health insurers, Medicaid, Medicare, and all other payers should reimburse health care professionals for coordinating patient care through consistent payment methodologies, which may include a global budget; a system of cost containment limits, health outcome measures, and patient consumer satisfaction targets which may include risk-sharing or other incentives designed to reduce costs while maintaining or improving health outcomes and patient consumer satisfaction; or another payment method providing an incentive to coordinate care and control cost growth;

(D) the scope of services in any capitated payment should be broad and comprehensive, including prescription drugs, diagnostic services, acute and sub-acute home health services, services received in a hospital, mental health and substance abuse services, and services from a licensed health care practitioner; and

(E) health insurers, Medicaid, Medicare, and all other payers should reimburse health care professionals for providing the full spectrum of evidence-based health services.

(4) In addition to the objectives identified in subdivision (a)(3) of this section, the design and implementation of payment reform pilot projects may consider:

(A) alignment with the requirements of federal law to ensure the full participation of Medicare in multipayer payment reform; and

(B) with input from long-term care providers, the inclusion of home health services and long-term care services as part of capitated payments.

(c) To the extent required to avoid federal antitrust violations, the board 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 board shall ensure that the process and implementation include sufficient state supervision over these entities to comply with federal antitrust provisions and shall refer to the attorney general for appropriate action the activities of any individual or entity that the board determines, after notice and an opportunity to be heard, violate state or federal antitrust laws without a countervailing benefit of improving patient care, improving access to health care, increasing efficiency, or reducing costs by modifying payment methods.

(d) The board or designee shall apply for grant funding, if available, for the evaluation of the pilot projects described in this section.

#### § 9378. PUBLIC PROCESS

The Green Mountain Care board shall provide a process for soliciting public input. The process may include receiving written comments on proposed new or amended rules or holding public hearings or both.

#### § 9379. AGENCY COOPERATION

The secretary of administration shall ensure that, in accordance with state and federal privacy laws, the Green Mountain Care board has access to data and analysis held by any executive branch agency which is necessary to carry out the board's duties as described in this chapter.

#### § 9380. RULES

The board may adopt rules pursuant to 3 V.S.A. chapter 25 as needed to carry out the provisions of this chapter.

#### § 9381. APPEALS

(a) The Green Mountain Care board shall adopt procedures for administrative appeals of its actions, orders, or other determinations. Such procedures shall provide for the issuance of a final order and the creation of a

record sufficient to serve as the basis for judicial review pursuant to subsection (b) of this section.

(b) Any person aggrieved by a final action, order, or other determination of the Green Mountain Care board may, upon exhaustion of all administrative appeals available pursuant to subsection (a) of this section, appeal to the supreme court pursuant to the Vermont Rules of Appellate Procedure.

Subchapter 2. Green Mountain Care Board Nominating Committee

§ 9390. GREEN MOUNTAIN CARE BOARD NOMINATING COMMITTEE CREATED; COMPOSITION

(a) A Green Mountain Care board nominating committee is created for the nomination of the chair and members of the Green Mountain Care board.

(b)(1) The committee shall consist of nine members who shall be selected as follows:

(A) Two members appointed by the governor.

(B) Two members of the senate, who shall not be members of the same party, to be appointed by the committee on committees.

(C) Two members of the house of representatives, who shall not be members of the same party, to be appointed by the speaker of the house of representatives.

(D) One member each to be appointed by the governor, the president pro tempore of the senate, and the speaker of the house, with knowledge of or expertise in health care policy, health care delivery, or health care financing, to complement that of the remaining members of the committee.

(2) The members of the committee shall serve for terms of two years and may serve for no more than three consecutive terms. All appointments shall be made between January 1 and February 1 of each odd-numbered year, except to fill a vacancy. Members shall serve until their successors are appointed.

(3) The members shall elect their own chair who shall serve for a term of two years.

(c) For committee meetings held when the general assembly is not in session, the legislative members of the Green Mountain Care board nominating committee shall be entitled to per diem compensation and reimbursement of expenses in accordance with the provisions of 2 V.S.A. § 406. Committee members who are not legislators shall be entitled to per diem compensation and reimbursement of expenses on the same basis as that applicable to the

legislative members, and their compensation and reimbursements shall be paid out of the budget of the Green Mountain Care board.

(d) The Green Mountain Care board nominating committee shall use the qualifications described in section 9392 of this title for the nomination of candidates for the chair and members of the Green Mountain Care board. The nominating committee shall adopt procedures for a nomination process based on the rules adopted by the judicial nominating board, and shall make such procedures available to the public.

(e) A quorum of the committee shall consist of five members.

(f) The board is authorized to use the staff and services of appropriate state agencies and departments as necessary to conduct investigations of applicants.

#### § 9391. NOMINATION AND APPOINTMENT PROCESS

(a) Whenever a vacancy occurs on the Green Mountain Care board, or when an incumbent does not declare that he or she will be a candidate to succeed himself or herself, the Green Mountain Care board nominating committee shall select for consideration by the committee, by majority vote, provided that a quorum is present, from the applications for membership on the Green Mountain Care board as many candidates as it deems qualified for the position or positions to be filled. The committee shall base its determinations on the qualifications set forth in section 9392 of this section.

(b) The committee shall submit to the governor the names of the persons it deems qualified to be appointed to fill the position or positions.

(c) The governor shall make an appointment to the Green Mountain Care board from the list of qualified candidates submitted pursuant to subsection (b) of this section. The appointment shall be subject to the consent of the senate.

(d) All proceedings of the committee, including the names of candidates considered by the committee and information about any candidate submitted by any source, shall be confidential.

#### § 9392. QUALIFICATIONS FOR NOMINEES

The Green Mountain Care board nominating committee shall assess candidates using the following criteria:

(1) commitment to the principles expressed in section 9371 of this title.

(2) knowledge of or expertise in health care policy, health care delivery, or health care financing, and openness to alternative approaches to health care.

(3) possession of desirable personal characteristics, including integrity, impartiality, health, empathy, experience, diligence, neutrality, administrative

and communication skills, social consciousness, public service, and regard for the public good.

(4) knowledge, expertise, and characteristics that complement those of the remaining members of the board.

(5) impartiality and the ability to remain free from undue influence by a personal, business, or professional relationship with any person subject to supervision or regulation by the board.

Sec. 3a. 8 V.S.A. § 4089w(b) is amended to read:

(b) The health care ombudsman office shall:

\* \* \*

(5) Analyze and monitor the development and implementation of federal, state and local laws, regulations, and policies relating to patients and health insurance consumers, including the activities and policies of the Green Mountain Care board established in 18 V.S.A. chapter 220, and recommend changes it deems necessary.

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Sec. 3b. GREEN MOUNTAIN CARE BOARD AND EXCHANGE POSITIONS

(a) On July 1, 2011, five exempt positions are created on the Green Mountain Care board, including:

(1) one chair, Green Mountain Care board; and

(2) four members, Green Mountain Care board.

(b)(1) On or before January 1, 2012, up to nine positions and appropriate amounts for personal services and operating expenses shall be transferred from the department of banking, insurance, securities, and health care administration to the Green Mountain Care board.

(2) One exempt attorney position shall be transferred from the administrative division in the department of banking, insurance, securities, and health care administration to the Green Mountain Care board.

(c) On July 1, 2011, one classified administrative assistant position is created for the Green Mountain Care board.

(d) On or after November 1, 2011, one exempt deputy commissioner position is created in the department of Vermont health access to support the functions provided for in Sec. 4 of this act establishing 33 V.S.A. chapter 18, subchapter 1. The salary and benefits for this position shall be funded from federal funds provided to establish the Vermont health benefit exchange.

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(e) On July 1, 2011, one exempt position, director of health care reform, is created in the agency of administration.

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Sec. 3c. 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 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) “Board” means the Green Mountain Care board established in chapter 220 of this title.

(3) “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)~~(4) “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)~~(5) “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 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.

(6) “Global payment” means a payment from a health insurer, Medicaid, Medicare, or other payer for the health services of a defined population of

patients for a defined period of time. Such payments may be adjusted to account for the population's underlying risk factors, including severity of illness and socioeconomic factors that may influence the cost of health care for the population.

~~(5)~~(7) "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)~~(8) "Health benefit plan" shall have the same meaning as in 8 V.S.A. § 4088h.

~~(7)~~(9) "Health insurer" shall have the same meaning as in section 9402 of this title.

(10) "Health service" means any treatment or procedure delivered by a health care professional to maintain an individual's physical or mental health or to diagnose or treat an individual's physical or mental health condition, including services ordered by a health care professional, chronic care management, preventive care, wellness services, and medically necessary services to assist in activities of daily living.

~~(8)~~(11) "Hospital" shall have the same meaning as in section 9456 of this title.

(12) "Integrated delivery system" means a group of health care professionals, associated either through employment by a single entity or through a contractual arrangement, that provides health services for a defined population of patients and is compensated through a global payment.

(13) "Payment reform" means modifying the method of payment from a fee for-service basis to one or more alternative methods for compensating health care professionals, health care provider bargaining groups created pursuant to section 9409 of this title, integrated delivery systems and other health care professional arrangements, manufacturers of prescribed products, medical supply companies, and other companies providing health services or health supplies, for the provision of high-quality and efficient health services, products, and supplies while measuring quality and efficiency. The term may include shared savings agreements, bundled payments, episode-based payments, and global payments.

(14) "Preventive care" means health services provided by health care professionals to identify and treat asymptomatic individuals who have risk factors or preclinical disease, but in whom the disease is not clinically apparent, including immunizations and screening, counseling, treatment, and medication determined by scientific evidence to be effective in preventing or detecting a condition.

(15) "Wellness services" means health services, programs, or activities that focus on the promotion or maintenance of good health.

Subchapter 1. Blueprint for Health

§ 702. BLUEPRINT FOR HEALTH; STRATEGIC PLAN

\* \* \*

Subchapter 2. Payment Reform

§ 721. PURPOSE

It is the intent of the general assembly to achieve the principles stated in section 9371 of this title. In order to achieve this goal and to ensure the success of health care reform, it is the intent of the general assembly that payment reform be implemented and that payment reform be carried out as described in this section. It is also the intent of the general assembly to ensure sufficient state involvement and action in the design and implementation of the payment reform pilot projects described in this section to comply with federal and state antitrust provisions by replacing competition between payers and others with state-supervised cooperation and regulation.

§ 722. PILOT PROJECTS

(a) The Green Mountain Care board shall be responsible for payment reform and delivery system reform, including setting the overall policy goals for the pilot projects as provided in this subchapter. The director of payment reform in the department of Vermont health access shall develop and implement the payment reform pilot projects consistent with policies established by the board and the board shall evaluate the effectiveness of the pilot projects in order to inform the payment and delivery system reform. Whenever health insurers are involved, the director and the Green Mountain Care board shall collaborate with the commissioner of banking, insurance, securities, and health care administration.

(b) The director of payment reform shall convene a broad-based group of stakeholders, including health care professionals who provide health services, health insurers, professional organizations, community and nonprofit groups, consumers, businesses, school districts, the state health care ombudsman, and state and local governments to advise the director in developing and implementing the pilot projects and the Green Mountain Care board in setting overall policy goals.

(c) Payment reform pilot projects shall be developed and implemented to manage the costs of the health care delivery system, improve health outcomes for Vermonters, provide a positive health care experience for patients and health care professionals, and further the following objectives:

(1) payment reform pilot projects should align with the Blueprint for Health strategic plan and the statewide health information technology plan;

(2) health care 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 and a sustained focus on disease prevention and promotion of wellness that includes individuals, employers, and communities;

(3) health insurers, Medicaid, Medicare, and all other payers should reimburse health care professionals for coordinating patient care through consistent payment methodologies, which may include a global budget; a system of cost containment limits, health outcome measures, and patient consumer satisfaction targets which may include risk-sharing or other incentives designed to reduce costs while maintaining or improving health outcomes and patient consumer satisfaction; or another payment method providing an incentive to coordinate care and control cost growth;

(4) the scope of services in any capitated payment should be broad and comprehensive, including prescription drugs, diagnostic services, acute and sub-acute home health services, services received in a hospital, mental health and substance abuse services, and services from a licensed health care practitioner; and

(5) health insurers, Medicaid, Medicare, and all other payers should reimburse health care professionals for providing the full spectrum of evidence-based health services.

(d) In addition to the objectives identified in subsection (c) of this section, the design and implementation of payment reform pilot projects may consider:

(1) alignment with the requirements of federal law to ensure the full participation of Medicare in multipayer payment reform; and

(2) with input from long-term care providers, the inclusion of home health services and long-term care services as part of capitated payments.

(e) The first pilot project shall become operational no later than January 1, 2012, and two or more additional pilot projects shall become operational no later than July 1, 2012.

(f) The Green Mountain Care board shall ensure that payment reform pilot projects are consistent with the board's overall efforts to control the rate of growth in health care costs while maintaining or improving health care quality.

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§ 723. HEALTH INSURER PARTICIPATION

(a)(1) Health insurers shall participate in the development of the payment reform strategic plan for the pilot projects and in the implementation of the pilot projects, including providing incentives, fees, or payment methods, 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 pursuant to 8 V.S.A. § 4088h.

(2) The board 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 board, in consultation with the commissioner of banking, insurance, securities, and health care administration. 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.

(b) 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.

§ 724. ANTITRUST PROTECTION

To the extent required to avoid federal antitrust violations, the director 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 director shall ensure that the process and implementation include sufficient state supervision over these entities to comply with federal antitrust provisions and shall refer to the attorney general for appropriate action the activities of any individual or entity that the director determines, after notice and an opportunity to be heard, violate state or federal antitrust laws without a countervailing benefit of improving patient care, improving access to health care, increasing efficiency, or reducing costs by modifying payment methods.

§ 725. ADMINISTRATION; RULES

(a) The director of payment reform shall apply for grant funding, if available, for the design and implementation evaluation of the pilot projects described in this section.

(b) The agency of human services may adopt rules pursuant to 3 V.S.A. chapter 25 as needed to carry out the provisions of this chapter.

(c) After implementation of the pilot projects described in this subchapter, health insurers shall have appeal rights pursuant to section 9381 of this title.

Sec. 3d. 18 V.S.A. § 4631a is amended to read:

§ 4631a. EXPENDITURES BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a) As used in this section:

\* \* \*

(5) "Gift" means:

(A) Anything of value provided for free to a health care provider for free or to a member of the Green Mountain Care board established in chapter 220 of this title; or

(B) 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 or to a member of the Green Mountain Care board established in chapter 220 of this title, unless:

(i) it is an allowable expenditure as defined in subdivision (a)(1) of this section; or

(ii) the health care provider or board member reimburses the cost at fair market value.

\* \* \*

(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 or to a member of the Green Mountain Care board established in chapter 220 of this title.

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Sec. 3e. 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:

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(A) any allowable expenditure or gift permitted under subdivision 4631a(b)(2) of this title to any health care provider or to a member of the Green Mountain Care board established in chapter 220 of this title, 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;

(iv) 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.

\* \* \*

(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~~ present information in aggregate form; ~~and~~ by selected types of health care providers or individual health care providers, as prioritized each year by the office; and showing the amounts expended on the Green Mountain Care board established in chapter 220 of this title.

(B) Information on violations and enforcement actions brought pursuant to this section and section 4631a of this title.

(6) After issuance of the report required by subdivision (5) of this 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.

\* \* \*

\* \* \* Public-Private Universal Health Care System \* \* \*

Sec. 4. 33 V.S.A. chapter 18 is added to read

CHAPTER 18. PUBLIC-PRIVATE UNIVERSAL  
HEALTH CARE SYSTEM

Subchapter 1. Vermont Health Benefit Exchange

§ 1801. PURPOSE

(a) It is the intent of the general assembly to establish a Vermont health benefit exchange which meets the policy established in 18 V.S.A. § 9401 and, to the extent allowable under federal law or a waiver of federal law, becomes the mechanism to create Green Mountain Care.

(b) The purpose of the Vermont health benefit exchange is to facilitate the purchase of affordable, qualified health benefit plans in the individual and group markets in this state in order to reduce the number of uninsured and underinsured; to reduce disruption when individuals lose employer-based insurance; to reduce administrative costs in the insurance market; to contain costs; to promote health, prevention, and healthy lifestyles by individuals; and to improve quality of health care.

(c) Nothing in this chapter shall be construed to reduce, diminish, or otherwise infringe upon the benefits provided to eligible individuals under Medicare.

§ 1802. DEFINITIONS

For purposes of this subchapter:

(1) “Affordable Care Act” means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and as further amended.

(2) “Commissioner” means the commissioner of the department of Vermont health access.

(3) “Health benefit plan” means a policy, contract, certificate, or agreement offered or issued by a health insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health services. This term does not include coverage only for accident or disability income insurance, liability insurance, coverage issued as a supplement to liability insurance, workers’ compensation or similar insurance, automobile medical payment insurance, credit-only insurance, coverage for on-site medical clinics, or other similar insurance coverage where benefits for health services are secondary or incidental to other insurance benefits as provided under the Affordable Care

Act. The term also does not include stand-alone dental or vision benefits; long-term care insurance; specific disease or other limited benefit coverage, Medicare supplemental health benefits, Medicare Advantage plans, and other similar benefits excluded under the Affordable Care Act.

(4) "Health insurer" shall have the same meaning as in 18 V.S.A. § 9402.

(5) "Qualified employer" means an employer that:

(A) has its principal place of business in this state and elects to provide coverage for its eligible employees through the Vermont health benefit exchange, regardless of where an employee resides; or

(B) elects to provide coverage through the Vermont health benefit exchange for all of its eligible employees who are principally employed in this state.

(6) "Qualified entity" means an entity with experience in individual and group health insurance, benefit administration, or other experience relevant to health benefit program eligibility, enrollment, or support.

(7) "Qualified health benefit plan" means a health benefit plan which meets the requirements set forth in section 1806 of this title.

(8) "Qualified individual" means an individual, including a minor, who is a Vermont resident and, at the time of enrollment:

(A) is not incarcerated, or is only incarcerated awaiting disposition of charges; and

(B) is, or is reasonably expected to be during the time of enrollment, a citizen or national of the United States or an immigrant lawfully present in the United States as defined by federal law.

#### § 1803. VERMONT HEALTH BENEFIT EXCHANGE

(a)(1) The department of Vermont health access shall establish the Vermont health benefit exchange, which shall be administered by the department in consultation with the advisory committee established in section 402 of this title.

(2) The Vermont health benefit exchange shall be considered a division within the department of Vermont health access and shall be headed by a deputy commissioner as provided in 3 V.S.A. chapter 53.

(b)(1)(A) The Vermont health benefit exchange shall provide qualified individuals and qualified employers with qualified health benefit plans, including the multistate plans required by the Affordable Care Act, with

effective dates beginning on or before January 1, 2014. The Vermont health benefit exchange may contract with qualified entities or enter into intergovernmental agreements to facilitate the functions provided by the Vermont health benefit exchange.

(B) Prior to contracting with any health insurer, the Vermont health benefit exchange shall consider the insurer's historic rate increase information required under section 1806 of this title, along with the information and the recommendations provided to the Vermont health benefit exchange by the commissioner of banking, insurance, securities, and health care administration under Section 2794(b)(1)(B) of the federal Public Health Service Act.

(2) To the extent allowable under federal law, the Vermont health benefit exchange may offer health benefits to populations in addition to those eligible under Subtitle D of Title I of the Affordable Care Act, including:

(A) to individuals and employers who are not qualified individuals or qualified employers as defined by this subchapter and by the Affordable Care Act;

(B) Medicaid benefits to individuals who are eligible, upon approval by the Centers for Medicare and Medicaid Services and provided that including these individuals in the health benefit exchange would not reduce their Medicaid benefits;

(C) Medicare benefits to individuals who are eligible, upon approval by the Centers for Medicare and Medicaid Services and provided that including these individuals in the health benefit exchange would not reduce their Medicare benefits; and

(D) state employees and municipal employees, including teachers.

(3) To the extent allowable under federal law, the Vermont health benefit exchange may offer health benefits to employees for injuries arising out of or in the course of employment in lieu of medical benefits provided pursuant to 21 V.S.A. chapter 9 (workers' compensation).

(c)(1) The Vermont health benefit exchange may determine an appropriate method to provide a unified, simplified administration system for health insurers offering qualified health benefit plans. The exchange may include claims administration, benefit management, billing, or other components in the unified system and may achieve simplification by contracting with a single entity for administration and management of all qualified health benefit plans, by licensing or requiring the use of particular software, by requiring health insurers to conform to a standard set of systems and rules, or by another method determined by the commissioner.

(2) The Vermont health benefit exchange may offer certain services, such as wellness programs and services designed to simplify administrative processes, to health insurers offering plans outside the exchange, to workers' compensation insurers, to employers, and to other entities.

(d) The Vermont health benefit exchange may enter into information-sharing agreements with federal and state agencies and other state exchanges to carry out its responsibilities under this subchapter provided such agreements include adequate protections with respect to the confidentiality of the information to be shared and provided such agreements comply with all applicable state and federal laws and regulations.

#### § 1804. QUALIFIED EMPLOYERS

[Reserved.]

#### § 1805. DUTIES AND RESPONSIBILITIES

The Vermont health benefit exchange shall have the following duties and responsibilities consistent with the Affordable Care Act:

(1) Offering coverage for health services through qualified health benefit plans, including by creating a process for:

(A) the certification, decertification, and recertification of qualified health benefit plans as described in section 1806 of this title;

(B) enrolling qualified individuals in qualified health benefit plans, including through open enrollment periods as provided in the Affordable Care Act, and ensuring that individuals may transfer coverage between qualified health benefit plans and other sources of coverage as seamlessly as possible;

(C) collecting premium payments made for qualified health benefit plans from employers and individuals on a pretax basis, including collecting premium payments from multiple employers of one individual for a single plan covering that individual; and

(D) creating a simplified and uniform system for the administration of health benefits.

(2) Determining eligibility for and enrolling individuals in Medicaid, Dr. Dynasaur, VPharm, and VermontRx pursuant to chapter 19 of this title, as well as any other public health benefit program.

(3) Creating and maintaining consumer assistance tools, including a website through which enrollees and prospective enrollees of qualified health benefit plans may obtain standardized comparative information on such plans, a toll-free telephone hotline to respond to requests for assistance, and

interactive online communication tools, in a manner that complies with the Americans with Disabilities Act.

(4) Creating standardized forms and formats for presenting health benefit options in the Vermont health benefit exchange, including the use of the uniform outline of coverage established under Section 2715 of the federal Public Health Services Act.

(5) Assigning a quality and wellness rating to each qualified health benefit plan offered through the Vermont health benefit exchange and determining each qualified health benefit plan's level of coverage in accordance with regulations issued by the U.S. Department of Health and Human Services.

(6) Determining enrollee premiums and subsidies as required by the secretary of the U.S. Treasury or of the U.S. Department of Health and Human Services and informing consumers of eligibility for premiums and subsidies, including by providing an electronic calculator to determine the actual cost of coverage after application of any premium tax credit under Section 36B of the Internal Revenue Code of 1986 and any cost-sharing reduction under Section 1402 of the Affordable Care Act.

(7) Transferring to the secretary of the U.S. Department of the Treasury the name and taxpayer identification number of each individual who was an employee of an employer but who was determined to be eligible for the premium tax credit under Section 36B of the Internal Revenue Code of 1986 for the following reasons:

(A) The employer did not provide minimum essential coverage; or

(B) The employer provided the minimum essential coverage, but it was determined under Section 36B(c)(2)(C) of the Internal Revenue Code to be either unaffordable to the employee or not to provide the required minimum actuarial value.

(8) Performing duties required by the secretary of the U.S. Department of Health and Human Services or the secretary of the U.S. Department of the Treasury related to determining eligibility for the individual responsibility requirement exemptions, including:

(A) Granting a certification attesting that an individual is exempt from the individual responsibility requirement or from the penalty for violating that requirement, if there is no affordable qualified health benefit plan available through the Vermont health benefit exchange or the individual's employer for that individual or if the individual meets the requirements for any exemption from the individual responsibility requirement or from the penalty pursuant to Section 5000A of the Internal Revenue Code of 1986; and

(B) transferring to the secretary of the U.S. Department of the Treasury a list of the individuals who are issued a certification under subdivision (8)(A) of this section, including the name and taxpayer identification number of each individual.

(9)(A) Transferring to the secretary of the U.S. Department of the Treasury the name and taxpayer identification number of each individual who notifies the Vermont health benefit exchange that he or she has changed employers and of each individual who ceases coverage under a qualified health benefit plan during a plan year and the effective date of that cessation; and

(B) Communicating to each employer the name of each of its employees and the effective date of the cessation reported to the U.S. Department of the Treasury under this subdivision.

(10) Establishing a navigator program as described in section 1807 of this title.

(11) Reviewing the rate of premium growth within and outside the Vermont health benefit exchange.

(12) Consistent with federal law, crediting the amount of any free choice voucher provided pursuant to Section 10108 of the Affordable Care Act to the monthly premium of the plan in which a qualified employee is enrolled and collecting the amount credited from the offering employer.

(13) Providing consumers and health care professionals with satisfaction surveys and other mechanisms for evaluating the performance of qualified health benefit plans and informing the commissioner of Vermont health access and the commissioner of banking, insurance, securities, and health care administration of such performance.

(14) Ensuring consumers have easy and simple access to the relevant grievance and appeals processes pursuant to 8 V.S.A. chapter 107 and 3 V.S.A. § 3090 (human services board).

(15) Consulting with the advisory committee established in section 402 of this title to obtain information and advice as necessary to fulfill the duties outlined in this subchapter.

(16) Referring consumers to the office of health care ombudsman for assistance with grievances, appeals, and other issues involving the Vermont health benefit exchange.

#### § 1806. QUALIFIED HEALTH BENEFIT PLANS

(a) Prior to contracting with a health insurer to offer a qualified health benefit plan, the commissioner shall determine that making the plan available

through the Vermont health benefit exchange is in the best interest of individuals and qualified employers in this state. In determining the best interest, the commissioner shall consider affordability; promotion of high-quality care, prevention, and wellness; promotion of access to health care; participation in the state's health care reform efforts; and such other criteria as the commissioner, in his or her discretion, deems appropriate.

(b) A qualified health benefit plan shall provide the following benefits:

(1)(A) The essential benefits package required by Section 1302(a) of the Affordable Care Act and any additional benefits required by the secretary of human services by rule after consultation with the advisory committee established in section 402 of this title and after approval from the Green Mountain Care board established in 18 V.S.A. chapter 220.

(B) Notwithstanding subdivision (1)(A) of this subsection, a health insurer or a stand-alone dental insurer, including a nonprofit dental service corporation, may offer a plan that provides only limited dental benefits, either separately or in conjunction with a qualified health benefit plan, if it meets the requirements of Section 9832(c)(2)(A) of the Internal Revenue Code and provides pediatric dental benefits meeting the requirements of Section 1302(b)(1)(J) of the Affordable Care Act.

(2) At least the silver level of coverage as defined by Section 1302 of the Affordable Care Act and the cost-sharing limitations for individuals provided in Section 1302 of the Affordable Care Act, as well as any more restrictive cost-sharing requirements specified by the secretary of human services by rule after consultation with the advisory committee established in section 402 of this title and after approval from the Green Mountain Care board established in 18 V.S.A. chapter 220.

(3) For qualified health benefit plans offered to employers, a deductible which meets the limitations provided in Section 1302 of the Affordable Care Act and any more restrictive deductible requirements specified by the secretary of human services by rule after consultation with the advisory committee established in section 402 of this title and after approval from the Green Mountain Care board established in 18 V.S.A. chapter 220.

(c) A qualified health benefit plan shall meet the following minimum prevention, quality, and wellness requirements:

(1) standards for marketing practices, network adequacy, essential community providers in underserved areas, appropriate services to enable access for underserved individuals or populations, accreditation, quality improvement, and information on quality measures for health benefit plan

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performance, as provided in Section 1311 of the Affordable Care Act and any more restrictive requirements provided by 8 V.S.A. chapter 107;

(2) quality and wellness standards, including a requirement for joint quality improvement activities with other plans, as specified in rule by the secretary of human services, after consultation with the commissioners of health and of banking, insurance, securities, and health care administration and with the advisory committee established in section 402 of this title; and

(3) standards for participation in the Blueprint for Health as provided in 18 V.S.A. chapter 13.

(d) A health insurer offering a qualified health benefit plan shall use the uniform enrollment forms and descriptions of coverage provided by the commissioner of Vermont health access and the commissioner of banking, insurance, securities, and health care administration.

(e)(1) A health insurer offering a qualified health benefit plan shall comply with the following insurance and consumer information requirements:

(A)(i) Obtain premium approval through the rate review process provided in 8 V.S.A. chapter 107; and

(ii) Submit to the commissioner of banking, insurance, securities, and health care administration a justification for any premium increase before implementation of that increase and prominently post this information on the health insurer's website.

(B) Offer at least one qualified health benefit plan at the silver level and at least one qualified health benefit plan at the gold level that meet the requirements of Section 1302 of the Affordable Care Act and any additional requirements specified by the secretary of human services by rule. In addition, a health insurer may choose to offer one or more qualified health benefit plans at the platinum level that meet the requirements of Section 1302 of the Affordable Care Act and any additional requirements specified by the secretary of human services by rule.

(C) Charge the same premium rate for a health benefit plan without regard to whether the plan is offered through the Vermont health benefit exchange and without regard to whether the plan is offered directly from the carrier or through an insurance agent.

(D) Provide accurate and timely disclosure of information to the public and to the Vermont health benefit exchange relating to claims denials, enrollment data, rating practices, out-of-network coverage, enrollee and participant rights provided by Title I of the Affordable Care Act, and other information as required by the commissioner of Vermont health access or by

the commissioner of banking, insurance, securities, and health care administration. The commissioner of banking, insurance, securities, and health care administration shall define, by rule, the acceptable time frame for provision of information in accordance with this subdivision.

(E) Provide information in a timely manner to an individual, upon request, regarding the cost-sharing amounts for that individual's health benefit plan.

(2) A health insurer offering a qualified health benefit plan shall comply with all other insurance requirements for health insurers as provided in 8 V.S.A. chapter 107 and as specified by rule by the commissioner of banking, insurance, securities, and health care administration.

(f) Consistent with Section 1311(e)(1)(B) of the Affordable Care Act, the Vermont health benefit exchange shall not exclude a health benefit plan:

(1) on the basis that the plan is a fee-for-service plan;

(2) through the imposition of premium price controls by the Vermont health benefit exchange; or

(3) on the basis that the health benefit plan provides for treatments necessary to prevent patients' deaths in circumstances the Vermont health benefit exchange determines are inappropriate or too costly.

#### § 1807. NAVIGATORS

(a)(1) The Vermont health benefit exchange shall establish a navigator program to assist individuals and employers in enrolling in a qualified health benefit plan offered under the Vermont health benefit exchange. The Vermont health benefit exchange shall select individuals and entities qualified to serve as navigators and shall award grants to navigators for the performance of their duties.

(2) The Vermont health benefit exchange shall ensure that navigators are available to provide assistance in person or through interactive technology to individuals in all regions of the state in a manner that complies with the Americans with Disabilities Act.

(3) Consistent with Section 1311(i)(4) of the Affordable Care Act, health insurers shall not serve as navigators, and no navigator shall receive any compensation from a health insurer in connection with enrolling individuals or employees in qualified health benefit plans.

(b) Navigators shall have the following duties:

(1) Conduct public education activities to raise awareness of the availability of qualified health benefit plans;

(2) Distribute fair and impartial information concerning enrollment in qualified health benefit plans and concerning the availability of premium tax credits and cost-sharing reductions;

(3) Facilitate enrollment in qualified health benefit plans, Medicaid, Dr. Dynasaur, VPharm, VermontRx, and other public health benefit programs;

(4) Provide referrals to the office of health care ombudsman and any other appropriate agency for any enrollee with a grievance, complaint, or question regarding his or her health benefit plan, coverage, or a determination under that plan or coverage;

(5) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Vermont health benefit exchange; and

(6) Distribute information to health care professionals, community organizations, and others to facilitate the enrollment of individuals who are eligible for Medicaid, Dr. Dynasaur, VPharm, VermontRx, other public health benefit programs, or the Vermont health benefit exchange in order to ensure that all eligible individuals are enrolled.

#### § 1808. FINANCIAL INTEGRITY

(a) The Vermont health benefit exchange shall:

(1) Keep an accurate accounting of all activities, receipts, and expenditures and submit this information annually as required by federal law;

(2) Cooperate with the secretary of the U.S. Department of Health and Human Services or the inspector general of the U.S. Department of Health and Human Services in any investigation into the affairs of the Vermont health benefit exchange, any examination of the properties and records of the Vermont health benefit exchange, or any requirement for periodic reports in relation to the activities undertaken by the Vermont health benefit exchange.

(b) In carrying out its activities under this subchapter, the Vermont health benefit exchange shall not use any funds intended for the administrative and operational expenses of the Vermont health benefit exchange for staff retreats, promotional giveaways, excessive executive compensation, or promotion of federal or state legislative or regulatory modifications.

#### § 1809. PUBLICATION OF COSTS AND SATISFACTION SURVEYS

(a) The Vermont health benefit exchange shall publish the average costs of licensing, regulatory fees, and any other payments required by the exchange, as well as the administrative costs of the exchange on a website intended to

educate consumers about such costs. This information shall include information on monies lost to waste, fraud, and abuse.

(b) The Vermont health benefit exchange shall publish the deidentified results of the satisfaction surveys and other evaluation mechanisms required pursuant to subdivision 1805(13) of this title on a website intended to enable consumers to compare the qualified health benefit plans offered through the exchange.

#### § 1810. RULES

The secretary of human services may adopt rules pursuant to 3 V.S.A. chapter 25 as needed to carry out the duties and functions established in this subchapter.

#### Subchapter 2. Green Mountain Care

#### § 1821. PURPOSE

The purpose of Green Mountain Care is to provide, as a public good, comprehensive, affordable, high-quality, publicly financed health care coverage for all Vermont residents in a seamless and equitable manner regardless of income, assets, health status, or availability of other health coverage. Green Mountain Care shall contain costs by:

(1) providing incentives to residents to avoid preventable health conditions, promote health, and avoid unnecessary emergency room visits;

(2) establishing innovative payment mechanisms to health care professionals, such as global payments;

(3) encouraging the management of health services through the Blueprint for Health; and

(4) reducing unnecessary administrative expenditures.

#### § 1822. IMPLEMENTATION; WAIVER

(a) Green Mountain Care shall be implemented 90 days following the last to occur of:

(1) Receipt of a waiver under Section 1332 of the Affordable Care Act pursuant to subsection (c) of this section.

(2) Enactment of a law establishing the financing for Green Mountain Care.

(3) Approval by the Green Mountain Care board of the initial Green Mountain Care benefit package pursuant to 18 V.S.A. § 9375.

(4) Enactment of the appropriations for the initial Green Mountain Care benefit package proposed by the Green Mountain Care board pursuant to 18 V.S.A. § 9375.

(5) A determination by the Green Mountain Care Board that each of the following conditions will be met:

(A) Each Vermont resident covered by Green Mountain Care will receive benefits with an actuarial value of 80 percent or greater.

(B) When implemented, Green Mountain Care will not have a negative aggregate impact on Vermont's economy.

(C) The financing for Green Mountain Care is sustainable.

(D) Administrative expenses will be reduced.

(E) Cost-containment efforts will result in a reduction in the rate of growth in Vermont's per-capita health care spending.

(F) Health care professionals will be reimbursed at levels sufficient to allow Vermont to recruit and retain high-quality health care professionals.

(b) As soon as allowed under federal law, the secretary of administration shall seek a waiver to allow the state to suspend operation of the Vermont health benefit exchange and to enable Vermont to receive the appropriate federal fund contribution in lieu of the federal premium tax credits, cost-sharing subsidies, and small business tax credits provided in the Affordable Care Act. The secretary may seek a waiver from other provisions of the Affordable Care Act as necessary to ensure the operation of Green Mountain Care.

#### § 1823. DEFINITIONS

For purposes of this subchapter:

(1) "Agency" means the agency of human services.

(2) "Board" means the Green Mountain Care board established in 18 V.S.A. chapter 220.

(3) "CHIP funds" means federal funds available under Title XXI of the Social Security Act.

(4) "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, and hyperlipidemia.

(5) “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 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.

(6) “Health care professional” means an individual, partnership, corporation, facility, or institution licensed or certified or otherwise authorized by Vermont law to provide professional health services.

(7) “Health service” means any treatment or procedure delivered by a health care professional to maintain an individual’s physical or mental health or to diagnose or treat an individual’s physical or mental health condition, including services ordered by a health care professional, chronic care management, preventive care, wellness services, and medically necessary services to assist in activities of daily living.

(8) “Hospital” shall have the same meaning as in 18 V.S.A. § 1902 and may include hospitals located outside the state.

(9) “Preventive care” means health services provided by health care professionals to identify and treat asymptomatic individuals who have risk factors or preclinical disease, but in whom the disease is not clinically apparent, including immunizations and screening, counseling, treatment, and medication determined by scientific evidence to be effective in preventing or detecting a condition.

(10) “Primary care” means health services provided by health care professionals specifically trained for and skilled in first-contact and continuing care for individuals with signs, symptoms, or health concerns, not limited by problem origin, organ system, or diagnosis, and shall include family planning, prenatal care, and mental health and substance abuse treatment.

(11) “Secretary” means the secretary of human services.

(12) “Vermont resident” means an individual domiciled in Vermont as evidenced by an intent to maintain a principal dwelling place in Vermont indefinitely and to return to Vermont if temporarily absent, coupled with an act or acts consistent with that intent. An individual shall not be considered to be

a Vermont resident if he or she is 18 years of age or older and is claimed as a dependent on the tax return of a resident of another state.

(13) "Wellness services" means health services, programs, or activities that focus on the promotion or maintenance of good health.

#### § 1824. ELIGIBILITY

(a)(1) Upon implementation, all Vermont residents shall be eligible for Green Mountain Care, regardless of whether an employer offers health insurance for which they are eligible. The agency shall establish standards by rule for proof and verification of residency.

(2)(A) Except as otherwise provided in subdivision (C) of this subdivision (2), if an individual is determined to be eligible for Green Mountain Care based on information later found to be false, the agency shall make reasonable efforts to recover from the individual the amounts expended for his or her care. In addition, if the individual knowingly provided the false information, he or she shall be assessed an administrative penalty of not more than \$5,000.00.

(B) The agency shall include information on the Green Mountain Care application to provide notice to applicants of the penalty for knowingly providing false information as established in subdivision (2)(A) of this subsection.

(C) An individual determined to be eligible for Green Mountain Care whose health services are paid in whole or in part by Medicaid funds who commits fraud shall be subject to the provisions of chapter 1, subchapter V of this title in lieu of the administrative penalty described in subdivision (A) of this subdivision (2).

(D) Nothing in this section shall be construed to limit or restrict prosecutions under any applicable provision of law.

(3)(A) Except as otherwise provided in this section, a person who is not a Vermont resident shall not be eligible for Green Mountain Care.

(B) Except as otherwise provided in subdivision (C) of this subdivision (3), an individual covered under Green Mountain Care shall inform the agency within 60 days of becoming a resident of another state. An individual who obtains or attempts to obtain health services through Green Mountain Care more than 60 days after becoming a resident of another state shall reimburse the agency for the amounts expended for his or her care and shall be assessed an administrative penalty of not more than \$1,000.00 for a first violation and not more than \$2,000.00 for any subsequent violation.

(C) An individual whose health services are paid in whole or in part by Medicaid funds who obtains or attempts to obtain health services through Green Mountain Care more than 60 days after becoming a resident of another state shall be subject to the provisions of chapter 1, subchapter V of this title in lieu of the administrative penalty described in subdivision (B) of this subdivision (3).

(D) Nothing in this section shall be construed to limit or restrict prosecutions under any applicable provision of law.

(b) The agency shall establish a procedure to enroll residents in Green Mountain Care.

(c)(1) The agency shall establish by rule a process to allow health care professionals to presume an individual is eligible based on the information provided on a simplified application.

(2) After submission of the application, the agency shall collect additional information as necessary to determine whether Medicaid, Medicare, CHIP, or other federal funds may be applied toward the cost of the health services provided, but shall provide payment for any health services received by the individual from the time the application is submitted.

(3) If an individual presumed eligible for Green Mountain Care pursuant to subdivision (1) of this subsection is later determined not to be eligible for the program, the agency shall make reasonable efforts to recover from the individual the amounts expended for his or her care.

(d) The agency shall adopt rules pursuant to 3 V.S.A. chapter 25 to ensure that Vermont residents who are temporarily out of the state and who intend to return and reside in Vermont remain eligible for Green Mountain Care while outside Vermont.

(e) A nonresident visiting Vermont, or his or her insurer, shall be billed for all services received. The agency may enter into intergovernmental arrangements or contracts with other states and countries to provide reciprocal coverage for temporary visitors and shall adopt rules pursuant to 3 V.S.A. chapter 25 to carry out the purposes of this subsection.

#### § 1825. HEALTH BENEFITS

(a)(1) Green Mountain Care shall include primary care, preventive care, chronic care, acute episodic care, and hospital services and shall include at least the same covered services as those included in the benefit package in effect for the lowest cost Catamount Health plan offered on January 1, 2011.

(2) It is the intent of the general assembly that Green Mountain Care provide a level of coverage that includes benefits that are actuarially equivalent to at least 87 percent of the full actuarial value of the covered health services.

(3) The Green Mountain Care board shall consider whether to impose cost-sharing requirements; if so, whether to make the cost-sharing requirements income-sensitized; and the impact of any cost-sharing requirements on an individual's ability to access care. The board shall consider waiving any cost-sharing requirement for evidence-based primary and preventive care; for palliative care; and for chronic care for individuals participating in chronic care management and, where circumstances warrant, for individuals with chronic conditions who are not participating in a chronic care management program.

(4)(A) The Green Mountain Care board established in 18 V.S.A. chapter 220 shall consider whether to include dental, vision, and hearing benefits in the Green Mountain Care benefit package.

(B) The Green Mountain Care board shall consider whether to include long-term care benefits in the Green Mountain Care benefit package.

(5) Green Mountain Care shall not limit coverage of preexisting conditions.

(6) The Green Mountain Care board shall approve the benefit package and present it to the general assembly as part of its recommendations for the Green Mountain Care budget.

(b)(1)(A) For individuals eligible for Medicaid or CHIP, the benefit package shall include the benefits required by federal law, as well as any additional benefits provided as part of the Green Mountain Care benefit package.

(B) Upon implementation of Green Mountain Care, the benefit package for individuals eligible for Medicaid or CHIP shall also include any optional Medicaid benefits pursuant to 42 U.S.C. § 1396d or services covered under the state plan for CHIP as provided in 42 U.S.C. § 1397cc for which these individuals are eligible on January 1, 2014. Beginning with the second year of Green Mountain Care and going forward, the Green Mountain Care board may, consistent with federal law, modify these optional benefits, as long as at all times the benefit package for these individuals contains at least the benefits described in subdivision (A) of this subdivision (b)(1).

(2) For children eligible for benefits paid for with Medicaid funds, the benefit package shall include early and periodic screening, diagnosis, and treatment services as defined under federal law.

(3) For individuals eligible for Medicare, the benefit package shall include the benefits provided to these individuals under federal law, as well as any additional benefits provided as part of the Green Mountain Care benefit package.

#### § 1826. BLUEPRINT FOR HEALTH

(a) It is the intent of the general assembly that within five years following the implementation of Green Mountain Care, each individual enrolled in Green Mountain Care will have a primary health care professional who is involved with the Blueprint for Health established in 18 V.S.A. chapter 13.

(b) Consistent with the provisions of 18 V.S.A. chapter 13, if an individual enrolled in Green Mountain Care does not have a medical home through the Blueprint for Health, the individual may choose a primary health care professional who is not participating in the Blueprint to serve as the individual's primary care point of contact.

(c) The agency shall determine a method to approve a specialist as a patient's primary health care professional for the purposes of establishing a medical home or primary care point of contact for the patient. The agency shall approve a specialist as a patient's medical home or primary care point of contact on a case-by-case basis and only for a patient who receives the majority of his or her health care from that specialist.

(d) Green Mountain Care shall be integrated with the Blueprint for Health established in 18 V.S.A. chapter 13.

#### § 1827. ADMINISTRATION; ENROLLMENT

(a)(1) The agency shall, under an open bidding process, solicit bids from and award contracts to public or private entities for administration of certain elements of Green Mountain Care, such as claims administration and provider relations.

(2) The agency shall ensure that entities awarded contracts pursuant to this subsection do not have a financial incentive to restrict individuals' access to health services. The agency may establish performance measures that provide incentives for contractors to provide timely, accurate, transparent, and courteous services to individuals enrolled in Green Mountain Care and to health care professionals.

(3) When considering contract bids pursuant to this subsection, the agency shall consider the interests of the state relating to the economy, the location of the entity, and the need to maintain and create jobs in Vermont. The agency may utilize an econometric model to evaluate the net costs of each contract bid.

(b) Nothing in this subchapter shall require an individual with health coverage other than Green Mountain Care to terminate that coverage.

(c) An individual enrolled in Green Mountain Care may elect to maintain supplemental health insurance if the individual so chooses.

(d) Except for cost-sharing, Vermonters shall not be billed any additional amount for health services covered by Green Mountain Care.

(e) The agency shall seek permission from the Centers for Medicare and Medicaid Services to be the administrator for the Medicare program in Vermont. If the agency is unsuccessful in obtaining such permission, Green Mountain Care shall be the secondary payer with respect to any health service that may be covered in whole or in part by Title XVIII of the Social Security Act (Medicare).

(f) Green Mountain Care shall be the secondary payer with respect to any health service that may be covered in whole or in part by any other health benefit plan, including private health insurance, retiree health benefits, or federal health benefit plans offered by the Veterans' Administration, by the military, or to federal employees.

(g) The agency may seek a waiver under Section 1115 of the Social Security Act to include Medicaid and under Section 2107(e)(2)(A) of the Social Security Act to include SCHIP in Green Mountain Care. If the agency is unsuccessful in obtaining one or both of these waivers, Green Mountain Care shall be the secondary payer with respect to any health service that may be covered in whole or in part by Title XIX of the Social Security Act (Medicaid) or Title XXI of the Social Security Act (CHIP), as applicable.

(h) Any prescription drug coverage offered by Green Mountain Care shall be consistent with the standards and procedures applicable to the pharmacy best practices and cost control program established in sections 1996 and 1998 of this title.

(i) Green Mountain Care shall maintain a robust and adequate network of health care professionals located in Vermont or regularly serving Vermont residents, including mental health and substance abuse professionals. The agency shall contract with outside entities as needed to allow for the appropriate portability of coverage under Green Mountain Care for Vermont residents who are temporarily out of the state.

(j) The agency shall make available the necessary information, forms, access to eligibility or enrollment systems, and billing procedures to health care professionals to ensure immediate enrollment for individuals in Green Mountain Care at the point of service or treatment.

(k) An individual aggrieved by an adverse decision of the agency or plan administrator may appeal to the human services board as provided in 3 V.S.A. § 3090.

(l) The agency, in collaboration with the department of banking, insurance, securities, and health care administration, shall monitor the extent to which residents of other states move to Vermont for the purpose of receiving health services and the impact, positive or negative, of any such migration on Vermont's health care system and on the state's economy, and make appropriate recommendations to the general assembly based on its findings.

#### § 1828. BUDGET PROPOSAL

The Green Mountain Care board, in collaboration with the agencies of administration and of human services, shall be responsible for developing each year a three-year Green Mountain Care budget for proposal to the general assembly and to the governor, to be adjusted annually in response to realized revenues and expenditures, that reflects any modifications to the benefit package and includes recommended appropriations, revenue estimates, and necessary modifications to tax rates and other assessments.

#### § 1829. GREEN MOUNTAIN CARE FUND

(a) The Green Mountain Care fund is established in the state treasury as a special fund to be the single source to finance health care coverage for Green Mountain Care.

(b) Into the fund shall be deposited:

(1) transfers or appropriations from the general fund, authorized by the general assembly;

(2) if authorized by a waiver from federal law, federal funds for Medicaid, Medicare, and the Vermont health benefit exchange established in chapter 18, subchapter 1 of this title; and

(3) the proceeds from grants, donations, contributions, taxes, and any other sources of revenue as may be provided by statute or by rule.

(c) The fund shall be administered pursuant to 32 V.S.A. chapter 7, subchapter 5, except that interest earned on the fund and any remaining balance shall be retained in the fund. The agency shall maintain records indicating the amount of money in the fund at any time.

(d) All monies received by or generated to the fund shall be used only for:

(1) the administration and delivery of health services covered by Green Mountain Care as provided in this subchapter; and

(2) expenses related to the duties and operation of the Green Mountain Care board pursuant to 18 V.S.A. chapter 220.

#### § 1830. COLLECTIVE BARGAINING RIGHTS

Nothing in this subchapter shall be construed to limit the ability of collective bargaining units to negotiate for coverage of health services pursuant to 3 V.S.A. § 904 or any other provision of law.

#### § 1831. PUBLIC PROCESS

The agency of human services shall provide a process for soliciting public input on the Green Mountain Care benefit package on an ongoing basis, including a mechanism by which members of the public may request inclusion of particular benefits or services. The process may include receiving written comments on proposed new or amended rules or holding public hearings or both.

#### § 1832. RULEMAKING

The secretary of human services may adopt rules pursuant to 3 V.S.A. chapter 25 to carry out the purposes of this subchapter. When establishing rules relating to the Green Mountain Care benefit package, the secretary shall ensure that the rules are consistent with the benefit package defined by the Green Mountain Care board pursuant to section 1825 of this title and to 18 V.S.A. chapter 220.

#### Sec. 4a. HOUSEHOLD HEALTH INSURANCE SURVEY

The department of banking, insurance, securities, and health care administration shall include questions on its household health insurance survey that enable the department to determine the extent to which residents of other states move to Vermont for the purpose of receiving health services. The department shall provide its findings to the agency of human services to enable the agency to monitor migration into the state as required in 33 V.S.A. § 1827.

#### Sec. 4b. EXCHANGE IMPLEMENTATION

(a) The commissioner of Vermont health access shall make a reasonable effort to maintain contracts with at least two health insurers to provide qualified health benefit plans, in addition to the multistate plans required by the Affordable Care Act, in the Vermont health benefit exchange in 2014 if at least two health insurers are interested in participating and meet the requirements of 33 V.S.A. § 1806; provided that the commissioner shall not be required to solicit participation by insurers outside the state in order to contract with two insurers.

(b) Nothing in this section shall be construed to require the commissioner to contract with a health insurer to provide a plan that does not meet the requirements specified in 33 V.S.A. chapter 18, subchapter 1.

Sec. 4c. HEALTH COVERAGE FINDINGS AND STUDY

(a) The general assembly finds that:

(1) Federal law requires certain health care providers to provide emergency treatment to all individuals, regardless of immigration status.

(2) Federal law prohibits coverage of undocumented immigrants through Medicaid and through the Vermont health benefit exchange. Federal funds would not be available to cover undocumented immigrants through Green Mountain Care.

(3) Federal law requires that employers provide health insurance coverage for certain immigrants working seasonally in Vermont. Dairy workers, however, are not included in this category because they are year-round workers.

(4) Some employers of undocumented immigrants pay employment taxes for these workers, and these workers do not derive health care benefits from the government.

(b) No later than January 15, 2013, the Green Mountain Care board shall examine and report to the general assembly on:

(1) The potential costs of services provided to undocumented immigrants by health care professionals if these immigrants are not covered through Green Mountain Care, including any increased costs of care delayed due to the lack of coverage for primary care; and

(2) The potential costs of providing coverage for health services to undocumented immigrants through Green Mountain Care, including any state funds necessary to fund the services.

(c) The secretary of administration or designee shall work with Vermont's congressional delegation to:

(1) provide a mechanism for legal status under federal immigration law for nonseasonal farm workers; and

(2) clarify any impacts of covering or not covering undocumented immigrants through Green Mountain Care on the receipt of a waiver under section 1332 of the Affordable Care Act.

Sec. 5. 33 V.S.A. § 401 is amended to read:

§ 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, a health care eligibility unit; and all divisions within the department, including the divisions of managed care; health care reform; the Vermont health benefit exchange; and Medicaid policy, fiscal, and support services.

Sec. 6. TRANSFER OF POSITIONS; HEALTH CARE ELIGIBILITY UNIT

After March 15, 2012 but not later than July 1, 2013, the secretary of administration shall transfer to and place under the supervision of the commissioner of Vermont health access all employees, professional and support staff, consultants, positions, and all balances of all appropriation amounts for personal services and operating expenses for the administration of health care eligibility currently contained in the department for children and families. No later than January 15, 2012, the secretary shall provide to the house committees on health care and on human services and the senate committee on health and welfare a plan for transferring the positions and funds.

\* \* \* Consumer and Health Care Professional Advisory Committee \* \* \*

Sec. 7. 33 V.S.A. § 402 is added to read:

§ 402. MEDICAID AND EXCHANGE ADVISORY COMMITTEE

(a) A Medicaid and exchange advisory committee is created for the purpose of advising the commissioner of Vermont health access with respect to policy development and program administration for the Vermont health benefit exchange, Medicaid, and Medicaid-funded programs, consistent with the requirements of federal law.

(b)(1) The commissioner of Vermont health access shall appoint members of the advisory committee established by this section, who shall serve staggered three-year terms. The total membership of the advisory committee shall be 22 members. The commissioner may remove members of the committee who fail to attend three consecutive meetings and may appoint replacements. The commissioner may reappoint members to serve more than one term.

(2)(A) The commissioner of Vermont health access shall appoint one representative of health insurers licensed to do business in Vermont to serve on the advisory committee. The commissioner of health shall also serve on the advisory committee.

(B) Of the remaining members of the advisory committee, one-quarter of the members shall be from each of the following constituencies:

(i) beneficiaries of Medicaid or Medicaid-funded programs.

(ii) individuals, self-employed individuals, and representatives of small businesses eligible for or enrolled in the Vermont health benefit exchange.

(iii) advocates for consumer organizations.

(iv) health care professionals and representatives from a broad range of health care professionals.

(3) Members whose participation is not supported through their employment or association shall receive per diem compensation pursuant to 32 V.S.A. § 1010 and reimbursement of travel expenses. In addition, members who are eligible for Medicaid or who are enrolled in a qualified health benefit plan in the Vermont health benefit exchange and whose income does not exceed 300 percent of the federal poverty level shall also receive reimbursement of expenses, including costs of child care, personal assistance services, and any other service necessary for participation in the advisory committee and approved by the commissioner.

(c)(1) The advisory committee shall have an opportunity to review and comment on agency policy initiatives pertaining to quality improvement initiatives and to health care benefits and eligibility for individuals receiving services through Medicaid, programs funded with Medicaid funds under a Section 1115 waiver, or the Vermont health benefit exchange. It also shall have the opportunity to comment on proposed rules prior to commencement of the rulemaking process pursuant to 3 V.S.A. chapter 25 and on waiver or waiver amendment applications prior to submission to the Centers for Medicare and Medicaid Services.

(2) Prior to the annual budget development process, the department of Vermont health access shall engage the advisory committee in setting priorities, including consideration of scope of benefits, beneficiary eligibility, health care professional reimbursement rates, funding outlook, financing options, and possible budget recommendations.

(d)(1) The advisory committee shall make policy recommendations on proposals of the department of Vermont health access to the department, the Green Mountain Care board, the health access oversight committee, the senate committee on health and welfare, and the house committees on health care and on human services. When the general assembly is not in session, the commissioner shall respond in writing to these recommendations, a copy of

which shall be provided to the members of each of the legislative committees of jurisdiction and to the Green Mountain Care board.

(2) During the legislative session, the commissioner shall provide the advisory committee at regularly scheduled meetings with updates on the status of policy and budget proposals.

(e) The commissioner shall convene the advisory committee at least 10 times during each calendar year. If at least one-third of the members of the advisory committee so choose, the members may convene up to four additional meetings per calendar year on their own initiative by sending a request to the commissioner. The department shall provide the committee with staffing and independent technical assistance as needed to enable it to make effective recommendations.

(f) A majority of the members of the committee shall constitute a quorum, and all action shall be taken upon a majority vote of the members present and voting.

#### Sec. 8. INTEGRATION PLAN

(a) No later than January 15, 2012, the secretary of administration or designee shall present a factual report and make recommendations to the house committee on health care and the senate committees on health and welfare and on finance on the following issues:

(1) How to fully integrate or align Medicaid, Medicare, private insurance, associations, state employees, and municipal employees into or with the Vermont health benefit exchange and Green Mountain Care established in 33 V.S.A. chapter 18, including:

(A) Whether it is advisable to establish a basic health program for individuals with incomes above 133 percent of the federal poverty level (FPL) and at or below 200 percent of FPL pursuant to Section 1331 of the Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and as further amended ("Affordable Care Act"), to ensure that the health coverage is comprehensive and affordable for this population.

(B)(i) The statutory changes necessary to integrate the private insurance markets with the Vermont health benefit exchange, including whether to impose a moratorium on the issuance of new association policies prior to 2014, as well as whether to continue exemptions for associations pursuant to 8 V.S.A. § 4080a(h)(3) after implementation of the Vermont health benefit exchange and if so, what criteria to use.

(ii) The advantages and disadvantages for the state, for the Vermont health benefit exchange, for employers, and for employees, of defining a small employer for purposes of the Vermont health benefit exchange for the period from January 1, 2014 through December 31, 2015 as an employer with up to 50 employees or as an employer with up to 100 employees, including an analysis of the impacts of the definition on teachers, municipal employees, and associations. For purposes of the analysis pursuant to this subdivision, "employer" means all for-profit entities, nonprofit entities, public entities, and individuals who are self-employed.

(iii) The advantages and disadvantages for the state, for the Vermont health benefit exchange, for employers, for employees, and for individuals of allowing qualified health benefit plans to be sold to individuals and small groups both inside and outside the Vermont health benefit exchange.

(iv) The advantages and disadvantages for the state, for the Vermont health benefit exchange, for employers, for employees, and for individuals of allowing nonqualified health benefit plans that comply with the provisions of the Affordable Care Act to be sold to individuals and small groups outside the exchange.

(C) In consultation with the Green Mountain Care board, the design of a common benefit package for the Vermont health benefit exchange. When creating the common benefit package, the secretary shall compare the essential benefits package defined under federal regulations implementing the Affordable Care Act with Vermont's insurance mandates, consider the affordability of cost-sharing both with and without the cost-sharing subsidy provided under federal regulations implementing the Affordable Care Act, and determine the feasibility and appropriate design of cost-sharing amounts for evidence-based health services with proven effectiveness.

(D) The impact of the availability of supplemental insurance plans on offerings in the small and individual group markets.

(E) The potential for purchasing prescription drugs in Green Mountain Care through Medicaid, the 340B drug pricing program, or another bulk purchasing mechanism.

(2) Once Green Mountain Care is implemented, whether to allow employers and individuals to purchase coverage for supplemental health services from Green Mountain Care or to allow private insurers to provide supplemental insurance plans.

(3) How to enable parents to make coverage under Green Mountain Care available to an adult child up to age 26 who would not otherwise be eligible for coverage under the program, including a recommendation on the

amount of and mechanism for collecting a financial contribution for such coverage and information on the difference in costs to the system between allowing all adult children up to age 26 to be eligible and limiting eligibility to adult children attending a college or university.

(4) whether it is necessary or advisable to implement a financial reserve requirement or reinsurance mechanism to reduce the state's exposure to financial risk in the operation of Green Mountain Care; if so, how to accomplish such implementation; and the impact, if any, on the state's bond rating.

(5) How to fully align the administration of Medicaid, Medicare, Dr. Dynasaur, the Catamount Health premium assistance program, the Vermont health access program, and other public or private health benefit programs in order to simplify the administrative aspects of health care delivery. In his or her recommendations, the secretary or designee shall estimate the cost-savings associated with such administrative simplification and identify any federal waivers or other agreements needed to accomplish the purposes of this subdivision (5).

(b) The commissioner of labor, in consultation with the commissioner of Vermont health access, the commissioner of banking, insurance, securities, and health care administration, and interested stakeholders, shall evaluate the feasibility of integrating or aligning Vermont's workers' compensation system with Green Mountain Care, including providing any covered services in addition to those in the Green Mountain Care benefit package that may be appropriate for injuries arising out of and in the course of employment. No later than January 15, 2012, the commissioner of labor shall report the results of the evaluation and, if integration or alignment has been found to be feasible, make recommendations on how to achieve it.

(c) The commissioner of Vermont health access, in consultation with the commissioner of banking, insurance, securities, and health care administration; the commissioner of taxes; and the commissioner of motor vehicles shall review the requirements for maintaining minimum essential coverage under Section 1501 of the Affordable Care Act, including the enforcement mechanisms provided in that act. No later than January 15, 2012, the commissioner of Vermont health access shall recommend to the house committee on health care and the senate committees on finance and on health and welfare any additional enforcement mechanisms necessary to ensure that most, if not all, Vermonters will obtain sufficient health benefit coverage.

## Sec. 9. FINANCING PLANS

(a) The secretary of administration or designee shall recommend two plans for sustainable financing to the house committees on health care and on ways

and means and the senate committees on health and welfare and on finance no later than January 15, 2013.

(1) One plan shall recommend the amounts and necessary mechanisms to finance any initiatives which must be implemented by January 1, 2014 in order to provide coverage to all Vermonters in the absence of a waiver from certain federal health care reform provisions established in Section 1332 of the Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and as further amended (“Affordable Care Act”).

(2) The second plan shall recommend the amounts and necessary mechanisms to finance Green Mountain Care and any systems improvements needed to achieve a public-private universal health care system. The secretary shall recommend whether nonresidents employed by Vermont businesses should be eligible for Green Mountain Care and solutions to other cross-border issues.

(b) In developing both financing plans, the secretary shall consider the following:

(1) all financing sources, including adjustments to the income tax, a payroll tax, consumption taxes, provider assessments required under 33 V.S.A. chapter 19, the employer assessment required by 21 V.S.A. chapter 25, other new or existing taxes, and additional options as determined by the secretary;

(2) the impacts of the various financing sources, including levels of deductibility of any tax or assessment system contemplated and consistency with the principles of equity expressed in 18 V.S.A. § 9371;

(3) issues involving federal law and taxation;

(4) impacts of tax system changes:

(A) on individuals, households, businesses, public sector entities, and the nonprofit community, including the circumstances under which a particular tax change may result in the potential for double payments, such as premiums and tax obligations;

(B) over time, on changing revenue needs; and

(C) for a transitional period, while the tax system and health care cost structure are changing;

(5) growth in health care spending relative to needs and capacity to pay;

(6) anticipated federal funds that may be used for health services and how to maximize the amount of federal funding available for this purpose;

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(7) the amounts required to maintain existing state insurance benefit requirements and other appropriate considerations in order to determine the state contribution toward federal premium tax credits available in the Vermont health benefit exchange pursuant to the Affordable Care Act;

(8) additional funds needed to support recruitment and retention programs for high-quality health care professionals in order to address the shortage of primary care professionals and other specialty care professionals in this state;

(9) additional funds needed to provide coverage for the uninsured who are eligible for Medicaid, Dr. Dynasaur, and the Vermont health benefit exchange in 2014;

(10) funding mechanisms to ensure that operations of both the Vermont health benefit exchange and Green Mountain Care are self-sustaining;

(11) how to maximize the flow of federal funds to the state for individuals eligible for Medicare, such as enrolling eligible individuals in Medicare and paying or supplementing the cost-sharing requirements on their behalf;

(12) the use of financial or other incentives to encourage healthy lifestyles and patient self-management for individuals enrolled in Green Mountain Care;

(13) preserving retirement health benefits while enabling retirees to participate in Green Mountain Care;

(14) the implications of Green Mountain Care on funds set aside to pay for future retiree health benefits; and

(15) changes in federal health funding through reduced payments to health care professionals or through limitations or restrictions on the availability of grant funding or federal matching funds available to states through the Medicaid program.

(c) In developing the financing plan for Green Mountain Care, the secretary of administration or designee shall consult with interested stakeholders, including health care professionals, employers, and members of the public, to determine the potential impact of various financing sources on Vermont businesses and on the state's economy and economic climate. No later than February 1, 2012, the secretary or designee shall report his or her findings on the impact on businesses and the economy and any related recommendations to the house committees on health care and on commerce and to the senate committees on health and welfare, on finance and on economic development, housing and general affairs.

(d) In addition to the consultation required by subsection (c) of this section, in developing the financing plan for Green Mountain Care, the secretary of administration or designee shall solicit input from interested stakeholders, including health care professionals, employers, and members of the public and shall provide opportunities for public engagement in the design of the financing plan.

(e) The secretary of administration or designee shall consider strategies to address individuals who receive health coverage through the Veterans Administration, TRICARE, the Federal Employees Health Benefits Program, the government of a foreign nation, or from another federal governmental or foreign source.

#### Sec. 10. HEALTH INFORMATION TECHNOLOGY PLAN

(a) The secretary of administration or designee, in consultation with the Green Mountain Care board and the commissioner of Vermont health access, shall review the health information technology plan required by 18 V.S.A. § 9351 to ensure that the plan reflects the creation of the Vermont health benefit exchange; the transition to a public-private universal health care system pursuant to 33 V.S.A. chapter 18, subchapter 2; and any necessary development or modifications to public health information technology and data and to public health surveillance systems, to ensure that there is progress toward full implementation.

(b) In conducting this review, the secretary of administration may issue a request for proposals for an independent design and implementation plan which would describe how to integrate existing health information systems to carry out the purposes of this act, detail how to develop the necessary capacity in health information systems, determine the funding needed for such development, and quantify the funding sources available for such development. The health information technology plan or design and implementation plan shall also include a review of the multi-payer database established in 18 V.S.A. § 9410 to determine whether there are systems modifications needed to use the database to reduce fraud, waste, and abuse; and shall include other systems analysis as specified by the secretary.

(c) The secretary shall make recommendations to the house committee on health care and the senate committee on health and welfare based on the design and implementation plan no later than January 15, 2012.

#### Sec. 11. HEALTH SYSTEM PLANNING, REGULATION, AND PUBLIC HEALTH

(a) No later than January 15, 2012, the secretary of administration or designee shall make recommendations to the house committee on health care

and the senate committee on health and welfare on how to unify Vermont's current efforts around health system planning, regulation, and public health, including:

(1) How best to align the agency of human services' public health promotion activities with Medicaid, the Vermont health benefit exchange functions, Green Mountain Care, and activities of the Green Mountain Care board established in 18 V.S.A. chapter 220.

(2) After reviewing current resources, including the community health assessments, how to create an integrated system of community health assessments, health promotion, and planning, including by:

(A) improving the use and usefulness of the health resource allocation plan established in 18 V.S.A. § 9405 in order to ensure that health resource planning is effective and efficient; and

(B) recommending a plan to institute a public health impact assessment process to ensure appropriate consideration of the impacts on public health resulting from major policy or planning decisions made by municipalities, local entities, and state agencies.

(3) In collaboration with the director of the Blueprint for Health established in 18 V.S.A. chapter 13 and health care professionals, how to coordinate quality assurance efforts across state government and private payers; optimize quality assurance programs; and ensure that health care professionals in Vermont utilize, are informed of, and engage in evidence-based practice, using standards and algorithms such as those developed by the National Committee for Quality Assurance.

(4) How to reorganize and consolidate health care-related functions in agencies and departments across state government in order to ensure integrated and efficient administration of all of Vermont's health care programs and initiatives.

(b) No later than January 15, 2012, the commissioner of banking, insurance, securities, and health care administration shall review the hospital budget review process provided in 18 V.S.A. chapter 221, subchapter 7, and the certificate of need process provided in 18 V.S.A. chapter 221, subchapter 5 and recommend to the house committee on health care and the senate committee on health and welfare statutory modifications needed to enable the participation of the Green Mountain Care board as set forth in 18 V.S.A. § 9375.

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**Sec. 12. PAYMENT REFORM; REGULATORY PROCESSES**

No later than March 15, 2012, the Green Mountain Care board established in 18 V.S.A. chapter 220, in consultation with the commissioner of banking, insurance, securities, and health care administration and the commissioner of Vermont health access, shall recommend to the house committee on health care and the senate committee on health and welfare any necessary modifications to the regulatory processes for health care professionals and managed care organizations in order to align these processes with the payment reform strategic plan.

Sec. 12a. 18 V.S.A. chapter 222 is added to read:

**CHAPTER 222. ACCESS TO HEALTH CARE PROFESSIONALS****§ 9491. HEALTH CARE WORKFORCE; STRATEGIC PLAN**

(a) The director of health care reform in the agency of administration shall oversee the development of a current health care workforce development strategic plan that continues efforts to ensure that Vermont has the health care workforce necessary to provide care to all Vermont residents. The director of health care reform may designate an entity responsible for convening meetings and for preparing the draft strategic plan. The Green Mountain Care board established in chapter 220 of this title shall review the draft strategic plan and shall approve the final plan and any subsequent modifications.

(b) The director or designee shall collaborate with the area health education centers, the workforce development council established in 10 V.S.A. § 541, the prekindergarten-16 council established in 16 V.S.A. § 2905, the department of labor, the department of health, the department of Vermont health access and other interested parties, to develop and maintain the plan. The director of health care reform shall ensure that the strategic plan includes recommendations on how to develop Vermont's health care workforce, including:

(1) the current capacity and capacity issues of the health care workforce and delivery system in Vermont, including the shortages of health care professionals, specialty practice areas that regularly face shortages of qualified health care professionals, issues with geographic access to services, and unmet health care needs of Vermonters.

(2) the resources needed to ensure that the health care workforce and the delivery system are able to provide sufficient access to services given demographic factors in the population and in the workforce as well as other factors, and able to participate fully in health care reform initiatives, including how to ensure that all Vermont residents have a medical home through the

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Blueprint for Health pursuant to chapter 13 of this title and how to transition to electronic medical records; and

(3) how state government, universities and colleges, the state's educational system, entities providing education and training programs related to the health care workforce, and others may develop the resources in the health care workforce and delivery system to educate, recruit, and retain health care professionals to achieve Vermont's health care reform principles and purposes.

(4) review data on the extent to which individual health care professionals begin and cease to practice in their applicable fields in Vermont.

(5) identify factors which either hinder or assist in recruitment or retention of health care professionals, including an examination of the processes for prior authorizations, and make recommendations for further improving recruitment and retention efforts.

(6) assess the availability of state and federal funds for health care workforce development.

(c) Beginning January 15, 2013, the director or designee shall provide the strategic plan approved by the Green Mountain Care board to the general assembly and shall provide periodic updates on modifications as necessary.

### Sec. 13. WORKFORCE ISSUES

(a)(1) Currently, Vermont has a shortage of primary care professionals, and many practices are closed to new patients. It also experiences periodic and geographic shortages of specialty care professionals necessary to ensure that Vermonters have reasonable access to a broad range of health services within the state. In order to ensure sufficient patient access now and in the future, it is necessary to plan for the implementation of Green Mountain Care and utilize Vermont's health care professionals to the fullest extent of their professional competence.

(2) The board of nursing, the board of medical practice, and the office of professional regulation shall collaborate to determine how to optimize the primary care workforce by reviewing the licensure process, scope of practice requirements, reciprocity of licensure, and efficiency of the licensing process, and by identifying any other barriers to augmenting Vermont's primary care workforce. No later than January 15, 2012, the boards and office shall provide to the house committee on health care and the senate committee on health and welfare joint recommendations for improving the primary care workforce through the boards' and office's rules and procedures, including specific recommendations to modify scopes of practice to enable health care professionals to perform to the fullest extent of their professional competence.

(b) The director of health care reform or designee, in collaboration with the department of labor, and the agency of human services, the prekindergarten-16 council established in 16 V.S.A. § 2905, the workforce development council, and other interested parties, shall create a plan to address the retraining needs of employees who may become dislocated due to a reduction in health care administrative functions when the Vermont health benefit exchange and Green Mountain Care are implemented. The plan shall include consideration of new training programs and scholarships or other financial assistance necessary to ensure adequate resources for training programs and to ensure that employees have access to these programs. The department and agency shall provide information to employers whose workforce may be reduced in order to ensure that the employees are informed of available training opportunities. The department shall provide the plan to the house committee on health care and the senate committee on health and welfare no later than January 15, 2012.

#### Sec. 13a. PRIOR AUTHORIZATIONS

The Green Mountain Care board shall consider:

(1) compensating health care providers for the completion of requests for prior authorization; and

(2) exempting from prior authorization requirements for specific services in Green Mountain Care those health care professionals whose prior authorization requests are routinely granted for those services.

\* \* \* Cost Estimates \* \* \*

#### Sec. 14. COST ESTIMATES; MEETINGS

(a) No later than April 21, 2011, the legislative joint fiscal office and the department of banking, insurance, securities, and health care administration shall provide to the house committee on health care and the senate committee on health and welfare an initial, draft estimate of the costs of Vermont's current health care system compared to the costs of a reformed health care system upon implementation of Green Mountain Care and the additional provisions of this act. To the extent possible, the estimates shall be based on the department of banking, insurance, securities, and health care administration's expenditure report and additional data available in the multi-payer database established in 18 V.S.A. § 9410.

(b) The legislative joint fiscal office and the department of banking, insurance, securities, and health care administration shall report their final estimates of the costs described in subsection (a) of this section to the committees of jurisdiction no later than November 1, 2011.

(c) The house committee on health care and the senate committee on health and welfare may meet while the legislature is not in session to receive updates on reports and work in progress related to the provisions of this act. To the extent practicable, such meetings shall coincide with scheduled meetings of the joint fiscal committee.

\* \* \* Rate Review \* \* \*

Sec. 15. 8 V.S.A. § 4062 is amended to read:

§ 4062. FILING AND APPROVAL OF POLICY FORMS AND PREMIUMS

(a)(1) No policy of health insurance or certificate under a policy not exempted by subdivision 3368(a)(4) of this title shall be delivered or issued for delivery in this state nor shall any endorsement, rider, or application which becomes a part of any such policy be used, until a copy of the form, premium rates, and rules for the classification of risks pertaining thereto have been filed with the commissioner of banking, insurance, securities, and health care administration; nor shall any such form, premium rate, or rule be so used until the expiration of 30 days after having been filed, or in the case of a request for a rate increase, until a decision by the Green Mountain Care board as provided herein, unless the commissioner shall sooner give his or her written approval thereto. Prior to approving a rate increase, the commissioner shall seek approval for such rate increase from the Green Mountain Care board established in 18 V.S.A. chapter 220, which shall approve or disapprove the rate increase within 10 business days. The commissioner shall apply the decision of the Green Mountain Care board as to rates referred to the board.

(2) The commissioner shall review policies and rates to determine whether a policy or rate is affordable, promotes quality care, promotes access to health care, and is not unjust, unfair, inequitable, misleading, or contrary to the laws of this state. The commissioner shall notify in writing the insurer which has filed any such form, premium rate, or rule if it contains any provision which is unjust, unfair, inequitable, misleading, or contrary to the law of this state does not meet the standards expressed in this section. In such notice, the commissioner shall state that a hearing will be granted within 20 days upon written request of the insurer. In all other cases, the commissioner shall give his or her approval.

(3) After the expiration of such 30 days from the filing of any such form, premium rate or rule, the review period provided herein or at any time after having given written approval, the commissioner may, after a hearing of which at least 20 days' written notice has been given to the insurer using such form, premium rate, or rule, withdraw approval on any of the grounds stated in this section. Such disapproval shall be effected by written order of the commissioner which shall state the ground for disapproval and the date, not

less than 30 days after such hearing when the withdrawal of approval shall become effective.

(b) In conjunction with a rate filing required by subsection (a) of this section, an insurer shall file a plain language summary of any requested rate increase of five percent or greater. If, during the plan year, the insurer files for rate increases that are cumulatively five percent or greater, the insurer shall file a summary applicable to the cumulative rate increase. All summaries shall include a brief justification of any rate increase requested, the information that the Secretary of the U.S. Department of Health and Human Services (HHS) requires for rate increases over 10 percent, and any other information required by the commissioner. The plain language summary shall be in the format required by the Secretary of HHS 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, and shall include notification of the public comment period established in subsection (c) of this section. In addition, the insurer shall post the summaries on its website.

(c)(1) The commissioner shall provide information to the public on the department's website about the public availability of the filings and summaries required under this section.

(2) Beginning no later than January 1, 2012, the commissioner shall post the filings pursuant to subsection (a) of this section and summaries pursuant to subsection (b) of this section on the department's website within five days of filing. The department shall provide an electronic mechanism for the public to comment on proposed rate increases over five percent. The public shall have 21 days from the posting of the summaries and filings to provide public comment. The department shall review and consider the public comments prior to the expiration of the review period pursuant to subsection (a) of this section. The department shall provide the Green Mountain Care board with the public comments for their consideration in approving any rate increases.

(d)(1) The following provisions of this section shall not apply to policies for specific disease, accident, injury, hospital indemnity, dental care, disability income, or other limited benefit coverage, but shall apply to long-term care policies:

(A) the requirement in subdivision (a)(1) for the Green Mountain Care board's approval for any rate increase;

(B) the review standards in subdivision (a)(2) of this section as to whether a policy or rate is affordable, promotes quality care, and promotes access to health care; and

(C) subsections (b) and (c) of this section.

(2) The exemptions from the provisions described in subdivisions (1)(A) through (C) of this subsection shall also apply to benefit plans that are paid directly to an individual insured or to his or her assigns and for which the amount of the benefit is not based on potential medical costs or actual costs incurred.

Sec. 15a. 8 V.S.A. § 4512(b) is amended to read:

(b) Subject to the approval of the commissioner, a hospital service corporation may establish, maintain and operate a medical service plan as defined in section 4583 of this title. The commissioner may refuse approval if the commissioner finds that the rates submitted are excessive, inadequate, or unfairly discriminatory or fail to meet the standards of affordability, promotion of quality care, and promotion of access pursuant to section 4062 of this title. The contracts of a hospital service corporation which operates a medical service plan under this subsection shall be governed by chapter 125 of this title to the extent that they provide for medical service benefits, and by this chapter to the extent that the contracts provide for hospital service benefits.

Sec. 15b. 8 V.S.A. § 4515a is amended to read:

§ 4515a. FORM AND RATE FILING; FILING FEES

Every contract or certificate form, or amendment thereof, including the rates charged therefor by the corporation shall be filed with the commissioner for his or her approval prior to issuance or use. Prior to approval, there shall be a public comment period pursuant to section 4062 of this title. In addition, each such filing shall be accompanied by payment to the commissioner of a nonrefundable fee of \$50.00 and the plain language summary of rate increases pursuant to section 4062 of this title.

Sec. 15c. 8 V.S.A. § 4587 is amended to read:

§ 4587. FILING AND APPROVAL OF CONTRACTS

A medical service corporation which has received a permit from the commissioner of banking, insurance, securities, and health care administration under section 4584 of this title shall not thereafter issue a contract to a subscriber or charge a rate therefor which is different from copies of contracts and rates originally filed with such commissioner and approved by him or her at the time of the issuance to such medical service corporation of its permit, until it has filed copies of such contracts which it proposes to issue and the rates it proposes to charge therefor and the same have been approved by such commissioner. Prior to approval, there shall be a public comment period pursuant to section 4062 of this title. Each such filing of a contract or the rate therefor shall be accompanied by payment to the commissioner of a

nonrefundable fee of \$50.00. A medical service corporation shall file a plain language summary of rate increases pursuant to section 4062 of this title.

Sec. 15d. 8 V.S.A. § 5104(a) is amended to read:

(a)(1) A health maintenance organization which has received a certificate of authority under section 5102 of this title shall file and obtain approval of all policy forms and rates as provided in sections 4062 and 4062a of this title. This requirement shall include the filing of administrative retentions for any business in which the organization acts as a third party administrator or in any other administrative processing capacity. The commissioner may request and shall receive any information that is needed to determine whether to approve the policy form or rate. In addition to any other information requested, the commissioner shall require the filing of information on costs for providing services to the organization's Vermont members affected by the policy form or rate, including but not limited to Vermont claims experience, and administrative and overhead costs allocated to the service of Vermont members. Prior to approval, there shall be a public comment period pursuant to section 4062 of this title. A health maintenance organization shall file a summary of rate filings pursuant to section 4062 of this title.

(2) The commissioner shall refuse to approve the form of evidence of coverage, filing or rate if it contains any provision which is unjust, unfair, inequitable, misleading or contrary to the law of the state or plan of operation, or if the rates are excessive, inadequate or unfairly discriminatory, or fail to meet the standards of affordability, promotion of quality care, and promotion of access pursuant to section 4062 of this title. No evidence of coverage shall be offered to any potential member unless the person making the offer has first been licensed as an insurance agent in accordance with chapter 131 of this title.

\* \* \* Health Benefit Information \* \* \*

Sec. 16. 21 V.S.A. § 2004 is added to read:

§ 2004. HEALTH BENEFIT COSTS

(a) Employers shall provide their employees with an annual statement indicating:

(1) the total monthly premium cost paid for any employer-sponsored health benefit plan;

(2) the employer's share and the employee's share of the total monthly premium; and

(3) any amount the employer contributes toward the employee's cost-sharing requirement or other out-of-pocket expenses.

(b) Notwithstanding the provisions of subsection (a) of this section, an employer who reports the cost of coverage under an employer-sponsored health benefit plan as required by 26 U.S.C. § 6051(a)(14) shall be deemed to be in full compliance with the requirements of this section.

Sec. 16a. 33 V.S.A. § 1901(g) is added to read:

(g) The department of Vermont health access shall post prominently on its website the total per-member per-month cost for each of its Medicaid and Medicaid waiver programs and the amount of the state's share and the beneficiary's share of such cost.

\* \* \* Consumer Protection \* \* \*

#### Sec. 17. REVIEW OF BAN ON DISCRETIONARY CLAUSES

(a) It is the intent of the general assembly to determine the advantages and disadvantages of enacting a National Association of Insurance Commissioners (NAIC) model act prohibiting insurers from using discretionary clauses in their health benefit contracts. The purpose of the NAIC model act is to prohibit insurance clauses that purport to reserve discretion to the insurer to interpret the terms of the policy, or to provide standards of interpretation or review that are inconsistent with the laws of this state.

(b) No later than January 15, 2012, the commissioner of banking, insurance, securities, and health care administration shall provide a report to the house committee on health care and the senate committee on health and welfare on the advantages and disadvantages of Vermont adopting the NAIC model act.

\* \* \* Single Formulary \* \* \*

#### Sec. 18. SINGLE FORMULARY RECOMMENDATIONS

No later than January 15, 2012, the department of Vermont health access, after consultation with health insurers, third-party administrators, and the drug utilization and review board, shall provide recommendations to the house committee on health care and the senate committee on health and welfare regarding:

(1) A single prescription drug formulary to be used by all payers of health services which allows for some variations for Medicaid due to the availability of rebates and discounts and which allows health care professionals prescribing drugs purchased pursuant to Section 340B of the Public Health Service Act to use the 340B formulary. The recommendations shall address the feasibility of requesting a waiver from Medicare Part D in order to ensure Medicare participation in the formulary, as well as the feasibility of enabling all prescription drugs purchased by or on behalf of Vermont residents to be

purchased through the Medicaid program or pursuant to the 340B drug pricing program.

(2) A single mechanism for negotiating rebates and discounts across payers using a single formulary, and the advantages and disadvantages of using a single formulary to achieve uniformity of coverage.

(3) A uniform set of drug management rules aligned with Medicare to the extent possible, to minimize administrative burdens and promote uniformity of benefit management. The standards for pharmacy benefit management shall address timely decisions, access to clinical peers, access to evidence-based rationales, exemption processes, and tracking and reporting data on prescriber satisfaction.

\* \* \* Repeal of Public Oversight Commission \* \* \*

Sec. 19. 18 V.S.A. § 9402 is amended to read:

§ 9402. DEFINITIONS

As used in this chapter, unless otherwise indicated:

\* \* \*

~~(15) “Public oversight commission” means the commission established in section 9407 of this title.~~

~~(16) “Unified health care budget” means the budget established in accordance with section 9406 of this title.~~

~~(17)~~(16) “State health plan” means the plan developed under section 9405 of this title.

Sec. 20. 18 V.S.A. § 9405 is amended to read:

§ 9405. STATE HEALTH PLAN; HEALTH RESOURCE ALLOCATION PLAN

\* \* \*

(b) On or before July 1, 2005, the commissioner, in consultation with the secretary of human services, shall submit to the governor a four-year health resource allocation plan. The plan shall identify Vermont needs in health care services, programs, and facilities; the resources available to meet those needs; and the priorities for addressing those needs on a statewide basis.

\* \* \*

(2) In the preparation of the plan, the commissioner shall assemble an advisory committee of no fewer than nine nor more than 13 members who shall reflect a broad distribution of diverse perspectives on the health care

system, including health care professionals, payers, third-party payers, and consumer representatives, ~~and up to three members of the public oversight commission.~~ The advisory committee shall review drafts and provide recommendations to the commissioner during the development of the plan. Upon adoption of the plan, the advisory committee shall be dissolved.

(3) The commissioner, with the advisory committee, shall conduct at least five public hearings, in different regions of the state, on the plan as proposed and shall give interested persons an opportunity to submit their views orally and in writing. To the extent possible, the commissioner shall arrange for hearings to be broadcast on interactive television. Not less than 30 days prior to any such hearing, the commissioner shall publish in the manner prescribed in 1 V.S.A. § 174 the time and place of the hearing and the place and period during which to direct written comments to the commissioner. In addition, the commissioner may create and maintain a website to allow members of the public to submit comments electronically and review comments submitted by others.

(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. 21. 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. 22. 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. 23. 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. 24. 18 V.S.A. § 9440 is amended to read:

§ 9440. PROCEDURES

\* \* \*

(c) The application process shall be as follows:

\* \* \*

(4) Within 90 days of receipt of an application, the commissioner shall notify the applicant that the application contains all necessary information required and is complete, or that the application review period is complete notwithstanding the absence of necessary information. The commissioner may extend the 90-day application review period for an additional 60 days, or for a period of time in excess of 150 days with the consent of the applicant. The time during which the applicant is responding to the commissioner's notice that additional information is required shall not be included within the maximum review period permitted under this subsection. ~~The public oversight commission may recommend, or the~~ commissioner may determine that the certificate of need application shall be denied if the applicant has failed to provide all necessary information required to review the application.

\* \* \*

(d) The review process shall be as follows:

(1) The ~~public oversight commission~~ commissioner 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~~ department shall hold a public hearing during the course of a review.

~~(3) The public oversight commission shall make a written findings and a recommendation to the commissioner in favor of or against each application. A record shall be maintained of all information reviewed in connection with each application.~~

~~(4) A review shall be completed and the~~ The commissioner shall make a final decision within 120 days after the date of notification under subdivision (c)(4) of this section. Whenever it is not practicable to complete a review within 120 days, the commissioner may extend the review period up to an additional 30 days. Any review period may be extended with the written consent of the applicant and all other applicants in the case of a review cycle process.

~~(5)(4)~~ After reviewing each application ~~and after considering the recommendations of the public oversight commission~~, 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)(5)~~ 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.~~

~~(7)~~(6) Notice of the final decision shall be sent to the applicant, competing applicants, and interested parties. The final decision shall include written findings and conclusions stating the basis of the decision.

~~(8)~~(7) The commissioner shall establish rules governing the compilation of the record used by ~~the public oversight commission and~~ the commissioner in connection with decisions made on applications filed and certificates issued under this subchapter.

(e) The commissioner shall adopt rules governing procedures for the expeditious processing of applications for replacement, repair, rebuilding, or reequipping of any part of a health care facility or health maintenance organization destroyed or damaged as the result of fire, storm, flood, act of God, or civil disturbance, or any other circumstances beyond the control of the applicant where the commissioner finds that the circumstances require action in less time than normally required for review. If the nature of the emergency requires it, an application under this subsection may be reviewed by the commissioner only, without notice and opportunity for public hearing or intervention by any party.

(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. 25. 18 V.S.A. § 9440a is amended to read:

§ 9440a. APPLICATIONS, INFORMATION, AND TESTIMONY; OATH REQUIRED

(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, 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.

(b) Each application shall be filed by the applicant's chief executive officer under oath, as provided by subsection (a) of this section. The commissioner may direct that information submitted with the application be submitted under oath by persons with personal knowledge of such information.

(c) A person who knowingly makes a false statement under oath or who knowingly submits false information under oath to the commissioner ~~or the public oversight commission~~ or 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 13 V.S.A. § 2901.

Sec. 25a. 18 V.S.A. § 9456(h) is amended to read:

(h)(1) If a hospital violates a provision of this section, the commissioner may maintain an action in the superior court of the county in which the hospital is located to enjoin, restrain or prevent such violation.

\* \* \*

(3)(A) The commissioner shall require the officers and directors of a hospital to file under oath, on a form and in a manner prescribed by the commissioner, any information designated by the commissioner and required pursuant to this subchapter. The authority granted to the commissioner under this subsection is in addition to any other authority granted to the commissioner under law.

(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 13 V.S.A. § 2901.

\* \* \* Conforming Revisions \* \* \*

Sec. 26. 18 V.S.A. § 5 is amended to read:

#### § 5. DUTIES OF DEPARTMENT OF HEALTH

The department of health is hereby designated as the sole state agency for the purposes of shall:

(1) ~~Conducting~~ Conduct studies, ~~developing~~ develop state plans, and ~~administering~~ administer programs and state plans for hospital survey and construction, hospital operation and maintenance, medical care, and treatment of ~~alcoholics and alcoholic rehabilitation~~ substance abuse.

(2) ~~Providing~~ Provide methods of administration and such other action as may be necessary to comply with the requirements of federal acts and regulations as relate to studies, ~~developing~~ development of plans and ~~administering~~ administration of programs in the fields of health, public health, health education, hospital construction and maintenance, and medical care.

(3) ~~Appointing~~ Appoint advisory councils, with the approval of the governor.

(4) ~~Cooperating~~ Cooperate with necessary federal agencies in securing federal funds ~~now or which may hereafter~~ become available to the state for all prevention, public health, wellness, and medical programs.

(5) Seek accreditation through the Public Health Accreditation Board.

(6) Create a state health improvement plan and facilitate local health improvement plans in order to encourage the design of healthy communities and to promote policy initiatives that contribute to community, school, and workplace wellness, which may include providing assistance to employers for wellness program grants, encouraging employers to promote employee engagement in healthy behaviors, and encouraging the appropriate use of the health care system.

Sec. 27. 18 V.S.A. § 9410(a)(1) is amended to read:

(a)(1) The commissioner shall establish and maintain a unified health care data base to enable the commissioner and the Green Mountain Care board to carry out ~~the~~ their duties under this chapter, chapter 220 of this title, and Title 8, including:

(A) Determining the capacity and distribution of existing resources.

(B) Identifying health care needs and informing health care policy.

(C) Evaluating the effectiveness of intervention programs on improving patient outcomes.

(D) Comparing costs between various treatment settings and approaches.

(E) Providing information to consumers and purchasers of health care.

(F) Improving the quality and affordability of patient health care and health care coverage.

Sec. 28. Sec. 10 of No. 128 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

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

(a) From the effective date of this act through July 1, ~~2014~~ 2014, 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, ~~2014~~ 2014, 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.

Sec. 29. Sec. 31(d) of No. 128 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

(d) Term of committee. The committee shall cease to exist on ~~January 31, 2011~~ June 30, 2011.

Sec. 30. Sec. 14 of No. 128 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

Sec. 14. PAYMENT REFORM; PILOTS

\* \* \*

~~(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) 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)~~(B) An ongoing program evaluation and improvement protocol.

~~(ii)(C)~~ (C) 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.~~

Sec. 31. GREEN MOUNTAIN CARE BOARD NOMINATIONS;  
APPOINTMENTS

(a) Notwithstanding the provisions of 18 V.S.A. § 9390(b)(2), no later than June 1, 2011, the governor, the speaker of the house of representatives, and the president pro tempore of the senate shall appoint the members of the Green Mountain Care board nominating committee. The members shall serve until their replacements are appointed pursuant to 18 V.S.A. § 9390 between January 1, 2013 and February 1, 2013.

(b) The governor shall appoint the members of the Green Mountain Care board pursuant to the process set forth in 18 V.S.A. chapter 220, subchapter 2, to begin employment no earlier than October 1, 2011. In making the initial appointments to the board, the governor shall ensure that the skills and qualifications of the board members complement those of the other members of the board.

Sec. 32. REPEAL

(a) 33 V.S.A. § 1901c (Medical care advisory board) is repealed effective July 1, 2012.

(b) 18 V.S.A. § 9407 (public oversight commission) is repealed effective July 1, 2011.

Sec. 33. APPROPRIATIONS

(a) In fiscal year 2012, the sum of \$703,693.00 in general funds and \$321,231.00 in federal funds is appropriated to the Green Mountain Care board to carry out its functions.

(b) In fiscal year 2012, the sum of \$25,000.00 is appropriated from the general fund to the secretary of administration for the medical malpractice proposal pursuant to Sec. 2(e) of this act.

(c) In fiscal year 2012, the sum of \$138,000.00 is appropriated from the general fund to the agency of administration for salary and benefits for the director of health care reform.

Sec. 33a. COMPENSATION

For fiscal year 2012, the salary for the chair of the Green Mountain Care board shall be \$116,688.00.

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Sec. 34. EFFECTIVE DATES

(a) Secs. 1 (intent), 1a (principles), and 2 (strategic plan); 3 (18 V.S.A. chapter 220, subchapter 2 “Green Mountain Care board nominating committee”); 8 (integration plan), and 9 (financing plans); 10 (HIT); 11 (health planning); 12 (regulatory process); 13 (workforce); 14 (cost estimates); 17 (discretionary clauses); 18 (single formulary); 26 (department of health); 28 (ACA grants); 29 (primary care workforce committee); 30 (approval of pilot projects); and 31 (initial Green Mountain Care board nominating committee appointments) of this act and this section shall take effect on passage.

(b) Sec. 1b (agency of administration), and Secs. 3, 18 V.S.A. chapter 220, subchapter 1 (Green Mountain Care board), 3a (health care ombudsman), 3b (positions), 3c (payment reform), 3d and 3e (manufacturers of prescribed products), 4c (health care coverage study), 5 (DVHA), 6 (Health care eligibility), 12a (health care workforce strategic plan); 13a (prior authorizations), 19–25a and 32 (repeal of public oversight commission), 33 (appropriations), and 33a (compensation) shall take effect on July 1, 2011.

(c)(1) Secs. 4 (Vermont health benefit exchange; Green Mountain Care), 4a (household health insurance survey), and 4b (exchange implementation) shall take effect on July 1, 2011.

(2) The Vermont health benefit exchange shall begin enrolling individuals no later than November 1, 2013 and shall be fully operational no later than January 1, 2014.

(3) Green Mountain Care shall be implemented as set forth in 33 V.S.A. § 1822.

(d) Sec. 7, 3 V.S.A. § 402 (Medicaid and exchange advisory board), shall take effect on July 1, 2012.

(e) Secs. 15-15d (rate review) shall take effect on January 1, 2012 and shall apply to all filings on and after January 1, 2012.

(f) Sec. 27 (VHCURES) shall take effect on October 1, 2011.

(g) Secs. 16 (health benefit information) and 16a (Medicaid program costs) shall take effect on January 1, 2012, and the reporting requirement shall apply to each calendar year, beginning with 2012.

*CLAIRE D. AYER  
KEVIN J. MULLIN  
SALLY G. FOX*

*Committee on the part of the Senate*

MARK LARSON

MICHAEL FISHER

SARAH L. COPELAND-HANZAS

*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 21, Nays 9.

Senator Carris 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, Baruth, Campbell, Carris, Cummings, Fox, \*Galbraith, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, McCormack, Miller, Mullin, Nitka, Pollina, Sears, White.

**Those Senators who voted in the negative were:** Benning, Brock, Doyle, Flory, Illuzzi, Mazza, Snelling, Starr, Westman.

\*Senator Galbraith explained his vote as follows:

“Mr. President:

“I voted yes because I believe strongly in the goal of H. 202 to establish a publicly-financed, government-run health care program so that all Vermonters have quality health care by right. Were I designing a health care system from scratch, I would have gone beyond H. 202 to make hospitals public institutions and Doctors and other medical personnel public employees.

“But, we are not creating a health care system from scratch. We have to work with the patchwork system of health care that already exists in this country. We must be pragmatic. I am concerned that so much in this bill is not pragmatic. The bill avoids the difficult issue of financing. The Conference Committee decided that Green Mountain care must cover Vermonters serving in the military even though they already have publicly-funded, government-provided health care and even though Green Mountain Care cannot possibly serve their needs. The bill also forces federal employees and retirees who have health care as a retirement benefit into the system even when it would save the state money not to include them

“Vermont has a history of enacting comprehensive health care plans that never materialize. Unless we are pragmatic, the promise in the bill will never become a reality.”

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

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

**H. 264.**

House bill entitled:

An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles .

Was taken up.

Thereupon, pending third reading of the bill, Senators Illuzzi and Flory moved that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 23 V.S.A. § 1130(c)(1), after the words “No person who owns or is” by striking out the word “under” and inserting in lieu thereof the word in

Second: In Sec. 4, 23 V.S.A. § 1210(f), by striking out subdivision (3) in its entirety and inserting in lieu thereof a new subdivision (3) to read as follows:

(3)(A) Death resulting; third or subsequent offense. If the death of any person results from a violation of section 1201 of this title and the person convicted of the violation previously has been convicted two or more times of a violation of that section, a sentence ordered pursuant to this subsection shall, except as provided in subdivision (B) of this subdivision (3), include at least a five-year term of imprisonment. The five-year minimum term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year term of imprisonment.

(B) Notwithstanding subdivision (A) of this subdivision (3), if the death of any person results from a violation of section 1201 of this title and the person convicted of the violation previously has been convicted two or more times of a violation of that section, the court may impose a sentence that does not include a term of imprisonment or which includes a term of imprisonment of less than five years if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

Third: In Sec. 4, 23 V.S.A. § 1210(g), by striking out subdivision (3) in its entirety and inserting in lieu thereof a new subdivision (3) to read:

(3)(A) Injury resulting; third or subsequent offense. If serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the

operator from a violation of section 1201 of this title and the person convicted of the violation previously has been convicted two or more times of a violation of section 1201, a sentence ordered pursuant to this subsection shall, except as provided in subdivision (B) of this subdivision (3), include at least a five-year term of imprisonment. The five-year minimum term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year term of imprisonment.

(B) Notwithstanding subdivision (A) of this subdivision (3), if serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of section 1201 of this title and the person convicted of the violation previously has been convicted two or more times of a violation of section 1201, the court may impose a sentence that does not include a term of imprisonment or which includes a term of imprisonment of less than five years if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

Fourth: In Sec. 18, by striking subsections (a), (b) and (c) in their entirety and inserting in lieu thereof new subsections (a), (b), (c) and (d) to read as follows:

(a) The department of public safety shall adopt rules, which may include emergency rules, to govern the operation, maintenance, and use of blood and breath alcohol testing and alcohol screening devices, and to describe the methods used to exercise the authority granted by this act. Prior to the effective date of the rules required to be adopted by this subsection, the department of public safety may take such steps as are necessary to prepare to assume authority and supervision over operation, maintenance, and use of blood and breath alcohol testing and alcohol screening devices. The rules of the agency of human services pertaining to the blood and breath alcohol testing and alcohol screening program shall remain in effect and govern the program until revised or repealed by rules adopted by the department of public safety, including emergency rules adopted pursuant to this subsection.

(b) The administration shall, in consultation with the Vermont state employees association, ensure that no reduction in positions occurs as a result of the transfer required by this section. The administration shall transfer positions to the department of public safety so that the department may implement the authority granted to it by this act.

(c) On or before January 15, 2012, and on or before January 15 of each of the following two years, the department of public safety shall report to the senate and house committees on judiciary on progress toward identifying and

implementing an accreditation process for the blood alcohol testing and alcohol screening program transferred to the department by this section.

(d) Notwithstanding any other provision of law, on March 1, 2012, or on the effective date of the rules required to be adopted by subsection (a) of this section, whichever is earlier, the department of public safety shall assume the authority transferred to it by this act over the blood and breath alcohol testing and alcohol screening program.

Which was agreed.

Thereupon, pending the question, Shall the bill be read third time?, Senators Flory and Illuzzi moved to amend the Senate proposal of amendment in Sec. 2, 23 V.S.A. § 1130, by striking out subsection (c) in its entirety and inserting in lieu thereof three new subsections to be subsections (c), (d) and (e) to read as follows:

(c)(1) No person who owns or is under control of a vehicle shall knowingly enable another person to operate the vehicle if the person who owns or controls the vehicle has actual knowledge that the operator is:

(A) under the influence of intoxicating liquor; or

(B) under the influence of any other drug or under the combined influence of alcohol and any other drug.

(2) As used in this section, “enable another person to operate the motor vehicle” means to create a direct and immediate opportunity for another person to operate the motor vehicle.

(d)(1) A person who violates subsection (c) of this section shall be fined not more than \$1,000.00 or imprisoned for not more than six months, or both.

(2) If the death or if serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of subsection (c) of this section, the person convicted of the violation shall be fined not more than \$5,000.00 or imprisoned not more than two years, or both. The provisions of this subdivision do not limit or restrict prosecutions for manslaughter.

(e) In a prosecution under this section, the defendant may raise as an affirmative defense to be proven by a preponderance of the evidence that the unlicensed person obtained permission from the defendant to operate the motor vehicle by placing the defendant under duress or subjecting the defendant to coercion.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senators Illuzzi and Flory?, Senator Flory requested and was granted leave to withdraw the proposal of amendment.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment, 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, Baruth, Benning, Brock, Campbell, Carris, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

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

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

### **Proposal of Amendment; Third Reading Ordered**

#### **H. 198.**

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

An act relating to a transportation policy to accommodate all users.

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. PURPOSE

The purpose of this bill is to ensure that the needs of all users of Vermont's transportation system—including motorists, bicyclists, public transportation users, and pedestrians of all ages and abilities—are considered in all state and municipally managed transportation projects and project phases, including planning, development, construction, and maintenance, except in the case of projects or project components involving unpaved highways. These "complete streets" principles shall be integral to the transportation policy of Vermont.

Sec. 2. 19 V.S.A. § 10b is amended to read:

#### § 10b. STATEMENT OF POLICY; GENERAL

(a) The agency shall be the responsible agency of the state for the development of transportation policy. It shall develop a mission statement to reflect:

(1) that state transportation policy encompassing, coordinating, and integrating shall be to encompass, coordinate, and integrate all modes of transportation; and to consider “complete streets” principles, which are principles of safety and accommodation of all transportation system users, regardless of age, ability, or modal preference; and

(2) the need for transportation projects that will improve the state’s economic infrastructure, as well as the use of resources in efficient, coordinated, integrated, cost-effective, and environmentally sound ways.

(b) The agency shall coordinate planning and education efforts with those of the Vermont climate change oversight committee and those of local and regional planning entities:

(1) to assure that the transportation system as a whole is integrated, that access to the transportation system as a whole is integrated, and that statewide, local, and regional conservation and efficiency opportunities and practices are integrated; and

(2) to support employer or local or regional government-led conservation, efficiency, rideshare, and bicycle programs and other innovative transportation advances, especially employer-based incentives.

(b)(c) In developing the state’s annual transportation program, the agency shall, consistent with the planning goals listed in 24 V.S.A. § 4302 as amended by No. 200 of the Acts of the 1987 Adj. Sess. (1988) and with appropriate consideration to local, regional, and state agency plans:

(1) Develop or incorporate designs that provide integrated, safe, and efficient transportation and promote.

(2)(A) Consider the safety and accommodation of all transportation system users—including motorists, bicyclists, public transportation users, and pedestrians of all ages and abilities—in all state and municipally managed transportation projects and project phases, including planning, development, construction, and maintenance, except in the case of projects or project components involving unpaved highways. If, after the consideration required under this subdivision, a state-managed project does not incorporate complete streets principles, the project manager shall make a written determination, supported by documentation and available for public inspection at the agency, that one or more of the following circumstances exist:

(i) Use of the transportation facility by pedestrians, bicyclists, or other users is prohibited by law.

(ii) The cost of incorporating complete streets principles is disproportionate to the need or probable use as determined by factors including

land use, current and projected user volumes, population density, crash data, historic and natural resource constraints, and maintenance requirements. The agency shall consult local and regional plans, as appropriate, in assessing these and any other relevant factors.

(iii) Incorporating complete streets principles is outside the scope of a project because of its very nature.

(B) The written determination required under subdivision (A) of this subdivision (2) shall be final and shall not be subject to appeal or further review.

(3) Promote economic opportunities for Vermonters and the best use of the state's environmental and historic resources.

~~(2)~~(4) Manage available funding to:

(A) give priority to preserving the functionality of the existing transportation infrastructure, including bicycle and pedestrian trails regardless of whether they are located along a highway shoulder; and

(B) adhere to credible project delivery schedules.

~~(e)~~(d) The agency of transportation, in developing each of the program prioritization systems schedules for all modes of transportation, shall include the following throughout the process:

(1) The agency shall annually solicit input from each of the regional planning commissions and the Chittenden County metropolitan planning organization on regional priorities within each schedule, and those inputs shall be factored into the prioritizations for each program area and shall afford the opportunity of adding new projects to the schedules.

(2) Each year the agency shall provide in the front of the transportation program book a detailed explanation describing the factors in the prioritization system that creates each project list.

Sec. 3. 19 V.S.A. § 309d is added to read:

§ 309d. POLICY FOR MUNICIPALLY MANAGED TRANSPORTATION PROJECTS

(a) Except in the case of projects or project components involving unpaved highways, for all transportation projects and project phases managed by a municipality, including planning, development, construction, or maintenance, it is the policy of this state for municipalities to consider "complete streets" principles, which are principles of safety and accommodation of all transportation system users, regardless of age, ability, or modal preference. If, after the consideration required under this section, a project does not

incorporate complete streets principles, the municipality managing the project shall make a written determination, supported by documentation and available for public inspection at the office of the municipal clerk and at the agency of transportation, that one or more of the following circumstances exist:

(1) Use of the transportation facility by pedestrians, bicyclists, or other users is prohibited by law.

(2) The cost of incorporating complete streets principles is disproportionate to the need or probable use as determined by factors such as land use, current and projected user volumes, population density, crash data, historic and natural resource constraints, and maintenance requirements. The municipality shall consult local and regional plans, as appropriate, in assessing these and any other relevant factors.

(3) Incorporating complete streets principles is outside the scope of a project because of its very nature.

(b) The written determination required by subsection (a) of this section shall be final and shall not be subject to appeal or further review.

#### Sec. 4. REPORTING AND TRANSITION RULE

(a) By March 15, 2012, the agency of transportation shall report to the house and senate committees on transportation on its activities to comply with this act.

(b) The agency shall make available to the public upon request and in an easily understandable format a list of all state and municipally managed projects that have incorporated complete streets principles, accompanied by a description of each project and its location.

(c) The agency shall make available to the public upon request and in an easily understandable format a list of all state and municipally managed projects that have not incorporated complete streets principles pursuant to an exemption of Sec. 2, 19 V.S.A. § 10b(c)(2)(A), or Sec. 3, 19 V.S.A. § 309d(a), of this act. This list shall specify which exemption applied.

(d) The agency and municipalities shall be exempt from the requirement to assign exemptions pursuant to Sec. 2, 19 V.S.A. § 10b(c)(2)(A), or Sec. 3, 19 V.S.A. § 309d(a), of this act and from the reporting requirements of this section with respect to any project for which preliminary engineering is complete as of the effective date of this act.

#### Sec. 5. EFFECTIVE DATE

This act 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 the proposal of amendment was agreed to, and third reading of the bill was ordered.

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

**H. 26.**

Senator Lyons, 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 limiting the application of fertilizer containing phosphorus or nitrogen to nonagricultural turf.

Respectfully reports that it has met and considered the same and recommends that the House accede to the Senate proposal of amendment, and that the bill be further amended as follows:

First: In Sec. 1, 10 V.S.A. § 1266b, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) Definitions. As used in this section:

(1) “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.

(2) “Fertilizer” shall have the same meaning as in 6 V.S.A. § 363(5).

(3) “Impervious surface” means those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.

(4) “Manipulated animal or vegetable manure” means manure that is ground, pelletized, mechanically dried, supplemented with plant nutrients or substances other than phosphorus or phosphate, or otherwise treated to assist with the use of manure as fertilizer.

(5) “Nitrogen fertilizer” means fertilizer labeled for use on turf in which the nitrogen content consists of less than 15 percent slow-release nitrogen.

(6) “Phosphorus fertilizer” means fertilizer labeled for use on turf in which the available phosphate content is greater than 0.67 percent by weight, except that “phosphorus fertilizer” shall not include compost or manipulated animal or vegetable manure.

(7) “Slow release nitrogen” means nitrogen in a form that is released over time and that is not water-soluble nitrogen.

(8)(A) “Turf” means land planted in closely mowed, managed grasses, including residential and commercial property and publicly owned land, parks, and recreation areas.

(B) “Turf” shall not include:

(i) pasture, cropland, land used to grow sod, or any other land used for agricultural production; or

(ii) private and public golf courses.

(9) “Water” or “water of the state” means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the state or any portion of it.

(10) “Water-soluble nitrogen” means nitrogen in a water-soluble form that does not have slow release properties.

Second: In Sec. 1, 10 V.S.A. § 1266b, by adding a new subsection (c) to read as follows:

(c) Application of nitrogen fertilizer. No person shall apply nitrogen fertilizer to turf.

and by relettering the subsequent subsections to be alphabetically correct

Third: In Sec. 5, by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

(b) Secs. 1 (application of fertilizer), 2 (golf course management plans) and 3 (judicial bureau offense) of this act shall take effect on January 1, 2012, except that 10 V.S.A. § 1266b(b)(2) (agency of agriculture, food and markets soil test authorization) shall take effect on passage.

*VIRGINIA V. LYONS  
MARK A. MACDONALD  
RANDOLPH D. BROCK*

*Committee on the part of the Senate*

*JAMES M. MCCULLOUGH  
LUCY R. LERICHE  
ROBERT LEWIS*

*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**

**H. 443.**

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 2012 transportation program appended to the agency of transportation's proposed fiscal year 2012 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) "agency" means the agency of transportation;

(2) "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) "TIB debt service fund" refers to the transportation infrastructure bonds debt service fund established in 32 V.S.A. § 951a; and

(5) "TIB funds" refers to monies deposited in the transportation infrastructure bond fund in accordance with 19 V.S.A. § 11f.

\* \* \* Town Highway Bridge \* \* \*

## Sec. 2. TOWN HIGHWAY BRIDGE

The following modifications are made to the town highway bridge program:

(1) Development and engineering funding for the Fairfield BRO 1448(22) project in the amount of \$16,000.00 in federal funds, \$2,000.00 in transportation funds, and \$2,000.00 in local funds is deleted.

(2) A new project is added for the reconstruction or replacement of bridge #48 on TH 30 over Wanzer Brook in the town of Fairfield. Development and evaluation spending in the amount of \$16,000.00 in federal funds, \$2,000.00 in transportation funds, and \$2,000.00 in local funds is authorized for the project.

(3) Authorized spending on the Brattleboro-Hinsdale BRF 2000(19)SC project is amended to read:

<u>FY12</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	100,000	0	-100,000
ROW	75,000	0	-75,000
Construction	0	0	0
Total	175,000	0	-175,000

### Sources of funds

State	0	0	0
TIB fund	35,000	0	-35,000
Federal	140,000	0	-140,000
Local	0	0	0
Total	175,000	0	-175,000

(4) Authorized spending on the Stratton culvert TH3 0103 project is amended to read:

<u>FY12</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	40,000	40,000	0
ROW	0	0	0
Construction	0	0	0

Total	40,000	40,000	0
<u>Sources of funds</u>			
State	36,000	1,000	-35,000
TIB fund	0	35,000	35,000
Federal	0	0	0
Local	4,000	4,000	0
Total	40,000	40,000	0

\* \* \* Park and Ride \* \* \*

### Sec. 3. PROGRAM DEVELOPMENT – PARK AND RIDE

Authorized spending on the municipal park and ride program within the program development — park and ride program is amended to read:

<u>FY12</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Construction	250,000	300,000	50,000
Total	250,000	300,000	50,000
<u>Sources of funds</u>			
State	250,000	300,000	50,000
Total	250,000	300,000	50,000

\* \* \* Rail \* \* \*

### Sec. 4. RAIL

The following modifications are made to the rail program:

(1) A new project is added to upgrade the western rail corridor to the standards required to support 286,000 pound freight traffic and inter-city passenger rail service. The western rail corridor includes connections from points in New York to the corridor between Bennington, Rutland, Burlington, Essex Junction, and St. Albans to points in Canada.

(2) Authorized spending on the three-way partnership program is amended to read as follows.

<u>FY12</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	0	0	0
ROW	0	0	0
Construction	0	0	0

Other	600,000	555,000	-45,000
Total	600,000	555,000	-45,000
<u>Sources of funds</u>			
State	200,000	185,000	-15,000
Federal	0	0	0
Local	400,000	370,000	-30,000
Total	600,000	555,000	-45,000

Sec. 5. Sec. 18 of No. 164 of the Acts of 2007 Adj. Sess. (2008) is amended to read:

Sec. 18. RAIL

The following modifications are made to the rail program:

(1) Authorized spending on the three-way partnership program is amended to read as follows. ~~In future budget years, funding for the program shall be limited to the costs of specific projects.~~

\* \* \*

\* \* \* Vermont Local Roads \* \* \*

Sec. 6. TOWN HIGHWAY VERMONT LOCAL ROADS

Authorized spending on the Vermont local roads program is amended to read:

<u>FY12</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Grants	375,000	390,000	15,000
Total	375,000	390,000	15,000
<u>Sources of funds</u>			
State	235,000	235,000	0
Federal	140,000	155,000	15,000
Total	375,000	390,000	15,000

\* \* \* Bike and Pedestrian Facilities \* \* \*

Sec. 7. PROGRAM DEVELOPMENT – BIKE AND PEDESTRIAN FACILITIES

The following modification is made to the program development – bike and pedestrian facilities program: Notwithstanding the authorized project or activity spending approved for the bike and pedestrian program, the secretary

shall transfer \$10,000.00 in transportation funds authorized for spending within the program to the Vermont Association of Snow Travelers (VAST) for expenditure on the Lamoille Valley Rail Trail project, STP LVRT(1). VAST may use these funds to satisfy a portion of the local match requirement for the federal earmark for this project, and shall provide the agency an accounting of its use of the funds by June 30, 2012.

\* \* \* Supplemental Paving Spending \* \* \*

Sec. 7a. TRANSPORTATION – SUPPLEMENTAL PAVING SPENDING

(a) Notwithstanding 32 V.S.A. § 706 and the limits on program, project, or activity spending authority approved in the fiscal year 2011 and fiscal year 2012 transportation programs, the secretary, with the approval of the secretary of administration and subject to the provisions of subsection (b) of this section, may transfer up to \$2,000,000.00 in transportation fund appropriations, other than appropriations for the town highway state aid, structures, and class 2 roadway programs, to program development (8100001100) – paving, for the specific purpose of improving the condition of selected state highways that have incurred the worst damage caused by the severe winter weather of 2010–2011.

(b) 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.

(c) This section shall expire on September 30, 2011.

\* \* \* Central Garage \* \* \*

Sec. 8. TRANSFER TO CENTRAL GARAGE FUND

Notwithstanding 19 V.S.A. § 13(c), in fiscal year 2012, 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.

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\* \* \* Cancellation of Projects \* \* \*

Sec. 9. CANCELLATION OF PROJECTS

Pursuant to 19 V.S.A. § 10g(h) (legislative approval for cancellation of projects), the general assembly approves cancellation of the following projects:

(1) Program development — interstate bridges:

(A) Berlin-Montpelier IM 089-1(17) (rehabilitation of bridges #36N&S, #37N&S, #38N&S, #39, #40N&S, and #41N&S on I-89);

(B) Bethel-Williamstown IR 089-1(12) (deck replacement and structural improvements to several bridges on I-89);

(C) Middlesex-Waterbury IR 089-2(16) (deck replacement and structural improvements to several bridges on I-89);

(D) Brattleboro IR 091-1(23) (at PE and/or ROW phase) (deck replacement on bridges #9N&S on I-91);

(E) Colchester-Highgate IM IR 089-3(18) (at PE and/or ROW phase) (deck replacement and substructure improvements to several bridges on I-89);

(F) Vernon-Putney IR 091-1(17) (at PE and/or ROW phase) (deck replacement and substructure improvements on several bridges along I-91);

(G) Guilford-Brattleboro IM 091-1(32) (proposed) (rehabilitation of bridges #2N&S, #4N&S, #5N&S, #7, #11N&S, and #12 on I-91);

(H) Hartford-Newbury IM 091-2(68) (proposed) (rehabilitation of bridges #45N&S, #46, #47N&S, #48N&S, #49N&S, and #51N&S on I-91);

(I) Hartford-Sharon-Royalton IR 089-1(10) (proposed) (deck replacement and structural improvements to several interstate bridges);

(J) Milton IM 089-3( ) (proposed) (rehabilitation of bridges #82, #84N&S, #85, #89, #90, #91, #92N&S, and #93 on I-89);

(K) Richmond IM 089-2(27) (proposed) (rehabilitation of bridges #52N&S, #53N&S, #54, #55N&S, #56N&S, and #57N&S on I-89);

(L) Rockingham-Weathersfield IR 091-1(24) (proposed) (replacement and substructure improvements to several bridges on I-91);

(M) Sharon-Royalton IR 089-1(9) (proposed) (deck replacement and substructure improvements to several bridges on I-89); and

(N) Windsor-Hartland IR 091-1(21) (proposed) (deck replacement and substructure improvements to several bridges on I-91).

(2) Program development — state highway bridges:

(A) Middlebury BHF 5900(4) (rehabilitation of bridge #2 on Merchants Row (TH 8) over Vermont Railway);

(B) Middlebury BHF 0161(9) (rehabilitation of bridge #102 on VT 30 over Vermont Railway);

(C) Plymouth BRS 0149(3)S (replacement of bridge #8 on VT 100A over Hollow Brook; at PE and/or ROW phase).

(3) Town highway bridges:

(A) Readsboro BRO 1441(28) (replacement of bridge #21 on TH 4 over the West Branch of the Deerfield River);

(B) Fairfield BRO 1448(22) (replacement of bridge #48 on TH 30 over Wanzer Brook; at PE and/or ROW phase);

(C) Northfield BRO 1446(25) (replacement of bridge #50 on TH 25 over Stoney Brook; at PE and/or ROW phase).

(4) Program development — roadway:

(A) Bennington M 1000(10) (VT 67A) (district has constructed some improvements to intersection);

(B) Bridgewater-Woodstock NH 020-2(33)S (US 4) (project scope defined before adoption of Vermont design standards in 1997);

(C) Cavendish STP 0146(9) SC (VT 131) (Cavendish selectboard supports cancellation of project but would like some signage improvements to enhance safety);

(D) Cavendish-Ludlow NH-F 025-1(30) (VT 103) (FHWA requested VTrans to close this project in 2007);

(E) Concord-Lunenburg STP 0218( ) SC (TH 4) (project set up for scoping in 1997 but no funds were ever programmed);

(F) Dorset-Wallingford NH 019-2(20) SC (US 7) (project set up for scoping only and scoping report was completed in 1997);

(G) Dover STP 013-1(12) SC (VT 100) (project set up for scoping only and scoping report was completed in 1997);

(H) Duxbury STP F 013-4(11)S (VT 100) (project scope defined before adoption of Vermont design standards in 1997);

(I) Hartford-Newbury IM 019-2(70) (I-91 drainage/fence) (high-priority safety projects have been completed along this segment of I-91);

(J) Hinesburg STP 0199( ) SC (TH 4/FAS 0199) (project set up for scoping in 1997 but no funds were ever programmed);

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(K) Killington STP 022-1(19) SC (VT 100) (project set up for scoping only and the scoping report was completed in 1997);

(L) Marlboro NH F 010-1(25) (VT 9) (project scope defined before adoption of Vermont design standards in 1997);

(M) Newbury STP 026-2( ) (US 302) (origination of project unknown; project has not been programmed with any funds);

(N) Pownal-Bennington F 019-1(16)C/1 (US 7) (project scope defined before adoption of Vermont design standards in 1997);

(O) Pownal-Bennington F 019-1(16)C/2 (US 7) (project scope defined before adoption of Vermont design standards in 1997);

(P) Readsboro-Whitingham STP RS 0102(13) (VT 100) (project scope defined before adoption of Vermont design standards in 1997);

(Q) Ryegate-St. Johnsbury IM 091-2(74) (I-91 drainage/fence) (high-priority safety projects have been completed along this segment of I-91);

(R) Ryegate-St. Johnsbury IM 091-2(75) (I-91 guardrail/ledge) (high-priority safety projects have been completed along this segment of I-91);

(S) St. Johnsbury-Lyndon IM 091-3(43) (I-91 drainage/fence) (high-priority safety projects have been completed along this segment of I-91);

(T) St. Johnsbury-Lyndon IM 091-3(44) (I-91 guardrail/ledge) (high-priority safety projects have been completed along this segment of I-91);

(U) Townshend STP 015-1(19)S (VT 30) (project set up in 1999 to modify the glare barrier and landscape in the vicinity of BR 3 on VT 30; no design activity or local interest in project since inception);

(V) Vergennes ST 017-1( )S (VT 22A) (VTrans granted city funds to reconstruct and city contracted the work out);

(W) Waitsfield-Moretown-Duxbury STP F 013-4(12)S (VT 100) (project scope defined before adoption of Vermont design standards in 1997);

(X) Wallingford F 025-1(31) (VT 103) (project scope defined before adoption of Vermont design standards in 1997);

(Y) Waterford IM 093-1(11) (I-93 drainage/fence) (high-priority safety projects completed along this segment of I-93);

(Z) Waterford IM 093-1(12) (I-93 guardrail/ledge) (high-priority safety projects completed along this segment of I-93); and

(AA) Williamstown STP RS 0204(3) (VT 64).

\* \* \* FY 2012 Western Rail Corridor Improvements \* \* \*

Sec. 10. WESTERN RAIL CORRIDOR GRANT APPLICATION; FY 2012 CONTINGENT BONDING AUTHORITY

(a) The general assembly finds that intercity passenger rail along Vermont's western rail corridor is of critical importance to the transportation mobility and economic prosperity of the state. The western rail corridor includes connections from points in New York to the corridor between Bennington, Rutland, Burlington, Essex Junction, and St. Albans to points in Canada.

(b) The agency is encouraged to apply for a federal grant to cover, in whole or in part, the cost of upgrading the state's western rail corridor for intercity passenger rail service. In the grant application, the agency is authorized to identify the bonds authorized by this section as a source of state match funds. Upon its completion, the agency shall send an electronic copy of the grant application to the joint fiscal office.

(c) In the event the state is awarded a federal grant as referenced in subsection (b) of this section, the treasurer is authorized in fiscal year 2012 to issue transportation infrastructure bonds in an amount up to \$15,000,000.00 for the purpose of providing any state matching funds required by the federal grant. The treasurer is authorized to increase the issue of transportation infrastructure bonds in the event the treasurer determines that:

(1) the creation and funding of a permanent debt service reserve is advisable to support the successful issuance of the transportation infrastructure bonds; and

(2) the balance of the TIB fund and the TIB debt service fund as of the end of fiscal year 2011 is insufficient to fund such a permanent debt service reserve.

(d) In the event the state is awarded a federal grant as referenced in subsection (b) of this section:

(1) authority to spend the federal grant funds is added to the fiscal year 2012 transportation program – rail program and the amount of federal funds awarded is appropriated to the fiscal year 2012 transportation – rail program; and

(2) if transportation infrastructure bonds are issued pursuant to subsection (c) of this section to fund the project, authority to spend the bond proceeds on the project in an amount needed to match the federal funds authorized in subdivision (d)(1) of this subsection is added to the 2012 fiscal

year transportation program – rail program and that amount is appropriated to the fiscal year 2012 transportation – rail program.

Sec. 11. FISCAL YEAR END 2011 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 2011 up to a maximum amount of \$1,000,000.00 may be transferred to the TIB debt service fund by order of the secretary of transportation, with the approval of the secretary of administration, for the purpose of providing the funds the treasurer deems likely to be needed to satisfy any debt service reserve requirement of transportation infrastructure bonds that may be issued pursuant to the authority granted in Sec. 10 of this act, to pay the issuance costs of such bonds, or to pay debt service obligations due on such bonds in fiscal years 2012 and 2013.

Sec. 12. FISCAL YEAR END 2011 TIB FUND SURPLUS

Any surplus in the transportation infrastructure bond fund as of the end of fiscal year 2011 up to a maximum amount of \$1,000,000.00 may be transferred to the TIB debt service fund by order of the secretary of transportation, with the approval of the secretary of administration, for the purpose of providing the funds the treasurer deems likely to be needed to satisfy any debt service reserve requirement of transportation infrastructure bonds that may be issued pursuant to the authority granted in Sec. 10 of this act, to pay the issuance costs of such bonds, or to pay debt service obligations due on such bonds in fiscal years 2012 and 2013.

Sec. 13. AUTHORITY TO REDUCE FISCAL YEAR 2011 APPROPRIATIONS

(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 to the TIB debt service fund for the purpose of providing the funds the treasurer deems likely to be needed to satisfy any debt service reserve requirement of transportation infrastructure bonds that may be issued pursuant to the authority granted in Sec. 10 of this act, to pay the issuance costs of such bonds, or to pay debt service obligations due on such bonds in fiscal years 2012 and 2013.

(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 2011 work schedule of a project which formed the basis of the project's funding in fiscal year 2011.

(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. 14. CHANGE TO CONSENSUS REVENUE FORECAST

In the event the July 2011 consensus revenue forecast of fiscal year 2012 transportation fund or TIB fund revenue is increased above the January 2011 forecast, the increase up to \$2,000,000.00 may be transferred to the TIB debt service fund, by order of the secretary of transportation with the approval of the secretary of administration, for the purpose of providing the funds the treasurer deems likely to be needed to satisfy any debt service reserve requirement of transportation infrastructure bonds that may be issued pursuant to the authority granted in Sec. 10 of this act, to pay the issuance costs of such bonds, or to pay debt service obligations due on such bonds in fiscal years 2012 and 2013.

#### Sec. 15. AUTHORITY TO REDUCE FISCAL YEAR 2012 APPROPRIATIONS

(a) Notwithstanding 32 V.S.A. § 706 and the limits on program, project, or activity spending authority in the fiscal year 2012 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 2012 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 2012 the amount of the reductions to the TIB debt service fund for the purpose of providing the funds the treasurer deems likely to be needed to pay debt service obligations of transportation infrastructure bonds authorized by Sec. 10 of this act in fiscal year 2013.

(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 2012 transportation program will not have the effect of significantly delaying the planned work schedule of the project which formed the basis of the project's funding in fiscal years 2012 and 2013.

(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 2011 which, subject to compliance with federal maintenance of effort requirements, would be available for use by the state in fiscal year 2013. The fiscal year 2013 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.

\* \* \* White River Junction Railroad Station \* \* \*

#### Sec. 16. ACQUISITION OF WHITE RIVER JUNCTION RAILROAD STATION

(a) The agency is authorized to acquire, and to seek federal funds to assist in acquiring, the White River Junction railroad station from Rio Blanco Corporation or its successors in interest for a purchase price of up to \$875,000.00. The subject property is a 6,774-square-foot commercial building sited on approximately 0.73 acres of land, is located at 100–106 Railroad Row in the village of White River Junction within the town of Hartford, and is all the same property conveyed to Rio Blanco Corporation by two deeds: Release Deed from Central Vermont Railway, Inc., dated February 1, 1995, and recorded at Book 219, pages 45–50, and Release Deed from Boston & Maine Corporation dated February 2, 1995, and recorded at Book 219, pages 51–60, both in the land records of the town of Hartford.

(b) A new project is added to the fiscal year 2011 and 2012 transportation program — rail program for purchase of the White River Junction railroad station.

(c) Notwithstanding the authorized project or activity spending within the fiscal year 2011 transportation program — rail program and the fiscal year 2012 transportation program — rail program, the secretary is authorized to use up to a total of \$875,000.00 in transportation funds or TIB funds approved within the fiscal year 2011 and 2012 rail programs for purchase of the station.

(d) The agency shall promptly report to the joint transportation oversight committee and to the joint fiscal office any action taken under the authority granted in subsection (a) of this section.

(e) Following conveyance of the White River Junction railroad station to the state of Vermont, the agency shall administer the property in accordance with 5 V.S.A. chapter 56 (intercity rail passenger service).

\* \* \* Aviation Program Plan \* \* \*

#### Sec. 17. AVIATION PROGRAM PLAN

(a) By January 15, 2012, the secretary of transportation shall develop a business plan to achieve the goal of reducing or eliminating the operating deficits of state-owned airports by June 30, 2015. In developing this plan, the secretary shall review the aviation programs of other states; study whether aircraft registration fees, hangar fees, landing fees for noncommercial aircraft, and other service fees would produce net revenues for the state; estimate the net revenues that would be generated at various fee levels and for various fee types; and review any other subject matter the secretary deems relevant to reducing or eliminating the operating deficits of state-owned airports.

(b) State airports certified by the Federal Aviation Administration pursuant to Part 139 of Title 14 of the Code of Federal Regulations and state airports that provide daily commercial passenger airline service shall be excluded from the business plan required under subsection (a) of this section.

(c) By January 15, 2012, the secretary shall submit the business plan required under subsection (a) of this section to the house and senate committees on transportation and shall include in the plan any recommendations for proposed legislation needed to implement the plan.

\* \* \* Municipal Airports \* \* \*

Sec. 18. 5 V.S.A. § 695 is amended to read:

#### § 695. FEDERAL ASSISTANCE

~~No municipality in this state, whether acting alone or jointly with another municipality or with the state shall submit to the Federal Aviation Administration of the United States any project application under the provisions of any federal statute, unless the project and the project application have been first approved by the secretary which approval shall not be unreasonably withheld. No A municipality shall directly accept, receive, receipt for, or disburse any funds granted by the United States under the Federal Airport Act or amendments to that act, but it shall designate~~ may petition the secretary to serve as its agent and in its behalf to accept, receive, receipt account for, and disburse all funds granted by the United States for an airport project. If the secretary agrees to serve as agent, the municipality shall enter into an agreement with the secretary prescribing the terms and

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conditions of the agency relationship in accordance with any applicable federal or state laws, ~~rules and or regulations and applicable laws of this state.~~

\* \* \* State Aid for Town Highway Roadways and Structures \* \* \*

Sec. 19. 19 V.S.A. § 306 is amended to read:

§ 306. APPROPRIATION; STATE AID FOR TOWN HIGHWAYS

\* \* \*

(e) State aid for town highway structures. There shall be an annual appropriation for grants to municipalities for maintenance, including actions to extend life expectancy, and for construction of bridges, culverts, and other structures, including causeways and retaining walls, intended to preserve the integrity of the traveled portion of class 1, 2, and 3 town highways. Each fiscal year, the agency shall approve qualifying projects with a total estimated state share cost of ~~\$3,490,000.00~~ \$5,833,500.00 at a minimum as new grants. The agency's proposed appropriation for the program shall take into account the estimated amount of qualifying invoices submitted to the agency with respect to project grants approved in prior years but not yet completed as well as with respect to new project grants to be approved in the fiscal year. In a given fiscal year, should expenditures in the town highway structures program exceed the amount appropriated, the agency shall advise the governor of the need to request a supplemental appropriation from the general assembly to fund the additional project cost, provided that the agency has previously committed to completing those projects. Funds received as grants for state aid for town highway structures may be used by a municipality to satisfy a portion of the matching requirements for federal earmarks, subject to subsection 309b(c) of this title.

(f), (g) [Deleted.]

(h) Class 2 town highway roadway program. There shall be an annual appropriation for grants to municipalities for resurfacing, rehabilitation, or reconstruction of paved or unpaved class 2 town highways. Each fiscal year, the agency shall approve qualifying projects with a total estimated state share cost of ~~\$4,240,000.00~~ \$7,248,750.00 at a minimum as new grants. The agency's proposed appropriation for the program shall take into account the estimated amount of qualifying invoices submitted to the agency with respect to project grants approved in prior years but not yet completed as well as with respect to new project grants to be approved in the fiscal year. In a given fiscal year, should expenditures in the town highway class 2 roadway program exceed the amount appropriated, the agency shall advise the governor of the need to request a supplemental appropriation from the general assembly to fund the additional project cost, provided that the agency has previously

committed to completing those projects. Funds received as grants for state aid under the class 2 town highway roadway program may be used by a municipality to satisfy a portion of the matching requirements for federal earmarks, subject to subsection 309b(c) of this title.

\* \* \*

\* \* \* Utility Adjustments \* \* \*

#### Sec. 20. UTILITY ADJUSTMENTS

Notwithstanding chapter 16 of Title 19, during fiscal years 2011, 2012, and 2013, the agency is authorized to pay from a federal earmark for a highway project the costs of adjustments to municipal utilities located within a state highway right-of-way needed to accommodate the project, provided that the earmark involves no state matching funds and no commitment of state or additional federal funds, and provided that the utility adjustment costs are otherwise eligible for federal participation.

\* \* \* Scenic Byways and Roads \* \* \*

Sec. 21. The title of 10 V.S.A. chapter 19 is amended to read:

#### CHAPTER 19. SCENERY PRESERVATION ~~COUNCIL~~

Sec. 22. 10 V.S.A. § 425 is amended to read:

#### § 425. ~~SCENERY PRESERVATION~~ BYWAYS ADVISORY COUNCIL

(a) ~~The scenery preservation~~ byways advisory council shall:

(1) upon request, advise and consult with the agency of transportation, 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;

(3) encourage and assist in fostering public awareness, and understanding of, and public participation in promoting, the objectives and functions of scenery preservation and in stimulating public participation and interest current intrinsic scenic and other qualities within byways and scenic road corridors.

(b) ~~The scenery preservation~~ byways advisory council shall consist of ~~seven~~ eight members: the secretary of natural resources or his or her designee; the secretary of transportation or his or her designee; the commissioner of tourism and marketing or his or her designee; and five members appointed by the governor. 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 governor shall designate an appointed member to serve as ~~chairman~~ chair at the governor's pleasure. Except as provided in this section, no state employee or member of any state commission or any federal employee or member of any federal commission shall be eligible for membership on the ~~scenery preservation~~ byways advisory council. Members of the council who are not full-time state employees shall be entitled to a per diem as provided in 32 V.S.A. § 1010(b) and reimbursement for 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~~ may call meetings of the council.

(c) ~~The transportation board shall, in consultation with the scenery preservation council, and considering the criteria recommended in subdivision (b)(5) of this section, prepare, adopt and promulgate standards, and criteria for variances therefrom, pursuant to chapter 25 of Title 19, to carry out the purposes of this chapter. The standards shall include, but shall not be limited to, descriptions of techniques for construction, including roadside grading and planting and preservation of intimate roadside environments as well as scenic outlooks. The standards shall further prescribe minimum width, alignment and surface treatment with particular reference to the legislative findings of this act. The standards shall include methods of traffic control, such as signs, speed limits, signals and warnings, which shall not, within appropriate safety considerations, jeopardize the scenic or historic value of such roads. These standards shall be revised as necessary taking into consideration increased weight, load and size of vehicles making use of scenic roads, such as, but not limited, to forest product vehicles, agribusiness vehicles and school buses. No provision of the scenic road law may deny necessary improvement to or maintenance of scenic roads over which such vehicles must travel~~ Rehabilitation or reconstruction of byways or state scenic roads shall be conducted in accordance with the agency of transportation's Vermont Design Standards, as amended. Signs along byways and scenic roads shall be in accordance with the Federal Highway Administration's Manual on Uniform Traffic Control Devices, as amended.

(d) ~~Provisions of this chapter shall apply only within the highway right of way.~~ [Repealed.]

(e) ~~All actions, including promulgation of rules, regulations or recommendations for designation, shall be made pursuant to the provisions of chapter 25 of Title 3.~~ [Repealed.]

Sec. 23. 19 V.S.A. § 2501 is amended to read:

§ 2501. STATE SCENIC ROADS; DESIGNATION AND DISCONTINUANCE

(a) On the recommendation of the ~~scenery preservation~~ byways advisory council, the transportation board may designate or discontinue any state highway, or portion of a state highway, as a state scenic road. The board shall hold a hearing on the recommendation and shall submit a copy of its decision together with its findings to the ~~scenery preservation~~ byways advisory council within 60 days after receipt of the recommendation. The hearing shall be held in the vicinity of the proposed scenic highway.

(b) Annually, the council shall provide information to the agency of commerce and community development on designated scenic roads for inclusion on state maps.

(c) A state scenic road shall not be reconstructed or improved unless the reconstruction or improvement ~~conforms to the standards established by the agency of transportation pursuant to 10 V.S.A. § 425~~ is conducted in accordance with the agency of transportation's Vermont Design Standards, as amended.

Sec. 24. 19 V.S.A. § 2502 is amended to read:

§ 2502. TOWN SCENIC ROADS; DESIGNATION AND DISCONTINUANCE

(a) On recommendation of the planning commission of a municipality, or on the initiative of the legislative body of a municipality, a legislative body may, after one public hearing warned for the purpose, designate or discontinue any town highway or portion of a town highway as a town scenic highway. Such action by the legislative body may be petitioned by the registered voters of the municipality pursuant to the provisions of 24 V.S.A. § 1973.

(b) A town scenic road may be reconstructed or improved in a manner ~~consistent with the standards established by the transportation board, pursuant to 10 V.S.A. § 425~~ consistent with the agency of transportation's Vermont Design Standards, as amended. A class 1, 2 or 3 scenic highway shall still be eligible to receive aid pursuant to the provisions of this title.

(c) ~~The legislative body of a municipality may appeal for a variance from standards promulgated by the transportation board. In these appeals, the board's decision shall be final.~~ [Repealed.]

Sec. 25. 30 V.S.A. § 218c(d)(2) is amended to read:

(2) Prior to the adoption of any transmission system plan, a utility preparing a plan shall host at least two public meetings at which it shall present a draft of the plan and facilitate a public discussion to identify and evaluate nontransmission alternatives. The meetings shall be at separate locations within the state, in proximity to the transmission facilities involved or as otherwise required by the board, and each shall be noticed by at least two advertisements, each occurring between one and three weeks prior to the meetings, in newspapers having general circulation within the state and within the municipalities in which the meetings are to be held. Copies of the notices shall be provided to the public service board, the department of public service, any entity appointed by the public service board pursuant to subdivision 209(d)(2) of this title, the agency of natural resources, the division for historic preservation, the department of health, the ~~scenery preservation~~ byways advisory council, the agency of transportation, the attorney general, the chair of each regional planning commission, each retail electricity provider within the state, and any public interest group that requests, or has made a standing request for, a copy of the notice. A verbatim transcript of the meetings shall be prepared by the utility preparing the plan, shall be filed with the public service board and the department of public service, and shall be provided at cost to any person requesting it. The plan shall contain a discussion of the principal contentions made at the meetings by members of the public, by any state agency, and by any utility.

Sec. 26. 30 V.S.A. § 248(a)(4)(C) is amended to read:

(C) At the time of filing its application with the board, copies shall be given by the petitioner to the attorney general and the department of public service, and, with respect to facilities within the state, the department of health, agency of natural resources, historic preservation division, ~~scenery preservation council, state planning office~~, agency of transportation, the agency of agriculture, food and markets and to the chairperson or director of the municipal and regional planning commissions and the municipal legislative body for each town and city in which the proposed facility will be located. At the time of filing its application with the board, the petitioner shall give the byways advisory council notice of the filing.

\* \* \* Rest Areas and Welcome Centers; Funding \* \* \*

Sec. 27. APPORTIONMENT STUDY

The joint fiscal office, in consultation with the commissioner of buildings and general services or designee and the secretary of transportation or designee, shall study how the cost of constructing, rehabilitating, maintaining, staffing, and operating rest areas, information centers, and welcome centers

could be apportioned between the general fund and the transportation fund. The joint fiscal office shall submit a report of its findings to the joint transportation oversight committee by November 1, 2011.

\* \* \* State Highway Condemnation Law Study Committee \* \* \*

Sec. 28. STATE HIGHWAY CONDEMNATION LAW STUDY COMMITTEE

(a) A study committee is established, consisting of a member of the house committee on transportation designated by the speaker, a member of the house committee on judiciary designated by the speaker, a member of the senate committee on transportation designated by the committee on committees, a member of the senate committee on judiciary designated by the committee on committees, a representative of the Vermont Bar Association designated by the association, a representative of the Vermont League of Cities and Towns designated by the league, a representative of the Vermont Society of Land Surveyors designated by the society, and the secretary of transportation or designee who shall serve as chair.

(b) The chair shall call the first meeting of the committee to be held by September 1, 2011, and the committee is authorized to hold up to five in-person meetings. The agency of transportation shall provide administrative support for the committee, and the office of legislative council shall provide staff service to the committee. The secretary of transportation or designee and staff of the office of legislative council shall prepare the report required under subsection (e) of this section based on the findings of the committee, and the committee shall terminate upon delivery of this report.

(c) The committee shall investigate possible changes in the state's highway condemnation law set forth in chapter 5 of Title 19 to achieve improved integration with the transportation planning process, federal and state environmental reviews, legislative oversight of the transportation program under 19 V.S.A. § 10g, and the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. § 4601 et seq. The committee also shall investigate the effect of possible changes to chapter 5 of Title 19 on other provisions of law that reference and rely upon the procedures set forth in that chapter.

(d) For attendance at a meeting when the general assembly is not in session, legislative members of the committee shall be entitled to per diem compensation and expense reimbursement as provided in 2 V.S.A. § 406(a).

(e) The committee shall deliver a report of its findings, including any recommendations for proposed legislation, to the house and senate committees on transportation and on judiciary by January 15, 2012.

\* \* \* Sign and Travel Information Law \* \* \*

Sec. 29. 10 V.S.A. § 494 is amended to read:

§ 494. EXEMPT SIGNS

The following signs are exempt from the requirements of this chapter except as indicated in section 495 of this title:

\* \* \*

(16) ~~[Repealed.]~~ Signs displaying a message of congratulations, condolences, birthday wishes, or displaying a message commemorating a personal milestone or event; provided, however, any such message is maintained for not more than two weeks.

\* \* \*

Sec. 30. TRAVEL INFORMATION COUNCIL – RULEMAKING AND RECOMMENDATIONS

(a) By July 1, 2012, the travel information council shall, pursuant to the rulemaking authority granted in 10 V.S.A. § 484(b), adopt rules as to what constitutes flashing intermittent or moving lights or animated or moving parts within the meaning of 10 V.S.A. § 495(a)(3). In adopting these rules, the travel information council shall consider reliable empirical studies of the effect of changing or flashing signs on traffic safety; the current state of sign technology and expected future developments in sign technology; and the findings set forth in 10 V.S.A. § 482 concerning the value of the scenic resources of the state, the importance of providing information regarding services, accommodations, and points of interest to the traveling public, and the hazard created by the proliferation of outdoor advertising. The agency of transportation shall provide staff and administrative support during the rulemaking process.

(b) The travel information council shall study whether, consistent with the legislative findings set forth in 10 V.S.A. § 482, and based on the council's experience enforcing 10 V.S.A. chapter 21, the list of exempt signs at 10 V.S.A. § 494 should be amended. The council shall report its findings to the house and senate committees on transportation and to the house and senate committees on natural resources and energy by January 15, 2012.

\* \* \* Motor Fuel Transportation Infrastructure Assessment \* \* \*

Sec. 31. 23 V.S.A. § 3106(a) is amended to read:

(a) Except for sales of motor fuels between distributors licensed in this state, which sales shall be exempt from the tax and from the motor fuel transportation infrastructure assessment, in all cases not exempt from the tax

under the laws of the United States at the time of filing the report required by section 3108 of this title, each distributor shall pay to the commissioner a tax of \$0.19 upon each gallon of motor fuel sold by the distributor, and a motor fuel transportation infrastructure assessment in the amount of two percent of the retail price ~~exclusive of all federal and state taxes~~ upon each gallon of motor fuel sold by the distributor, exclusive of: all federal and state taxes, the petroleum distributor licensing fee established by 10 V.S.A. § 1942, and the motor fuel transportation infrastructure assessment authorized by this section. The retail price shall be based upon the average retail prices for regular gasoline determined and published by the department of public service. The retail price applicable for the January–March quarter shall be the average of the retail prices published by the department of public service the prior October, November, and December; and the retail price applicable in each succeeding calendar quarter shall be equal to the average of the retail prices published by the department of public service in the preceding quarter. The distributor shall also pay to the commissioner a tax and a motor fuel transportation infrastructure assessment in the same amounts upon each gallon of motor fuel used within the state by him or her.

\* \* \* Public Transit Advisory Council \* \* \*

Sec. 32. 24 V.S.A. § 5084 is amended to read:

§ 5084. PUBLIC TRANSIT ADVISORY COUNCIL

(a) A public transit advisory council shall be created by the secretary of transportation under 19 V.S.A. § 7(f)(5), to consist of the following members:

- (1) the secretary of transportation or designee;
- (2) ~~the executive director of the Vermont public transportation association;~~
- (~~3~~) three representatives of the Vermont public transportation association;
- (~~4~~)(3) a representative of the Chittenden County transportation authority;
- (~~5~~)(4) the secretary of human services or designee;
- (~~6~~)(5) the commissioner of employment and training labor or designee;
- (~~7~~)(6) the secretary of commerce and community development or designee;
- (~~8~~)(7) a representative of the Vermont center for independent living;
- (~~9~~)(8) a representative of the ~~council~~ community of Vermont elders;

- (10)(9) a representative of private bus operators and taxi services;
- (11)(10) a representative of Vermont intercity bus operators;
- (12)(11) a representative of the Vermont association of planning and development agencies;
- (13)(12) a representative of the Vermont league of cities and towns;
- (14)(13) a citizen appointed by the governor;
- (15)(14) a member of the senate, appointed by the committee on committees; and
- (16)(15) a member of the house of representatives, appointed by the speaker.

\* \* \*

\* \* \* Public Transportation Planning; Annual Reporting \* \* \*

Sec. 33. 24 V.S.A. § 5089(b) is amended to read:

(b) Recognizing that the growing demand for new regional and commuter services must be considered within the context of the continuing need for local transit services that meet basic mobility needs, the agency of transportation shall consult annually with the regional planning commissions and public transit providers in advance of the award of available planning funds. The agency shall maintain a working list of both short- and long-term planning needs, goals, and objectives that balances the needs for regional service with the need for local service. Available planning funds shall be awarded in accordance with state and federal law and as deemed necessary and appropriate by the agency following consultation with the regional planning commissions and the public transit providers. ~~The agency shall report annually to the general assembly on planning needs, expenditures, and cooperative planning efforts.~~

Sec. 34. 24 V.S.A. § 5092 is amended to read:

§ 5092. REPORTS

The agency of transportation, in cooperation with the public transit advisory council, shall develop an annual report of financial and performance data of all public transit systems that receive operating subsidies in any form from the state or federal government, including but not limited to subsidies related to the elders and persons with disabilities transportation program for service and capital equipment. Financial and performance data on the elders and persons with disabilities transportation program shall be a separate category in the report. The report shall be modeled on the Federal Transit Administration's

national transit database program with such modifications as appropriate for the various services, ~~including the~~ and guidance found in ~~the most current short-range public transportation plans and~~ the most current state policy plan. The report shall describe any action taken by the agency pursuant to contractual authority to terminate funding for routes or to request service changes for failure to meet performance standards. The report shall be available to the general assembly by January 15 of each year.

\* \* \* Temporary Siting of Meteorological Stations \* \* \*

Sec. 35. 30 V.S.A. § 246 is amended to read:

§ 246. TEMPORARY SITING OF METEOROLOGICAL STATIONS

(a) For purposes of this section, a “meteorological station” consists of one temporary tower, which may include guy wires, and attached instrumentation to collect and record wind speed, wind direction, and atmospheric conditions.

(b) The public service board shall establish by rule or order standards and procedures governing application for, and issuance or revocation of, a certificate of public good for the temporary installation of one or more meteorological stations under the provisions of section 248 of this title. A meteorological station shall be deemed to promote the public good of the state if it is in compliance with the criteria of this section and the board rules or orders. An applicant for a certificate of public good for a meteorological station shall be exempt from the requirements of subsection 202(f) of this title.

(c) In developing rules or orders, the board:

(1) Shall develop a simple application form and shall require that completed applications be filed with the board, the department of public service, the agency of natural resources, the agency of transportation, and the municipality in which the meteorological station is proposed to be located.

\* \* \*

\* \* \* Transportation Program; Project Dates \* \* \*

Sec. 36. 19 V.S.A. § 10g(o) is added to read:

(o) For projects initially approved by the general assembly for inclusion in the state transportation program after January 1, 2006, the agency’s proposed transportation program prepared pursuant to subsection (a) of this section and the official transportation program prepared pursuant to subsection (f) of this section shall include the year in which such projects were first approved by the general assembly.

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\* \* \* Possession of Valid Operator's License \* \* \*

Sec. 37. 23 V.S.A. § 611 is amended to read:

§ 611. POSSESSION OF LICENSE CERTIFICATE

Every licensee shall have his or her operator's license certificate in his or her immediate possession at all times when operating a motor vehicle. However, no person charged with violating this section or section 610 of this title shall be convicted if he or she produces in court or to the arresting enforcement officer an operator's license certificate theretofore issued to him or her and valid which, at the time of his or her arrest or within 14 days following its expiration citation, was valid or had expired within the prior 14 days.

\* \* \* Inspection Stickers \* \* \*

Sec. 38. 23 V.S.A. § 1222 is amended to read:

§ 1222. INSPECTION OF REGISTERED VEHICLES

(a) Except for school buses which shall be inspected as prescribed in section 1282 of this title and motor buses as defined in subdivision 4(17) of this title which shall be inspected twice during the calendar year at six-month intervals, all motor vehicles registered in this state shall be inspected once each year. Any motor vehicle, trailer or semi-trailer not currently inspected in this state shall be inspected within 15 days from the date of its registration in the state of Vermont.

(b) The inspections shall be made at garages or qualified service stations, designated by the commissioner as inspection stations, for the purpose of determining whether those motor vehicles are properly equipped and maintained in good mechanical condition. The charges for such inspections made by garages or qualified service stations designated to conduct periodic inspections shall be subject to the approval of the commissioner.

(~~b~~) If a fee is charged for inspection, it shall be based upon the hourly rate charged by each official inspection station or it may be a flat rate fee and, in either instance, the fee shall be prominently posted and displayed beside the official inspection station certificate. In addition, the official inspection station may disclose the state inspection certificate charge on the repair order as a separate item and collect the charge from the consumer.

(c) A person shall not operate a motor vehicle unless it has been inspected as required by this section and has a valid certification of inspection affixed to it. A person shall be subject to a fine of not more than \$5.00 if he or she is cited for a violation of this section within 14 days of expiration of the motor

vehicle inspection sticker. The month of next inspection for all motor vehicles shall be shown on the current inspection certificate affixed to the vehicle.

~~(e)~~(d) Notwithstanding the provisions of subsection (a) of this section, an exhibition vehicle of model year 1940 or before registered as prescribed in section 373 of this title or a trailer registered as prescribed in subdivision 371(a)(1)(A) of this title shall be exempt from inspection; provided, however, the vehicle must be equipped as originally manufactured, must be in good mechanical condition, and must meet the applicable standards of the inspection manual.

\* \* \* Parking for Blind and Disabled \* \* \*

Sec. 39. 23 V.S.A. § 304a(d) is amended to read:

(d) A person ~~who is blind or~~ who has an ambulatory disability ~~may or an individual transporting a person who is blind shall be permitted to park and to park~~ without fee for ~~not more than~~ at least 10 continuous days in a parking zone space or area which is restricted as to the length of time parking is permitted or where parking fees are assessed, except that this minimum period shall be 24 continuous hours for parking in a state or municipally operated parking garage. This section shall not apply to ~~zones spaces or areas~~ in which parking, standing, or stopping of all vehicles is prohibited, by law or by any parking ban, or which are reserved for special vehicles, ~~or where parking is prohibited by any parking ban.~~ As a condition to this privilege, the vehicle shall display the special handicapped plate or placard issued by the commissioner or a special registration license plate or placard issued by any other jurisdiction.

Sec. 40. 20 V.S.A. § 2904 is amended to read:

#### § 2904. PARKING SPACES

Any parking facility on the premises of a public building shall contain at least the number of parking spaces required by ADAAG standards, and in any event at least one parking space, as ~~free~~ designated parking for individuals with ambulatory disabilities or blind individuals patronizing the building. The space or spaces shall be accessibly and proximately located to the building, and, subject to 23 V.S.A. § 304a(d), shall be provided free of charge. Consideration shall be given to the distribution of spaces in accordance with the frequency and persistence of parking needs. Such spaces shall be designated by a clearly visible sign that cannot be obscured by a vehicle parked in the space, by the international symbol of access and, where appropriate, by the words "van accessible"; shall otherwise conform to ADAAG standards; and shall be in accordance with the standards established under section 2902 of this title.

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Sec. 41. EFFECTIVE DATES

(a) This section, Secs. 7a (supplemental paving spending), 10 (western rail corridor grant application), 13 (authority to reduce fiscal year 2011 appropriations), 16 (White River Junction railroad station), 17 (aviation program plan), 20 (utility adjustments), and 29–30 (sign law provisions) shall take effect on passage.

(b) Sec. 36 (transportation program project dates) shall take effect on January 1, 2012.

(c) All other sections of this act shall take effect on July 1, 2011.

*RICHARD T. MAZZA  
M. JANE KITCHEL  
RICHARD A. WESTMAN*

*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.

**Rules Suspended; Bill Passed**

**S. 95.**

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

An act relating to exemptions for newspaper deliverers from the unemployment statutes; relieving an employer's experience rating record of charges; studying the receipt of unemployment compensation between academic terms; allowing school employees to be paid wages over the course of a year; and requiring employers to furnish required work apparel.

Was placed on all remaining stages of its passage forthwith.

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

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

**H. 198.**

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

An act relating to a transportation policy to accommodate all users.

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

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

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

#### **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:

**H. 11, H. 26, H. 201, H. 264, H. 443.**

#### **Recess**

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

#### **Called to Order**

The Senate was called to order by the President.

#### **Message from the House No. 66**

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

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

**H. 237.** An act relating to the use value program.

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

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

**S. 77.** An act relating to water testing of private wells.

**S. 92.** An act relating to the protection of students' health by requiring the use of safe cleaning products in schools.

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 proposals of amendment to the following House bills:

**H. 153.** An act relating to human trafficking.

**H. 438.** An act relating to the department of banking, insurance, securities, and health care administration.

**H. 448.** An act relating to contributions to the state and municipal employees' retirement systems.

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 Senate bill of the following title:

**S. 94.** An act relating to miscellaneous amendments to the motor vehicle laws.

And has adopted the same on its part.

**House Proposal of Amendment Concurred In with Amendment; Rules Suspended; Bill Messaged**

**S. 108.**

House proposal of amendment to Senate bill entitled:

An act relating to effective strategies to reduce criminal recidivism.

Was taken up.

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

Sec. 1. FINDINGS

The general assembly finds:

(1) From 1996 to 2006, Vermont's prison population doubled. To accommodate this increase, spending on corrections increased 129 percent from \$48 million in fiscal year 1996 to \$130 million in fiscal year 2008. Yet during this time, Vermont's crime rate remained stable and the state has one of the lowest crime rates in the country.

(2) In 2008, the Pew Center on the States estimated that if trends continued, the state prison population would increase 23 percent by 2018, resulting in additional costs of \$82 to \$206 million. In an effort to stem the growth of the prison population, reduce spending on corrections, and increase public safety, the legislature passed justice reinvestment legislation in 2008. Since that time, Vermont's prison population growth has slowed, and in the last year has declined.

(3) A key component to justice reinvestment is using evidence-based practices to reduce recidivism. The Council of State Government's Justice Center, a leader in providing nonpartisan advice to states on justice reinvestment issues, has identified four key areas to form the basis of criminal justice policy decisions aimed at reducing recidivism.

(A) Focus on the offenders most likely to commit crimes. Studies show that intensive supervision and incarceration can actually increase recidivism rates for low-risk offenders; thus, identifying exactly who should be the focus of the state's efforts is critical.

(B) Invest in programs that work and ensure that they are working well. Drug treatment both in prison and the community, cognitive-behavioral treatment programs, and intensive community supervision combined with treatment oriented programs have shown to reduce recidivism.

(C) Strengthen supervision and deploy swift and certain sanctions. Policymakers should ensure that the offenders most likely to reoffend receive the most intensive supervision, and balance monitoring compliance with participation in programs that can reduce risk to public safety, and respond with immediate, certain, and proportional sanctions.

(D) Use strategies that reduce recidivism in communities where there are a high number of persons under the supervision of the department of corrections.

(4) No national standard exists for defining recidivism. Measures of recidivism used by various correctional agencies include arrest, convictions and return to incarceration. Standard follow-up periods are also essential in comparing recidivism rates. Vermont's primary method of measuring recidivism is the percent of offenders reconvicted for a new offense within three years, which currently stands at 52 percent. However, most states and the Bureau of Justice Statistics use the percent of offenders returned to prison for a new sentence of one year or more or for a revocation of supervision to measure recidivism. Thus, Vermont includes some offenders in recidivist populations who are not counted in other jurisdictions.

\* \* \* Indeterminate Sentences \* \* \*

Sec. 2. 13 V.S.A. § 7031 is amended to read:

§ 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

(a) When a respondent is sentenced to any term of imprisonment, other than for life, the court imposing the sentence shall not fix the term of imprisonment, unless such term is definitely fixed by statute, but shall establish a maximum and may establish a minimum term for which such

respondent may be held in imprisonment. The maximum term shall not be more than the longest term fixed by law for the offense of which the respondent is convicted and the minimum term shall be not less than the shortest term fixed by law for such offense. If the court suspends a portion of said sentence, the unsuspended portion of such sentence shall be the minimum term of sentence solely for the purpose of any reductions. A sentence shall not be considered fixed as long as the maximum and minimum terms are not identical.

\* \* \*

\* \* \* Nonviolent Misdemeanors \* \* \*

Sec. 3. 28 V.S.A. § 808 is amended to read:

§ 808. FURLOUGHS GRANTED TO ~~INMATES~~ OFFENDERS

(a) The department may extend the limits of the place of confinement of an inmate offender at any correctional facility if the inmate offender agrees to comply with such conditions of supervision the department, in its sole discretion, deems appropriate for that inmate's offender's furlough. The department may authorize furlough for any of the following reasons:

- (1) To visit a critically ill relative.
- (2) To attend a the funeral of a relative.
- (3) To obtain medical services.
- (4) To contact prospective employers.
- (5) To secure a suitable residence for use upon discharge.

(6) To continue the process of reintegration initiated in a correctional facility. The inmate offender may be placed in a program of conditional reentry status by the department upon the inmate's offender's completion of the minimum term of sentence. While on conditional reentry status, the inmate offender shall be required to participate in programs and activities that hold the inmate offender accountable to victims and the community pursuant to section 2a of this title.

~~(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.~~

~~(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, 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.~~

~~(8) To prepare for reentry into the community.~~

~~(A) Any offender sentenced to incarceration may be furloughed to the community up to 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 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.~~

~~(B) Except as provided in subdivision (D) of this subdivision (8), any offender sentenced to incarceration is eligible to earn five days toward reintegration furlough, to be applied prior to the expiration of the offender's minimum term, for each month served in the correctional facility during which the inmate has complied with the case plan prepared pursuant to subsection 1(b) of this title and has obeyed all rules and regulations of the facility. Days~~

~~shall be awarded only if the commissioner determines, in his or her sole discretion, that they have been earned in accordance with rules adopted by the department pursuant to subdivision (C) of this subdivision (8) and shall in no event be awarded automatically. The commissioner's determination shall be final. Days earned under this subdivision may be awarded in addition to the reintegration furlough authorized in subdivision (A) of this subdivision (8). The commissioner shall have the discretion to determine the frequency with which calculations under this subdivision shall be made provided they are made at least as frequently as every six months.~~

~~(C) The commissioner may authorize reintegration furlough under subdivisions (A) and (B) of this subdivision (8) only if the days are awarded in accordance with rules adopted pursuant to chapter 25 of Title 3 designed to:~~

~~(i) Evaluate factors such as risk of reoffense, history of violent behavior, history of compliance with community supervision, compliance with the case plan, progress in treatment programs designed to reduce criminal risk, and obedience to rules and regulations of the facility.~~

~~(ii) Ensure adequate departmental supervision of the offender when furloughed into the community.~~

~~(D) The commissioner may not award days toward reintegration furlough under subdivision (B) of this subdivision (8) if the offender is sentenced to a minimum term of incarceration in excess of five years or is incarcerated for a conviction of one or more of the following crimes:~~

~~(i) Arson causing death as defined in 13 V.S.A. § 501;~~

~~(ii) Assault and robbery with a dangerous weapon as defined in subsection 608(b) of Title 13;~~

~~(iii) Assault and robbery causing bodily injury as defined in subsection 608(e) of Title 13;~~

~~(iv) Aggravated assault as defined in 13 V.S.A. § 1024;~~

~~(v) Murder as defined in 13 V.S.A. § 2301;~~

~~(vi) Manslaughter as defined in 13 V.S.A. § 2304;~~

~~(vii) Kidnapping as defined in 13 V.S.A. § 2405;~~

~~(viii) Unlawful restraint as defined in 13 V.S.A. §§ 2406 and 2407;~~

~~(ix) Maiming as defined in 13 V.S.A. § 2701;~~

~~(x) Sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (2);~~

~~(xi) Aggravated sexual assault as defined in 13 V.S.A. § 3253;~~

~~(xii) Burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(e); or~~

~~(xiii) Lewd or lascivious conduct with a child as defined in 13 V.S.A. § 2602.~~

~~(E) An offender incarcerated for driving while under the influence of alcohol under subsection 1210(d) or (e) may be furloughed to the community up to 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 270 days shall not be eligible for furlough under this subdivision until the offender has served at least 90 days of his or her minimum term of incarceration and provided that the commissioner uses electronic equipment to continually monitor the offender's location and blood alcohol level, or other equipment such as an alcohol ignition interlock system, or both.~~

~~(F) Prior to release under this subdivision (8), the department shall screen and, if appropriate, assess each felony drug and property offender for substance abuse treatment needs using an assessment tool designed to assess the suitability of a broad range of treatment services, and it shall use the results of this assessment in preparing a reentry plan. The department shall attempt to identify all necessary services in the reentry plan and work with the offender to make connections to necessary services prior to release so that the offender can begin receiving services immediately upon release.~~

(b) An inmate offender granted a furlough pursuant to this section may be accompanied by an employee of the department, in the discretion of the commissioner, during the period of the inmate's offender's furlough. The department may use electronic monitoring equipment such as global position monitoring, automated voice recognition telephone equipment, and transdermal alcohol monitoring equipment to enable more effective or efficient supervision of individuals placed on furlough.

(c) The extension of the limits of the place of confinement authorized by this section shall in no way be interpreted as a probation or parole of the inmate offender, but shall constitute solely a permitted extension of the limits of the place of confinement for inmates offenders committed to the custody of the commissioner.

(d) When any enforcement officer, as defined in 23 V.S.A. § 4, employee of the department, or correctional officer responsible for supervising an offender believes the offender is in violation of any verbal or written condition of the furlough, the officer or employee may immediately lodge the offender at a correctional facility or orally or in writing deputize any law enforcement

officer or agency to arrest and lodge the offender at such a facility. The officer or employee shall subsequently document the reason for taking such action.

(e) ~~{Deleted.}~~

~~(f) Medical furlough.~~ The commissioner may place on medical furlough any inmate offender who is serving a sentence, including an inmate offender who has not yet served the minimum term of the sentence, who is diagnosed as suffering from a terminal or debilitating condition so as to render the inmate offender unlikely to be physically capable of presenting a danger to society. The commissioner shall develop a policy regarding the application for, standards for eligibility of and supervision of persons on medical furlough. The inmate offender may be released to a hospital, hospice, other licensed inpatient facility or other housing accommodation deemed suitable by the commissioner.

~~(g) Treatment furlough.~~ ~~The department may place on furlough an inmate who has not yet served the minimum term of the sentence, provided the approval of the sentencing judge is first obtained, who, in the department's determination, needs residential treatment services not available in a correctional facility. The services may include treatment for substance abuse or personal violence or any other condition that the department has determined should be addressed in order to reduce the inmate's risk to reoffend or cause harm to himself or herself or to others in the facility. The inmate shall be released only to a hospital or residential treatment facility that provides services to the general population. The state's share of the cost of placement in such a facility, net of any private or federal participation, shall be paid pursuant to memoranda of agreement between and within state agencies reflective of their shared responsibilities to maximize the efficient and effective use of state resources. In the event that a memorandum of agreement cannot be reached, the secretary of administration shall make a final determination as to the manner in which costs will be allocated.~~

~~(h)~~(f) While appropriate community housing is an important consideration in release of inmates offenders, the department of corrections shall not use lack of housing as the sole factor in denying furlough to inmates offenders 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 offender will be served by reentering the community on furlough.

(g) Subsections (b)–(f) of this section shall also apply to sections 808a and 808c of this title.

Sec. 3a. 28 V.S.A. §§ 808a–808d are added to read:

§ 808a. TREATMENT FURLOUGH

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on treatment 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.

(b) Provided the approval of the sentencing judge is first obtained, the department may place on treatment furlough an offender who has not yet served the minimum term of the sentence, who, in the department's determination, needs residential treatment services not available in a correctional facility. The services may include treatment for substance abuse or personal violence or any other condition that the department has determined should be addressed in order to reduce the offender's risk to reoffend or cause harm to himself or herself or to others in the facility. The offender shall be released only to a hospital or residential treatment facility that provides services to the general population. The state's share of the cost of placement in such a facility, net of any private or federal participation, shall be paid pursuant to memoranda of agreement between and within state agencies reflective of their shared responsibilities to maximize the efficient and effective use of state resources. In the event that a memorandum of agreement cannot be reached, the secretary of administration shall make a final determination as to the manner in which costs will be allocated.

(c)(1) Except as provided in subdivision (2) of this subsection, the department, in its own discretion, may place on treatment furlough an offender who has not yet served the minimum term of his or her sentence for an eligible misdemeanor as defined in section 808d of this title if the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism. An offender shall not be eligible for treatment furlough under this subdivision, if, at the time of sentencing, the court makes written findings that treatment furlough is not likely to ensure public safety or victim safety, or is not likely to reduce the risk of recidivism for the offender.

(2) Driving under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. §§ 1201 and 1210(c) and boating under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323 shall be considered eligible misdemeanors for the sole purpose of subdivision (1) of this subsection.

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§ 808b. HOME CONFINEMENT FURLOUGH

(a) An offender 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. Home confinement furlough shall be 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, the department, or both.

(b) The department, in its own discretion, may place on home confinement furlough an offender who has not yet served the minimum term of the sentence for an eligible misdemeanor as defined in section 808d of this title if the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism. An offender shall not be eligible for home confinement furlough under this subsection, if, at the time of sentencing, the court makes written findings that home confinement furlough is not likely to ensure public safety or victim safety, or is not likely to reduce the risk of recidivism for the offender, or the criteria for a home confinement furlough set forth in this section have not been met. Such a finding shall be set forth as a condition on the mittimus.

(c) A home confinement furlough shall not exceed a total of 180 days and shall require the defendant:

(1) 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

(2) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.

(d) In determining whether a home confinement furlough sentence is appropriate and whether a place of residence is suitable for such a sentence, all of the following shall be considered:

(1) The nature of the offense with which the defendant was charged and the nature of the offense of which the defendant was convicted.

(2) The defendant's criminal history record, history of violence, medical and mental health needs, history of supervision, and risk of flight.

(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.

(e) At the request of the department, the court may vacate a condition of a mittimus prohibiting home confinement issued under subsection (b) of this section, based upon a showing of changed circumstances by the department.

#### § 808c. REINTEGRATION FURLOUGH

(a)(1) To prepare for reentry into the community, an offender sentenced to incarceration may be furloughed to the community up to 180 days prior to completion of the minimum sentence, at the commissioner's discretion and in accordance with rules adopted pursuant to subsection (c) of this section. Except as provided in subdivision (2) of this subsection, an offender sentenced to a minimum term of fewer than 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.

(2) An offender sentenced to a minimum term of fewer than 365 days for an eligible misdemeanor as defined in section 808d of this title shall be eligible for furlough under this subdivision, provided the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism. An offender shall not be eligible for a reintegration furlough under this subdivision if, at the time of sentencing, the court makes written findings that it is not likely to ensure public safety or victim safety, or is not likely to reduce the risk of recidivism for the offender.

(b) Except as provided in subsection (d) of this section, an offender sentenced to incarceration is eligible to earn five days toward reintegration furlough, to be applied prior to the expiration of the offender's minimum term, for each month served in the correctional facility during which the offender has complied with the case plan prepared pursuant to subsection 1(b) of this title and has obeyed all rules and regulations of the facility. Days shall be awarded only if the commissioner determines, in his or her sole discretion, that they have been earned in accordance with rules adopted by the department pursuant to subsection (c) of this section and shall in no event be awarded automatically. The commissioner's determination shall be final. Days earned under this subsection may be awarded in addition to the reintegration furlough authorized in subsection (a) of this section. The commissioner shall have the discretion to determine the frequency with which calculations under this subsection shall be made provided they are made at least as frequently as every six months.

(c) The commissioner may authorize reintegration furlough under subsections (a) and (b) of this section only if the days are awarded in accordance with rules adopted pursuant to chapter 25 of Title 3 designed to do the following:

(1) Evaluate factors such as risk of reoffense, history of violent behavior, history of compliance with community supervision, compliance with the case plan, progress in treatment programs designed to reduce criminal risk, and obedience to rules and regulations of the facility.

(2) Ensure adequate departmental supervision of the offender when furloughed into the community.

(d) The commissioner may not award days toward reintegration furlough under subsection (b) of this section if the offender is sentenced to a minimum term of incarceration in excess of five years or is incarcerated for a conviction of one or more of the following crimes:

(1) Arson causing death as defined in 13 V.S.A. § 501;

(2) Assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);

(3) Assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);

(4) Aggravated assault as defined in 13 V.S.A. § 1024;

(5) Murder as defined in 13 V.S.A. § 2301;

(6) Manslaughter as defined in 13 V.S.A. § 2304;

(7) Kidnapping as defined in 13 V.S.A. § 2405;

(8) Unlawful restraint as defined in 13 V.S.A. §§ 2406 and 2407;

(9) Maiming as defined in 13 V.S.A. § 2701;

(10) Sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (2);

(11) Aggravated sexual assault as defined in 13 V.S.A. § 3253;

(12) Burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c); or

(13) Lewd or lascivious conduct with a child as defined in 13 V.S.A. § 2602.

(e) An offender incarcerated for driving while under the influence of alcohol under 23 V.S.A. § 1210(d) or (e) may be furloughed to the community up to 180 days prior to completion of the minimum sentence at the commissioner's discretion and in accordance with rules adopted pursuant to

subsection (d) of this section, provided that an offender sentenced to a minimum term of fewer than 270 days shall not be eligible for furlough under this subsection until the offender has served at least 90 days of his or her minimum term of incarceration and provided that the commissioner uses electronic equipment to monitor the offender's location and blood alcohol level continually, or other equipment such as an alcohol ignition interlock system, or both.

(f) Prior to release under this section, the department shall screen and, if appropriate, assess each felony drug and property offender for substance abuse treatment needs using an assessment tool designed to assess the suitability of a broad range of treatment services, and it shall use the results of this assessment in preparing a reentry plan. The department shall attempt to identify all necessary services in the reentry plan and work with the offender to make connections to necessary services prior to release so that the offender can begin receiving services immediately upon release.

§ 808d. DEFINITION; ELIGIBLE MISDEMEANOR; FURLOUGH AT THE DISCRETION OF THE DEPARTMENT

For purposes of sections 808a–808c of this title, “eligible misdemeanor” means a misdemeanor crime that is not one of the following crimes:

(1) Cruelty to animals involving death or torture as defined in 13 V.S.A. § 352(1) and (2).

(2) Simple assault as defined in 13 V.S.A. § 1023(a)(1).

(3) Simple assault with a deadly weapon as defined in 13 V.S.A. § 1023(a)(2).

(4) Simple assault of a law enforcement officer, firefighter, emergency medical personnel member, or health care worker while he or she is performing a lawful duty as defined in 13 V.S.A. § 1023(a)(1).

(5) Reckless endangerment as defined in 13 V.S.A. § 1025.

(6) Simple assault of a correctional officer as defined in 13 V.S.A. § 1028a(a)(1).

(7) Simple assault of a correctional officer as defined in 13 V.S.A. § 1028a(b).

(8) Violation of an abuse prevention order, first offense, as defined in 13 V.S.A. § 1030.

(9) Stalking as defined in 13 V.S.A. § 1062.

(10) Domestic assault as defined in 13 V.S.A. § 1042.

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(11) Cruelty to children over 10 years of age by one over 16 years of age as defined in 13 V.S.A. § 1304.

(12) Cruelty by a person having custody of another as defined in 13 V.S.A. § 1305.

(13) Abuse, neglect, or exploitation of a vulnerable adult as provided in 13 V.S.A. §§ 1376-1381.

(14) Hate-motivated crime as defined in 13 V.S.A. § 1455 or burning of a cross or other religious symbol as defined in 13 V.S.A. § 1456.

(15) Voyeurism as defined in 13 V.S.A. § 2605.

(16) Prohibited acts as defined in 13 V.S.A. § 2632.

(17) Obscenity as defined in chapter 63 of Title 13.

(18) Possession of child pornography as defined in 13 V.S.A. § 2827.

(19) Possession of a dangerous or deadly weapon in a school bus or school building as defined in 13 V.S.A. § 4004(a).

(20) Possession of a dangerous or deadly weapon on school property with intent to injure as defined in 13 V.S.A. § 4004(b).

(21) Possession of a firearm in court as defined in 13 V.S.A. § 4016(b)(1).

(22) Possession of a dangerous or deadly weapon in court as defined in 13 V.S.A. § 4016(b)(2).

(23) Failure to comply with the sex offender registry as defined in 13 V.S.A. § 5409.

(24) Careless or negligent operation of a motor vehicle resulting in serious bodily injury or death as defined in 23 V.S.A. § 1091(b).

(25) Driving under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. §§ 1201 and 1210(c).

(26) Boating under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323.

### Sec. 3b. EMERGENCY RULES

The department of corrections may adopt emergency rules in accordance with 3 V.S.A. § 844 for the purpose of compliance with 28 V.S.A. § 808c(c) as it relates to 28 V.S.A. § 808c(a)(2).

Sec. 4. NONVIOLENT MISDEMEANOR SENTENCE REVIEW COMMITTEE

(a) Creation of committee. There is created a nonviolent misdemeanor sentence review committee to propose alternatives to incarceration for nonviolent, low-risk misdemeanor offenses.

(b) Membership. The committee shall be composed of the following members:

(1) the chair of the senate committee on judiciary;

(2) the chair of the house committee on judiciary;

(3) a member of the senate appointed by the senate committee on committees;

(4) a member of the house appointed by the speaker of the house;

(5) the governor's special assistant on corrections; and

(6) the administrative judge.

(c) Powers and duties.

(1) The committee shall:

(A) Review the statutory sentences for all nonviolent misdemeanor offenses as defined in 28 V.S.A. § 301.

(B) Consider whether incarceration for such misdemeanors may be counterproductive because it disrupts stabilizing factors such as housing, employment, and treatment.

(C) Examine the policy of housing low-risk misdemeanants with the general prison population and whether alternatives should be employed.

(D) Consider restorative justice principles in its deliberations.

(2) The committee shall consult stakeholders while engaging in its mission.

(3) For purposes of its study of these issues, the committee shall have the legal and administrative assistance of the office of legislative council and the department of corrections.

(d) Report. By December 1, 2011, the committee shall report to the general assembly on its findings and any recommendations for legislative action.

(e) Number of meetings; term of committee; reimbursement. The committee may meet no more than five times and shall cease to exist on January 1, 2012.

(f) Reimbursement. For attendance at meetings during adjournment of the general assembly, legislative members of the committee shall be entitled to compensation and reimbursement for expenses as provided in 2 V.S.A. § 406; and other members of the committee who are not employees of the state of Vermont shall be reimbursed at the per diem rate set in 32 V.S.A. § 1010.

\* \* \* Measuring Recidivism \* \* \*

#### Sec. 5. STANDARD MEASURE OF RECIDIVISM

(a) Currently, no national standard exists for defining recidivism. Measures of recidivism used by correctional agencies include arrest, convictions, and return to incarceration. Standard follow-up periods are also necessary when comparing recidivism rates. In general, offenders tracked for three years will have higher recidivism rates than offenders only tracked for one year due to a longer period at risk.

(b)(1) In order to target sentences and services effectively to reduce recidivism, the department of corrections shall calculate the rate of recidivism based upon offenders who are sentenced to more than one year of incarceration, who, after release from incarceration, return to prison within three years for a conviction for a new offense or a violation of supervision resulting, and the new incarceration sentence is at least 90 days.

(2) The department shall report on this measure to the general assembly in the department's annual report.

(c) It is the intent of the general assembly that the department of corrections shall generate data based on the measurement described in subsection (b) of this section, including recidivism rates and costs for furlough and intermediate sanctions, and present the data to the joint committee on corrections oversight no later than September 30, 2011.

(d) Upon receipt of the data referred to in subsection (c) of this section and no later than December 15, 2011, the joint committee on corrections oversight, in consultation with the department of corrections, shall establish a goal for reducing the number of recidivists over a one- to two-year period.

Sec. 5a. Sec. D9 of No. 146 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

#### Sec. D9. BUDGETARY SAVINGS; ALLOCATIONS IN FISCAL YEAR 2011

(a) In FY 2011, a total of \$6,350,500.00 in investments in communities and services are included in the department of corrections budget. In Sec. B.338 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.

\* \* \*

\* \* \* Strategies \* \* \*

#### Sec. 6. STRATEGIES TO REDUCE RECIDIVISM

Corrections and law enforcement officials are increasingly interested in sharing information that can lead to more effective resource allocation and coordination to reduce recidivism in communities with a high number of persons under the supervision of the department of corrections. Therefore, the department of corrections shall work with the Vermont League of Cities and Towns, the department of state's attorneys and sheriffs' association, and the association of the chiefs of police to develop strategies that coordinate services provided by state, local, and nonprofit entities to persons in the custody of the commissioner of corrections and that enhance public safety. The department shall keep the joint committee on corrections oversight, the senate and house committees on judiciary, and the house committee on corrections and institutions informed of the groups' efforts on this matter.

\* \* \* Early Screening \* \* \*

#### Sec. 7. SCREENING CRIMINAL DEFENDANTS AND ALTERNATIVES TO VIDEO ARRAIGNMENT

(a) Screening defendants in the criminal justice system as early as possible to assess risk and needs is essential to reducing recidivism. The court administrator, 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 develop a statewide plan for screening all persons who are charged with a violent misdemeanor or any felony as early as possible and shall report their efforts to the general assembly no later than October 15, 2011.

(b) The group shall also study and propose alternatives to video arraignments, including the use of conference calls and the existing telephone system used by attorneys to reach their clients in correctional facilities. The group shall report to the house and senate committees on judiciary by October 15, 2011 on the results of the study and status of implementing any alternatives.

\* \* \* Increasing the Use of Home Confinement  
as a Sentencing Option \* \* \*

Sec. 8. USE OF HOME CONFINEMENT AS AN ALTERNATIVE TO INCARCERATION IN A CORRECTIONAL FACILITY

(a) In Sec. 7 of No. 157 of the Acts of the 2009 Adj. Sess. (2010), the general assembly created home confinement furlough whereby the court could sentence a person to serve a term of imprisonment but place the person to serve that term continuously at a preapproved residence under numerous restrictions. Between the date of enactment of the new law—July 1, 2010—and February 28, 2011, home confinement was ordered only 25 times. The general assembly finds that the law is not being utilized with the frequency that the general assembly intended.

(b) The administrative judge, 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 individually and cooperatively to increase awareness among attorneys, judges, and probation officers of the option of home confinement as provided in 28 V.S.A. § 808(b).

(c) The entities identified in subsection (b) of this section shall keep the joint committee on corrections oversight, the senate and house committees on judiciary, and the house committee on corrections and institutions informed of their efforts on this matter.

\* \* \* Video Arraignments \* \* \*

Sec. 9. SUSPENSION OF VIDEO ARRAIGNMENTS; REGIONAL ARRANGEMENTS

The general assembly finds that the use of video conferencing for arraignments has resulted in cost-shifting, higher costs, and logistical problems. Therefore, unless it is necessary for the interests of justice, the use of video conferencing for arraignments shall be suspended until the general assembly determines that there is evidence to support that it can be done in a manner that is cost-effective and efficient and ensures defendants' due process rights.

## Sec. 9a. FEASIBILITY STUDY

(a) The general assembly recognizes that the corrections population is part of the greater community and, therefore, any proposed study for the purpose of reforming offender health care should be conducted within the context and framework of the state's ongoing health care reform efforts for the entire state. The general assembly further recognizes that creating barriers to health care based on one's status as an offender is not in the state's best interests because it contradicts Vermont's efforts to create systems of care that work for all Vermonters.

(b) The agency of administration in conjunction with the joint fiscal office shall conduct a study which draws on resources across states agencies on how the state can best provide quality health care services to people incarcerated in Vermont at a cost savings to the state.

(c) The agency of administration will report its progress to the house committee on corrections and institutions and the house and senate committees on judiciary or before January 15, 2012.

\* \* \* Recidivism Reduction Study \* \* \*

## Sec. 10. RECIDIVISM REDUCTION STUDY, EVALUATION OF WORK CAMPS; VERMONT CENTER FOR JUSTICE RESEARCH

(a) Research suggests that short, swift and certain sanctions may be effective at reducing recidivism among certain groups of offenders. Programs that employ strategies have shown reduced rates of recidivism, drug use, missed appointments with probation officers, and probation revocations for program participants versus rates for control group participants. The general assembly and representatives of all statewide criminal justice agencies have been working to develop an innovative pilot project to reduce recidivism based on such a model, but more information is needed to ascertain how these principles can be applied in Vermont to achieve clearly stated goals set forth by the joint committee on corrections oversight with respect to reductions in recidivism.

(b) The Vermont center for justice research specializes in collecting and analyzing criminal and juvenile justice information and providing technical assistance to state and local criminal justice agencies. The center shall evaluate innovative programs and initiatives, including local programs and prison-based initiatives, best practices, and contemporary research regarding assessments of programmatic alternatives and pilot projects relating to reducing recidivism in the criminal justice system. The center's research shall focus on evidence-based initiatives related to swift and sure delivery of sanctions and effective interventions for offenders. The center shall make its

recommendations to the senate and house committees on judiciary and the joint committee on corrections oversight by December 1, 2011.

(c) In addition to the requirements of subsection (b) of this section, the center shall conduct an outcome assessment of Vermont's two work camps. The evaluation shall focus on:

(1) The percentage of defendants who recidivate after release from the work camp;

(2) When defendants recidivate after release from the work camp;

(3) The nature of crimes committed by defendants who recidivate; and

(4) In which jurisdictions crimes are committed by recidivists.

(d) The center shall issue a final report of its findings to the senate and house committees on judiciary and the joint committee on corrections oversight by January 15, 2012.

\* \* \* Improving Community Supervision

Through a Reduction of Administrative Burden \* \* \*

Sec. 11. DEPARTMENT OF CORRECTIONS; REDUCTION IN ADMINISTRATIVE REQUIREMENTS FOR PROBATION AND PAROLE OFFICERS

To improve community supervision, the department of corrections shall undertake a review of the administrative requirements placed on field officers and shall reduce paperwork handled by these officers. In its efforts, the department shall strongly consider the use of technology to assist field officers and the efficiency of providing portable devices so that officers would not need to leave the field to file reports. The department shall keep the joint committee on corrections oversight, the senate and house committees on judiciary, and the house committee on corrections and institutions informed of their efforts on this matter.

Sec. 12. APPROPRIATION

(a) There is appropriated in fiscal year 2012 the sum of \$4,800.00 from the general fund to the department of corrections for a grant to the Vermont center for justice research to evaluate innovative programs and initiatives, including local programs and prison-based initiatives, best practices, and contemporary research regarding assessments of programmatic alternatives and pilot projects relating to reducing recidivism in the criminal justice system.

(b) There is appropriated in fiscal year 2012 the sum of \$5,600.00 from the general fund to the Vermont center for justice research for the purpose of conducting an outcome assessment of Vermont's two work camps.

(c) There is appropriated in fiscal year 2012 the sum of \$4,000.00 from the general fund to the Vermont criminal information center for the purpose of upgrading the Vermont criminal history information program to accept bulk criminal history requests by the name and date of birth of the research subject.

### Sec. 13. EFFECTIVE DATES

Sec. 2 of this act shall take effect on passage, and the remainder of the act shall take effect on July 1, 2011.

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 an amendment as follows:

The Senate concurs in the House proposal of amendment with the following proposal of amendment thereto:

First: By adding a new section to be numbered Sec. 1 to read as follows:

#### Sec. 1. SHORT TITLE

This act may be referred to and cited as “The War on Recidivism Act.”

And be renumbering the existing Sec. 1 to be Sec. 1a.

Second: In Sec. 3a, in 28 V.S.A. § 808a(c)(1), by striking out the last sentence, and in 28 V.S.A. § 808b, by striking the last two sentences in subsection (b) and by striking subsection (e) in its entirety, and in 28 V.S.A. § 808c(a)(2), by striking the last sentence.

Third: By adding a new section to be numbered Sec. 3c to read as follows:

Sec. 3c. 28 V.S.A. §§ 808a–808d are amended to read:

#### § 808a. TREATMENT FURLOUGH

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on treatment 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.

(b) Provided the approval of the sentencing judge is first obtained, the department may place on treatment furlough an offender who has not yet served the minimum term of the sentence, who, in the department’s determination, needs residential treatment services not available in a correctional facility. The services may include treatment for substance abuse or personal violence or any other condition that the department has determined should be addressed in order to reduce the offender’s risk to reoffend or cause harm to himself or herself or to others in the facility. The offender shall be

released only to a hospital or residential treatment facility that provides services to the general population. The state's share of the cost of placement in such a facility, net of any private or federal participation, shall be paid pursuant to memoranda of agreement between and within state agencies reflective of their shared responsibilities to maximize the efficient and effective use of state resources. In the event that a memorandum of agreement cannot be reached, the secretary of administration shall make a final determination as to the manner in which costs will be allocated.

~~(c)(1) Except as provided in subdivision (2) of this subsection, the department, in its own discretion, may place on treatment furlough an offender who has not yet served the minimum term of his or her sentence for an eligible misdemeanor as defined in section 808d of this title if the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism.~~

~~(2) Driving under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. §§ 1201 and 1210(c) and boating under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323 shall be considered eligible misdemeanors for the sole purpose of subdivision (1) of this subsection.~~

#### § 808b. HOME CONFINEMENT FURLOUGH

(a) An offender 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. Home confinement furlough shall be 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, the department, or both.

~~(b) The department, in its own discretion, may place on home confinement furlough an offender who has not yet served the minimum term of the sentence for an eligible misdemeanor as defined in section 808d of this title if the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism.~~

(c) A home confinement furlough shall not exceed a total of 180 days and shall require the defendant:

(1) 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

(2) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.

(d) In determining whether a home confinement furlough sentence is appropriate and whether a place of residence is suitable for such a sentence, all of the following shall be considered:

(1) The nature of the offense with which the defendant was charged and the nature of the offense of which the defendant was convicted.

(2) The defendant's criminal history record, history of violence, medical and mental health needs, history of supervision, and risk of flight.

(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.

#### § 808c. REINTEGRATION FURLOUGH

(a)(1) To prepare for reentry into the community, an offender sentenced to incarceration may be furloughed to the community up to 180 days prior to completion of the minimum sentence, at the commissioner's discretion and in accordance with rules adopted pursuant to subsection (c) of this section. ~~Except as provided in subdivision (2) of this subsection, an~~ An offender sentenced to a minimum term of fewer than 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.

~~(2) An offender sentenced to a minimum term of fewer than 365 days for an eligible misdemeanor as defined in section 808d of this title shall be eligible for furlough under this subdivision, provided the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism.~~

(b) Except as provided in subsection (d) of this section, an offender sentenced to incarceration is eligible to earn five days toward reintegration furlough, to be applied prior to the expiration of the offender's minimum term, for each month served in the correctional facility during which the offender has complied with the case plan prepared pursuant to subsection 1(b) of this title and has obeyed all rules and regulations of the facility. Days shall be awarded

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only if the commissioner determines, in his or her sole discretion, that they have been earned in accordance with rules adopted by the department pursuant to subsection (c) of this section and shall in no event be awarded automatically. The commissioner's determination shall be final. Days earned under this subsection may be awarded in addition to the reintegration furlough authorized in subsection (a) of this section. The commissioner shall have the discretion to determine the frequency with which calculations under this subsection shall be made provided they are made at least as frequently as every six months.

(c) The commissioner may authorize reintegration furlough under subsections (a) and (b) of this section only if the days are awarded in accordance with rules adopted pursuant to chapter 25 of Title 3 designed to do the following:

(1) Evaluate factors such as risk of reoffense, history of violent behavior, history of compliance with community supervision, compliance with the case plan, progress in treatment programs designed to reduce criminal risk, and obedience to rules and regulations of the facility.

(2) Ensure adequate departmental supervision of the offender when furloughed into the community.

(d) The commissioner may not award days toward reintegration furlough under subsection (b) of this section if the offender is sentenced to a minimum term of incarceration in excess of five years or is incarcerated for a conviction of one or more of the following crimes:

(1) Arson causing death as defined in 13 V.S.A. § 501;

(2) Assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);

(3) Assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);

(4) Aggravated assault as defined in 13 V.S.A. § 1024;

(5) Murder as defined in 13 V.S.A. § 2301;

(6) Manslaughter as defined in 13 V.S.A. § 2304;

(7) Kidnapping as defined in 13 V.S.A. § 2405;

(8) Unlawful restraint as defined in 13 V.S.A. §§ 2406 and 2407;

(9) Maiming as defined in 13 V.S.A. § 2701;

(10) Sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (2);

(11) Aggravated sexual assault as defined in 13 V.S.A. § 3253;

(12) Burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c); or

(13) Lewd or lascivious conduct with a child as defined in 13 V.S.A. § 2602.

(e) An offender incarcerated for driving while under the influence of alcohol under 23 V.S.A. § 1210(d) or (e) may be furloughed to the community up to 180 days prior to completion of the minimum sentence at the commissioner's discretion and in accordance with rules adopted pursuant to subsection (d) of this section, provided that an offender sentenced to a minimum term of fewer than 270 days shall not be eligible for furlough under this subsection until the offender has served at least 90 days of his or her minimum term of incarceration and provided that the commissioner uses electronic equipment to monitor the offender's location and blood alcohol level continually, or other equipment such as an alcohol ignition interlock system, or both.

(f) Prior to release under this section, the department shall screen and, if appropriate, assess each felony drug and property offender for substance abuse treatment needs using an assessment tool designed to assess the suitability of a broad range of treatment services, and it shall use the results of this assessment in preparing a reentry plan. The department shall attempt to identify all necessary services in the reentry plan and work with the offender to make connections to necessary services prior to release so that the offender can begin receiving services immediately upon release.

~~§ 808d. DEFINITION; ELIGIBLE MISDEMEANOR; FURLOUGH AT THE DISCRETION OF THE DEPARTMENT~~

~~For purposes of sections 808a-808c of this title, "eligible misdemeanor" means a misdemeanor crime that is not one of the following crimes:~~

~~(1) Cruelty to animals involving death or torture as defined in 13 V.S.A. § 352(1) and (2).~~

~~(2) Simple assault as defined in 13 V.S.A. § 1023(a)(1).~~

~~(3) Simple assault with a deadly weapon as defined in 13 V.S.A. § 1023(a)(2).~~

~~(4) Simple assault of a law enforcement officer, firefighter, emergency medical personnel member, or health care worker while he or she is performing a lawful duty as defined in 13 V.S.A. § 1023(a)(1).~~

~~(5) Reckless endangerment as defined in 13 V.S.A. § 1025.~~

~~(6) Simple assault of a correctional officer as defined in 13 V.S.A. § 1028a(a)(1).~~

~~(7) Simple assault of a correctional officer as defined in 13 V.S.A. § 1028a(b).~~

~~(8) Violation of an abuse prevention order, first offense, as defined in 13 V.S.A. § 1030.~~

~~(9) Stalking as defined in 13 V.S.A. § 1062.~~

~~(10) Domestic assault as defined in 13 V.S.A. § 1042.~~

~~(11) Cruelty to children over 10 years of age by one over 16 years of age as defined in 13 V.S.A. § 1304.~~

~~(12) Cruelty by a person having custody of another as defined in 13 V.S.A. § 1305.~~

~~(13) Abuse, neglect, or exploitation of a vulnerable adult as provided in 13 V.S.A. §§ 1376-1381.~~

~~(14) Hate-motivated crime as defined in 13 V.S.A. § 1455 or burning of a cross or other religious symbol as defined in 13 V.S.A. § 1456.~~

~~(15) Voyeurism as defined in 13 V.S.A. § 2605.~~

~~(16) Prohibited acts as defined in 13 V.S.A. § 2632.~~

~~(17) Obscenity as defined in chapter 63 of Title 13.~~

~~(18) Possession of child pornography as defined in 13 V.S.A. § 2827.~~

~~(19) Possession of a dangerous or deadly weapon in a school bus or school building as defined in 13 V.S.A. § 4004(a).~~

~~(20) Possession of a dangerous or deadly weapon on school property with intent to injure as defined in 13 V.S.A. § 4004(b).~~

~~(21) Possession of a firearm in court as defined in 13 V.S.A. § 4016(b)(1).~~

~~(22) Possession of a dangerous or deadly weapon in court as defined in 13 V.S.A. § 4016(b)(2).~~

~~(23) Failure to comply with the sex offender registry as defined in 13 V.S.A. § 5409.~~

~~(24) Careless or negligent operation of a motor vehicle resulting in serious bodily injury or death as defined in 23 V.S.A. § 1091(b).~~

~~(25) Driving under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. §§ 1201 and 1210(e).~~

~~(26) Boating under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323.~~

Fourth: In Sec. 4, by adding a new subdivision (b)(1) to read as follows:

(1) a former member of either the house committee on judiciary or the senate committee on judiciary appointed jointly by the speaker of the house and the senate committee on committees;

and be renumbering the existing subdivisions to be numerically correct

Fifth: By striking out Sec. 6 in its entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

#### Sec. 6. PLACE-BASED STRATEGIES TO REDUCE RECIDIVISM

Some Vermont communities have a disproportionate number of residents who have been through the correctional system. Corrections and law enforcement officials are increasingly interested in sharing information that can lead to more effective resource allocation and coordination to reduce recidivism in communities with a high number of persons under the supervision of the department of corrections. Therefore, the department of corrections shall work with the Vermont League of Cities and Towns, the association of the chiefs of police, and other local law enforcement agencies to develop strategies that coordinate services provided by state, local, and nonprofit entities to persons in the custody of the commissioner of corrections and that enhance public safety. The department shall keep the joint committee on corrections oversight, the senate and house committees on judiciary, and the house committee on corrections and institutions informed of the groups' efforts on this matter.

Sixth: By striking out Sec. 10 in its entirety and inserting in lieu thereof a new Sec. 10 to read as follows:

#### Sec. 10. RECIDIVISM REDUCTION STUDY, EVALUATION OF WORK CAMPS; VERMONT CENTER FOR JUSTICE RESEARCH

(a) Research suggests that short, swift and certain sanctions may be effective at reducing recidivism among certain groups of offenders. Programs that employ strategies such as those of Georgia's Probation Options Management (POM) and Hawaii's Opportunity Probation with Enforcement (HOPE) have shown reduced rates of recidivism, drug use, missed appointments with probation officers, and probation revocations for program participants versus rates for control group participants. The general assembly and representatives of all statewide criminal justice agencies have been working to develop an innovative pilot project to reduce recidivism based on such a model, but more information is needed to ascertain how these principles

can be applied in Vermont to achieve clearly stated goals set forth by the joint committee on corrections oversight with respect to reductions in recidivism.

(b) The Vermont center for justice research has been engaged in discussions with stakeholders regarding the employment of strategies used in POM and HOPE and specializes in collecting and analyzing criminal and juvenile justice information and providing technical assistance to state and local criminal justice agencies.

(c) The center shall evaluate innovative programs and initiatives, including local programs and prison-based initiatives, best practices, and contemporary research regarding assessments of programmatic alternatives and pilot projects relating to reducing recidivism in the criminal justice system. The center's research shall focus on evidence-based initiatives related to swift and sure delivery of sanctions and effective interventions for offenders. The center shall make its recommendations to the senate and house committees on judiciary and the joint committee on corrections oversight by December 1, 2011.

Seventh: By striking out Sec. 11 in its entirety and inserting in lieu thereof a new Sec. 11 to read as follows:

Sec. 11. DEPARTMENT OF CORRECTIONS; REDUCTION IN ADMINISTRATIVE BURDEN ON PROBATION AND PAROLE OFFICERS

(a) The general assembly finds that the current burden of administrative paperwork on probation and parole officers impedes their ability to supervise offenders in the community. Additionally, some paperwork, such as the offender responsibility plan, has diverged from its laudable original purpose and become unnecessarily time-consuming for staff and of little value to offenders. Rather than spending time in the field, visiting offenders at home, and checking on employment and housing, officers are forced to spend an inordinate amount of time at their desks filling out paperwork.

(b) To improve community supervision by getting more probation and parole officers out on the streets, the department of corrections shall undertake a review of the administrative burden placed on field officers and shall reduce paperwork handled by these officers by 50 percent as of July 1, 2012. In its efforts, the department shall strongly consider the use of technology to assist field officers and the efficiency of providing portable devices so that officers would not need to leave the field to file reports. The department shall keep the joint committee on corrections oversight, the senate and house committees on judiciary, and the house committee on corrections and institutions informed of their efforts on this matter.

Eighth: By adding a new section to be numbered Sec. 11a to read as follows:

Sec. 11a. 28 V.S.A. § 122 is added to read:

§ 122. CONTRACTING FOR PROGRAMMING AND SERVICES

For the purpose of securing programming and services for offenders, the department of corrections shall publicly advertise or invite three or more bids. The contract for any such programming and services shall be awarded to one of the three lowest responsible bidders, conforming to specification, with consideration being given to the time required for provision of services, purpose for which required, competency and responsibility of bidder, and his or her ability to render satisfactory services, but the commissioner with the approval of the secretary of human services shall have the right to reject any and all bids and to invite other bids.

Ninth: By adding a new section to be numbered Sec. 11b to read as follows:

Sec. 11b. 13 V.S.A. § 5241 is added to read:

§ 5241. MALPRACTICE CLAIM AGAINST DEFENDER GENERAL; SUCCESSFUL INEFFECTIVE ASSISTANCE CLAIM REQUIRED

No action shall be brought for professional negligence against a criminal defense attorney under contract with or providing ad hoc legal services for the office of the defender general unless the plaintiff has first successfully prevailed in a claim for post-conviction relief based upon ineffective assistance of counsel against that criminal defense attorney in the same or a substantially related matter. Failure to prevail in a claim for post-conviction relief based upon ineffective assistance of counsel against a criminal defense attorney under contract with or providing ad hoc legal services for the office of the defender general shall bar any claim against the attorney based upon the attorney's representation in the same or a substantially related matter.

Tenth: By striking out Sec. 13 in its entirety and inserting in lieu thereof a new Sec. 13 to read as follows:

Sec. 13. EFFECTIVE DATES

- (a) Sec. 2 of this act shall take effect on passage.
- (b) Sec. 3c shall take effect April 1, 2013.
- (c) The remainder of the act shall take effect on July 1, 2011.

Which was agreed to.

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

### **Adjournment**

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

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### **WEDNESDAY, MAY 4, 2011**

The Senate was called to order by the President.

### **Devotional Exercises**

A moment of silence was observed in lieu of devotions.

### **Rules Suspended; Action Reconsidered; Rules Suspended; House Proposal of Amendment Concurred in with Proposal of Amendment; Rules Suspended; Bill Messaged**

#### **S. 108.**

Senator Sears moved the rules be suspended for the purpose of reconsidering the action taken by the Senate to message S. 108 to the House.

Which was agreed to.

Assuring the Chair that he voted with the majority whereby the Senate messaged to the House, Senate bill entitled:

An act relating to effective strategies to reduce criminal recidivism.

Senator Sears moved that the Senate reconsider its action to message S. 108 to the House forthwith.

Which was agreed to.

Thereupon, pending the recurring question, Shall the rules be suspended to message the bill to the House forthwith?, was disagreed to.

Thereupon, Senator Sears, assuring the Chair that he voted with the majority moved that the Senate reconsider the question, Shall the Senate concur in the House proposal of amendment with further proposal of amendment.

Was agreed to.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment with further proposal of amendment?, Senator Sears moved to substitute a proposal of amendment for his proposal of amendment as follows:

First: By adding a new section to be numbered Sec. 1 to read as follows:

Sec. 1. SHORT TITLE

This act may be referred to and cited as “The War on Recidivism Act.”

And by renumbering the existing Sec. 1 to be Sec. 1a.

Second: In Sec. 3a, in 28 V.S.A. § 808a(c)(1), by striking out the last sentence, and in 28 V.S.A. § 808b, by striking out the last two sentences in subsection (b) and by striking subsection (e) in its entirety, and in 28 V.S.A. § 808c(a)(2), by striking out the last sentence

Third: By adding a new section to be numbered Sec. 3c to read as follows:

Sec. 3c. 28 V.S.A. §§ 808a–808d are amended to read:

§ 808a. TREATMENT FURLOUGH

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on treatment 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.

(b) Provided the approval of the sentencing judge is first obtained, the department may place on treatment furlough an offender who has not yet served the minimum term of the sentence, who, in the department’s determination, needs residential treatment services not available in a correctional facility. The services may include treatment for substance abuse or personal violence or any other condition that the department has determined should be addressed in order to reduce the offender’s risk to reoffend or cause harm to himself or herself or to others in the facility. The offender shall be released only to a hospital or residential treatment facility that provides services to the general population. The state’s share of the cost of placement in such a facility, net of any private or federal participation, shall be paid pursuant to memoranda of agreement between and within state agencies reflective of their shared responsibilities to maximize the efficient and effective use of state resources. In the event that a memorandum of agreement cannot be reached, the secretary of administration shall make a final determination as to the manner in which costs will be allocated.

~~(c)(1) Except as provided in subdivision (2) of this subsection, the department, in its own discretion, may place on treatment furlough an offender who has not yet served the minimum term of his or her sentence for an eligible misdemeanor as defined in section 808d of this title if the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to~~

~~incarceration to hold the offender accountable is likely to reduce the risk of recidivism.~~

~~(2) Driving under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. §§ 1201 and 1210(e) and boating under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323 shall be considered eligible misdemeanors for the sole purpose of subdivision (1) of this subsection.~~

#### § 808b. HOME CONFINEMENT FURLOUGH

(a) An offender 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. Home confinement furlough shall be 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, the department, or both.

~~(b) The department, in its own discretion, may place on home confinement furlough an offender who has not yet served the minimum term of the sentence for an eligible misdemeanor as defined in section 808d of this title if the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism.~~

(c) A home confinement furlough shall not exceed a total of 180 days and shall require the defendant:

(1) 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

(2) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.

(d) In determining whether a home confinement furlough sentence is appropriate and whether a place of residence is suitable for such a sentence, all of the following shall be considered:

(1) The nature of the offense with which the defendant was charged and the nature of the offense of which the defendant was convicted.

(2) The defendant's criminal history record, history of violence, medical and mental health needs, history of supervision, and risk of flight.

(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.

§ 808c. REINTEGRATION FURLOUGH

(a)(1) To prepare for reentry into the community, an offender sentenced to incarceration may be furloughed to the community up to 180 days prior to completion of the minimum sentence, at the commissioner's discretion and in accordance with rules adopted pursuant to subsection (c) of this section. ~~Except as provided in subdivision (2) of this subsection, an~~ An offender sentenced to a minimum term of fewer than 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.

~~(2) An offender sentenced to a minimum term of fewer than 365 days for an eligible misdemeanor as defined in section 808d of this title shall be eligible for furlough under this subdivision, provided the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism.~~

(b) Except as provided in subsection (d) of this section, an offender sentenced to incarceration is eligible to earn five days toward reintegration furlough, to be applied prior to the expiration of the offender's minimum term, for each month served in the correctional facility during which the offender has complied with the case plan prepared pursuant to subsection 1(b) of this title and has obeyed all rules and regulations of the facility. Days shall be awarded only if the commissioner determines, in his or her sole discretion, that they have been earned in accordance with rules adopted by the department pursuant to subsection (c) of this section and shall in no event be awarded automatically. The commissioner's determination shall be final. Days earned under this subsection may be awarded in addition to the reintegration furlough authorized in subsection (a) of this section. The commissioner shall have the discretion to determine the frequency with which calculations under this subsection shall be made provided they are made at least as frequently as every six months.

(c) The commissioner may authorize reintegration furlough under subsections (a) and (b) of this section only if the days are awarded in accordance with rules adopted pursuant to chapter 25 of Title 3 designed to do the following:

(1) Evaluate factors such as risk of reoffense, history of violent behavior, history of compliance with community supervision, compliance with

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the case plan, progress in treatment programs designed to reduce criminal risk, and obedience to rules and regulations of the facility.

(2) Ensure adequate departmental supervision of the offender when furloughed into the community.

(d) The commissioner may not award days toward reintegration furlough under subsection (b) of this section if the offender is sentenced to a minimum term of incarceration in excess of five years or is incarcerated for a conviction of one or more of the following crimes:

- (1) Arson causing death as defined in 13 V.S.A. § 501;
- (2) Assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) Assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);
- (4) Aggravated assault as defined in 13 V.S.A. § 1024;
- (5) Murder as defined in 13 V.S.A. § 2301;
- (6) Manslaughter as defined in 13 V.S.A. § 2304;
- (7) Kidnapping as defined in 13 V.S.A. § 2405;
- (8) Unlawful restraint as defined in 13 V.S.A. §§ 2406 and 2407;
- (9) Maiming as defined in 13 V.S.A. § 2701;
- (10) Sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (2);
- (11) Aggravated sexual assault as defined in 13 V.S.A. § 3253;
- (12) Burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c); or
- (13) Lewd or lascivious conduct with a child as defined in 13 V.S.A. § 2602.

(e) An offender incarcerated for driving while under the influence of alcohol under 23 V.S.A. § 1210(d) or (e) may be furloughed to the community up to 180 days prior to completion of the minimum sentence at the commissioner's discretion and in accordance with rules adopted pursuant to subsection (d) of this section, provided that an offender sentenced to a minimum term of fewer than 270 days shall not be eligible for furlough under this subsection until the offender has served at least 90 days of his or her minimum term of incarceration and provided that the commissioner uses electronic equipment to monitor the offender's location and blood alcohol level

continually, or other equipment such as an alcohol ignition interlock system, or both.

(f) Prior to release under this section, the department shall screen and, if appropriate, assess each felony drug and property offender for substance abuse treatment needs using an assessment tool designed to assess the suitability of a broad range of treatment services, and it shall use the results of this assessment in preparing a reentry plan. The department shall attempt to identify all necessary services in the reentry plan and work with the offender to make connections to necessary services prior to release so that the offender can begin receiving services immediately upon release.

~~§ 808d. DEFINITION; ELIGIBLE MISDEMEANOR; FURLOUGH AT THE DISCRETION OF THE DEPARTMENT~~

~~For purposes of sections 808a-808c of this title, "eligible misdemeanor" means a misdemeanor crime that is not one of the following crimes:~~

~~(1) Cruelty to animals involving death or torture as defined in 13 V.S.A. § 352(1) and (2).~~

~~(2) Simple assault as defined in 13 V.S.A. § 1023(a)(1).~~

~~(3) Simple assault with a deadly weapon as defined in 13 V.S.A. § 1023(a)(2).~~

~~(4) Simple assault of a law enforcement officer, firefighter, emergency medical personnel member, or health care worker while he or she is performing a lawful duty as defined in 13 V.S.A. § 1023(a)(1).~~

~~(5) Reckless endangerment as defined in 13 V.S.A. § 1025.~~

~~(6) Simple assault of a correctional officer as defined in 13 V.S.A. § 1028a(a)(1).~~

~~(7) Simple assault of a correctional officer as defined in 13 V.S.A. § 1028a(b).~~

~~(8) Violation of an abuse prevention order, first offense, as defined in 13 V.S.A. § 1030.~~

~~(9) Stalking as defined in 13 V.S.A. § 1062.~~

~~(10) Domestic assault as defined in 13 V.S.A. § 1042.~~

~~(11) Cruelty to children over 10 years of age by one over 16 years of age as defined in 13 V.S.A. § 1304.~~

~~(12) Cruelty by a person having custody of another as defined in 13 V.S.A. § 1305.~~

~~(13) Abuse, neglect, or exploitation of a vulnerable adult as provided in 13 V.S.A. §§ 1376-1381.~~

~~(14) Hate motivated crime as defined in 13 V.S.A. § 1455 or burning of a cross or other religious symbol as defined in 13 V.S.A. § 1456.~~

~~(15) Voyeurism as defined in 13 V.S.A. § 2605.~~

~~(16) Prohibited acts as defined in 13 V.S.A. § 2632.~~

~~(17) Obscenity as defined in chapter 63 of Title 13.~~

~~(18) Possession of child pornography as defined in 13 V.S.A. § 2827.~~

~~(19) Possession of a dangerous or deadly weapon in a school bus or school building as defined in 13 V.S.A. § 4004(a).~~

~~(20) Possession of a dangerous or deadly weapon on school property with intent to injure as defined in 13 V.S.A. § 4004(b).~~

~~(21) Possession of a firearm in court as defined in 13 V.S.A. § 4016(b)(1).~~

~~(22) Possession of a dangerous or deadly weapon in court as defined in 13 V.S.A. § 4016(b)(2).~~

~~(23) Failure to comply with the sex offender registry as defined in 13 V.S.A. § 5409.~~

~~(24) Careless or negligent operation of a motor vehicle resulting in serious bodily injury or death as defined in 23 V.S.A. § 1091(b).~~

~~(25) Driving under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. §§ 1201 and 1210(e).~~

~~(26) Boating under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323.~~

Fourth: In Sec. 4(b) , by adding a new subdivision (1) to read as follows:

(1) a former member of either the house committee on judiciary or the senate committee on judiciary appointed jointly by the speaker of the house and the senate committee on committees;

And by renumbering the existing subdivisions to be numerically correct.

Fifth: By striking out Sec. 6 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 6 to read as follows:

#### Sec. 6. PLACE-BASED STRATEGIES TO REDUCE RECIDIVISM

Some Vermont communities have a disproportionate number of residents who have been through the correctional system. Corrections and law

enforcement officials are increasingly interested in sharing information that can lead to more effective resource allocation and coordination to reduce recidivism in communities with a high number of persons under the supervision of the department of corrections. Therefore, the department of corrections shall work with the Vermont League of Cities and Towns, the association of the chiefs of police, and other local law enforcement agencies to develop strategies that coordinate services provided by state, local, and nonprofit entities to persons in the custody of the commissioner of corrections and that enhance public safety. The department shall keep the joint committee on corrections oversight, the senate and house committees on judiciary, and the house committee on corrections and institutions informed of the groups' efforts on this matter.

Sixth: By striking out Sec. 10 in its entirety and inserting in lieu thereof a new Sec. 10 to read as follows:

**Sec. 10. RECIDIVISM REDUCTION STUDY, EVALUATION OF WORK CAMPS; VERMONT CENTER FOR JUSTICE RESEARCH**

(a) Research suggests that short, swift, and certain sanctions may be effective at reducing recidivism among certain groups of offenders. Programs that employ strategies such as those of Georgia's Probation Options Management (POM) and Hawaii's Opportunity Probation with Enforcement (HOPE) have shown reduced rates of recidivism, drug use, missed appointments with probation officers, and probation revocations for program participants versus rates for control group participants. The general assembly and representatives of all statewide criminal justice agencies have been working to develop an innovative pilot project to reduce recidivism based on such a model, but more information is needed to ascertain how these principles can be applied in Vermont to achieve clearly stated goals set forth by the joint committee on corrections oversight with respect to reductions in recidivism.

(b) The Vermont center for justice research has been engaged in discussions with stakeholders regarding the employment of strategies used in POM and HOPE and specializes in collecting and analyzing criminal and juvenile justice information and providing technical assistance to state and local criminal justice agencies.

(c) The center shall evaluate innovative programs and initiatives, including local programs and prison-based initiatives, best practices, and contemporary research regarding assessments of programmatic alternatives and pilot projects relating to reducing recidivism in the criminal justice system. The center's research shall focus on evidence-based initiatives related to swift and sure delivery of sanctions and effective interventions for offenders. The center shall make its recommendations to the senate and house committees on

judiciary and the joint committee on corrections oversight by December 1, 2011.

Seventh: By striking out Sec. 11 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 11 to read as follows:

Sec. 11. DEPARTMENT OF CORRECTIONS; REDUCTION IN ADMINISTRATIVE BURDEN ON PROBATION AND PAROLE OFFICERS

(a) The general assembly finds that the current burden of administrative paperwork on probation and parole officers impedes their ability to supervise offenders in the community. Additionally, some paperwork, such as the offender responsibility plan, has diverged from its laudable original purpose and become unnecessarily time-consuming for staff and of little value to offenders. Rather than spending time in the field, visiting offenders at home, and checking on employment and housing, officers are forced to spend an inordinate amount of time at their desks filling out paperwork.

(b) To improve community supervision by getting more probation and parole officers out on the streets, the department of corrections shall undertake a review of the administrative burden placed on field officers and shall reduce paperwork handled by these officers by 50 percent as of July 1, 2012. In its efforts, the department shall strongly consider the use of technology to assist field officers and the efficiency of providing portable devices so that officers would not need to leave the field to file reports. The department shall report to the joint committee on corrections oversight by November 1, 2011 regarding its progress in achieving the goal of a 50-percent reduction in paperwork, and shall continue to keep the joint committee, the senate and house committees on judiciary, and the house committee on corrections and institutions informed of their efforts on this matter.

Eighth: By adding a new section to be numbered Sec. 11a to read as follows:

Sec. 11a. 28 V.S.A. § 122 is added to read:

§ 122. CONTRACTING FOR PROGRAMMING AND SERVICES

For the purpose of securing programming and services for offenders, the department of corrections shall publicly advertise or invite three or more bids. The contract for any such programming and services shall be awarded to one of the three lowest responsible bidders, conforming to specification, with consideration being given to the time required for provision of services, the purpose for which it is required, competency and responsibility of bidder, and his or her ability to render satisfactory services; but the commissioner with the

approval of the secretary of human services shall have the right to reject any and all bids and to invite other bids.

Ninth: By striking out Sec. 13 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 13 to read as follows:

Sec. 13. EFFECTIVE DATES

- (a) Sec. 2 of this act shall take effect on passage.
- (b) Sec. 3c shall take effect on April 1, 2013.
- (c) The remainder of the act shall take effect on July 1, 2011.

Which was agreed to.

Thereupon, the recurring question, Shall the Senate concur in the House proposal of amendment with further proposal of amendment, as substituted?, was agreed to.

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

#### **Recess**

On motion of Senator Campbell the Senate recessed until one o'clock and thirty minutes in the afternoon.

#### **Called to Order**

The Senate was called to order by the President.

#### **Message from the House No. 67**

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. 34.** An act relating to the collection and disposal of mercury-containing lamps.

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 bill of the following title:

**H. 73.** An act relating to establishing a government transparency office to enforce the public records act.

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

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

**H. 264.** An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles .

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

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

Rep. Lippert of Hinesburg  
Rep. Grad of Moretown  
Rep. Koch of Barre Town

**Rules Suspended; Bills on Notice Calendar for Immediate Consideration**

On motion of Senator Campbell, the rules were suspended, and the following bills, appearing on the Calendar for notice, were ordered to be brought up for immediate consideration:

**S. 77, H. 24, H. 38, H 91.**

**Bill Ordered to Lie**

**H. 46.**

House bill entitled:

An act relating to youth athletes with concussions participating in athletic activities.

Was taken up.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Education?, on motion of Senator Campbell, the bill was ordered to lie.

**Proposal of Amendment; Third Reading Ordered****J.R.H. 19.**

Senator Lyons, for the Committee on Natural Resources and Energy, to which was referred joint House resolution entitled:

Joint resolution supporting the administration's efforts to examine and provide recommendations for improving and increasing the effectiveness of Vermont's state and municipal environmental protection process.

Reported recommending that the Senate propose to the House that the Senate propose to the House that the joint resolution be amended by striking out all after the title and inserting in lieu thereof the following:

Whereas, our environment is the sum of everything around us, our beautiful mountains and valleys, our streams and lakes, the air we breathe and the winter's snow and summer's green grass, and

Whereas, to date, Vermont has managed to preserve many aspects of the state's environment, but this protective process could be administered more effectively and with greater certainty and transparency, and

Whereas, since 1970, Vermont's system of state and municipal environmental and land use regulation has grown and changed, resulting in overlapping laws and programs under the administrative jurisdiction of multiple state offices that do not always share the same regulatory objectives or coordinate in an optimal fashion, and

Whereas, the state of Vermont and local municipalities should be encouraging appropriate development at specific locations, and

Whereas, for example, attempts to effectively enforce water quality standards in Lake Champlain, promote a settlement pattern of compact urban and village centers surrounded by a rural, working landscape, and reduce greenhouse gas emissions have not resulted in achieving compliance with statutory goals and not infrequently have resulted in contentious disputes and litigation, and

Whereas, project developers and citizens concerned about projects often voice complaints expressing confusion about the specific permits required for a given project and objecting that the regulatory process can be expensive, daunting, and time-consuming and that it needs to be predictable, and

Whereas, Vermont must ensure that its permitting process appropriately utilizes the benefits of new technology to improve efficiency while simultaneously achieving protection of the natural environment, and

Whereas, Governor Shumlin has directed the chair of the natural resources board and the secretary of natural resources to review Vermont's environmental and land use permitting system and to provide recommendations for improving the system and increasing its effectiveness, and

Whereas, the General Assembly continues to propose policies that improve environmental permitting and ensure that development protects Vermont's working landscape and natural environment, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly supports the administration's efforts to examine and provide recommendations for improving and increasing the effectiveness of Vermont's environmental protection process, and be it further

Resolved: That the General Assembly requests that the chair of the natural resources board and the secretary of natural resources, in consultation with other state permitting officials including representatives of the agencies of agriculture, food and markets, commerce and community development, transportation, and the environmental division of superior court, and municipal permitting officials, and invite public input through public meetings, the use of the Internet, and other forms of outreach, and be it further

Resolved: That the General Assembly requests that the chair of the natural resources board and the secretary of natural resources regularly meet and consult with the chairs of the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources during this review process, and be it further

Resolved: That the General Assembly requests that the chair of the natural resources board and the secretary of natural resources develop recommendations intended to maintain standards assuring the environmental quality so important to Vermonters while making Vermont's land use and environmental permit process more efficient, more effective, more user-friendly, more open, more predictable, better coordinated, and quicker for applicants and citizens, and be it further

Resolved: That the General Assembly requests the chair of the natural resources board and the secretary of natural resources to report to the chairs of the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources by January 15, 2012 with recommendations to meet the intent of this resolution, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the chair of the natural resources board and the secretary of natural resources.

And that the joint resolution ought to be adopted in concurrence with such proposal of amendment.

Thereupon, the joint resolution was read the second time by title only pursuant to Rule 43, the proposal of amendment was agreed to, and third reading of the joint resolution was ordered.

### **House Proposal of Amendment Concurred In**

#### **S. 36.**

House proposal of amendment to Senate bill entitled:

An act relating to the surplus lines insurance multi-state compliance 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:

**\* \* \* Surplus Lines Insurance Multi-state Compliance Compact \* \* \***

Sec. 1. 8 V.S.A. chapter 138A is added to read:

#### CHAPTER 138A. SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT

##### § 5050. FINDINGS

The general assembly makes the following findings of fact:

(1) The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, was signed into law on July 21, 2010. Title V, Subtitle B of that act is known as the Non-Admitted and Reinsurance Reform Act of 2010 (NRRA). NRRA states that:

(A) the placement of non-admitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home state; and

(B) any law, regulation, provision, or action of any state that applies or purports to apply to non-admitted insurance sold to, solicited by, or negotiated with an insured whose home state is another state shall be preempted with respect to such application; except that any state law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a non-admitted insurer shall not be preempted.

(2) In compliance with NRRA, no state other than the home state of an insured may require any premium tax payment for non-admitted insurance; and no state other than an insured's home state may require a surplus lines broker

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to be licensed in order to sell, solicit, or negotiate non-admitted insurance with respect to such insured.

(3) NRRA intends that the states may enter into a compact or otherwise establish procedures to allocate among the states the premium taxes paid to an insured's home state; and that each state adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provides for the reporting, payment, collection, and allocation of premium taxes for non-admitted insurance.

(4) After the expiration of the two-year period beginning on the date of the enactment of NRRA, a state may not collect any fees relating to licensing of an individual or entity as a surplus lines licensee in the state unless the state has in effect at such time laws or regulations that provide for participation by the state in the national insurance producer database of the National Association of Insurance Commissioners (NAIC), or any other equivalent uniform national database, for the licensure of surplus lines licensees and the renewal of such licenses.

(5) A need exists for a system of regulation that will provide for surplus lines insurance to be placed with reputable and financially sound non-admitted insurers, and that will permit orderly access to surplus lines insurance in this state and encourage insurers to make new and innovative types of insurance available to consumers in this state.

(6) Protecting the revenue of this state and other compacting states may be accomplished by facilitating the payment and collection of premium tax on non-admitted insurance and providing for allocation of premium tax for non-admitted insurance of multi-state risks among the states in accordance with uniform allocation formulas.

(7) The efficiency of the surplus lines market may be improved by eliminating duplicative and inconsistent tax and regulatory requirements among the states, and by promoting and protecting the interests of surplus lines licensees who assist such insureds and non-admitted insurers, thereby ensuring the continued availability of non-admitted insurance to consumers.

(8) Regulatory compliance with respect to non-admitted insurance placements may be streamlined by providing for exclusive single-state regulatory compliance for non-admitted insurance of multi-state risks, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including insureds, regulators, surplus lines licensees, other insurance producers, and surplus lines insurers.

(9) Coordination of regulatory resources and expertise between state insurance departments and other state agencies, as well as state surplus lines

stamping offices, with respect to non-admitted insurance will be improved under the surplus lines insurance multi-state compliance compact.

(10) By July 21, 2011, if Vermont does not enter into a compact or other reciprocal agreement with other states for the purpose of collecting, allocating, and disbursing premium taxes and fees attributable to multi-state risks, the state could lose up to 20 percent of its surplus lines premium tax collected annually. In fiscal year 2010, Vermont's surplus lines premium tax was \$938,636.54. A revenue loss of 20 percent would be \$187,727.31.

§ 5051. INTENT; AUTHORITY TO ENTER OTHER AGREEMENT

(a) It is the intent of the general assembly to enact the surplus lines insurance multi-state compliance compact as provided under this chapter, and also to authorize the commissioner of banking, insurance, securities, and health care administration to enter into another agreement pursuant to subsections (b) and (c) of this section if the compact does not take effect.

(b) During the interim of the 2011–2012 legislative biennium and subject to subsection (c) of this section, if the surplus lines insurance multi-state compliance compact does not take effect under section 5064 of this title then, in accordance with NRRA, the commissioner of banking, insurance, securities, and health care administration may enter into a cooperative agreement, reciprocal agreement, or multi-state agreement with another state or states to provide for the reporting, payment, collection, and allocation of premium fees and taxes imposed on non-admitted insurance. The commissioner may also enter into other cooperative agreements with surplus lines stamping offices and other similar entities located in other states related to the capturing and processing of insurance premium and tax data. The commissioner is further authorized to participate in any clearinghouse established under any such agreement or agreements for the purpose of collecting and disbursing to reciprocal states any funds collected and applicable to properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the insured properties, risks, or exposures are located have failed to enter into a compact or reciprocal allocation procedure with Vermont, the net premium tax collected shall be retained by Vermont.

(c) Prior to entering into a cooperative agreement, reciprocal agreement, or multi-state agreement with another state or states pursuant to subsection (b) of this section, the commissioner shall:

(1) Determine that the agreement is in Vermont's financial best interest; does not create an undue administrative burden on the state; and is consistent with the requirements of NRRA.

(2) Obtain the prior approval of the joint fiscal committee, in consultation with the chairs of the senate committee on finance and the house committees on ways and means and on commerce and economic development.

(d) By July 21, 2011, if a clearinghouse is not established or otherwise in operation in order to implement NRRA, all payments and taxes that otherwise would be payable to such a clearinghouse shall be submitted to the commissioner or with a voluntary domestic organization of surplus lines brokers with which the commissioner has contracted for the purpose of collecting and allocating all payments and taxes.

(e) The commissioner may adopt rules deemed necessary to carry out the purposes of this section.

#### § 5052. PURPOSES

The purposes of this compact are to:

(1) implement the express provisions of NRRA;

(2) protect the premium tax revenues of the compacting states through facilitating the payment and collection of premium tax on non-admitted insurance; protect the interests of the compacting states by supporting the continued availability of such insurance to consumers; and provide for allocation of premium tax for non-admitted insurance of multi-state risks among the states in accordance with uniform allocation formulas to be developed, adopted, and implemented by the commission;

(3) streamline and improve the efficiency of the surplus lines market by eliminating duplicative and inconsistent tax and regulatory requirements among the states; and promote and protect the interest of surplus lines licensees who assist such insureds and surplus lines insurers, thereby ensuring the continued availability of surplus lines insurance to consumers;

(4) streamline regulatory compliance with respect to non-admitted insurance placements by providing for exclusive single-state regulatory compliance for non-admitted insurance of multi-state risks, in accordance with rules to be adopted by the commission, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including insureds, regulators, surplus lines licensees, other insurance producers, and surplus lines insurers;

(5) establish a clearinghouse for receipt and dissemination of premium tax and clearinghouse transaction data related to non-admitted insurance of multi-state risks, in accordance with rules adopted by the commission;

(6) improve coordination of regulatory resources and expertise between state insurance departments and other state agencies as well as state surplus lines stamping offices with respect to non-admitted insurance;

(7) adopt uniform rules to provide for premium tax payment, reporting, allocation, data collection and dissemination for non-admitted insurance of multi-state risks and single-state risks, in accordance with rules adopted by the commission, thereby promoting the overall efficiency of the non-admitted insurance market;

(8) adopt uniform mandatory rules with respect to regulatory compliance requirements for:

(A) foreign insurer eligibility requirements; and

(B) surplus lines policyholder notices;

(9) establish the surplus lines insurance multi-state compliance compact commission;

(10) coordinate reporting of clearinghouse transaction data on non-admitted insurance of multi-state risks among compacting states and contracting states; and

(11) perform these and such other related functions as may be consistent with the purposes of the compact.

#### § 5053. DEFINITIONS

For purposes of this chapter:

(1) “Admitted insurer” means an insurer that is licensed, or authorized, to transact the business of insurance under the laws of the home state. It shall not include a domestic surplus lines insurer as may be defined by applicable state law.

(2) “Affiliate” means with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) “Allocation formula” means the uniform methods adopted by the commission by which insured risk exposures will be apportioned to each state for the purpose of calculating premium taxes due.

(4) “Bylaws” means the bylaws established by the commission for its governance, or for directing or controlling the commission’s actions or conduct.

(5) “Clearinghouse” means the commission’s operations involving the acceptance, processing, and dissemination, among the compacting states, contracting states, surplus lines licensees, insureds and other persons, of

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premium tax and clearinghouse transaction data for non-admitted insurance of multi-state risks, in accordance with this compact and rules adopted by the commission.

(6) “Clearinghouse transaction data” means the information regarding non-admitted insurance of multi-state risks required to be reported, accepted, collected, processed, and disseminated by surplus lines licensees for surplus lines insurance and insureds for independently procured insurance under this compact and rules adopted by the commission. Clearinghouse transaction data includes information related to single-state risks if a state elects to have the clearinghouse collect taxes on single-state risks for such state.

(7) “Commission” means the surplus lines insurance multi-state compliance compact commission established by this compact.

(8) “Commissioner” means the chief insurance regulatory official of a state including, commissioner, superintendent, director, or administrator, or their designees.

(9) “Compact” means the surplus lines insurance multi-state compliance compact established under this chapter.

(10) “Compacting state” means any state which has enacted this compact legislation and which has not withdrawn pursuant to subsection 5065(a), or been terminated pursuant to subsection 5065(b), of this chapter.

(11) “Contracting state” means any state which has not enacted this compact legislation but has entered into a written contract with the commission to use the services of and fully participate in the clearinghouse.

(12) “Control.” An entity has “control” over another entity if:

(A) the entity directly or indirectly or acting through one or more other persons own, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(13)(A) “Home state” means, with respect to an insured:

(i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(ii) if 100 percent of the insured risk is located out of the state referred to in subdivision (A)(i) of this subsection, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) If more than one insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term "home state" means the home state, as determined pursuant to subdivision (A) of this subsection, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(14) "Independently procured insurance" means insurance procured by an insured directly from a surplus lines insurer or other non-admitted insurer as permitted by the laws of the home state.

(15) "Insurer eligibility requirements" means the criteria, forms, and procedures established to qualify as a surplus lines insurer under the law of the home state provided that such criteria, forms, and procedures are consistent with the express provisions of NRRA on and after July 21, 2011.

(16) "Member" means the person or persons chosen by a compacting state as its representative or representatives to the commission provided that each compacting state shall be limited to one vote.

(17) "Multi-state risk" means a risk with insured exposures in more than one state.

(18) "Non-admitted insurance" means surplus lines insurance and independently procured insurance.

(19) "Non-admitted insurer" means an insurer that is not authorized or admitted to transact the business of insurance under the law of the home state.

(20) "Noncompacting state" means any state which has not adopted this compact.

(21) "NRRA" means the Non-Admitted and Reinsurance Reform Act of 2010 which is Title V, Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203.

(22) "Policyholder notice" means the disclosure notice or stamp that is required to be furnished to the applicant or policyholder in connection with a surplus lines insurance placement.

(23) "Premium tax" means with respect to non-admitted insurance, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(24) "Principal place of business" means with respect to determining the home state of the insured, the state where the insured maintains its

headquarters and where the insured's high-level officers direct, control and coordinate the business activities of the insured.

(25) "Purchasing group" means any group formed pursuant to the Liability Risk Retention Act of 1986, Pub.L. 99-63, which has as one of its purposes the purchase of liability insurance on a group basis, purchases such insurance only for its group members and only to cover their similar or related liability exposure and is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises or operations and is domiciled in any state.

(26) "Rule" means a statement of general or particular applicability and future effect adopted by the commission designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission which shall have the force and effect of law in the compacting states.

(27) "Single-state risk" means a risk with insured exposures in only one state.

(28) "State" means any state, district, or territory of the United States of America.

(29) "State transaction documentation" means the information required under the laws of the home state to be filed by surplus lines licensees in order to report surplus lines insurance and verify compliance with surplus lines laws, and by insureds in order to report independently procured insurance.

(30) "Surplus lines insurance" means insurance procured by a surplus lines licensee from a surplus lines insurer or other non-admitted insurer as permitted under the law of the home state. It shall also mean excess lines insurance as may be defined by applicable state law.

(31) "Surplus lines insurer" means a non-admitted insurer eligible under the law of the home state to accept business from a surplus lines licensee. It shall also mean an insurer which is permitted to write surplus lines insurance under the laws of the state where such insurer is domiciled.

(32) "Surplus lines licensee" means an individual, firm, or corporation licensed under the law of the home state to place surplus lines insurance.

#### § 5054. ESTABLISHMENT OF THE COMMISSION; VENUE

(a) The compacting states hereby create and establish a joint public agency known as the surplus lines insurance multi-state compliance compact commission.

(b) Pursuant to section 5055 of this chapter, the commission shall have the power to adopt mandatory rules which establish exclusive home state authority regarding non-admitted insurance of multi-state risks, allocation formulas, clearinghouse transaction data, a clearinghouse for receipt and distribution of allocated premium tax and clearinghouse transaction data, and uniform rulemaking procedures and rules for the purpose of financing, administering, operating, and enforcing compliance with the provisions of this compact, its bylaws, and rules.

(c) Pursuant to section 5055 of this chapter, the commission shall have the power to adopt mandatory rules establishing foreign insurer eligibility requirements and a concise and objective policyholder notice regarding the nature of a surplus lines placement.

(d) The commission is a body corporate and politic, and an instrumentality of the compacting states.

(e) The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.

(f) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

#### § 5055. AUTHORITY TO ESTABLISH MANDATORY RULES

The commission shall adopt mandatory rules establishing:

(1) allocation formulas for each type of non-admitted insurance coverage, which allocation formulas must be used by each compacting state and contracting state in acquiring premium tax and clearinghouse transaction data from surplus lines licensees and insureds for reporting to the clearinghouse created by the compact commission. Such allocation formulas will be established with input from surplus lines licensees and be based upon readily available data with simplicity and uniformity for the surplus line licensee as a material consideration.

(2) Uniform clearinghouse transaction data reporting requirements for all information reported to the clearinghouse.

(3) Methods by which compacting states and contracting states require surplus lines licensees and insureds to pay premium tax and to report clearinghouse transaction data to the clearinghouse, including processing clearinghouse transaction data through state stamping and service offices, state insurance departments, or other state designated agencies or entities.

(4)(A) That non-admitted insurance of multi-state risks shall be subject to all of the regulatory compliance requirements of the home state exclusively. Home state regulatory compliance requirements applicable to surplus lines insurance shall include but not be limited to:

(i) persons required to be licensed to sell, solicit, or negotiate surplus lines insurance;

(ii) insurer eligibility requirements or other approved non-admitted insurer requirements;

(iii) diligent search; and

(iv) state transaction documentation and clearinghouse transaction data regarding the payment of premium tax as set forth in this compact and rules to be adopted by the commission.

(B) Home state regulatory compliance requirements applicable to independently procured insurance placements shall include but not be limited to providing state transaction documentation and clearinghouse transaction data regarding the payment of premium tax as set forth in this compact and rules adopted by the commission.

(5) That each compacting state and contracting state may charge its own rate of taxation on the premium allocated to such state based on the applicable allocation formula provided that the state establishes one single rate of taxation applicable to all non-admitted insurance transactions and no other tax, fee assessment, or other charge by any governmental or quasi-governmental agency be permitted. Notwithstanding the foregoing, stamping office fees may be charged as a separate, additional cost unless such fees are incorporated into a state's single rate of taxation.

(6) That any change in the rate of taxation by any compacting state or contracting state be restricted to changes made prospectively on not less than 90 days' advance notice to the compact commission.

(7) That each compacting state and contracting state shall require premium tax payments either annually, semiannually, or quarterly using one or more of the following dates only: March 1, June 1, September 1, and December 1.

(8) That each compacting state and contracting state prohibit any other state agency or political subdivision from requiring surplus lines licensees to provide clearinghouse transaction data and state transaction documentation other than to the insurance department or tax officials of the home state or one single designated agent thereof.

(9) The obligation of the home state by itself, through a designated agent, surplus lines stamping or service office, to collect clearinghouse transaction data from surplus line licensee and from insureds for independently procured insurance, where applicable, for reporting to the clearinghouse.

(10) A method for the clearinghouse to periodically report to compacting states, contracting states, surplus lines licensees and insureds who independently procure insurance, all premium taxes owed to each of the compacting states and contracting states, the dates upon which payment of such premium taxes are due and a method to pay them through the clearinghouse.

(11) That each surplus line licensee is required to be licensed only in the home state of each insured for whom surplus lines insurance has been procured.

(12) That a policy considered to be surplus lines insurance in the insured's home state shall be considered surplus lines insurance in all compacting states and contracting states, and taxed as a surplus lines transaction in all states to which a portion of the risk is allocated. Each compacting state and contracting state shall require each surplus lines licensee to pay to every other compacting state and contracting state premium taxes on each multi-state risk through the clearinghouse at such tax rate charged on surplus lines transactions in such other compacting states and contracting states on the portion of the risk in each such compacting state and contracting state as determined by the applicable uniform allocation formula adopted by the commission. A policy considered to be independently procured insurance in the insured's home state shall be considered independently procured insurance in all compacting states and contracting states. Each compacting state and contracting state shall require the insured to pay every other compacting state and contracting state the independently procured insurance premium tax on each multi-state risk through the clearinghouse pursuant to the uniform allocation formula adopted by the commission.

(13) Uniform foreign insurer eligibility requirements as authorized by NRRA.

(14) A uniform policyholder notice.

(15) Uniform treatment of purchasing group surplus lines insurance placements.

#### § 5056. POWERS OF THE COMMISSION

The commission shall have the powers to:

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(1) adopt rules and operating procedures, pursuant to section 5059 of this chapter, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

(2) bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

(3) issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence, provided however, the commission is not empowered to demand or subpoena records or data from non-admitted insurers;

(4) establish and maintain offices including the creation of a clearinghouse for the receipt of premium tax and clearinghouse transaction data regarding non-admitted insurance of multi-state risks, single-state risks for states which elect to require surplus lines licensees to pay premium tax on single state risks through the clearinghouse and tax reporting forms;

(5) purchase and maintain insurance and bonds;

(6) borrow, accept or contract for services of personnel, including, but not limited to, employees of a compacting state or stamping office, pursuant to an open, transparent, objective, competitive process and procedure adopted by the commission;

(7) hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications, pursuant to an open, transparent, objective competitive process and procedure adopted by the commission; and to establish the commission's personnel policies and programs relating to conflicts of interest, rates of compensation and qualifications of personnel, and other related personnel matters;

(8) accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, use and dispose of the same; provided that at all times the commission shall avoid any appearance of impropriety and/or conflict of interest;

(9) lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed; provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest;

(10) sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

(11) provide for tax audit rules and procedures for the compacting states with respect to the allocation of premium taxes, including:

(A) Minimum audit standards, including sampling methods.

(B) Review of internal controls.

(C) Cooperation and sharing of audit responsibilities between compacting states.

(D) Handling of refunds or credits due to overpayments or improper allocation of premium taxes.

(E) Taxpayer records to be reviewed including a minimum retention period.

(F) Authority of compacting states to review, challenge, or re-audit taxpayer records.

(12) enforce compliance by compacting states and contracting states with rules, and bylaws pursuant to the authority set forth in section 5065 of this chapter;

(13) provide for dispute resolution among compacting states and contracting states;

(14) advise compacting states and contracting states on tax-related issues relating to insurers, insureds, surplus lines licensees, agents or brokers domiciled or doing business in non-compacting states, consistent with the purposes of this compact;

(15) make available advice and training to those personnel in state stamping offices, state insurance departments or other state departments for record keeping, tax compliance, and tax allocations; and to be a resource for state insurance departments and other state departments;

(16) establish a budget and make expenditures;

(17) borrow money;

(18) appoint and oversee committees, including advisory committees comprised of members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

(19) establish an executive committee of not less than seven nor more than 15 representatives, which shall include officers elected by the commission and such other representatives as provided for herein and determined by the

bylaws. Representatives of the executive committee shall serve a one year term. Representatives of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the commission, with the exception of rulemaking, during periods when the commission is not in session. The executive committee shall oversee the day to day activities of the administration of the compact, including the activities of the operations committee created under this section and compliance and enforcement of the provisions of the compact, its bylaws and rules, and such other duties as provided herein and as deemed necessary.

(20) establish an operations committee of not less than seven and not more than 15 representatives to provide analysis, advice, determinations, and recommendations regarding technology, software, and systems integration to be acquired by the commission and to provide analysis, advice, determinations and recommendations regarding the establishment of mandatory rules to be adopted to be by the commission.

(21) enter into contracts with contracting states so that contracting states can use the services of and fully participate in the clearinghouse subject to the terms and conditions set forth in such contracts;

(22) adopt and use a corporate seal; and

(23) perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

#### § 5057. ORGANIZATION OF THE COMMISSION

(a)(1) Membership, voting, and bylaws. Each compacting state shall have and be limited to one member. Each state shall determine the qualifications and the method by which it selects a member and set forth the selection process in the enabling provision of the legislation which enacts this compact. In the absence of such a provision the member shall be appointed by the governor of such compacting state. Any member may be removed or suspended from office as provided by the law of the state from which he or she shall be appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists.

(2) Each member shall be entitled to one vote and shall otherwise have an opportunity to participate in the governance of the commission in accordance with the bylaws.

(3) The commission shall, by a majority vote of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact including:

(A) establishing the fiscal year of the commission;

(B) providing reasonable procedures for holding meetings of the commission, the executive committee, and the operations committee;

(C) providing reasonable standards and procedures for the establishment and meetings of committees, and for governing any general or specific delegation of any authority or function of the commission;

(D) providing reasonable procedures for calling and conducting meetings of the commission that consist of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' and surplus lines licensees' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting *in toto* or in part. As soon as practicable, the commission must make public:

(i) a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and

(ii) votes taken during such meeting;

(E) establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;

(F) providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

(G) adopting a code of ethics to address permissible and prohibited activities of commission members and employees;

(H) providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment and reserving of all of its debts and obligations;

(4) The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compacting states.

(b)(1) Executive committee, personnel, and chairperson. An executive committee of the commission shall be established. All actions of the executive

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committee, including compliance and enforcement are subject to the review and ratification of the commission as provided in the bylaws.

(2) The executive committee shall have no more than 15 representatives, or one for each state if there are less than 15 compacting states, who shall serve for a term and be established in accordance with the bylaws.

(3) The executive committee shall have such authority and duties as may be set forth in the bylaws, including:

(A) managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(B) establishing and overseeing an organizational structure within, and appropriate procedures for the commission to provide for the creation of rules and operating procedures.

(C) overseeing the offices of the commission; and

(D) planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the commission.

(4) The commission shall annually elect officers from the executive committee, with each having such authority and duties, as may be specified in the bylaws.

(5) The executive committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other persons as may be authorized by the commission.

(c)(1) Operations committee. An operations committee shall be established. All actions of the operations committee are subject to the review and oversight of the commission and the executive committee and must be approved by the commission. The executive committee will accept the determinations and recommendations of the operations committee unless good cause is shown why such determinations and recommendations should not be approved. Any disputes as to whether good cause exists to reject any determination or recommendation of the operations committee shall be resolved by the majority vote of the commission.

(2) The operations committee shall have no more than 15 representatives or one for each state if there are less than 15 compacting states, who shall serve for a term and shall be established as set forth in the bylaws.

(3) The operations committee shall have responsibility for:

(A) evaluating technology requirements for the clearinghouse, assessing existing systems used by state regulatory agencies and state stamping offices to maximize the efficiency and successful integration of the clearinghouse technology systems with state and state stamping office technology platforms and to minimize costs to the states, state stamping offices and the clearinghouse;

(B) making recommendations to the executive committee based on its analysis and determination of the clearinghouse technology requirements and compatibility with existing state and state stamping office systems;

(C) evaluating the most suitable proposals for adoption as mandatory rules, assessing such proposals for ease of integration by states, and likelihood of successful implementation and to report to the executive committee its determinations and recommendations; and

(D) such other duties and responsibilities as are delegated to it by the bylaws, the executive committee, or the commission.

(4) All representatives of the operations committee shall be individuals who have extensive experience or employment in the surplus lines insurance business, including executives and attorneys employed by surplus line insurers, surplus line licensees, law firms, state insurance departments, or state stamping offices. Operations committee representatives from compacting states which use the services of a state stamping office must appoint the chief operating officer or a senior manager of the state stamping office to the operations committee.

(d)(1) Legislative and advisory committees. A legislative committee comprised of state legislators or their designees shall be established to monitor the operations of and make recommendations to, the commission, including the executive committee. The manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget or other significant matter as may be provided in the bylaws, the executive committee shall consult with and report to the legislative committee.

(2) The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

(e) Corporate records of the commission. The commission shall maintain its corporate books and records in accordance with the bylaws.

(f)(1) Qualified immunity, defense, and indemnification. The members, officers, executive director, employees, and representatives of the commission,

the executive committee, and any other committee of the commission 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 by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities. Nothing in this subdivision 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 or wanton misconduct of that person.

(2) The commission shall defend any member, officer, executive director, employee, or representative of the commission, the executive committee, or any other committee of the commission 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 commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act error or omission did not result from that person's intentional or willful or wanton misconduct. Nothing herein shall be construed to prohibit that person from retaining his or her own counsel.

(3) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission, executive committee, or any other committee of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional or willful or wanton misconduct of that person.

#### § 5058. MEETINGS AND ACTS OF THE COMMISSION

(a) The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

(b) Each member of the 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 commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(c) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

(d) 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 otherwise provided in the compact.

(e) The commission shall adopt rules concerning its meetings consistent with the principles contained in the "Government in the Sunshine Act," 5 U.S.C. § 552b, as may be amended.

(f) The commission and its committees may close a meeting, or portion thereof, where it determines by majority vote that an open meeting would be likely to:

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

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

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

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

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

(g) For a meeting, or a portion of a meeting, closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptive provision. The commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission.

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§ 5059. RULES AND OPERATING PROCEDURES; RULEMAKING FUNCTIONS OF THE COMMISSION

(a) Rulemaking authority. The commission shall adopt reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, then such an action by the commission shall be invalid and have no force or effect.

(b) Rulemaking procedure. Rules shall be made pursuant to a rulemaking process that substantially conforms to the Model State Administrative Procedure Act of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the commission.

(c) Effective date. All rules and amendments, thereto, shall become effective as of the date specified in each rule, operating procedure, or amendment.

(d) Not later than 30 days after a rule is adopted, any person may file a petition for judicial review of the rule, provided that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the commission's authority.

§ 5060. COMMISSION RECORDS; ENFORCEMENT

(a) The commission shall adopt rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals, insurers, insureds, or surplus lines licensee trade secrets. State transaction documentation and clearinghouse transaction data collected by the clearinghouse shall be used for only those purposes expressed in or reasonably implied under the provisions of this compact and the commission shall afford this data the broadest protections as permitted by any applicable law for proprietary information, trade secrets, or personal data. The commission may adopt additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(b) Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve

any compacting state member of the duty to disclose any relevant records, data, or information to the commission, provided that disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement, and further provided that, except as otherwise expressly provided in this compact, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any member, and the commission shall maintain the confidentiality of any information provided by a member that is confidential under that member's state law.

(c) The commission shall monitor compacting states for compliance with duly adopted bylaws and rules. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws or rules. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in section 5065 of this chapter.

#### § 5061. DISPUTE RESOLUTION

(a) Before a member may bring an action in a court of competent jurisdiction for violation of any provision, standard, or requirement of the compact, the commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, contracting states or noncompacting states, and the commission shall adopt a rule providing alternative dispute resolution procedures for such disputes.

(b) The commission shall also provide alternative dispute resolution procedures to resolve any disputes between insureds or surplus lines licensees concerning a tax calculation or allocation or related issues which are the subject of this compact.

(c) Any alternative dispute resolution procedures shall be used in circumstances where a dispute arises as to which state constitutes the home state.

#### § 5062. REVIEW OF COMMISSION DECISIONS

(a) Except as necessary for adopting rules to fulfill the purposes of this compact, the commission shall not have authority to otherwise regulate insurance in the compacting states.

(b) Not later than 30 days after the commission has given notice of any rule or allocation formula, any third party filer or compacting state may appeal the

determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in making compliance or tax determinations acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with subsection 5054(f) of this chapter.

(c) The commission shall have authority to monitor, review and reconsider commission decisions upon a finding that the determinations or allocations do not meet the relevant rule. Where appropriate, the commission may withdraw or modify its determination or allocation after proper notice and hearing, subject to the appeal process in subsection (b) of this section.

#### § 5063. FINANCE

(a) The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations the commission may accept contributions, grants, and other forms of funding from the state stamping offices, compacting states, and other sources.

(b) The commission shall collect a fee payable by the insured directly or through a surplus lines licensee on each transaction processed through the compact clearinghouse, to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

(c) The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in section 5059 of this chapter.

(d) The commission shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this compact and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by any state or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange.

(e) The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements for all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports including the system of internal controls and procedures of the commission shall be audited annually by an independent

certified public accountant. Upon the determination of the commission, but not less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner, the controller, or the stamping office of any compacting state upon request provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals, and licensees' and insurers' proprietary information, including trade secrets, shall remain confidential.

(f) No compacting state shall have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

(g) The commission shall not make any political contributions to candidates for elected office, elected officials, political parties, nor political action committees. The commission shall not engage in lobbying except with respect to changes to this compact.

#### § 5064. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

(a) Any state is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states, provided the commission shall become effective for purposes of adopting rules, and creating the clearinghouse when there are a total of 10 compacting states and contracting states or, alternatively, when there are compacting states and contracting states representing greater than 40 percent of the surplus lines insurance premium volume based on records of the percentage of surplus lines insurance premium set forth in section 5069 of this chapter. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. Notwithstanding the foregoing, the clearinghouse operations and the duty to report clearinghouse transaction data shall begin on the first January 1 or July 1 following the first anniversary of the commission effective date. For states which join the compact subsequent to the effective date, a start date for reporting clearinghouse transaction data shall be set by the commission provided surplus lines licensees and all other interested parties receive not less than 90 days' advance notice.

(c) Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective

and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

§ 5065. WITHDRAWAL; DEFAULT; TERMINATION

(a)(1) Withdrawal. 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 enacting a statute specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any tax or compliance determinations approved on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the commission.

(3) The member of the withdrawing state shall immediately notify the executive committee of the commission in writing upon the introduction of legislation repealing this compact in the withdrawing state.

(4) The commission shall notify the other compacting states of the introduction of such legislation within 10 days after its receipt of notice thereof.

(5) The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal. To the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state, the commission's determinations prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the commission.

(6) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

(b)(1) Default. If the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws, or duly adopted rules then after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension 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 and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(2) Decisions of the commission that are issued on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subdivision (1) of this subsection.

(3) Reinstatement following termination of any compacting state requires a reenactment of the compact.

(c)(1) Dissolution of compact. 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 have no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the rules and bylaws.

#### § 5066. SEVERABILITY AND 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.

(c) Throughout this compact the use of the singular shall include the plural and vice-versa.

(d) The headings and captions of articles, sections, and subsections used in this compact are for convenience only and shall be ignored in construing the substantive provisions of this compact.

#### § 5067. BINDING EFFECT OF COMPACT AND OTHER LAWS

(a)(1) Other laws. Nothing herein prevents the enforcement of any other law of a compacting state except as provided in subdivision (2) of this subsection.

(2) Decisions of the commission, and any rules, and any other requirements of the commission shall constitute the exclusive rule or determination applicable to the compacting states. Any law or regulation regarding non-admitted insurance of multi-state risks that is contrary to rules of the commission is preempted with respect to the following:

- 
- (A) clearinghouse transaction data reporting requirements;
  - (B) the allocation formula;
  - (C) clearinghouse transaction data collection requirements;
  - (D) premium tax payment time frames and rules concerning dissemination of data among the compacting states for non-admitted insurance of multi-state risks and single-state risks;
  - (E) exclusive compliance with surplus lines law of the home state of the insured;
  - (F) rules for reporting to a clearinghouse for receipt and distribution of clearinghouse transaction data related to non-admitted insurance of multi-state risks;
  - (G) uniform foreign insurers eligibility requirements;
  - (H) uniform policyholder notice; and
  - (I) uniform treatment of purchasing groups procuring non-admitted insurance.

(3) Except as stated in subdivision (2) of this subsection, any rule, uniform standard, or other requirement of the commission shall constitute the exclusive provision that a commissioner may apply to compliance or tax determinations. Notwithstanding the foregoing, no action taken by the commission shall abrogate or restrict:

- (A) the access of any person to state courts;
- (B) the availability of alternative dispute resolution under section 5061 of this chapter;
- (C) the remedies available under state law related to breach of contract, tort, or other laws not specifically directed to compliance or tax determinations;
- (D) state law relating to the construction of insurance contracts; or
- (E) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

(b)(1) Binding effect of this compact. All lawful actions of the commission, including all rules adopted by the commission, are binding upon the compacting states, except as provided herein.

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

(3) Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute. This provision may be implemented by rule at the discretion of the commission.

(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 that provision upon the commission shall be ineffective as to that state and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

§ 5068. VERMONT COMMISSION MEMBER; SELECTION

The Vermont member of the commission shall be the commissioner of banking, insurance, securities, and health care administration or designee.

§ 5069. SURPLUS LINE INSURANCE PREMIUMS BY STATE

<u>State</u>	<u>Premiums based on taxes paid (\$)</u>	<u>Share of Total Premiums (%)</u>
<u>Alabama</u>	<u>445,746,000</u>	<u>1.47</u>
<u>Alaska</u>	<u>89,453,519</u>	<u>0.29</u>
<u>Arizona</u>	<u>663,703,267</u>	<u>2.18</u>
<u>Arkansas</u>	<u>201,859,750</u>	<u>0.66</u>
<u>California</u>	<u>5,622,450,467</u>	<u>18.49</u>
<u>Colorado</u>	<u>543,781,333</u>	<u>1.79</u>
<u>Connecticut</u>	<u>329,358,800</u>	<u>1.08</u>
<u>Delaware</u>	<u>92,835,950</u>	<u>0.31</u>
<u>Florida</u>	<u>2,660,908,760</u>	<u>8.75</u>
<u>Georgia</u>	<u>895,643,150</u>	<u>2.95</u>
<u>Hawaii</u>	<u>232,951,489</u>	<u>0.77</u>
<u>Idaho</u>	<u>74,202,255</u>	<u>0.24</u>
<u>Illinois</u>	<u>1,016,504,629</u>	<u>3.34</u>
<u>Indiana</u>	<u>412,265,320</u>	<u>1.36</u>
<u>Iowa</u>	<u>135,130,933</u>	<u>0.44</u>

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<u>Kansas</u>	<u>160,279,300</u>	<u>0.53</u>
<u>Kentucky</u>	<u>167,996,133</u>	<u>0.55</u>
<u>Louisiana</u>	<u>853,173,280</u>	<u>2.81</u>
<u>Maine</u>	<u>60,111,200</u>	<u>0.20</u>
<u>Maryland</u>	<u>434,887,600</u>	<u>1.43</u>
<u>Massachusetts</u>	<u>708,640,225</u>	<u>2.33</u>
<u>Michigan</u>	<u>703,357,040</u>	<u>2.31</u>
<u>Minnesota</u>	<u>393,128,400</u>	<u>1.29</u>
<u>Mississippi</u>	<u>263,313,175</u>	<u>0.87</u>
<u>Missouri</u>	<u>404,489,860</u>	<u>1.33</u>
<u>Montana</u>	<u>64,692,873</u>	<u>0.21</u>
<u>Nebraska</u>	<u>92,141,167</u>	<u>0.30</u>
<u>Nevada</u>	<u>354,271,514</u>	<u>1.17</u>
<u>New Hampshire</u>	<u>102,946,250</u>	<u>0.34</u>
<u>New Jersey</u>	<u>1,087,994,033</u>	<u>3.58</u>
<u>New Mexico</u>	<u>67,608,458</u>	<u>0.22</u>
<u>New York</u>	<u>2,768,618,083</u>	<u>9.11</u>
<u>North Carolina</u>	<u>514,965,060</u>	<u>1.69</u>
<u>North Dakota</u>	<u>36,223,943</u>	<u>0.12</u>
<u>Ohio</u>	<u>342,000,000</u>	<u>1.12</u>
<u>Oklahoma</u>	<u>319,526,400</u>	<u>1.05</u>
<u>Oregon</u>	<u>312,702,150</u>	<u>1.03</u>
<u>Pennsylvania</u>	<u>780,666,667</u>	<u>2.57</u>
<u>Rhode Island</u>	<u>71,794,067</u>	<u>0.24</u>
<u>South Carolina</u>	<u>412,489,825</u>	<u>1.36</u>
<u>South Dakota</u>	<u>38,702,120</u>	<u>0.13</u>
<u>Tennessee</u>	<u>451,775,240</u>	<u>1.49</u>
<u>Texas</u>	<u>3,059,170,454</u>	<u>10.06</u>
<u>Utah</u>	<u>142,593,412</u>	<u>0.47</u>
<u>Vermont</u>	<u>41,919,433</u>	<u>0.14</u>

<u>Virginia</u>	<u>611,530,667</u>	<u>2.01</u>
<u>Washington</u>	<u>739,932,050</u>	<u>2.43</u>
<u>West Virginia</u>	<u>130,476,250</u>	<u>0.43</u>
<u>Wisconsin</u>	<u>248,758,333</u>	<u>0.82</u>
<u>Wyoming</u>	<u>40,526,967</u>	<u>0.13</u>
<u>Total</u>	<u>30,400,197,251</u>	<u>100.00</u>

**\*\*\* NRRA Conforming Amendments to Existing VT Laws \*\*\***

Sec. 2. 8 V.S.A. § 5022 is amended to read:

§ 5022. DEFINITIONS

~~For the purposes of this chapter:~~

~~(1) “Surplus lines insurance” means coverage not procurable from admitted insurers.~~

~~(2) “Surplus lines broker” means an individual licensed pursuant to this chapter and chapter 131 of this title.~~

~~(3) “Surplus lines insurer” means a non-admitted insurer with which insurance coverage may be placed under this chapter.~~

~~(4) “Domestic risk” means a subject of insurance which is resident, located or to be performed in this state.~~

~~(5) “To export” means to place surplus lines insurance with a non-admitted insurer.~~

~~(6) “Commissioner” means the commissioner of banking, insurance, securities, and health care administration.~~

~~(7) “Admitted insurer” means an insurer possessing a certificate of authority to transact business in this state issued by the commissioner pursuant to section 3361 of this title.~~

(a) Notwithstanding subsection (b) of this section, as used in this chapter, unless the context requires otherwise, words and phrases shall have the meaning given under Title V, Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, as amended.

(b) For purposes of this chapter:

(1) “Admitted insurer” means an insurer possessing a certificate of authority to transact business in this state issued by the commissioner pursuant to section 3361 of this title.

(2) “Commissioner” means the commissioner of banking, insurance, securities, and health care administration.

(3) “Domestic risk” means a subject of insurance which is resident, located, or to be performed in this state.

(4) “To export” means to place surplus lines insurance with a non-admitted insurer.

(5) “Home state” means, with respect to an insured:

(A)(i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(ii) if 100 percent of the insured risk is located outside the state referred to in subdivision (A)(i) of this subsection, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) If more than one insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term “home state” means the home state, as determined pursuant to subdivision (A) of this subdivision (5), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(6) “NAIC” means the national association of insurance commissioners.

(7) “Surplus lines broker” means an individual licensed under this chapter and chapter 131 of this title.

(8) “Surplus lines insurance” means coverage not procurable from admitted insurers.

(9) “Surplus lines insurer” means a non-admitted insurer with which insurance coverage may be placed under this chapter.

Sec. 3. 8 V.S.A. § 5024 is amended to read:

#### § 5024. CONDITIONS FOR PLACEMENT OF INSURANCE

(a) Insurance coverage, except as described in section 5025 of this chapter, shall not be placed with a nonadmitted insurer unless the full amount of insurance required is not reasonably procurable from admitted insurers actually transacting that kind and class of insurance in this state; and the amount of insurance exported shall be only the excess over the amount procurable from admitted insurers actually transacting and insuring that kind and class of insurance.

(b) Notwithstanding any other provision of this section, the commissioner may order eligible for export any class or classes of insurance coverage or risk

for which he or she finds there to be an inadequate competitive market among admitted insurers either as to acceptance of the risk, contract terms or premium or premium rate.

(c) The due diligence search for reasonably procurable insurance coverage required under subsection (a) of this section is not required for an exempt commercial purchaser, provided:

(1) the surplus lines broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may be available from an admitted insurer and may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the surplus lines broker to procure or place such insurance from a nonadmitted insurer.

Sec. 4. 8 V.S.A. § 5025 is amended to read:

§ 5025. EXCEPTIONS CONCERNING PLACEMENT OF INSURANCE WITH NONADMITTED INSURERS; RECORDS

The provisions of this chapter controlling the placement of insurance with nonadmitted insurers shall not apply to life insurance, health insurance, annuities, or reinsurance, nor to the following insurance when so placed by any licensed producer in this state:

(1) insurance on subjects located, resident, or to be performed wholly outside this state whose home state is other than Vermont;

\* \* \*

Sec. 5. 8 V.S.A. § 5026 is amended to read:

§ 5026. SOLVENT INSURERS REQUIRED

(a) Surplus Where Vermont is the home state of the insured, surplus lines brokers shall not knowingly place or continue surplus lines insurance with nonadmitted insurers who are insolvent or unsound financially, and in no event shall any surplus lines broker place any insurance with a nonadmitted insurer unless such insurer:

(1) has paid to the commissioner an initial fee of \$100.00 and an annual listing fee of \$300.00, payable before March 1 of each year;

(2) has furnished the commissioner with a certified copy of its current annual statement; and

~~(3) has and maintains capital, surplus or both to policyholders in an amount not less than \$10,000,000.00; and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:~~

~~(A) the minimum capital and surplus requirements under the law of this state; or~~

~~(B) \$15,000,000.00; and~~

~~(4)(2) if an alien insurer, in addition to the requirements of subdivisions (1), (2), and (3) of this subsection, has established a trust fund in a minimum amount of \$2,500,000.00 within the United States maintained in and administered by a bank that is a member of the Federal Reserve System and held for the benefit of all of its insurer's policyholders and beneficiaries in the United States. In the case of an association of insurers, which association includes unincorporated individual insurers, they shall maintain in a bank that is a member of the Federal Reserve System assets held in trust for all their policyholders and beneficiaries in the United States of not less than \$50,000,000.00 in lieu of the foregoing trust fund requirement. These trust funds or assets held in trust shall consist of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance is listed on the quarterly listing of alien insurers maintained by the NAIC international insurers department.~~

~~(b) Notwithstanding the capital and surplus requirements of this section, a non-admitted insurer may receive approval upon an affirmative finding of acceptability by the commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment-income trends, market availability, and company record and reputation within the industry. In no event, however, shall the commissioner make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$4,500,000.00.~~

~~(c) The commissioner may from time to time publish a list of all nonadmitted insurers deemed by him or her to be currently eligible surplus lines insurers under the provisions of this section, and shall mail a copy of such list to each surplus lines broker. The commissioner may satisfy this subsection by adopting the list of approved surplus lines insurers published by the Nonadmitted Insurers Information Office of the National Association of Insurance Commissioners. This subsection shall not be deemed to cast upon the commissioner the duty of determining the actual financial condition or claims practices of any nonadmitted insurer; and the status of eligibility, if granted by the commissioner, shall indicate only that the insurer appears to be~~

sound financially and to have satisfactory claims practices, and that the commissioner has no credible evidence to the contrary. While any such list is in effect, the surplus lines broker shall restrict to the insurers so listed all surplus lines insurance business placed by him or her. However, upon the request of a surplus lines broker or an insured, the commissioner may deem a nonadmitted insurer to be an eligible surplus lines insurer for purposes of this subsection prior to publication of the name of such surplus lines insurer on the list.

Sec. 6. 8 V.S.A. § 5027(a) is amended to read:

(a) ~~Upon~~ Where Vermont is the home state of the insured, the surplus lines broker, upon placing a domestic risk with a surplus lines insurer, ~~the surplus lines broker~~ shall promptly deliver to the insured the policy issued by the surplus lines insurer, or if such policy is not then available, a certificate, cover note, or other confirmation of insurance, showing the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and surplus lines insurer. If the risk is assumed by more than one insurer, the document or documents shall state the name and address and proportion of the entire risk assumed by each insurer.

Sec. 7. 8 V.S.A. § 5028 is amended to read:

#### § 5028. INFORMATION REQUIRED ON CONTRACT

~~Each~~ Where Vermont is the home state of the insured, each surplus lines broker through whom a surplus lines insurance coverage is procured shall endorse on the outside of the policy and on any confirmation of the insurance, his or her name, address and license number, and the name and address of the producer, if any, through whom the business originated. Where such coverage is placed with an eligible surplus lines insurer there shall be stamped or written conspicuously in no smaller than 10 point boldface type of a contrasting color upon the first page of the policy and the confirmation of insurance if any, "The company issuing this policy has not been licensed by the state of Vermont and the rates charged have not been approved by the commissioner of insurance. Any default on the part of the insurer is not covered by the Vermont Insurance Guaranty Association."

Sec. 8. 8 V.S.A. § 5033(a) is amended to read:

(a) ~~Each~~ Where Vermont is the home state of the insured, each surplus lines broker shall keep in his or her office a full and true record of each surplus lines insurance contract covering a domestic risk placed by or through him or her with a surplus lines insurer, including a copy of the daily report, if any, and showing such of the following items as may be applicable:

\* \* \*

Sec. 9. 8 V.S.A. § 5035(a) is amended to read:

(a) ~~Gross~~ Where Vermont is the home state of the insured, gross premiums charged, less any return premiums, for surplus lines coverages placed with nonadmitted insurers are subject to a premium receipts tax of three percent, which shall be collected from the insured by the surplus lines broker at the time of delivery of policy or other confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance shall be returned to the policyholder by the surplus lines broker. Nothing contained in this section will preclude a surplus lines broker from charging a fee to the purchaser of the contract sufficient to recover the amount of this tax. Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this state, the sum payable shall be computed based on gross premiums charged, less any return premiums, as follows:

(1) An amount equal to three percent on that portion of the premiums applicable to properties, risks, or exposures located or to be performed in Vermont; plus

(2) An amount equal to a percentage on that portion of the premiums applicable to properties, risks, or exposures located or to be performed outside Vermont. Such percentage shall be determined based on the laws of the jurisdiction within which the property, risk, or exposure is located or to be performed.

Sec. 10. 8 V.S.A. § 5036 is amended to read:

#### § 5036. DIRECT PLACEMENT OF INSURANCE

(a) Every insured and every self-insurer in this state for whom this is their home state who procures or causes to be procured or continues or renews insurance from any non-admitted insurer, covering a subject located or to be performed within this state, other than insurance procured through a surplus lines broker pursuant to this chapter, shall, before March 1 of the year after the year in which the insurance was procured, continued or renewed, file a written report with the commissioner on forms prescribed and furnished by the commissioner. The report shall show:

\* \* \*

Sec. 11. 8 V.S.A. § 5037(7) is amended to read:

(7) ~~Violation~~ Material violation of any provision of this chapter; or

Sec. 12. 8 V.S.A. § 4807 is amended to read:

§ 4807. SURPLUS LINES INSURANCE BROKER

(a) Every surplus lines insurance broker who solicits an application for insurance of any kind, in any controversy between the insured or his or her beneficiary and the insurer issuing any policy upon such application, shall be regarded as representing the insured and his or her beneficiary and not the insurer; except any insurer which directly or through its agents delivers in this state to any surplus lines insurance broker a policy or contract for insurance pursuant to the application or request of the surplus lines insurance broker, acting for an insured other than himself or herself, shall be deemed to have authorized the surplus lines insurance broker to receive on its behalf payment of any premium which is due on the policy or contract for insurance at the time of its issuance or delivery.

(b) [Repealed.]

(c) Notwithstanding any other provision of this title, a person licensed as a surplus lines insurance broker in his or her home state shall receive a nonresident surplus lines insurance broker license pursuant to section 4800 of this chapter.

(d) Not later than July 1, 2012, the commissioner shall participate in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

**\* \* \* Effective Date \* \* \***

Sec. 13. EFFECTIVE DATE

This act shall be effective on passage.

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

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

**H. 428.**

House bill entitled:

An act relating to requiring supervisory unions to perform common duties.

Was taken up.

Thereupon, pending third reading of the bill, Senator White moved that the Senate propose to the House to amend the bill by adding a new section to be numbered Sec. 2a to read as follows:

---

**Sec. 2a. PUTNEY EDUCATION PROPERTY TAX LIABILITY**

Notwithstanding 32 V.S.A. § 5402(c), the commissioner of education shall use the corrected education grand list values provided by the town of Putney to the department of taxes after March 15, 2011 to calculate Putney's fiscal year 2012 education property tax liability.

Which was agreed to.

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

**Third Reading Ordered****H. 24.**

Senator Hartwell, for the Committee on Institutions, to which was referred House bill entitled:

An act relating to the maintenance and conveyance of Maidstone Lake Road.

Reported that the bill ought to pass in concurrence.

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

**House Proposal of Amendment Concurred In with Amendment****S. 77.**

House proposal of amendment to Senate bill entitled:

An act relating to water testing of private wells.

Was taken up.

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

**Sec. 1. FINDINGS**

The general assembly finds and declares that:

(1) The U.S. Environmental Protection Agency and the Vermont department of health estimate that 40 percent of Vermont residents obtain drinking water from groundwater sources.

(2) Property owners currently are not required to test groundwater sources that are a potable water supply serving one single-family residence.

(3) In adults and especially in children, consumption of contaminated groundwater can cause serious health effects, such as digestive problems, kidney problems, blue baby syndrome, and brain damage.

(4) The state lacks a comprehensive database or map identifying where groundwater contamination is prevalent in the state.

(5) To help mitigate the potential health effects of consumption of contaminated groundwater, the state should require testing of all newly developed groundwater sources and should conduct education and outreach regarding the need for property owners to test the water quality of groundwater used in potable water supplies.

(6) The state should utilize tests of groundwater sources to construct a database and map of groundwater contamination in the state so that the department of health can recommend treatment options to property owners in certain parts of the state.

Sec. 2. 10 V.S.A. § 1981 is added to read:

§ 1981. TESTING OF NEW GROUNDWATER SOURCES

(a) As used in this section, “groundwater source” means that portion of a potable water supply that draws water from the ground, including a drilled well, shallow well, driven well point, or spring.

(b) Prior to use of a new groundwater source as a potable water supply, where testing is not otherwise required, the person who owns or controls the groundwater source shall test the groundwater source for the parameters set forth in subsection (c) of this section.

(c) A water sample collected under this section shall be analyzed for, at a minimum: arsenic; lead; uranium; gross alpha radiation; total coliform bacteria, total nitrate and nitrite, fluoride, manganese, and any other parameters required by the agency by rule.

(d) The secretary, after consultation with the department of health, the wastewater and potable water supply technical advisory committee, the Vermont association of realtors, the Vermont home inspectors’ association, private laboratories, and other interested parties, shall adopt by rule requirements regarding:

(1) when, prior to use of a new groundwater source, the test required under subsection (b) of this section shall be conducted;

(2) who shall be authorized to sample the source for the test required under subsection (b) of this section, provided that the rule shall include the person who owns or controls the groundwater source and licensed well drillers among those authorized to conduct the test;

(3) how a water sample shall be collected in order to comply with the requirements of the analyses to be performed; and

(4) any other requirements necessary to implement this section.

Sec. 3. 18 V.S.A. § 501b is amended to read:

§ 501b. CERTIFICATION OF LABORATORIES

(a) The commissioner may certify a laboratory to perform the testing and monitoring required under 10 V.S.A. chapter 56, 10 V.S.A. § 1981, and the federal Safe Drinking Water Act if such laboratory meets the standards currently in effect of the National Environmental Laboratory Accreditation Conference and is accredited by an approved National Environmental Laboratory Accreditation Program accrediting authority or its equivalent.

(b)(1) The commissioner may by order suspend or revoke a certificate granted under this section, after notice and opportunity to be heard, if the commissioner finds that the certificate holder has:

(A) submitted materially false or materially inaccurate information;  
or

(B) violated any material requirement, restriction or condition of the certificate; or

(C) violated any statute, rule or order relating to this title.

(2) The order shall set forth what steps, if any, may be taken by the certificate holder to relieve the holder of the suspension or enable the certificate holder to reapply for certification if a previous certificate has been revoked.

(c) A person may appeal the suspension or revocation of the certificate to the board under section 128 of this title.

\* \* \*

(f) In accrediting a laboratory to conduct testing under 10 V.S.A. § 1981, the commissioner shall require a laboratory accredited under this section to submit in an electronic format the results of groundwater analyses conducted pursuant to 10 V.S.A. § 1981 to the department of health and the agency of natural resources.

Sec. 4. 27 V.S.A. § 616 is added to read:

§ 616. GROUNDWATER SOURCE TESTING; DISCLOSURE OF EDUCATIONAL MATERIAL

(a) For purchase and sales agreements executed on or after January 1, 2012, the seller shall, within 72 hours of the execution of a purchase and sales agreement for a property with a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), that is not served by a public water system, as that term is

defined in 10 V.S.A. § 1671(5), provide the buyer with informational materials developed by the department of health regarding:

(1) the potential health effects of the consumption of untreated groundwater; and

(2) the buyer's opportunity under the agreement to test the potable water supply.

(b) If a purchase and sales agreement for a property lacks a property inspection and contingency clause that allows for testing of a potable water supply, the buyer of the property may test a potable water supply on that property within 20 days of receipt of the informational materials required under subsection (a) of this section. If a test taken pursuant to this section reveals the presence of contamination in excess of acceptable limits set by the agency of natural resources for one of the parameters listed in 10 V.S.A. § 1981(c), the buyer, within 20 days of receipt of the informational materials required under subsection (a) of this section, shall have the option to render the purchase and sales agreement unenforceable.

(c) Non-compliance with the requirements of subsection (a) of this section shall not affect the marketability of title.

#### Sec. 5. DEPARTMENT OF HEALTH; EDUCATION AND OUTREACH ON SAFE DRINKING WATER

The department of health, after consultation with the agency of natural resources, shall revise and update its education and outreach materials regarding the potential health effects of contaminants in groundwater sources of drinking water in order to improve citizen access to such materials and to increase awareness of the need to conduct testing of groundwater sources. In revising and updating its education and outreach materials, the department shall update the online safe water resource guide by incorporating the most current information on the health effects of contaminants, treatment of contaminants, and causes of contamination and by directly linking users to the department of health contaminant fact sheets.

#### Sec. 6. EFFECTIVE DATES

(a) This section and Secs. 1 (findings), 3 (certification of laboratories), and 5 (department of health; education and outreach) of this act shall take effect upon passage.

(b) Sec. 2 (testing of new groundwater sources) of this act shall take effect upon passage, except that 10 V.S.A. § 1981(b) (the requirement to test new groundwater sources) shall take effect on January 1, 2013.

(c) Sec. 4 (disclosure of educational material) of this act shall take effect on January 1, 2012.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Lyons moved that the Senate concur in the House proposal of amendment with a proposal of amendment as follows:

In Sec. 4, 27 V.S.A. § 616, by striking out subsection (b) in its entirety and by relettering the remaining subsection to be alphabetically correct.

Which was agreed to.

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

**H. 38.**

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

To the Senate and House of Representatives:

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

An act relating to ensuring educational continuity for children of military families.

Respectfully reports that it has met and considered the same and recommends that it has met and considered the same and recommends that the House accede to the Senate proposals of amendment, and that the bill be further amended:

First: In Sec. 1, 16 V.S.A. § 806l, subsection A, subdivision 1, in the second sentence, by striking the words "provisions of this compact and the rules promulgated hereunder" and inserting in lieu thereof the words rules promulgated under this compact

Second: By striking out Sec. 2 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 2 to read as follows:

Sec. 2. 16 V.S.A. § 164(20) is added to read:

(20) Pursuant to section 806g of this title, constitute the State Council for the Interstate Compact on Educational Opportunity for Military Children and appoint to the council a compact commissioner and military family education liaison, who may be the same person. The board may appoint additional members.

*KEVIN J. MULLIN  
ROBERT A. STARR  
VIRGINIA V. LYONS*

*Committee on the part of the Senate*

*PETER PELTZ  
BRIAN A. CAMPION  
PATTI J. LEWIS*

*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; Point of Order Sustained; Report of  
Committee of Conference Discarded**

**H. 91.**

Senator Benning, 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 management of fish and wildlife.

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: By striking out Sec. 11 in its entirety.

Second: By striking out Secs. 13 and 14 in their entirety and inserting in lieu thereof the following:

\* \* \* Deer Doing Damage to Forestland; Working Group \* \* \*

Sec. 13. FINDINGS

The general assembly finds and declares:

(1) The forests of Vermont are integral to the economy, culture, beauty, and appeal of the state.

(2) Each 1,000 acres of forestland in Vermont supports 1.4 forest-based manufacturing, forestry, and logging jobs and 1.4 forest-related tourism and recreation jobs.

(3) Vermont landowners received estimated stumpage revenue in 2005 of \$31.5 million.

(4) The sale of Christmas trees, wreaths, and maple syrup contributed approximately \$22 million in 2005.

(5) White-tailed deer in Vermont are also important socially, culturally, ecologically, and economically.

(6) Under 10 V.S.A. § 4081, an abundant, healthy deer herd is a primary goal of fish and wildlife management in Vermont.

(7) Activities related to white-tailed deer such as hunting, photographing, and viewing generate in excess of \$157 million annually in Vermont, and the revenue generated from deer hunting is dispersed throughout the state's rural communities in the form of food, gasoline, and lodging expenditures.

(8) In parts of Vermont, however, the state's distinct interests in forestland and the deer herd are in conflict where deer populations have damaged existing woodlots and destroyed efforts to reseed or regenerate saplings.

(9) The existing authority to take deer doing damage to crops has been interpreted by the department of fish and wildlife as applying to trees or plantations cultivated for an annual or perennial crop and not to land managed for the production of other marketable forest products.

(10) An abundant, healthy deer herd is a primary goal of fish and wildlife management, but the deer herd should be managed in balance with other forest species, forest uses, and forest health.

(11) The general assembly should clarify the authority of a land owner to take deer doing damage to land managed for the production of marketable forest products in order to mitigate the existing conflicts between management of forestland and the management of the deer herd.

Sec. 13a. 10 V.S.A. § 4826 is amended to read:

§ 4826. TAKING DEER DAMAGING CROPS

(a) A person, including an authorized member of the person's family, an authorized regular on-premises employee, or an agent who holds a valid Vermont hunting license and who is designated by the person, may take, with the approval of a game warden, on land owned or ~~occupied~~ leased by the person, up to four deer per calendar year which the person can prove were doing damage to the following:

(1) a tree which is being grown in a plantation, being grown for the production of a commercial sawlog, or being grown or cultivated for the purpose of harvesting an annual or perennial crop or producing any marketable item; or

(2) a crop-bearing plant; or

(3) a crop, except grass.

\* \* \*

~~(f)(1) "Person" includes all people who jointly own or occupy lease the land. Therefore, if two or more people jointly own or occupy land, they may jointly take or authorize the taking of only up to four deer.~~

(2) "Post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land, except for signs erected pursuant to section 4710 of this title.

(g) The commissioner may issue a permit to a person to take more than four deer under this section if:

(1) the land owned by the person is not posted against hunting;

(2) the person ~~can prove~~ proves that the property is sustaining additional and ongoing damage; and

(3) the person has taken reasonable measures to prevent the deer from continuing to damage the crop or to damage trees on land managed for the production of marketable forest products.

\* \* \*

Sec. 13b. DEPARTMENT OF FISH AND WILDLIFE WORKING GROUP ON DEER DOING DAMAGE TO LAND MANAGED FOR THE PRODUCTION OF MARKETABLE FOREST PRODUCTS

(a) The commissioner of fish and wildlife shall convene a working group to review and recommend methods for addressing or limiting damage by deer to trees, saplings, and seedlings on land managed for the production of marketable forest products and to assess land access issues related to wildlife management. The working group shall consist of the commissioner or his or her designee and the following members to be appointed by the commissioner:

(1) two qualified foresters;

(2) two owners of land managed for the production of marketable forest products;

(3) two members of the fish and wildlife board;

(4) two wildlife biologists with knowledge of the state deer herd or of the impact of deer on forestland; and

(5) two persons who hold a valid Vermont hunting license.

(b) On or before January 15, 2012, the commissioner shall report to the house committee on fish, wildlife and water resources and the senate

committee on natural resources and energy with the recommendations of the working group. The report shall include an analysis of if and how prohibiting the posting of land as a condition of taking deer doing damage to land managed for the production of marketable forest products will achieve the goal of reducing or mitigating distinct occurrences of damage from deer populations, including an assessment of broader land access issues related to wildlife management.

Sec. 14. EDUCATION AND OUTREACH REGARDING FORESTRY PRACTICES TO PREVENT DEER DOING DAMAGE

On or before September 1, 2011, the commissioner of fish and wildlife, in consultation with the commissioner of forests, parks and recreation, shall conduct education and outreach activities regarding forestry practices to address deer doing damage to land managed for the production of marketable forest products. Outreach should include methods by which owners of land managed for the production of marketable forest products can contact Vermont licensed hunters in order to invite hunting on land being damaged by deer. The commissioner shall publish recommended forestry practices and other methods for addressing deer damage to land managed for the production of marketable forest products in the department of fish and wildlife's landowner habitat management guidelines; in the Vermont guide to hunting, fishing, and trapping laws; and on the website of the department of fish and wildlife.

Sec. 14a. 10 V.S.A. § 4826 is amended to read:

§ 4826. TAKING DEER DAMAGING CROPS

(a) A person, including an authorized member of the person's family, an authorized regular on-premises employee, or an agent who holds a valid Vermont hunting license and who is designated by the person, may take, with the approval of a game warden, on land owned or leased by the person, up to four deer per calendar year which the person can prove were doing damage to the following:

(1) a tree which is being grown in a plantation, ~~being grown for the production of a commercial sawlog, or being grown or~~ cultivated for the purpose of harvesting an annual or perennial crop or producing any marketable item; or

(2) a crop-bearing plant; or

(3) a crop, except grass.

\* \* \*

(f)(1) "Person" includes all people who jointly own or lease the land.

(2) "Post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land, except for signs erected pursuant to section 4710 of this title.

\* \* \*

(g) The commissioner may issue a permit to a person to take more than four deer under this section if:

(1) the land owned by the person is not posted against hunting;

(2) the person proves that the property is sustaining additional and ongoing damage; and

(3) the person has taken reasonable measures to prevent the deer from continuing to damage the crop ~~or to damage trees on land managed for the production of marketable forest products.~~

\* \* \*

Third: In Sec. 15, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) This section and Secs. 9 (antlerless permit; post), 10 (landowner hunt exception; post), 11 (deer doing damage; post), 12 (bear doing damage; post), 13 (deer doing damage; findings), 13a (deer doing damage; taking of deer damaging sawlog trees), 13b (working group on deer doing damage), and 14 (outreach and education) of this act shall take effect on passage.

And by inserting subsection (d) to read as follows:

(d) Sec. 14a (repeal of authority to take deer damaging land managed for commercial sawlogs) of this act shall take effect July 1, 2014.

*VIRGINIA V. LYONS*

*JOSEPH C. BENNING*

*RICHARD J. MCCORMACK*

*Committee on the part of the Senate*

*KATHRYN L. WEBB*

*DAVID L. DEEN*

*ROBERT C. KREBS*

*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 Starr 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, as the Second proposal was not in the Senate proposal of amendment, nor in the bill as passed by the House, and therefore the Committee of Conference did not

confine itself to the differences between the two houses and thus the report in its entirety was objectionable and could not be considered by the Senate.

Thereupon, the President *sustained* the point of order and ruled that the report of the Committee of Conference did go beyond the area of disagreement between the two Houses and therefore was *objectionable* and could *not* be considered by the Senate.

### **Rules Suspended; Joint Resolution Passed**

#### **J.R.H. 19.**

Pending entry on the Calendar for action tomorrow, on motion of Senator Carris, the rules were suspended and Joint House resolution entitled:

Joint resolution supporting the administration's efforts to examine and provide recommendations for improving and increasing the effectiveness of Vermont's state and municipal environmental protection process.

Was placed on all remaining stages of its adoption in concurrence with proposal of amendment.

Thereupon, the joint resolution was read the third time and adopted in concurrence with proposal of amendment.

### **Rules Suspended; Bill Passed**

#### **H. 24.**

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

An act relating to the maintenance and conveyance of Maidstone Lake Road.

Was placed on all remaining stages of its passage forthwith.

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

### **Rules Suspended; Joint Resolution Messaged**

On motion of Senator Carris, the rules were suspended, and the following joint resolution was ordered messaged to the House forthwith:

#### **J.R.H. 19.**

### **Rules Suspended; Bills Messaged**

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

#### **S. 77, H. 24, H. 38, H. 428.**

**Rules Suspended; Report of Committee of Conference Accepted and  
Adopted on the Part of the Senate; Bill Messaged**

**S. 94.**

Pending entry on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and the report of the Committee of Conference on Senate bill entitled:

An act relating to miscellaneous amendments to the motor vehicle laws.

Was taken up for immediate consideration.

Senator Flory, 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. 94.** An act relating to miscellaneous amendments to the motor vehicle laws.

Respectfully reports that it has met and considered the same and recommends that the Senate concur with the House proposal of amendment, and that the bill be further amended as follows:

First: In Sec. 3, 23 V.S.A. § 304, in subdivision (d)(1), by striking out the following: “, or are “fighting words” inherently likely to provoke violent reaction when addressed to an ordinary citizen”

Second: In Sec. 14, 23 V.S.A. § 2045, in subsections (a) and (b), by striking out the following: “15” and inserting in lieu thereof the following: 12 in each subsection

*MARGARET K FLORY  
M. JANE KITCHEL  
RICHARD T. MAZZA*

*Committee on the part of the Senate*

*DIANE M. LANPHER  
CLEMENT J. BISSONNETTE  
MOLLIE SULLIVAN BURKE*

*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.

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

### **Appointments Confirmed**

Under suspension of the rules (and particularly, Senate Rule 93), as moved by Senator Campbell, the following Gubernatorial appointments were confirmed together as a group by the Senate, without reports given by the Committees to which they were referred and without debate:

Post, Bruce of Essex Junction – Member, Board of Libraries – November 12, 2010, to February 28, 2014.

Gibbs, Jason of Duxbury – Member, Community High School of Vermont – January 1, 2011, to February 28, 2013

Fitzhugh, John of West Berlin – Member, Board of Libraries – August 19, 2010, to February 29, 2012.

Grillo, Amy W. of Dummerston – Member, Community High School of Vermont Board – November 10, 2010, to February 29, 2012.

Strano, Elizabeth of Bennington – Member State Board of Education – August 4, 2010, to June 30, 2012.

Pelletier, Thomas of Montpelier – Member, Vermont Housing Finance Agency – February 1, 2011, to January 31, 2015.

Boardman, Kathryn T. of Shelburne – Director, Vermont Municipal Bond Bank – February 1, 2011, to January 31, 2013.

Costes, David R. of Colchester – Director, Vermont Municipal Bond Bank – February 1, 2011, to January 31, 2013.

### **Appointments Confirmed**

The following Gubernatorial appointments were confirmed separately by the Senate, upon full reports given by the Committees to which they were referred:

Racine, Douglas A. of Richmond – Secretary of the Agency of Human Services – January 7, 2011, to February 28, 2013.

Flynn, Keith of Derby Line – Commissioner of the Department of Public Safety – January 7, 2011, to February 28, 2013.

Ide, Robert D. of Peacham - Commissioner of the Department of Motor Vehicles, - from January 7, 2011, to February 28, 2013.

Gerety, Robert P., Jr. of White River Junction – Superior Court Judge – December 28, 2010, to March 31, 2013.

Searles, Brian of Burlington – Commissioner of the Agency of Transportation – January 7, 2011, to February 28, 2013.

Reardon, Jim of Essex Junction - Commissioner of the Department of Finance and Management, - from January 7, 2011, to February 28, 2013.

Tomasi, Timothy B. of Montpelier – Superior Court Judge – December 30, 2010, to March 31, 2013.

Duffy, Kate of Williston - Commissioner of the Department of Human Resources, - from January 7, 2011, to February 28, 2013.

Ross, Chuck of Hinesburg - Secretary of Agency of Agriculture, - from January 7, 2011, to February 28, 2013.

Spaulding, George B. “Jeb” of Montpelier – Secretary of Administration, - from January 7, 2011, to February 28, 2013.

Peterson, Mary of Williston - Commissioner of the Department of Taxes, - from January 7, 2011, to February 28, 2013.

Wehry, Susan of Burlington – Commissioner of the Department of Disabilities, Aging and Independent Living – January 7, 2011, to February 28, 2013.

Yacovone, Dave of Morrisville – Commissioner of the Department of Children and Families – January 7, 2011, to February 28, 2013.

Oliver, Christine of Montpelier – Commission of the Department of Mental Health – January 7, 2011, to February 28, 2013.

Obuchowski, Michael of Montpelier – Commissioner of the Department of Building and General Services – January 7, 2011, to February 28, 2013.

Besio, Susan Ph.D. of Jericho – Commissioner of the Department of Vermont Health Access – July 1, 2010, to February 28, 2011.

Besio, Susan Ph.D. of Jericho – Commissioner of the Department of Vermont Health Access – January 7, 2011, to February 28, 2013.

Chen, Harry of Mendon – Commissioner of the Department of Health – January 7, 2011, to February 28, 2013.

Pallito, Andrew of Jericho – Commissioner of the Department of Corrections – January 7, 2011, to February 28, 2013.

Mears, David of Montpelier – Commissioner of the Department of Environmental Conservation – January 7, 2011, to February 28, 2013.

Berry, Patrick of Middlebury – Commissioner of the Department of Fish and Wildlife – January 7, 2011, to February 28, 2013.

Kimbell, Steve of Tunbridge - Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration, - from January 7, 2011, to February 28, 2013.

Markowitz, Deborah of Montpelier – Secretary of the Agency of Natural Resources – January 7, 2011, to February 28, 2013.

### **Recess**

On motion of Senator Campbell the Senate recessed until four o'clock and fifteen minutes.

### **Called to Order**

The Senate was called to order by the President.

### **Rules Suspended; Revised Report of Committee of Conference Accepted and Adopted on the Part of the Senate; Bill Messaged**

#### **H. 91.**

Pending entry on the Calendar for notice, on motion of Senator Carris, the rules were suspended and the revised report of the Committee of Conference on House bill entitled:

An act relating to the management of fish and wildlife.

Was taken up for immediate consideration.

Senator Benning, 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. 91.** An act relating to the management of fish and wildlife.

Respectfully reports that it has met and considered the same and recommends that the House accede to the Senate proposal of amendment

*VIRGINIA V. LYONS*

*JOSEPH C. BENNING*

*RICHARD J. MCCORMACK*

*Committee on the part of the Senate*

*KATHRYN L. WEBB*

*DAVID L. DEEN*

*ROBERT C. KREBS*

*Committee on the part of the House*

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

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

**Rules Suspended; Third Reading Ordered, Rules Suspended; Bill Passed;  
Bill Messaged**

**H. 451.**

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

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

Was taken up for immediate consideration.

Senator Galbraith, for the Committee on Government Operations, to which the bill was referred, reported that the bill ought to pass in concurrence.

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

Thereupon, on motion of Senator Carris, 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.

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

**Rules Suspended; Third Reading Ordered**

**H. 455.**

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

An act relating to the enhanced 911 emergency response system.

Was taken up for immediate consideration.

Senator Galbraith, for the Committee on Government Operations, to which the bill was referred, reported that the bill ought to pass in concurrence.

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

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**Committee of Conference Appointed****H. 264.**

An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles .

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

Senator Nitka  
Senator White  
Senator Snelling

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

**Adjournment**

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

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**THURSDAY, MAY 5, 2011**

The Senate was called to order by the President.

**Devotional Exercises**

A moment of silence was observed in lieu of devotions.

**Bill Referred**

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

**H. 237.**

An act relating to the use value program.

To the Committee on Rules.

**Bill Passed in Concurrence****H. 455.**

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

An act relating to the enhanced 911 emergency response system.

**Rules Suspended; House Proposal of Amendment Concurred In****H. 73.**

Appearing on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and Senate bill entitled:

An act relating to establishing a government transparency office to enforce the public records act.

Was taken up for immediate consideration.

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

First: In Sec. 2, 1 V.S.A. § 316, in subsection (c), in the first sentence, by striking out “In” where it appears before “the following instances” and inserting in lieu thereof the following: Unless otherwise provided by law, in

Second: In Sec. 4, 1 V.S.A. § 318, in subsection (g), by striking out the following: “may” where it occurs the first time and inserting in lieu thereof the following: shall

Third: In Sec. 11, in subsection (c), at the end of subdivisions (3) and (5), by striking out the following: “and” where it appears and by inserting in lieu thereof the following: ; and at the end of subdivision (6) and by adding subdivision (7) to read as follows:

(7) Whether a municipality and how a municipality shall appoint or designate an official, officer, or employee responsible for advising municipal employees and any agency, board, committee, department, instrumentality, commission, or authority of the municipality regarding the requirements of the public records act and proper management of public records. As used in this subdivision, “municipality” shall mean a city, town, village, or school district.

Fourth: In Sec. 11, in subsection (e), by striking out the last sentence and inserting in lieu thereof the following:

The study committee is authorized to meet three times each year during the interim between sessions of the general assembly, provided that the speaker of the house and the committee on committees may authorize the study committee to hold additional meetings during the interim between sessions so that the committee may accomplish its charge.

Fifth: In Sec. 14, by striking out the designation (a) where it appears and by striking out subsection (b) in its entirety.

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

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**Appointments Confirmed**

The following Gubernatorial appointments were confirmed separately by the Senate, upon full reports given by the Committees to which they were referred:

Snyder, Michael of Stowe – Commissioner of the Department of Forests, Parks and Recreation – January 7, 2011, to February 28, 2013.

Noonan, Annie of Montpelier – Commissioner of the Department of Labor – January 7, 2011, to February 28, 2013.

Miller, Elizabeth of Burlington – Commissioner of the Department of Public Service – January 7, 2011, to February 28, 2013.

**Rules Suspended; Appointment Confirmed**

Pending entry on the Calendar for notice, on motion of Senator Campbell, the rules were suspended the gubernatorial appointment of Robert A. Mello was taken up for immediate consideration.

Thereupon, the following Gubernatorial appointment was confirmed separately by the Senate, upon full reports given by the Committee to which it was referred:

Mello, Robert A. of Hinesburg – Superior Court Judge – December 23, 2010, to March 31, 2016.

**Rules Suspended; House Proposal of Amendment Concurred In****S. 34.**

Appearing on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and Senate bill entitled:

An act relating to the collection and disposal of mercury-containing lamps.

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 and declares that:

(1) Extended producer responsibility programs are an effective method of managing certain types of potentially hazardous waste, such as mercury-containing lamps;

(2) In implementing extended producer responsibility programs, states are often faced with the issue of how to regulate products sold in the state by a manufacturer with no corporate presence in Vermont or the United States.

(3) Under Huey v. Bates, 135 Vt. 160 (1977), Northern Aircraft, Inc. v. Reed, 154 Vt. 36 (1990), and Hedges Western Auto Supply Co., 161 Vt. 614 (1994), a clear intention by a manufacturer or a distributor to participate in the Vermont market through the sale or purposeful utilization of an in-state distribution system is sufficient to provide the state with jurisdiction over the manufacturer or distributor.

(4) Thus, an extended producer responsibility program for the collection and disposal of mercury containing lamps may regulate a manufacturer or distributor that purposefully and intentionally sells or distributes mercury-containing lamps in Vermont.

Sec. 2. 10 V.S.A. chapter 164A is added to read:

CHAPTER 164A. COLLECTION AND DISPOSAL OF  
MERCURY-CONTAINING LAMPS

§ 7151. DEFINITIONS

As used in this chapter:

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

(2) "Covered entity" means any person who presents to a collection facility that is included in an approved plan:

(A) any number of compact fluorescent mercury-containing lamps; or

(B) 10 or fewer mercury-containing lamps that are not compact fluorescent lamps.

(3) "Lamp" means an electric lamp, including mercury-containing lamps, incandescent lamps, halogen lamps, and light-emitting diode lamps.

(4) "Manufacturer" means a person who:

(A) Manufactures or manufactured a mercury-containing lamp under its own brand or label for sale in the state;

(B) Sells in the state under its own brand or label a mercury-containing lamp produced by another supplier;

(C) Owns a brand that it licenses or licensed to another person for use on a mercury-containing lamp sold in the state;

(D) Imports into the United States for sale in the state a mercury-containing lamp manufactured by a person without a presence in the United States;

(E) Manufactures a mercury-containing lamp for sale in the state without affixing a brand name; or

(F) Assumes the responsibilities, obligations, and liabilities of a manufacturer as defined under subdivisions (A) through (E) of this subdivision (4), provided that the secretary may enforce the requirements of this chapter against a manufacturer defined under subdivisions (A) through (E) of this subdivision (4) if a person who assumes the manufacturer's responsibilities fails to comply with the requirements of this chapter.

(5) "Mercury-containing lamp" means a general purpose lamp to which mercury is intentionally added during the manufacturing process. "Mercury-containing lamp" does not mean a lamp used for medical, disinfection, treatment, or industrial purposes.

(6) "Program year" means the period from July 1 through June 30.

(7) "Retailer" means a person who sells a mercury-containing lamp to a person in the state through any means, including a sales outlet, a catalogue, the telephone, the Internet, or any electronic means.

(8) "Secretary" means the secretary of natural resources.

(9) "Sell" or "sale" means any transfer for consideration of title or of the right to use by lease or sales contract a mercury-containing lamp to a person in the state of Vermont. "Sell" or "sale" does not include the sale, resale, lease, or transfer of a used mercury-containing lamp or a manufacturer's or a distributor's wholesale transaction with a distributor or a retailer.

(10) "Stewardship organization" means an organization, association, or entity that has developed a system, method, or other mechanism which assumes the responsibilities, obligations, and liabilities under this chapter of multiple manufacturers of mercury-containing lamps.

#### § 7152. SALE OF MERCURY-CONTAINING LAMPS; STEWARDSHIP ORGANIZATION REGISTRATION

(a) Sale prohibited. Beginning on July 1, 2012, except as set forth under section 7155 of this title, a manufacturer of a mercury-containing lamp shall not sell, offer for sale, or deliver to a retailer for subsequent sale a mercury-containing lamp unless all the following have been met:

(1) The manufacturer is implementing an approved collection plan;

(2) The manufacturer has paid the fee under section 7158 of this title;

(3) The name of the manufacturer and the manufacturer's brand are designated on the agency of natural resources' website as covered by an approved plan.

(4) The manufacturer has submitted an annual report under section 7153 of this title;

(5) The manufacturer has conducted a plan audit consistent with the requirements of subsection 7153(b) of this title; and

(6) The manufacturer has demonstrated that no alternative non-mercury energy efficient lamp is available that provides the same or better overall performance at a cost equal to or better than the classes of lamps that the manufacturer proposes to sell.

(b) Stewardship organization registration requirements.

(1) Beginning January 1, 2012 and annually thereafter, a stewardship organization shall file a registration form with the secretary. The secretary shall provide the registration form to a stewardship organization. The registration form shall include:

(A) a list of the manufacturers participating in the stewardship organization;

(B) the name, address, and contact information of a person responsible for ensuring the manufacturer's compliance with this chapter;

(C) a description of how the stewardship organization meets the requirements of 10 V.S.A. § 7155(b), including any reasonable requirements for participation in the stewardship organization; and

(D) the name, address, and contact information of a person for a nonmember manufacturer to contact on how to participate in the stewardship organization to satisfy the requirements of this chapter.

(2) A renewal of a registration without changes may be accomplished through notifying the agency of natural resources on a form provided by the agency.

#### § 7153. ANNUAL REPORT; PLAN AUDIT

(a) Annual report. At the end of each program year, a manufacturer of a mercury-containing lamp shall submit an annual report to the secretary that contains the following:

(1) a description of the collection program;

(2) The number and type of mercury-containing lamps collected and the collection facility from which the lamps were collected.

(3) an estimate of the number of mercury-containing lamps available for collection and the methodology used to develop this number. Sales data and other confidential business information provided under this section shall not be subject to inspection and review pursuant to subchapter 3 of chapter 5 of Title 1 (access to public records). Confidential information shall be redacted from any final public report.

(4) the steps that the manufacturer has taken during the past program year to improve the collection rate and life cycle performance of mercury-containing lamps.

(b) Plan audit. Once every five years, the manufacturer shall hire an independent third party to audit the plan and plan operation. The auditor shall examine the effectiveness of the program in collecting and disposing of mercury-containing lamps. The auditor shall examine the cost-effectiveness of the program and compare it to that of collection programs for mercury-containing lamps in other jurisdictions. The auditor shall make recommendations to the secretary on ways to increase program efficacy and cost-effectiveness.

#### § 7154. COLLECTION PLANS

(a) Collection plan required. Prior to February 1, 2012, a manufacturer, individually or as a participant in a stewardship organization, shall submit a collection plan to the secretary for review.

(1) Free collection of mercury-containing lamps. The collection program shall provide for free collection of mercury-containing lamps from covered entities. A manufacturer shall accept all mercury-containing lamps collected from a covered entity and shall not refuse the collection of a mercury-containing lamp based on the brand or manufacturer of the mercury-containing lamp. The collection program shall also provide for the payment of the costs for recycling and transportation from a collection facility to a recycler.

(2) Convenient collection location. The manufacturer shall develop a collection program that:

(A) allows all municipal collection locations and all retailers that sell mercury-containing lamps to opt to be a collection facility; and

(B) at a minimum, has not less than two collection facilities in each county.

(3) Public education and outreach. The collection plan shall include an education and outreach program that may include media advertising, retail displays, articles in trade and other journals and publications, and other public

educational efforts. At a minimum, the education and outreach program shall notify the public of the following:

(A) that there is a free collection program for mercury-containing lamps;

(B) the location of collection points and how a covered entity can access this collection program; and

(C) the special handling considerations associated with mercury-containing lamps.

(4) Compliance with appropriate environmental standards. In implementing a collection plan, a manufacturer shall comply with all applicable laws related to the collection, transportation, and disposal of mercury-containing lamps. A manufacturer shall comply with any special handling or disposal standards established by the secretary for a mercury-containing lamp or for the collection plan of the manufacturer.

(b) Term of collection plan. A collection plan approved by the secretary under section 7156 of this title shall have a term not to exceed five years, provided that the manufacturer remains in compliance with the requirements of this chapter and the terms of the approved plan.

#### § 7155. STEWARDSHIP ORGANIZATIONS

(a) Participation in a stewardship organization. A manufacturer may meet the requirements of this chapter by participating in a stewardship organization that undertakes the manufacturer's responsibilities under sections 7152, 7153, and 7154 of this title.

(b) Qualifications for a stewardship organization. To qualify as a stewardship organization under this chapter, an organization shall:

(1) Commit to assume the responsibilities, obligations, and liabilities of all manufacturers participating in the stewardship organization;

(2) Represent at least 45 percent of the market share of mercury-containing lamps sold in the state;

(3) Not create unreasonable barriers for participation in the stewardship organization; and

(4) Maintain a public website that lists all manufacturers and manufacturers' brands covered by the stewardship organization's approved collection plan.

(c) Exemption from antitrust provisions. A stewardship organization and manufacturers participating in a stewardship organization subject to the requirements of this chapter may engage in anticompetitive conduct to the

extent necessary to develop and implement the collection plan required by this chapter. A stewardship organization or a manufacturer participating within a stewardship organization that is engaged in anticompetitive conduct under this subsection shall be immune from liability for conduct under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce if the stewardship organization is exercising due diligence to comply with the requirements of this chapter.

#### § 7156. AGENCY RESPONSIBILITIES

(a) Review and approve collection plans. The secretary shall review and approve or deny collection plans submitted under section 7154 of this title. The secretary shall approve a collection plan if the secretary finds that the plan:

(1) complies with the requirements of subsection 7154(a) of this title.

(2) provides adequate notice to the public of the collection opportunities available for mercury-containing lamps.

(3) ensures that collection of mercury-containing lamps will occur in an environmentally sound fashion that is consistent with the law or with any special handling requirements adopted by the secretary.

(4) promotes the collection and disposal of mercury-containing lamps.

(b) Plan amendment. The secretary, in his or her discretion or at the request of a manufacturer or a stewardship organization, may require a manufacturer or a stewardship organization to amend an approved plan. Plan amendments shall be subject to the public input provisions of subsection (c) of this section.

(c) Public input. The agency shall establish a process under which a collection plan for a mercury-containing lamp is, prior to plan approval or amendment, available for public review and comment for 30 days. In establishing such a process, the agency shall consult with interested persons, including manufacturers, environmental groups, wholesalers, retailers, municipalities, and solid waste districts.

(d) Registrations. The secretary shall accept, review, and approve or deny registrations required by this chapter. The secretary may revoke a registration of a stewardship organization for actions that are unreasonable, unnecessary, or contrary to the requirements or the policy of this chapter.

(e) Supervisory capacity. The secretary shall act in a supervisory capacity over the actions of a stewardship organization registered under this section. In acting in this capacity, the secretary shall review the actions of the stewardship organization to ensure that they are reasonable, necessary, and limited to carrying out requirements of and policy established by this chapter.

(f) Special handling requirements. The secretary may adopt, by rule, special handling requirements for the collection, transport, and disposal of mercury-containing lamps.

(g) Approved plans; Internet posting. The secretary shall post on the agency website all manufacturers and manufacturers' brands that are covered under an approved plan. For stewardship organizations, the agency may link to the list of manufacturers and manufacturers' brands on the stewardship organization's website.

#### § 7157. RETAILER OBLIGATIONS

(a) Sale prohibited. Except as set forth under subsection (b) of this section, beginning July 1, 2012, no retailer shall sell or offer for sale a mercury-containing lamp unless the retailer has reviewed the agency website required in subsection 7156(e) of this title to determine that the manufacturer of the mercury-containing lamp is implementing an approved collection plan or is a member of a stewardship organization.

(b) Inventory exception; expiration or revocation of manufacturer registration. A retailer shall not be responsible for an unlawful sale of a mercury-containing lamp under this subsection if:

(1) the retailer purchased the mercury-containing lamp prior to July 1, 2012; or

(2) the manufacturer's collection plan expired or was revoked, and the retailer took possession of the in-store inventory of mercury-containing lamps prior to the expiration or revocation of the manufacturer's collection plan.

#### § 7158. FEES; DISPOSITION

(a) A manufacturer or stewardship organization shall pay \$2,000.00 annually for operation under a collection plan approved by the secretary under section 7156 of this title.

(b) The fees collected under subsection (a) of this section shall be deposited in the environmental permit fund established under 3 V.S.A. § 2805. The agency shall utilize no more than \$20,000.00 annually of the fees collected under subsection (a) for the performance of its responsibilities under section 7156 of this title.

#### § 7159. MERCURY CONTENT STANDARDS

(a) Mercury content standards for lamps. Beginning January 1, 2013, a mercury-containing lamp sold in this state shall satisfy the mercury-content standard for lamps set by California.

(b) Rulemaking; implementation. The agency of natural resources may adopt rules to implement the requirements of this chapter, including exemptions from the mercury content standards established under subsection (a) of this section.

(c) Certificate of compliance.

(1) Beginning April 1, 2013, the secretary may request a manufacturer of a lamp or lamps to submit a certification, supported by technical information, that the manufacturer's lamp or lamps that are sold or offered for sale in the state comply with the standard established under subsection (a) of this section. A manufacturer shall submit a certificate of compliance within 30 days of the secretary's request. If a manufacturer fails to provide a requested certification within 30 days of the request, the manufacturer shall be prohibited from selling lamps or offering lamps for sale in the state.

(2) Upon request of a retailer or other person selling a manufacturer's lamps, a manufacturer shall provide a certification that the manufacturer's lamp or lamps comply with the standard established under subsection (a) of this section. A manufacturer shall provide a certificate of compliance within 30 days of the retailer's request. The certification must specify that the lamp or lamps are not prohibited from sale in the state. If a manufacturer fails to provide a certification under this subdivision (c)(2), the manufacturer shall be prohibited from selling lamps or offering lamps for sale in the state.

#### § 7160. OTHER DISPOSAL PROGRAMS

A municipality or other public agency may not require covered entities to use public facilities to dispose of mercury-containing lamps to the exclusion of other lawful programs available. A municipality and other public agencies are encouraged to work with manufacturers to assist them in meeting their collection and disposal obligations under this chapter. Nothing in this chapter prohibits or restricts the operation of any program collecting and disposing of mercury-containing lamps in addition to those provided by manufacturers or prohibits or restricts any persons from receiving, collecting, transporting, or disposing of mercury-containing lamps, provided that all other applicable laws are met.

Sec. 3. 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:

\* \* \*

(20) 10 V.S.A. chapter 50, relating to the control of aquatic species and introduction of algicides, pesticides, and herbicides; ~~and~~

(21) 10 V.S.A. chapter 166, relating to collection and recycling of electronic waste; and

(22) 10 V.S.A. chapter 164A, collection and disposal of mercury-containing lamps.

\* \* \*

Sec. 4. 10 V.S.A. § 8503 is amended to read:

§ 8503. APPLICABILITY

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

(1) The following provisions of this title:

(A) chapter 23 (air pollution control).

(B) chapter 50 (aquatic species control).

(C) chapter 41 (regulation of stream flow).

(D) chapter 43 (dams).

(E) chapter 47 (water pollution control).

(F) chapter 48 (groundwater protection).

(G) chapter 53 (beverage containers; deposit-redemption system).

(H) chapter 55 (aid to municipalities for water supply, pollution abatement, and sewer separation).

(I) chapter 56 (public water supply).

(J) chapter 59 (underground and aboveground liquid storage tanks).

(K) chapter 64 (potable water supply and wastewater system permit).

(L) section 2625 (regulation of heavy cutting).

(M) chapter 123 (protection of endangered species).

(N) chapter 159 (waste management).

(O) chapter 37 (wetlands protection and water resources management).

(P) chapter 166 (collection and recycling of electronic waste).

(Q) chapter 164 (collection and disposal of mercury-containing lamps).

(2) 29 V.S.A. chapter 11 (management of lakes and ponds).

(3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

\* \* \*

Sec. 5. 24 V.S.A. § 2248(a) is added to read:

(a) Beginning July 1, 2010, a salvage yard shall meet the following operational standards:

(1) The salvage yard shall comply with the screening and fencing requirements of section 2257 of this title.

(2) Motor vehicles shall be drained of all fluids prior to crushing and within 365 days of receipt by the salvage yard, except that a vehicle with visible signs of leaking fluids shall be drained immediately. Fluids shall be drained, collected, and stored according to standards established by the secretary in order to prevent release to the environment. The fluids that shall be drained, collected, and stored under this subdivision include antifreeze, oil, brake fluid, fuel, refrigerants, and transmission fluid.

(3) Vehicles shall be drained and crushed:

(A) on or over a surface that is designed to retain seepage or draining fluids and that is designed to prevent releases to groundwater, discharges to surface waters, or other releases to the environment; or

(B) by a crusher with an onboard fluid-recovery and storage system that prevents releases to groundwater, discharges to surface waters, or other releases to the environment.

(4) A salvage yard issued a certificate of registration under section 2242 of this title after July 1, 2010, shall not be sited or operated within 100 feet of a Class I or Class II wetland as those terms are defined in 10 V.S.A. § 902. This subdivision shall not apply to the renewal of a valid certificate of registration under this subchapter.

(5)(A) A salvage yard issued a certificate of registration under section 2242 of this title after July 1, 2010, shall not be sited or operated within 300 feet of a potable water supply, as that term is defined in 10 V.S.A. § 1972, unless:

(i) the water supply provides water to the salvage yard; or

(ii) the agency of natural resources approves management practices or remedial measures to prevent contamination of the potable water supply.

(B) This subdivision shall not apply to the renewal of a valid certificate of registration under this subchapter.

#### Sec. 6. REPEAL

24 V.S.A. § 2248(a) (statutory operational standards for salvage yards) is repealed on the effective date of the rules required by 24 V.S.A. § 2248(b).

#### Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.

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

#### **Recess**

On motion of Senator Campbell the Senate recessed until one o'clock and thirty minutes.

#### **Called to Order**

The Senate was called to order by the President.

**Rules Suspended; Report of Committee of Conference; Point of Order Sustained; Report of Committee of Conference Discarded**

#### **H. 441.**

Appearing on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and Senate bill entitled:

An act relating to making appropriations for the support of government.

Was taken up for immediate consideration.

Thereupon, Senator Brock immediately 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, as the Sec. E.700 was not in the Senate proposal of amendment, nor in the bill as passed by the House, and therefore the Committee of Conference did not confine itself to the differences between the two houses and thus the report in its entirety was objectionable and could not be considered by the Senate.

Thereupon, the President sustained the point of order and ruled that the report of the Committee of Conference did go beyond the area of disagreement between the two Houses and therefore was *objectionable* and could *not* be considered by the Senate.

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**Recess**

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

**Called to Order**

The Senate was called to order by the President.

**Bill Introduced**

Senate bill of the following title was introduced, read the first time and referred:

**S. 111.**

By Senators Brock and Sears,

An act relating to public participation in environmental enforcement.

To the Committee on Judiciary.

**Senate Resolution Placed on Calendar****S.R. 9.**

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

By Senator Sears, Brock and White,

**S.R. 9.** Senate resolution urging Congress to adopt comprehensive immigration reform legislation at the earliest possible date.

*Whereas*, Article 1 § 8, clause 4 of the United States Constitution provides in relevant part that “Congress shall have Power To establish an uniform Rule of Naturalization,” and

*Whereas*, America’s immigration laws are hopelessly outdated and do not address the realities of 2011, and

*Whereas*, a large number of persons annually seek to enter the United States illegally, some successfully and others are caught, often only to try again until they achieve their goal, and

*Whereas*, there are millions of illegal immigrants residing in the United States as well as children who accompanied their parents, and

*Whereas*, several states have attempted to adopt their own immigration laws because of federal inaction, notwithstanding the clear constitutional directive assigning naturalization matters to Congress, and

*Whereas*, health care for illegal immigrants is a matter of great concern, and

*Whereas*, the Vermont Senate's proposal of amendment to H.202 "An Act related to a universal and unified health system" contained a provision barring access to the legislation's newly established Green Mountain Care program for persons "not lawfully present in the United States," and

*Whereas*, although the conferees on H.202 ultimately decided to substitute this statutory prohibition with a study to examine access to Green Mountain Care for persons not legally in the United States, the raising of this issue during deliberations on H.202 is just one state's example of the need for comprehensive federal immigration reform legislation, *now therefore be it*

***Resolved by the Senate:***

That the Senate of the State of Vermont urges Congress to adopt comprehensive immigration reform legislation at the earliest possible date, *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.

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

**Message from the Governor**

**Appointments Referred**

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

Shems, Ron of Duxbury - Chair of the Natural Resources Board, - from April 1, 2011, to January 31, 2013.

To the Committee on Natural Resources and Energy.

**Rules Suspended; Point of Order Sustained; Consideration Interrupted by Recess**

**H. 436.**

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

An act relating to tax changes, including income taxes, property taxes, economic development credits, health care-related tax provisions, and miscellaneous tax provisions.

Was taken up for immediate consideration.

Thereupon, Senator Illuzzi immediately 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, as the *twentieth-*

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*twenty-third* proposals were not in the Senate proposal of amendment, nor in the bill as passed by the House, and therefore the Committee of Conference did not confine itself to the differences between the two houses and thus the report in its entirety was objectionable and could not be considered by the Senate.

Thereupon, the President sustained the point of order and ruled that the report of the Committee of Conference did go beyond the area of disagreement between the two Houses and therefore was *objectionable* and could *not* be considered by the Senate.

### **Recess**

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

### **Called to Order**

The Senate was called to order by the President.

### **Rules Suspended; Consideration Resumed; Report of Committee of Conference Accepted and Adopted on the Part of the Senate**

#### **H. 436.**

Consideration was resumed on House bill entitled:

An act relating to tax changes, including income taxes, property taxes, economic development credits, health care-related tax provisions, and miscellaneous tax provisions.

Thereupon, Senator Illuzzi moved the rules be suspended to permit the Senate to consider the Report of the Committee of Conference with the provisions of the *twentieth- twenty-third* proposals retained in the report.

Which was agreed to.

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 tax changes, including income taxes, property taxes, economic development credits, health care-related tax provisions, and miscellaneous tax provisions.

Respectfully reports that it has met and considered the same and recommends:

That the House accede to the Senate's first, second, seventh, eighth, ninth, thirteenth, seventeenth, eighteenth, nineteenth, twenty-second, twenty-fifth, twenty-sixth and twenty-ninth proposals of amendment;

That the Senate recede from its third, fourth, fifth, sixth, tenth, eleventh, twelfth, fourteenth, fifteenth, sixteenth, twentieth, twenty-first, twenty-third, twenty-fourth, twenty-seventh, and twenty-eighth proposals of amendment.

And that the bill be further amended as follows:

First: In Sec. 8 (EVALUATION OF EDUCATION FINANCING SYSTEM), in subdivision (e)(2), by striking the word "draft" and by striking the words "March 30, 2012" and inserting in lieu thereof the words "January 18, 2012" and by striking out the words ", and a final report due one month later"

Second: By striking Sec. 12 (EXAMINATION OF RENEWABLE ENERGY PROPERTY TAX ISSUES) in its entirety, and inserting in lieu thereof a new Sec. 12 to read as follows:

Sec. 12. EXAMINATION OF RENEWABLE ENERGY PROPERTY TAX ISSUES

(a) The director of property valuation and review and the commissioner of public service shall undertake a joint examination of issues regarding the taxation of real property that includes a renewable energy plant. The examination shall consider the goals of Title 30 Chapter 89 relative to promoting in-state renewable energy resources, and in doing so shall consider whether the current method of property taxation of electric generation plants disproportionately burdens renewable energy plants.

(b) No later than January 15, 2012, the director of property valuation and review and the commissioner of public service shall report findings and analysis to the house committees on ways and means, on commerce and economic development, and on natural resources and energy, and the senate committees on finance, on economic development, housing and general affairs, and on natural resources and energy. The report shall include specific recommendations with respect to whether the current method of property taxation of renewable energy plants should be continued or whether there are other methodologies that could be more appropriate. The report should detail both the positive and negative aspects associated with each methodology and make a recommendation as to which method the director and commissioner deem to be the best option for each type of renewable energy. The types of renewable energy generation that are to be addressed in the report shall include solar (both PV and solar thermal), woody biomass (both electric generation and pure thermal) and farm methane plants (designed to supply wholesale

electricity into the grid). Among the factors that should be considered in making this determination, the report should address whether renewable energy plants that are on leased land should be taxed differently from renewable energy plants that are on land owned by the plant owner as well as other factors deemed important by the director and the commissioner. As part of the examination of this issue, parties of interest from both municipal government and the field of renewable energy development shall be consulted.

(c) For the purpose of this section, the terms “plant” and “renewable energy” shall have the same meaning as under 30 V.S.A. § 8002.

Third: By adding a new Sec. 13a to read as follows:

Sec. 13a. 32 V.S.A. § 3757(a) is amended to read:

(a) Land which has been classified as agricultural land or managed forest land pursuant to this chapter shall be subject to a land use change tax ~~upon~~ on the earliest of either the development of that land, as defined in section 3752 of this chapter, or two years after the issuance of all permits legally required by a municipality for any action constituting development, or two years after the issuance of a wastewater system and potable water supply permit under 10 V.S.A. § 1973. Said tax shall be at the rate of 20 percent of the full fair market value of the changed land determined without regard to the use value appraisal; or the tax shall be at the rate of 10 percent if the owner demonstrates to the satisfaction of the director that the parcel has been enrolled continuously more than 10 years. If changed land is a portion of a parcel, the fair market value of the changed land shall be the fair market value of the changed land prorated on the basis of acreage, divided by the common level of appraisal. Such fair market value shall be determined as of the date the land is no longer eligible for use value appraisal. This tax shall be in addition to the annual property tax imposed upon such property. Nothing in this section shall be construed to require payment of an additional land use change tax upon the subsequent development of the same land, nor shall it be construed to require payment of a land use change tax merely because previously eligible land becomes ineligible, provided no development of the land has occurred.

Fourth: By adding a new Sec. 13e to read as follows:

Sec. 13e. HEALTH, RECREATION, AND FITNESS ORGANIZATION PROPERTY TAX EXEMPTION

In fiscal year 2012, the following two properties shall be exempt from 50 percent of the education property tax under chapter 135 of Title 32: Buildings and land owned and occupied by a health, recreation, and fitness organization which is exempt under Section 501(c)(3) of the Internal Revenue Code, the income of which is entirely used for its exempt purpose, one of which is

designated by the Springfield Hospital and the other designated by the North Country Hospital, to promote exercise and healthy lifestyles for the community and to serve citizens of all income levels in this mission. This exemption shall apply, notwithstanding the provisions of 32 V.S.A. § 3832(7).

Fifth: By adding a new Sec. 13f to read as follows:

Sec. 13f. Sec. 40 of No. 190 of the Acts of the 2007 Adj. Sess. (2008), as amended by Sec. 22 of No. 160 of the Acts of the 2009 Adj. Sess. (2010), is further amended to read:

Sec. 40. EDUCATION PROPERTY TAX EXEMPTION FOR SKATINGRINKS 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 50 percent of the education property taxes for fiscal ~~years 2009, 2010, and 2011~~ year 2012 only.

Sixth: By adding a new Sec. 13g to read as follows:

Sec. 13g. 32 V.S.A. § 3802(11)(A) is amended to read:

(11)(A) Real and personal property to the extent of \$10,000.00 of appraisal value, except any part used for business or rental, occupied as the established residence of and owned in fee simple by a veteran of any war or a veteran who has received an American Expeditionary Medal, his or her spouse, widow, widower or child, or jointly by any combination of them, if one or more of them are receiving disability compensation for at least 50 percent disability, death compensation, dependence and indemnity compensation, or pension for disability paid through any military department or the veterans administration if, before May 1 of each year, there is filed with the ~~listers~~ office of veterans affairs:

(i) a written application therefor; and

(ii) a written statement from the military department or the veterans administration showing that the compensation or pension is being paid. Only one exemption may be allowed on a property. Application for an exemption under this section based upon permanent disability is only required to be filed with the ~~listers~~ office of veterans affairs before May 1 of the first year for which the exemption is sought, and the exemption shall remain on the grand list until title to the property is transferred.

Seventh: By adding a new Sec. 13h to read as follows:

Sec. 13h. TRACKING WASTEWATER PERMITS

The division of property valuation and review shall establish a system for tracking the issuance of wastewater system and potable water supply permits under 10 V.S.A. § 1973 on land enrolled in the use value appraisal program.

Eighth: By striking out Sec. 15, 24 V.S.A. § 1894(a)(2), in its entirety and inserting in lieu thereof a new Sec. 15, and new Secs. 15a and 15b to read as follows:

Sec. 15. 24 V.S.A. § 1894(a)(2) is amended to read:

(2) If no indebtedness is incurred within the first five years after creation of the district, no indebtedness may be incurred unless the municipality obtains reapproval from the Vermont economic progress council under 32 V.S.A. § 5404a(h). When considering reapproval, the Vermont economic progress council shall consider only material changes in the application under 32 V.S.A. § 5404a(h). The Vermont economic progress council shall presume that an applicant qualifies for reapproval upon a showing that the inability of the district to incur indebtedness was the result of the macro-economic conditions in the first five years after the creation of the district. Upon reapproval, the Vermont economic progress council shall grant a five-year extension of the period to incur indebtedness.

Sec. 15a. 32 V.S.A. § 5404a(l) is amended to read:

(l) The state auditor of accounts shall review and conduct an audit of all active tax increment financing districts every ~~three~~ four years and bill back to the municipality the charge for the audit. The amount paid by the municipality for the audit shall be considered a “related cost” as defined in 24 V.S.A. § 1981(6). Any audit conducted by the state auditor of accounts under this subsection shall include a validation of the portion of the tax increment retained by the municipality and the portion directed to the education fund.

Sec. 15b. TREATMENT OF TIF DISTRICTS FOR ACCOUNTING PURPOSES

The town of Milton may elect to treat the Husky and Catamount tax increment financing districts as a single district for purposes of the accounting and reporting requirements established under 32 V.S.A. § 5404a, 24 V.S.A. § 1901, and any rule adopted by the Vermont economic progress council governing tax increment financing districts, and such an election shall be conclusive for purposes of any state audit pursuant to 32 V.S.A. § 5404a(l).

Ninth: By striking Sec. 24, 33 V.S.A. § 1953(a), in its entirety and inserting in lieu thereof a new Sec. 24 to read:

Sec. 24. 33 V.S.A. § 1953(a) is amended to read:

(a) Hospitals shall be subject to an annual assessment as follows:

(1) 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 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 most recent full fiscal year for which data has been reported to the department of banking, insurance, securities, and health care administration through September 30, 2011. Beginning October 1, 2011, each hospital's assessment, except for hospitals assessed under subdivision (2) of this subsection, shall be 5.9 percent of its net patient revenues (less chronic, skilled, and swing bed revenues).

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Tenth: By adding a new Sec. 24a to read as follows:

Sec. 24a. HOSPITAL ASSESSMENT BILLING

(a) For the purpose of this section, the word "assessment" means the hospital assessment under 33 V.S.A. § 1953.

(b) Each year by May 15, the department of banking, insurance, securities, and health care administration shall deliver to the department of Vermont health access the financial reports and other data required to identify the actual net patient revenue for each hospital subject to the assessment for the months of the preceding October through March.

(c) The department of Vermont health access shall use the data identified in subsection (b) of this section to prepare estimated monthly assessments for the entire year based on the estimated net patient revenues for each hospital. The department of Vermont health access shall send notice of the assessment due to each hospital for the months of July through March based on its estimates prepared under this subsection.

(d) Each year on or before March 15, when the department of banking, insurance, securities, and health care administration obtains the information necessary to determine the actual net patient revenue for each hospital for the preceding fiscal year, it shall transmit that information to the department of Vermont health access and the department of taxes.

(e) The department of Vermont health access, with the assistance of the department of taxes, shall calculate the assessments for the months of April, May, and June of each year to reflect the difference on an annual basis, if any, between the amount a hospital would have paid under the estimates prepared by the department of Vermont health access under subsection (c) of this section and the amount based on the actual net patient revenue provided by the department of banking, insurance, securities, and health care administration under subsection (d) of this section.

Eleventh: In Sec. 27, 32 V.S.A. § 7771, in subsection (d), by striking out “125.5” and inserting in lieu thereof “131”, and in Sec. 27a, 32 V.S.A. § 7814(b), in subsection (b), by striking out “\$0.25” and inserting in lieu thereof “\$0.38”

Twelfth: By adding a new Sec. 36a to read as follows:

Sec. 36a. 32 V.S.A. § 9701(9)(I) is added to read:

(I) For purposes of subdivision (C) of this subdivision (9), a person making sales that are taxable under this chapter shall be presumed to be soliciting business through an independent contractor, agent, or other representative if the person enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet website or otherwise, to the person if the cumulative gross receipts from sales by the person to customers in the state who are referred to the person by all residents with this type of an agreement with the person are in excess of \$10,000.00 during the preceding tax year. For purposes of subdivision (C) of this subdivision (9), the presumption may be rebutted by proof that the resident with whom the person has an agreement did not engage in any solicitation in the state on behalf of the person that would satisfy the nexus requirements of the United States Constitution during the tax year in question.

Thirteenth: By adding a new Sec. 36b to read as follows:

Sec. 36b. 32 V.S.A. § 9783 is added to read:

§ 9783. NOTICE OF USE TAX DUE

(a) As used in this section:

(1) “De minimis online auction website” means an online auction website that facilitated total gross sales in Vermont in the prior calendar year of less than \$100,000.00 and reasonably expects to facilitate total gross sales in Vermont in the current calendar year of less than \$100,000.00.

(2) “De minimis retailer” means any noncollecting retailer that made total gross sales in Vermont in the prior calendar year of less than \$100,000.00 and reasonably expects total gross sales in Vermont in the current calendar year to be less than \$100,000.00.

(3) “Noncollecting retailer” means any retailer not currently registered to collect and remit Vermont sales and use tax who makes sales of tangible personal property, services, and products transferred electronically from a place of business outside Vermont to be shipped to Vermont for use, storage, or consumption and who is not required to collect Vermont sales or use taxes.

(4) “Online auction website” means a collection of web pages on the Internet that allows any person to display tangible personal property, services, or products transferred electronically for sale which are purchased through a competitive process in which a participant places a bid, with the highest bidder purchasing the property, service, or product when the bidding period ends.

(5) “Vermont purchaser” means any purchaser who purchases tangible personal property, services, or products transferred electronically to be shipped or transferred to Vermont.

(b) Each noncollecting retailer shall give notice that Vermont use tax is due on nonexempt purchases of tangible personal property, services, or products transferred electronically and shall be paid by the Vermont purchaser. The notice in this subsection shall be readily visible and contain the information as follows:

(1) The noncollecting retailer is not required and does not collect Vermont sales and use tax;

(2) The purchase is subject to state use tax unless it is specifically exempt from taxation;

(3) The purchase is not exempt merely because the purchase is made over the Internet, by catalogue, or by other remote means;

(4) The state requires each Vermont purchaser to report any purchase that was not taxed and to pay tax on the purchase. The tax may be reported and paid on the Vermont use tax form; and

(5) The use tax form and corresponding instructions are available on the department of taxes website.

(c) Notice requirements.

(1) The notice required by subsection (b) of this section to be displayed on a website shall occur on a page necessary to facilitate the applicable transaction. The notice shall be sufficient if the noncollecting retailer provides

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a prominent linking notice that reads as follows: “See important Vermont sales and use tax information regarding the tax you may owe directly to the state of Vermont.” The prominent linking notice shall direct the purchaser to the principal notice information required by subsection (b) of this section.

(2) The notice required in a catalogue by subsection (b) of this section shall be part of the order form. The notice shall be sufficient if the noncollecting retailer provides a prominent reference to a supplemental page that reads as follows: “See important Vermont sales and use tax information regarding the tax you may owe directly to the state of Vermont on page .” The notice on the order form shall direct the purchaser to the page that includes the principal notice required by subsection (b) of this section.

(3) For any Internet purchase made pursuant to this section, the invoice notice shall occur on the electronic order confirmation. The notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: “See important Vermont sales and use tax information regarding the tax you may owe directly to the state of Vermont.” The invoice notice link shall direct the purchaser to the principal notice required by subsection (b) of this section. If the noncollecting retailer does not issue an electronic order confirmation, the complete notice shall be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

(4) For any catalogue or telephone purchase made pursuant to this section, the complete notice required by subsection (b) of this section shall be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

(5) For any Internet purchase made pursuant to this section, notice on the check-out page fulfills simultaneously both the website and invoice notice requirements of subdivisions (1) and (3) of this subsection. The notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: “See important Vermont sales and use tax information regarding the tax you may owe directly to the state of Vermont.” The check-out page notice link shall direct the purchaser to the principal notice required by subsection (b) of this section.

(d) Exemptions and limitations.

(1) If a retailer is required to provide a similar notice for another state in addition to Vermont, the retailer may provide a consolidated notice so long as the notice includes the information contained in subsection (b) of this section, specifically references Vermont, and meets the placement requirements of this section.

(2) A noncollecting retailer may not state or display or imply that no tax is due on any Vermont purchase unless the display is accompanied by the notice required by subsection (b) of this section each time the display appears. If a summary of the transaction includes a line designated "sales tax" and shows the amount of sales tax as zero, this constitutes a display implying that no tax is due on the purchase. This display shall be accompanied by the notice required by subsection (b) of this section each time it appears.

(3) Notwithstanding the limitation in this section, if a noncollecting retailer knows that a purchase is exempt from Vermont tax pursuant to Vermont law, the noncollecting retailer may display or indicate that no sales or use tax is due even if the display is not accompanied by the notice required by subsection (b) of this section.

(4) With the exception of notification on an invoice, the provisions of this section apply to online auction websites.

(5) A de minimis retailer and a de minimis online auction website are exempt from the notice requirements provided by this section.

(6) No criminal penalty or civil liability may be applied or assessed for failure to comply with the provisions of this section.

Fourteenth: By adding a new Sec. 36d to read as follows:

Sec. 36d. 7 V.S.A. § 422 is amended to read:

§ 422. TAX ON SPIRITUOUS LIQUOR

A tax of 25 percent of the gross revenues is assessed on the gross revenue on the retail sale of spirituous liquor in the state of Vermont, including fortified wine, sold by or through the liquor control board or sold by a manufacturer or rectifier of spirituous liquor in accordance with the provisions of this title. The tax shall be at the following rates based on the gross revenue of the retail sales by the seller in the previous year:

(1) if the gross revenue of the seller is \$100,000.00 or lower a year, the rate of tax is five percent;

(2) if the gross revenue of the seller is between \$100,000.00 and \$200,000.00, the rate of tax is \$5,000.00 plus 15 percent of gross revenues over \$100,000.00;

(3) if the gross revenue of the seller is over \$200,000.00, the rate of tax is 25 percent.

Fifteenth: By adding a new Sec. 36e to read as follows:

Sec. 36e. 32 V.S.A. § 3205 is added to read:

§ 3205. TAXPAYER ADVOCATE

(a) There is established within the department of taxes an office of the taxpayer advocate.

(b) The taxpayer advocate shall have the following functions and duties:

(1) identify subject areas where taxpayers have difficulties interacting with the department of taxes;

(2) identify classes of taxpayers or specific business sectors who have common problems related to the department of taxes;

(3) propose solutions, including administrative changes to practices and procedures of the department of taxes;

(4) recommend legislative action as may be appropriate to resolve problems encountered by taxpayers;

(5) educate taxpayers concerning their rights and responsibilities under Vermont's tax laws; and

(6) educate tax professionals concerning the department of taxes regulations and interpretations by issuing bulletins and other written materials.

(c) The taxpayer advocate shall prepare an annual report detailing the actions the taxpayer's advocate has taken to improve taxpayer services and the responsiveness of the department of taxes. The report shall identify the problems encountered by taxpayers in interacting with the department of taxes and include specific recommendations for administrative and legislative actions to resolve those problems. The report shall identify any problems that span an entire class of taxpayer or specific industry, and propose class- or industry-wide solutions. The report of the taxpayer advocate shall be submitted to the senate committee on finance and the house committee on ways and means no later than January 15th of each year.

(d) By January 15, 2012, the joint fiscal office and the office of legislative council shall jointly present a proposal to the senate committee on finance and the house committee on ways and means for the creation of an independent office of the taxpayer advocate. The proposal shall consider the experiences in other states and include the specific duties and functions of the office, an independent appointment and retention process, a reporting process, and potential funding sources. The joint fiscal office and office of legislative council shall be assisted by the department of taxes, and any other executive agency, as necessary in preparing the proposal.

Sixteenth: By adding a new Sec. 36f to read as follows:

Sec. 36f. 32 V.S.A. § 5887(c) is added to read:

(c) Notwithstanding subsections (a) and (b) of this section, the commissioner may compromise a tax liability arising under this title upon the grounds of doubt as to liability or doubt as to collectibility, or both. Upon acceptance by the commissioner of an offer in compromise, the liability of the taxpayer in question is conclusively settled, and neither the taxpayer nor the commissioner may reopen the case except by reason of falsification or concealment of assets by the taxpayer or mutual mistake of a material fact or if, in the opinion of the commissioner, justice requires it. The decision of the commissioner to reject an offer in compromise is not subject to review. The commissioner may adopt rules regarding the procedures to be followed for the submission and consideration of offers in compromise.

Seventeenth: By adding a new Sec. 36g to read as follows:

Sec. 36g. 32 V.S.A. § 9741(48) is added to read:

(48) Sales of tangible personal property sold by an auctioneer licensed under chapter 89 of Title 26, including any buyer's premium charged by the auctioneer, that are conducted on the premises of the owner of the property, provided that no other person's property is sold on the auction premises.

Eighteenth: By adding a new Sec. 36h to read as follows:

Sec. 36h. TAXPAYER OUTREACH AND INFORMATION SYSTEMS

As the department of taxes has increased its compliance efforts in recent years, it has not increased its taxpayer service and education capacity. To balance the needs of the state with the rights of taxpayers, the department of taxes should increase its taxpayer outreach and education efforts. By January 18, 2012, the department of taxes shall make recommendations to the senate committee on finance and the house committee on ways and means on:

(1) ways in which the department of taxes can improve its education outreach to taxpayers in specific industries or classes to ensure that taxpayers in those industries and classes are aware of their obligations under law and to ensure that the department of taxes is able to track and respond to industry- or class-wide concerns;

(2) how to improve its system of taxpayer administrative appeals that includes a review of the feasibility of creating an appeals officer or body independent of the department of taxes; and

(3) protocols the department of taxes can adopt for tracking taxpayer inquiries and responses by the department of taxes to ensure that taxpayers receive correct information.

Nineteenth: By adding a new Sec. 36i to read as follows:

Sec. 36i. LEGISLATIVE INTENT FOR TAX EXPENDITURES

It is the intent of the general assembly in reviewing the tax expenditure budgets recommended by the governor to ensure that any changes to Vermont's tax expenditures are done openly and equitably and are subject to public review. Vermont tax expenditures are intended to reflect and support Vermont values and policies.

Twentieth: By adding a new Sec. 36j to read as follows:

Sec. 36j. 32 V.S.A. § 306 is amended to read:

§ 306. BUDGET REPORT

(a) The governor shall submit to the general assembly, not later than the third Tuesday of every annual session, a budget which shall embody his or her estimates, requests, and recommendations for appropriations or other authorizations for expenditures from the state treasury. In the first year of the biennium, the budget shall relate to the two succeeding fiscal years. In the second year of the biennium, it shall relate to the succeeding fiscal year.

(b) The governor shall also submit to the general assembly, not later than the third Tuesday of each session of every biennium, a tax expenditure budget which shall embody his or her estimates, requests, and recommendations. The tax expenditure budget shall be divided into three parts and made as follows:

(1) A budget covering tax expenditures related to nonprofits and charitable organizations and covering miscellaneous expenditures shall be made by the third Tuesday of the legislative session beginning in January 2012 and every three years thereafter.

(2) A budget covering tax expenditures related to economic development, including business, investment, and energy, shall be made by the third Tuesday of the legislative session beginning in January 2013 and every three years thereafter.

(3) A budget covering tax expenditures made in furtherance of Vermont's human services, including tax expenditures affecting veterans, shall be made by the third Tuesday of the legislative session beginning in January 2014 and every three years thereafter.

(c) The tax expenditure budget shall be provided to the house committee on ways and means and the senate committee on finance, which committees shall

review the tax expenditure budget and shall report their recommendations in bill form.

Twenty-first: By adding a new Sec. 36k to read as follows:

Sec. 36k. 32 V.S.A. § 312 is amended to read:

§ 312. TAX EXPENDITURE REPORT

\* \* \*

~~(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.~~

Twenty-second: By adding a new Sec. 36l to read as follows:

Sec. 36l. REPEAL

32 V.S.A. § 5823(a)(5) is repealed as of July 1, 2013.

Twenty-third: By adding a new Sec. 36m to read as follows:

Sec. 36m. LINK-BASED USE TAX RETURNS

The department of taxes shall evaluate the feasibility of providing a voluntary Internet-based use tax reporting and payment system in conjunction with the notice required under Sec. 36a of this act. The department of taxes shall communicate its findings to the senate committee on finance and the house committee on ways and means by memorandum no later than January 15, 2012.

\* \* \* **TECHNICAL CORRECTIONS** \* \* \*

Twenty-fourth: In Sec. 7 (REPEAL), by striking out the words “The following are repealed:” and “(1)”, and by inserting after the words “Acts of 2011” the words “is repealed”

Twenty-fifth: In Sec. 26, 33 V.S.A. § 1955(a), by striking out “6.0” and inserting “5.9”

Twenty-sixth: In Sec. 28, 8 V.S.A. § 4089l, in subdivision (a)(1), by striking out the word “quarterly” and by striking out “June 30” and inserting in lieu thereof “June 1”

Twenty-seventh: In Sec. 29, 8 V.S.A. § 4089k(a)(1), by striking out the word “quarterly” and by striking “June 30” and inserting in lieu thereof “June 1”

Twenty-eighth: By adding a new Sec. 36n to read as follows:

Sec. 36n. 33 V.S.A. § 1986(a)(2) is amended to read:

(2) ~~15.5~~ 14.5 percent of the revenue from the cigarette tax levied pursuant to chapter 205 of Title 32;

Twenty-ninth: By adding a new Sec. 36o to read as follows:

Sec. 36o. 33 V.S.A. § 1901d(b)(1) is amended to read:

(1) all revenue from the tobacco products tax and ~~84.5~~ 85.5 percent of the revenue from the cigarette tax levied pursuant to chapter 205 of Title 32;

**\* \* \* EFFECTIVE DATES \* \* \***

Thirtieth: In Sec. 37 (EFFECTIVE DATES), in subdivision (3), after the words “(changes to homestead declaration penalty)”, by inserting the words “and Sec. 13b (veteran’s exemption adjustment)”, and in subdivision (8), after “(allocation of property transfer tax revenue)” by striking the word “and” and after the words “(exempt organizations)” by inserting the words “, 36d (spirituous liquors), 36g (sales tax exemption for auctioneers), 36n (Catamount fund), and 36o (state health care fund)”

Thirty-first: In Sec. 37 (EFFECTIVE DATES), by adding new subdivisions (11), (12), (13), (14), and (15) to read:

(11) Sec. 13a (use value appraisal permits) shall take effect on passage and shall apply to any land permitted at the time of passage, or to any land permitted after passage.

(12) Sec. 15a (tax increment audits) shall apply only to audits initiated by the state auditor of accounts after January 1, 2012.

(13) Sec. 36a (Internet affiliate sales tax) shall take effect on the date on which, through legislation, rule, agreement, or other binding means, 15 or more other states have adopted requirements that are the same, substantially similar, or significantly comparable to the requirements contained in Sec. 36a. The attorney general shall determine when this date has occurred.

(14) Sec. 36b (out of state sellers notice) is repealed on the date on which, through legislation, rule, agreement, or other binding means, 15 or more other states have adopted requirements that are the same, substantially similar, or significantly comparable to the requirements contained in Sec. 36a. The attorney general shall determine when this date has occurred.

(15) Sec. 15b (Milton TIF) shall apply retroactively to July 1, 2008.

And that all sections and cross references be renumbered to be numerically correct.

*ANN E. CUMMINGS  
MARK A. MACDONALD  
TIMOTHY R. ASHE*

*Committee on the part of the Senate*

*JANET ANCEL  
CAROLYN W. BRANAGAN  
DAVID D. SHARPE*

*Committee on the part of the House*

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative on a roll call, Yeas 17, Nays 10.

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

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Campbell, Carris, Cummings, Fox, Galbraith, Hartwell, Kitchel, Lyons, MacDonald, Mazza, Miller, Nitka, Sears, White.

**Those Senators who voted in the negative were:** Benning, Brock, Doyle, Flory, Giard, Illuzzi, McCormack, Mullin, Pollina, Starr.

**Those Senators absent and not voting were:** Kittell, Snelling, Westman.

#### **Rules Suspended; Report of Committee of Conference Accepted and Adopted on the Part of the Senate**

#### **H. 446.**

Pending entry on the Calendar for notice, on motion of Senator Campbell, 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 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:

H. 446 An act relating to capital construction and state bonding.

Respectfully reports that it has met and considered the same and recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Legislative Intent \* \* \*

Sec. 1. LEGISLATIVE INTENT

(a) Notwithstanding any other provision of law, this act, unlike previous acts relating to capital construction and state bonding, appropriates capital funds for the next two years. This temporary move to a biennial capital budgeting cycle is designed to accelerate the construction dates of larger projects and thus create jobs for Vermonters sooner than would be possible under a one-year capital budgeting cycle.

(b) It is the intent of the general assembly that:

(1) this move to a biennial capital budgeting cycle shall apply only to FY 2012 and FY 2013.

(2) any decision to move permanently to a biennial capital budgeting cycle shall receive study and consideration at a later date prior to implementation.

(3) of the \$154,739,399 million authorized by this act, no more than \$92,249,757 shall be appropriated in the first year of the biennium, and the remainder shall be appropriated in the second year.

(4) in the second year of the biennium, any amendments to the appropriations or authorities granted in this act shall take the form of a capital construction and state bonding adjustment bill. It is the intent of the general assembly that unless otherwise indicated, all appropriations in this act are subject to capital budget adjustment.

(c) On or before January 15, 2012, each entity to which funds are appropriated under this act shall submit to the house committee on corrections and institutions and the senate committee on institutions a brief report on the status of each project. The report shall be no more than one page in length for each project.

## \* \* \* Capital Appropriations \* \* \*

## Sec. 2. STATE BUILDINGS

(a) Of the total sums appropriated to the department of buildings and general services, the commissioner is authorized to direct funds appropriated in this section to the projects contained in this section; however, no project shall be canceled until 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.

(b) The following sums are appropriated in FY 2012:

(1) Statewide, asbestos and lead abatement: 100,000

(2) Statewide, building reuse and planning: 125,000

(3) Statewide, contingency: 300,000

(4) Statewide, major maintenance. Of this amount, up to \$360,000 may be used for window sills and frames in coordination with the ARRA-funded window replacement project in Waterbury. For the purposes of this act, major maintenance shall mean deferred maintenance, planned capital renewal, and routine maintenance as these terms are defined in the memorandum of explanation of terminology dated April 14, 2011 from BGS to the chairs of the institutions committees: 8,000,000

(5) Statewide, BGS engineering, project management, and architectural project costs. It is the intent of the general assembly to evaluate in the second year of the biennium the appropriate amount for future funding of this project: 2,428,802

(6) Statewide, physical security enhancements: 150,000

(7) Brattleboro, state office building, HVAC replacement and renovations: 3,275,000

(8) Burlington, 108 Cherry St., HVAC upgrades: 1,000,000

(9) Montpelier, 116 State St., restore building envelope: 1,000,000

(10) Burlington, for Burlington International Airport to continue the process of planning and designing a new aviation technical center. 150,000

(11) Montpelier, 120 State St., restroom renovations: 250,000

(12) Montpelier, 120 State St., planning and design for building renovations: 250,000

(13) Newport, Hebard state office building, state share, façade replacement and water intrusion prevention: 350,000

(14) Newport, Northern State Correctional Facility, maintenance shop: 350,000

(15) Springfield Correctional Facility, exterior mechanical building: 350,000

(16) No funds are appropriated for the exposition center building located in Springfield, MA. On or before January 15, 2012, the agency of agriculture, food and markets shall present financial information for the facility, including cost share and revenue data, to the house committee on corrections and institutions and the senate committee on institutions. The secretary of agriculture, food and markets and the commissioner of buildings and general services shall work together to create a plan for how revenues can be used to perform major maintenance on the facility.

(17) St. Albans, Northwest State Correctional Facility, maintenance shop: 350,000

(18) St. Johnsbury, Caledonia Community Work Camp, wood boiler and generator upgrade: 400,000

(19) Waterbury, powerhouse fuel tank replacement: 400,000

(20) Waterbury, wood-chip-fired boiler facility planning: 500,000

(21) Montpelier, capital district heat plant, subject to the conditions in subsection (e) of this section: 7,000,000

(22) Montpelier, state house, renovate and refurnish house committee rooms, chosen by the speaker of the house, to continue making better use of existing space. By January 1, 2013, the Ethan Allen room shall be restored to public use: 200,000

(c) The following sums are appropriated in FY 2013:

(1) Statewide, asbestos and lead abatement: 100,000

(2) Statewide, contingency: 300,000

(3) Statewide, major maintenance, as that term is defined in subdivision (b)(4) of this section: 7,900,000

(4) Statewide, BGS engineering, project management, and architectural project costs. It is the intent of the general assembly to evaluate in the second year of the biennium the appropriate amount for future funding of this project: 2,428,802

(5) Statewide, physical security enhancements: 150,000

(6) Burlington, 108 Cherry St., HVAC upgrades: 1,000,000

(d) For the project described in subdivision (b)(12) of this section, the commissioner shall present a design plan to the committees on institutions on or before January 15, 2012.

(e) For the project described in subdivision (b)(21) of this section:

(1) The state of Vermont shall own and operate the plant and be responsible for the state distribution lines. The state shall have the sole responsibility for planning, design, and construction of the plant; however, the state may involve the city in this process to the extent desirable by the state. The state and city shall engage in discussions regarding capacity. The commissioner of buildings and general services is authorized to enter into contracts with the city regarding the sale of thermal energy.

(2) Release of funds appropriated to this project is contingent on the execution on or before June 9, 2011 of a memorandum of understanding between the department of buildings and general services and the city of Montpelier that includes the following:

(A) A statement of how federal grant funds shall be allocated between the state and the city.

(B) The mechanism for establishing the wholesale thermal energy price that the state will charge the city. This mechanism shall include the recovery of the state's costs of operation and maintenance of the heat plant, including maintenance reserves.

(C) A provision that, regardless of the outcome of the bond vote of the city of Montpelier for funding the plant or other related matters, the city shall cooperate with the state to aid the state in retaining the benefit of federal grant monies for this project.

(D) A statement that the city shall own and maintain a thermal conversion unit and the city distribution lines.

(E) An agreement between the state and the city regarding how much capacity shall be built into the plant initially for Montpelier.

(3) If no memorandum of understanding meeting the requirements of subdivision (2) of this subsection (e) is executed on or before June 9, 2011, \$1,900,000 of the \$7,000,000 that would otherwise be appropriated for this project shall be appropriated instead to the department of buildings and general services for maintenance of the existing plant. Another \$1,000,000 shall be appropriated for major maintenance of state properties. The remainder shall be reallocated during the budget adjustment process.

Appropriation – FY 2012

\$26,928,802

<u>Appropriation – FY2013</u>	<u>\$11,878,802</u>
<u>Total Appropriation – Section 2</u>	<u>\$38,807,604</u>

### Sec. 3. ADMINISTRATION

(a) Of the funds 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:

(1) \$100,000 is appropriated in FY 2012.

(2) \$100,000 is appropriated in FY 2013.

(b) The sum of \$10,000,000 is appropriated to Vermont Telecommunications Authority (VTA) in FY 2012 for the project described in and subject to the requirements of Sec. 49 of this act.

<u>Appropriation – FY 2012</u>	<u>\$10,100,000</u>
<u>Appropriation – FY 2013</u>	<u>\$100,000</u>
<u>Total Appropriation – Section 3</u>	<u>\$10,200,000</u>

### Sec. 4. HUMAN SERVICES

(a) The following sums are appropriated in FY 2012 to the department of buildings and general services for the agency of human services for the projects described in this subsection:

(1) Health laboratory, continuation of design, permitting, bidding, and construction phases for co-location of department of health laboratory with the UVM Colchester research facility: 14,000,000

(2) Vermont state hospital, ongoing safety renovations: 100,000

(3) Vermont state hospital, continuation of planning and design for the replacement of services: 700,000

(4) Corrections, continuation of suicide prevention project: 100,000

(5) Corrections, security upgrades: 100,000

(6) Corrections, removal of existing dam at the Southeast State Correctional Facility in Windsor and upgrade of the facility's potable and fire suppression water supply: 1,000,000

(b) The sum of \$1,400,000 is appropriated to the department of buildings and general services in FY 2012 for the department of corrections master plan outlined in Sec. 38 of this act.

(c) The sum of \$400,000 is appropriated in FY 2012 to the agency of human services for the construction of transitional housing. On or before

January 15, 2012, the secretary of human services shall present a plan for how the construction of transitional housing should be funded in the future to the house committee on appropriations, house committee on corrections and institutions, the senate committee on appropriations, and the senate committee on institutions.

(d) The following sums are appropriated in FY 2013 to the department of buildings and general services for the agency of human services for the projects described in this subsection:

(1) Corrections, rehabilitate VCI print shop: 143,920

(2) Corrections, removal of existing dam at the Southeast State Correctional Facility in Windsor and upgrade of the facility's potable and fire suppression water supply: 400,000

(3) Vermont state hospital, continuation of planning and design for the replacement of services: 1,300,000

(e) The sum of \$14,000,000 is appropriated in FY 2013 to the department of buildings and general services for the agency of human services to continue the project described in subdivision (a)(1) of this section. For the purpose of allowing the department of buildings and general services to enter into contractual agreements and complete work on the health laboratory project as soon as possible, it is the intent of the general assembly that these are committed funds not subject to budget adjustment.

Appropriation – FY 2012 \$17,800,000

Appropriation – FY 2013 \$15,843,920

Total Appropriation – Section 4 \$33,643,920

#### Sec. 5. JUDICIARY

(a) \$200,000 is appropriated in FY 2012 to the department of buildings and general services on behalf of the judiciary to perform repairs and upgrades to bring county courthouse facilities into ADA compliance. The department shall perform these repairs in accordance with the County Courts Americans with Disabilities Act Audits Reports submitted by the department to the general assembly pursuant to Sec. 235a of No. 154 of the Acts of the 2009 Adj. Sess. (2010).

(b) \$200,000 is appropriated in FY 2013 to continue the project described in subsection (a) of this section. For the purpose of allowing the department of buildings and general services to enter into contractual agreements and

complete work as soon as possible, it is the intent of the general assembly that these are committed funds not subject to capital budget adjustment.

Total Appropriation – Section 5 \$400,000

#### Sec. 6. COMMERCE AND COMMUNITY DEVELOPMENT

(a) The following sums are appropriated in FY 2012 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) Vermont archeology heritage center; rehabilitation of unused space at the Vermont history center and associated moving costs: 400,000

(3) Historic property stabilization and rehabilitation fund: 100,000

(b) \$200,000 is appropriated in FY 2013 to the department of buildings and general services for the agency of commerce and community development major maintenance at historic sites statewide; provided such maintenance shall be under the supervision of the department of buildings and general services.

(c) The following sums are appropriated in FY 2012 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

(d) The following sums are appropriated in FY 2013 to the agency of commerce and community development for the following projects:

(1) Underwater preserves: 25,000

(2) Placement and replacement of roadside historic site markers: 15,000

Appropriation – FY 2012 \$815,000

Appropriation – FY 2013 \$240,000

Total Appropriation – Section 6 \$1,055,000

#### Sec. 7. BUILDING COMMUNITIES GRANTS

(a) The following sums are appropriated in FY 2012 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: 225,000

(2) To the agency of commerce and community development, division for historic preservation, for the historic barns preservation grant program. Of this sum, up to \$20,000 may be used for the Barn Census Project: 225,000

(3) To the Vermont council on the arts for the cultural facilities grant program: 225,000

(4) To the department of buildings and general services for the recreational facilities grant program: 225,000

(5) To the department of buildings and general services for the human services and educational facilities competitive grant program: 225,000

(6) For the agricultural fairs capital projects competitive grant program: 225,000

(b) The following sums are appropriated in FY 2013 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: 225,000

(2) To the agency of commerce and community development, division for historic preservation, for the historic barns preservation grant program: 225,000

(3) To the Vermont council on the arts for the cultural facilities grant program: 225,000

(4) To the department of buildings and general services for the recreational facilities grant program: 225,000

(5) To the department of buildings and general services for the human services and educational facilities competitive grant program: 225,000

(6) For the agricultural fairs capital projects competitive grant program: 225,000

Appropriation – FY 2012 \$1,350,000

Appropriation – FY 2013 \$1,350,000

Total Appropriation – Section 7 \$2,700,000

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**Sec. 8. EDUCATION**

(a) \$7,425,000 is appropriated in FY 2012 to the department of education for funding the state share of completed school construction projects pursuant to 16 V.S.A. § 3448. The appropriation shall be allocated according to the priorities established by the state board of education for fiscal year 2012, excluding emergency projects and asset renewal projects. Major addition or renovation projects shall receive 30 percent of the remaining amount owed by the state. Technical education projects shall each receive 33 percent of the remaining amount owed by the state. Of the balance remaining of the appropriation once all major addition or renovation and technical education projects are paid, renewable energy projects shall receive an equal percentage of the amount owed by the state.

(b) \$7,425,000 is appropriated in FY 2013 pursuant to 16 V.S.A. § 3448. It is the intent of the general assembly that these are committed funds not subject to capital budget adjustment.

Total Appropriation – Section 8 \$14,850,000

**Sec. 9. AUSTINE SCHOOL**

The sum of \$500,000 is appropriated in FY 2012 to the department of buildings and general services for the final phase of renovation of Holton Hall at the Austine School. This shall be the last capital funding for this project.

Total Appropriation – Section 9 \$500,000

**Sec. 10. UNIVERSITY OF VERMONT**

(a) \$1,800,000 is appropriated in FY 2012 to the University of Vermont for construction, renovation, and major maintenance.

(b) \$1,800,000 is appropriated in FY 2013 for the project described in subsection (a) of this section.

(c) It is the intent of the general assembly to evaluate in the second year of the biennium the appropriate amount for future funding of this project.

Total Appropriation – Section 10 \$3,600,000

**Sec. 11. VERMONT STATE COLLEGES**

(a) \$1,800,000 is appropriated in FY 2012 to Vermont State Colleges for construction, renovation, and major maintenance.

(b) \$1,800,000 is appropriated in FY 2013 to Vermont State Colleges for construction, renovation, and major maintenance.

(c) It is the intent of the general assembly to evaluate in the second year of the biennium the appropriate amount for future funding of this project.

Total Appropriation – Section 11 \$3,600,000

Sec. 12. NATURAL RESOURCES

(a) The following sums are appropriated to the agency of natural resources in FY 2012 for:

(1) the water pollution control fund for the following projects:

(A) Clean water state/EPA revolving loan fund (CWSRF)  
match: 1,000,000

(B) Combined sewer overflow project in Springfield, several  
areas: 210,000

(C) Principal and interest on short-term borrowing associated with  
delayed grant funding for the Pownal project: 500,000

(D) Springfield loan conversion: 100,000

(E) Administrative support – engineering, oversight, and program  
management. It is the intent of the general assembly to evaluate in the second  
year of the biennium the appropriate amount for future funding of this  
project: 275,000

(2) the drinking water state revolving fund for the following projects:

(A) Engineering oversight and project management. It is the intent of  
the general assembly to evaluate in the second year of the biennium the  
appropriate amount for future funding of this project: 275,000

(B) Balance of match to federal FY 2010 EPA grant: 2,515,253

(C) Partial match to federal FY 2011 EPA grant: 271,460

(3) the following water pollution control TMDL and wetland protection  
projects:

(A) Ecosystem restoration and protection: 2,500,000

(B) Waterbury waste treatment facility phosphorous  
removal: 2,700,000

(4) the following dam safety and hydrology projects:

(A) Wolcott Pond dam repair and maintenance: 150,000

(B) Waterbury dam maintenance: 175,000

(5) the following department of forests, parks and recreation projects for  
statewide small-scale rehabilitation, wastewater repairs, preventive

improvements and upgrades of restrooms and bathhouses, and statewide small-scale road rehabilitation. 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

(6) the following department of fish and wildlife projects:

(A) general infrastructure projects: 250,000

(B) removal of unsafe dilapidated structures. Of this amount, up to \$50,000 may be used for improvements to state-owned shooting ranges: 150,000

(C) fish culture station improvements: 550,000

(D) fishing access improvements: 100,000

(b) The following sums are appropriated to the agency of natural resources in FY 2013 for:

(1) the water pollution control fund for the following projects:

(A) Clean water state/EPA revolving loan fund (CWSRF) match: 2,000,400

(B) Combined sewer overflow projects:

(i) St. Albans, 1272 Order (Combined Sewer Overflow Abatement): 250,000

(ii) Hartford and White River Junction, Nutt Lane overflow: 125,000

(C) Principal and interest on short-term borrowing associated with delayed grant funding for the Pownal project: 500,000

(D) Springfield loan conversion: 100,000

(E) Administrative support – engineering, oversight, and program management. It is the intent of the general assembly to evaluate in the second year of the biennium the appropriate amount for future funding of this project: 300,000

(2) the following projects:

(A) the drinking water state revolving fund for balance of match to federal FY 2011 EPA grant: 2,433,140

(B) engineering oversight and program management. It is the intent of the general assembly to evaluate in the second year of the biennium the appropriate amount for future funding of this project: 300,000

(3) <u>ecosystem restoration and protection:</u>	<u>2,500,000</u>
(4) <u>the department of forests, parks and recreation for statewide small-scale rehabilitation, wastewater repairs, preventive improvements and upgrades of restrooms and bathhouses, and statewide small-scale road rehabilitation projects. 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:</u>	<u>2,500,000</u>
(5) <u>the following department of fish and wildlife projects:</u>	
(A) <u>fish culture station improvements:</u>	<u>550,000</u>
(B) <u>fishing access improvements:</u>	<u>100,000</u>
(C) <u>for the Lake Champlain Walleye Association, Inc. to upgrade and repair the walleye rearing, restoration, and stocking infrastructure:</u>	<u>25,000</u>
<u>Appropriation – FY 2012</u>	<u>\$14,221,713</u>
<u>Appropriation – FY 2013</u>	<u>\$11,683,540</u>
<u>Total Appropriation – Section 12</u>	<u>\$25,905,253</u>

#### Sec. 13. MILITARY

(a) \$400,000 is appropriated in FY 2012 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.

(b) \$350,000 is appropriated in FY 2013 for the purpose described in subsection (a) of this section.

Total Appropriation – Section 13 \$750,000

#### Sec. 14. PUBLIC SAFETY

(a) \$50,000 is appropriated in FY 2012 to the department of public safety for the purchase of equipment for the fire service training center of Vermont in Pittsford.

(b) \$50,000 is appropriated in FY 2013 for the project described in subsection (a) of this section.

(c) \$2,500,000 is appropriated in FY 2012 to the department of buildings and general services for the department of public safety for the design, construction, and fit-up of a new public safety field station to consolidate the Brattleboro and Rockingham barracks.

(d) \$2,500,000 is appropriated in FY 2013 for the project described in subsection (c) of this section. For the purpose of allowing the department of buildings and general services to enter into contractual agreements and

complete work on this project as soon as possible, it is the intent of the general assembly that these are committed funds not subject to budget adjustment.

(e) \$10,000 is appropriated in FY 2012 for an architectural assessment of the Vermont State Police barracks in Middlesex to determine the most cost-effective way to modify the existing facilities to enhance officer and suspect safety by incorporating an existing garage to aid in criminal transport, creating an updated holding cell, and creating a contained processing and booking area that is separate from staff work space.

(f) The commissioners of the departments of public safety and of buildings and general services shall study the feasibility of consolidating the Vermont State Police facilities currently located in Bradford and St. Johnsbury into one location.

<u>Appropriation – FY 2012</u>	<u>\$2,560,000</u>
<u>Appropriation – FY 2013</u>	<u>\$2,550,000</u>
<u>Total Appropriation – Section 14</u>	<u>\$5,110,000</u>

#### Sec. 15. CRIMINAL JUSTICE TRAINING COUNCIL; DEPARTMENT OF PUBLIC SAFETY

No capital funds other than those to be used for major maintenance shall be appropriated for the criminal justice training council or the fire training council until the two entities enter into a memorandum of understanding regarding the use of facilities and a strategic plan to avoid duplication of facilities and services.

#### Sec. 16. AGRICULTURE, FOOD AND MARKETS

(a) \$1,300,000 is appropriated in FY 2012 to the agency of agriculture, food and markets for the best management practice implementation cost share program, to continue to reduce nonpoint source pollution in Vermont. Cost share funds shall not exceed 90 percent of the total cost of a project. Whenever possible, state funds shall be combined with federal funds to complete projects.

(b) \$1,200,000 is appropriated in FY 2013 for the program described in subsection (a) of this section.

<u>Total Appropriation – Section 16</u>	<u>\$2,500,000</u>
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#### Sec. 17. VERMONT PUBLIC TELEVISION

(a) \$300,000 is appropriated in FY 2012 to Vermont Public Television for the continuation of digital conversion and energy conservation retrofitting.

(b) \$300,000 is appropriated in FY 2013 for the project described in subsection (a) of this section.

Total Appropriation – Section 17 \$600,000

Sec. 18. VERMONT RURAL FIRE PROTECTION

(a) \$100,000 is appropriated in FY 2012 to the department of public safety, division of fire safety for the Vermont rural fire protection task force to continue the dry hydrant program.

(b) \$100,000 is appropriated in FY 2013 to continue the dry hydrant program.

Total Appropriation – Section 18 \$200,000

Sec. 19. VERMONT VETERANS' HOME

(a) \$200,000 is appropriated in FY 2012 to the department of buildings and general services for the Vermont Veterans' Home to replace the nurse call system on B and C wings of the facility.

(b) \$100,000 is appropriated in FY 2012 to the department of buildings and general services for the Vermont Veterans' Home to design an upgrade of the kitchen and dietary storage areas to be code compliant and to improve the food preparation and delivery systems.

Total Appropriation – Section 19 \$300,000

Sec. 20. VERMONT CENTER FOR CRIME VICTIM SERVICES

(a) \$50,000 is appropriated in FY 2012 to the Vermont Center for Crime Victim Services for Americans with Disabilities Act improvements at domestic and sexual violence shelters and nonshelter programs. The Vermont Center for Crime Victim Services shall continue to file annually and in the manner prescribed by the report required by Sec. 20 of No. 161 of the Acts of the 2009 Adj. Sess. (2010).

(b) \$35,000 is appropriated in FY 2013 for the project described in subsection (a) of this section.

Total Appropriation – Section 20 \$85,000

Sec. 21. INFORMATION AND INNOVATION

\$5,334,139 is appropriated in FY 2013 to the department of information and innovation for the upgrade of the financial and human resources computer system. The department shall report back to the general assembly on or before

January 15, 2012 regarding how the appropriations granted in Sec. C.100 of No. \_\_\_ of 2011 (H.441; the appropriations bill) have been used for this project.

Total Appropriation – Section 21 \$5,334,139

## Sec. 22. HOUSING AND CONSERVATION BOARD

The amount of \$4,000,000 is appropriated in FY 2012 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 and supportive housing for persons with disabilities, including persons with chronic mental illness and transitional and supportive housing for individuals and families who might otherwise be homeless;

(2) consider the need for creating public inebriate beds and transitional housing in unserved areas of the state;

(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;

(4) leverage federal and private funds to the maximum extent feasible. If less than \$3,200,000 of the state's private use bond cap is made available to VHCB for loans to eligible affordable housing projects or if federal law prevents the state from combining the nine percent housing tax credit with this capital appropriation, 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 by Sec. B.810 of No. \_\_\_ of 2011 (H.441; the appropriations bill); and

(5) on or before January 31, 2012, provide its annual report to the senate committee on institutions and the house committee on corrections and institutions on how the funds appropriated by this section and by No. \_\_\_ of 2011 (H.441; the appropriations bill) were spent or obligated.

Total Appropriation – Section 22 \$4,000,000

## Sec. 22a. PUBLIC INEBRIATES TASK FORCE

The public inebriates task force established pursuant to Sec. 17 of No. 179 of the Acts of the 2007 Adj. Sess. (2008) shall work with the Vermont housing

and conservation board to provide public inebriate beds. The task force shall develop a plan to assemble support services and related annual funding, and assemble a facility with two to four beds, in one or more of the unserved areas of the state. The task force shall report the plan and its progress to the house committee on corrections and institutions and the senate committee on institutions on or before January 15, 2012.

### Sec. 23. VERMONT INTERACTIVE TELEVISION

(a) \$299,242 is appropriated in FY 2012 to Vermont Interactive Television for the purchase of equipment necessary for systems and unit upgrades at Vermont Interactive Television sites.

(b) \$299,241 is appropriated in FY 2013 to Vermont Interactive Television for the project described in subsection (a) of this section.

Total Appropriation – Section 23 \$598,483

\* \* \* Financing This Act \* \* \*

### Sec. 24. 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. 2 of this act:

(1) of the amount appropriated by Sec. 12(a) of No. 147 of the Acts of the 2005 Adj. Sess. (2006) (public safety): 6,306.13

(2) of the amount appropriated by Sec. 1 of No. 200 of the Acts of the 2007 Adj. Sess. (2008) (20 Houghton): 10,260.00

(3) of the amount appropriated by Sec. 6 of No. 200 of the Acts of the 2007 Adj. Sess. (2008) (human resources grants): 3,969.35

(4) of the amount appropriated by Sec. 15 of No. 200 of the Acts of the 2007 Adj. Sess. (2008) (Pittsford fire service training facility): 418,632.97

(5) of proceeds from the sale of property authorized by Sec. 32(d) of No. 200 of the Acts of the 2007 Adj. Sess. (2008) (Thayer school): 100,001.00

(6) of the amount appropriated by Sec. 1 of No. 43 of the Acts of 2009 (engineering staff): 74,472.91

(7) of the amount appropriated by Sec. 14 of No. 61 of the Acts of 2001 (Pittsford water treatment): 10,000.00

(8) of the amount appropriated by Sec. 1 of No. 43 of the Acts of 2009 (state archives): 900,986.04

(9) of the amount appropriated by Sec. 1 of No. 200 of the Acts of the 2007 Adj. Sess. (2008) (elevators): 54,770.11

Total Reallocations and Transfers – Section 24 \$1,579,398.51

#### Sec. 25. GENERAL OBLIGATION BONDS AND APPROPRIATIONS

The state treasurer is authorized to issue general obligation bonds in the amount of \$153,160,000 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.

Total Revenues – Section 25 \$153,160,000

\* \* \* Policy \* \* \*

\* \* \* Buildings and General Services \* \* \*

#### Sec. 26. PROPERTY TRANSACTIONS; MISCELLANEOUS

(a)(1) On or before October 1, 2011, the City of Rutland shall present to the commissioner of buildings and general services a plan for the Rutland Multi Modal Transit Center (parking garage) that satisfies the city's interest in the parking garage, reduces the costs to the state of maintaining and operating the parking garage, protects the state's assets, and is designed to result ultimately in the sale of the parking garage and the Asa Bloomer State Office Building. Upon receiving the plan, the commissioner may accept, reject, or modify it.

(2) Upon receiving the plan referred to in subdivision (1) of this subsection or on or after October 2, 2011, the commissioner may petition the chair and vice chair of the house committee on corrections and institutions and the chair and vice chair of the senate committee on institutions for permission to sell the Asa Bloomer State Office Building and parking garage. Notwithstanding any law, the chairs and vice chairs may authorize the sale to be conducted in accordance with 29 V.S.A. § 166 as long as the general assembly is not convened.

(b) The commissioner of buildings and general services on behalf of the division for historic preservation is authorized to enter into the agreements specified for the following properties, the proceeds of which shall be dedicated to the fund created by Sec. 30 of this act:

(1) Fuller farmhouse at the Hubbardton Battlefield state historic site, authority to sell or enter into a long-term lease with covenants.

(2) Hyde log cabin in Grand Isle, authority to donate property free of covenants to Grand Isle or, in the alternative, to donate the building to Hyde Park, or in the alternative to sell the property.

(3) Bishop Cabin at Mount Independence State Historic Site in Orwell, authority to sell or enter into a long-term lease with covenants on the land.

(4) Eureka Schoolhouse in Springfield, authority to transfer with covenants to a local organization or, in the alternative, to sell the property.

(5) Bradley Law Office in Westminster, authority to transfer with covenants to a local organization.

(c) The commissioner of buildings and general services is authorized to sell the Vermont health laboratory at 195 Colchester Avenue in Burlington pursuant to 29 V.S.A. § 166. Net proceeds of the sale shall be reallocated to fund future capital projects.

(d) The commissioner of buildings and general services is authorized to use funds appropriated under this act for capital projects requiring additional support that were funded with capital or general appropriations made in prior years.

(e) The commissioners of buildings and general services and of education shall continue with efforts to colocate all department of education staff offices at one or more proximate locations.

#### Sec. 27. REPEAL OF AUTHORITY TO SELL REDSTONE

Sec. 25(g)(2) of No. 43 of the Acts of 2009 (authority to sell the Redstone building) is repealed.

#### Sec. 27a. REDSTONE FEASIBILITY STUDY

The commissioner of buildings and general services shall provide a feasibility study to the senate committee on institutions and the house committee on corrections and institutions on or before January 15, 2012 on whether it is in the best interest of the state for the Redstone building located at 26 Terrace Street in Montpelier to remain in the state's inventory for the support of state government, public functions, state museums, or any other use consistent with functions of state government. The commissioner may propose a plan that includes partnering with nonprofit entities to restore and renovate the building to accommodate the proposal and retain the property's historic value.

Sec. 28. Sec. 26 of No. 52 of the Acts of 2007 is amended to read:

Sec. 26. PROPERTY TRANSACTIONS; MISCELLANEOUS

The commissioner of buildings and general services is authorized, with the approval of the secretary of administration, to sell the properties listed in this subsection pursuant to 29 V.S.A. § 166. ~~Of proceeds from the sales \$50,000 is appropriated to the Friends of the State House for renovations to the state house. The remainder is~~ Proceeds from the sale are appropriated to the department of buildings and general services for construction and renovation of building 617 in Essex to house the department of health and department of public safety forensics laboratories future capital projects.

\* \* \*

Sec. 28a. Sec. 25 of No. 43 of the Acts of 2009 is amended to read:

Sec. 25. PROPERTY TRANSACTIONS; MISCELLANEOUS

\* \* \*

(i) In Sec. 32(d) of No. 200 of the Acts of the 2007 Adj. Sess. (2008), the general assembly authorized the commissioner of buildings and general services to sell, lease, subdivide, convert into condominiums, or any combination thereof the Thayer school building located at 1193 North Avenue in Burlington. The commissioner is hereby further authorized to transfer title by warranty deed for sale of the building and to convey the Thayer school property by warranty deed and to renegotiate or redevelop the terms of the property development agreement, including the state's present and future ownership interest in the real property and the scope and nature of the development agreement. If a proposal to renegotiate or redevelop the terms of the property development agreement is created when the general assembly is not convened, the proposal shall be presented to the chairs and vice chairs of the institutions committees to review and approve.

Sec. 29. Sec. 25(f) of No. 161 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

(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. Net proceeds of the sale shall be deposited in the historic property stabilization and rehabilitation fund established in Sec. 30 of this act.

Sec. 30. 29 V.S.A. § 155 is added to read:

§ 155. HISTORIC PROPERTY STABILIZATION AND REHABILITATION SPECIAL FUND

(a) There is established a special fund managed by and under the authority and control of the commissioner, comprising net revenue from the sale of underutilized state-owned historic property to be used for the purposes set forth in this section. Any remaining balance at the end of the fiscal year shall be carried forward in the fund; provided, however, that if the fund balance exceeds \$250,000.00 as of November 15 in any year, then the general assembly shall reallocate the excess funds for other purposes in the next enacted capital appropriations bill.

(b) Monies in the fund shall be available to the department for the stabilization or rehabilitation of state-owned historic property pursuant to a program created jointly by the department of buildings and general services and the division for historic preservation of the agency of commerce and community development.

(c) On or before January 15 of each year, the department shall report to the house committee on corrections and institutions and the senate committee on institutions concerning deposits into and disbursements from the fund occurring in the previous calendar year, the properties sold and stabilized or rehabilitated during that period, and the department's plans for future stabilization or rehabilitation of state-owned historic properties.

(d) Annually, the list presented to the general assembly of state-owned property the commissioner seeks approval to sell pursuant to section 166 of this title shall identify those properties the commissioner has identified as underutilized state-owned historic property pursuant to subsection (b) of this section.

(e) For purposes of this section, "historic property" has the same meaning as defined in 22 V.S.A. § 701.

Sec. 31. TRANSITION; FUNDING

(a) On or before July 15, 2011, the department of buildings and general services and the division for historic preservation shall develop a proposal for the program required in Sec. 30, 29 V.S.A. § 155(b), of this act and shall present the proposal to the chairs of the house committee on corrections and institutions and the senate committee on institutions. The chairs shall review the proposal and recommend to the joint fiscal committee whether or not to approve the proposal. After review of the proposal and the chairs' recommendations, the joint fiscal committee shall approve the proposal.

disapprove the proposal, or direct the departments to amend and resubmit the proposal to the chairs by a date certain.

(b) Of the funds appropriated in Sec. 6(a)(3) of this act, the sum of \$100,000 is allocated in fiscal year 2012 to the historic property stabilization and rehabilitation special fund created in Sec. 30 of this act.

#### Sec. 32. INFORMATION CENTERS

The secretaries of transportation and of commerce and community development and the commissioner of buildings and general services shall study and recommend on or before January 15, 2012 a future program for delivery of travel information services to motorists and the promotion of Vermont businesses and products to the motoring public. To the extent

possible, the secretaries and the commissioner shall explore means that do not utilize new

structures.

#### Sec. 33. BICYCLE RACKS AT STATE BUILDINGS

(a) It is the intent of the general assembly that the department of buildings and general services consider installation of bicycle parking during the design phase of any state-owned buildings for projects under the jurisdiction of the department of buildings and general services.

(b) By September 30, 2011, the commissioner of buildings and general services, in consultation with statewide or regional bicycle organizations, shall:

(1) assess state-owned buildings under the jurisdiction and control of the department to determine the possibility of utilizing existing space for bicycle parking, as well as determining the location, type, and existence of current bicycle parking options. To the extent feasible, the commissioner shall identify areas at the capital complex in Montpelier and the state office complex in Waterbury where bicycle parking could be added. The commissioner shall consider the costs and savings associated with converting existing indoor space for bicycle parking and the installation costs of adding various types of outdoor bicycle parking options. Based on availability of existing space, ease of conversion of that space, and the availability and costs of creating additional outdoor bicycle parking, the commissioner shall create a priority list of changes that may be implemented to increase the number of bicycle parking options at state-owned buildings.

(2) create an inventory of existing spaces for bicycle parking at state-owned buildings under the jurisdiction and control of the department and make that inventory available to the public via the department's website.

(3) report the information produced as a result of the requirements of subdivisions (1) and (2) of this subsection to the house committee on corrections and institutions and the senate committee on institutions.

Sec. 34. RESTROOMS IN STATE BUILDINGS

By September 30, 2011, the commissioner of buildings and general services shall ensure that any single-occupancy restroom with an outer door that can be locked by the occupant in a building owned by the state which is under the commissioner's jurisdiction shall be available for use regardless of the gender of the user.

Sec. 34a. 29 V.S.A. § 152 is amended to read:

§ 152. DUTIES OF COMMISSIONER

(a) The commissioner of buildings and general services, in addition to the duties expressly set forth elsewhere by law, shall have the authority to:

\* \* \*

(34) Sell thermal energy to the city of Montpelier at a price set by the commissioner.

(35) Accept from the department of public service, the city of Montpelier, or other entity grant funds for renovations to the Capital District heating plant.

\* \* \* Capital Budget Reporting \* \* \*

Sec. 35. 32 V.S.A. § 309 is amended to read:

§ 309. CAPITAL BUDGET REPORT

(a) Consolidated capital budget request. In addition to the general operating budget request to be submitted by the governor to the general assembly pursuant to this chapter, the governor shall submit to the general assembly, not later than the ~~second week~~ third Tuesday of every annual session, a consolidated capital budget request for the following fiscal year, which encompasses all undertakings that may require state general obligation debt financing, including transportation projects as follows:

\* \* \*

\* \* \* Tort Claims Against the State \* \* \*

Sec. 36. 12 V.S.A. § 5601(b) is amended to read:

(b) ~~Effective July 1, 1989, the maximum liability of the state under this section shall be \$250,000.00 to any one person and the maximum aggregate liability shall be \$500,000.00 to all persons arising out of each occurrence.~~

Effective July 1, ~~1990~~ 2011, the maximum liability of the state under this section shall be ~~\$250,000.00~~ \$500,000.00 to any one person and the maximum aggregate liability shall be ~~\$1,000,000.00~~ \$2,000,000.00 to all persons arising out of each occurrence.

Sec. 36a. 12 V.S.A. § 5606 is amended to read:

§ 5606. INDEMNIFICATION OF EMPLOYEES

\* \* \*

(b) The maximum liability of the state under this section shall be ~~\$250,000.00~~ \$500,000.00 to any one person and the maximum aggregate liability shall be ~~\$1,000,000.00~~ \$2,000,000.00 to all persons arising out of each occurrence.

\* \* \*

\* \* \* Human Services \* \* \*

Sec. 37. VERMONT STATE HOSPITAL

(a) Of the funds appropriated in Sec. 271(a)(3) of No. 215 of the Acts of the 2005 Adj. Sess. (2006) (appropriations), up to \$562,635.63 may be used for planning and design for the replacement of services currently being provided at Vermont State Hospital in Waterbury. In reallocating these funds, the general assembly affirms the priority need to close the existing facility.

(b) The commissioners of buildings and general services and of mental health shall report orally to the mental health oversight committee at regular intervals when the general assembly is not in session on the status of planning and design for replacement of services currently being provided at Vermont State Hospital in Waterbury.

(c) On or before January 15, 2012, the commissioners of buildings and general services and of mental health shall report to the house committees on appropriations, on corrections and institutions, and on human services and to the senate committees on appropriations, on institutions, and on health and welfare on the status of planning and design for this project, a proposal for further stages of development, and future appropriations that will be needed to continue that development. The committees shall respond with their approval or disapproval of the plan by sending a letter to the commissioners of buildings and general services and of mental health or by offering a resolution or proposed legislation on or before January 30, 2012.

Sec. 38. DEPARTMENT OF CORRECTIONS MASTER PLAN

(a) For the purpose of reducing the number of out-of-state beds at a cost savings to the state, the department of corrections shall:

(1) switch male and female populations between certain facilities by:

(A) changing the role of the Chittenden Regional Correctional Facility from housing a predominantly male to a predominantly female population. The department shall modify the facility for females.

(B) changing the role of the Northwest State Correctional Facility from housing a predominantly female population to a predominantly male population and restore the number of beds at that facility to 247.

(2) modify the Southeast State Correctional Facility into a 50-bed work camp and a 50-bed general population facility.

(b) As part of the transfer required by subdivision (a)(1) of this section, the department of corrections shall:

(1) train correctional facility staff in gender-responsive practices prior to the transfer.

(2) continue to provide prearrestment lodging at the Chittenden Regional Correctional Facility for a male until his first appearance in court. If the male is remanded into custody, he shall move to another facility.

(3) ensure individuals are released in accordance with 28 V.S.A. § 808(a) for the purpose of facilitating furlough or outside programming.

(4) continue to engage with community partners to develop a continuum of services that reduces recidivism to assist in a reentry of individuals. This continuum of services shall include employment, parenting, education, and risk reduction programs.

(c) The department of corrections shall report to the corrections oversight committee no later than August 15, 2011 on the following:

(1) trends pertaining to incarcerated women in this state, including population, sentencing, and detention.

(2) the range of work opportunities available for incarcerated individuals and the number of participants.

(3) the range of program opportunities available for incarcerated individuals and the number of participants. Program opportunities shall be defined broadly to include gardening, substance abuse, parenting, education, and risk reduction programs.

(4) the feasibility of expanding house arrest measures to initially avoid incarceration for misdemeanors and nonviolent felonies.

(d) The department shall reduce the number of women incarcerated by five percent by January 15, 2012, as measured by the daily average of women incarcerated in February 2011.

(e) It is the intent of the general assembly to:

(1) ensure that the incarcerated individuals who in the interest of public safety can be supervised safely in the community are reintegrated into the community with the appropriate status.

(2) in the second year of the biennium evaluate the move required by subsection (a) of this section and consider strategies to reduce the number of women incarcerated.

\* \* \* Natural Resources \* \* \*

Sec. 39. LAKE CHAMPLAIN WALLEYE ASSOCIATION;  
REALLOCATION

Of the funds appropriated in Sec. 11(g)(1) of No. 52 of the Acts of 2007, the Lake Champlain Walleye Association, Inc. is authorized to redirect the sum of \$21,150 to purchase walleye-rearing infrastructure upgrades.

Sec. 40. NATURAL RESOURCES; CONSOLIDATION; EXCESS  
PROPERTY

The agency of natural resources shall conduct an inventory of unused building space within its properties, study how unused and underutilized buildings may be consolidated to provide more efficient agency operations and energy usage across the agency, and consider what buildings, if any, might be sold following consolidation. On or before January 15, 2012, the agency of natural resources shall report to the house committee on corrections and institutions and the senate committee on institutions on the matters listed in this section and any legislative changes that would need to occur to facilitate the consolidation process.

\* \* \* Military Department \* \* \*

Sec. 41. DEPARTMENT OF MILITARY; REALLOCATION

Of the funds appropriated in Sec. 13 of No. 161 of the Acts of the 2009 Adj. Sess. (2010), the department of the military is authorized to use up to \$600,000 as necessary to fund the state's share of land acquisition in Bennington for new construction and for major maintenance and renovation projects at state armories. To the extent possible, these funds shall be used to match federal funds, and the department of the military is authorized to accept federal funds.

## \* \* \* Education \* \* \*

Sec. 42. 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, ~~2011~~ 2013.

Sec. 43. STATE AID FOR SCHOOL CONSTRUCTION

On or before January 15, 2012, the department of education shall provide a report on the costs of lifting the moratorium on state aid for school construction, required by Sec. 36 of No. 52 of the Acts of 2007, including the moratorium on biomass, to the house committee on corrections and institutions and the senate committee on institutions. In preparing its report, the department shall consider the demand for new projects, how other states fund school construction, and new funding formulas, including formulas that do not utilize capital funding. The report shall include a recommendation about when the moratorium should be lifted.

## \* \* \* Transportation \* \* \*

Sec. 44. TRANSPORTATION; CONSOLIDATION; EXCESS PROPERTY

The agency of transportation shall conduct an inventory of unused building space within its properties, study how unused and underutilized buildings may be consolidated to provide more efficient operations and energy usage across the agency, and consider what buildings, if any, might be sold following consolidation. On or before January 15, 2012, the agency of transportation shall report to the house committee on corrections and institutions and the senate committee on institutions on the matters listed in this section and any legislative changes that would need to occur to facilitate the consolidation process.

Sec. 45. FINDINGS

Two local civic leaders, John Boylan and John Worth, played instrumental roles in establishing a state airport in Island Pond (town of Brighton). However, in an effort to shorten the airport's name, John Worth was not recognized.

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Sec. 45a. RENAMING OF JOHN H. BOYLAN AIRPORT

Notwithstanding any provisions of law to the contrary, the Vermont board of libraries is authorized to rename the "John H. Boylan Airport" in Island Pond (town of Brighton).

Sec. 46. TELECOMMUTING BY STATE WORKERS

On or before January 15, 2012, the agencies of transportation and of human services and the department of buildings and general services shall submit to the house committee on corrections and institutions and the senate committee on institutions a joint report addressing whether and to what extent their employees could telecommute to perform their duties and what impact, if any, an increase in telecommuting by state employees would have on the inventory of state buildings.

\* \* \* Energy Use on State Properties \* \* \*

Sec. 47. STATE ENERGY USE

(a) The general assembly recognizes and applauds the ongoing efforts of the state to pursue all practicable measures to reduce overall energy consumption.

(b) It is the intent of the general assembly that each agency, board, department, commission, committee, branch, or authority of the state:

(1) reduce its energy consumption, including the amount of fuel used by its employees to travel to and from meetings during the workday, by five percent each year; and

(2) increase its use of renewable energy.

(c) The secretary of administration is charged with coordinating this initiative. The secretary or designee shall track the state's progress in meeting these goals and, for the purpose of encouraging success, shall have the authority to implement incentive programs, to consult with public and nonpublic entities about strategies, and to require the relevant subdivisions of state government to take necessary actions. The secretary may use incentives received by the state from an electric energy efficiency entity to cover the costs associated with tracking or encouraging success in meeting these goals.

(d) On or before January 15, 2012, the secretary of administration shall recommend to the general assembly and the governor strategies for investing in energy efficiency and renewable energy.

(e) The secretary of administration shall create and maintain an energy accounting system that includes baseline and annual data on energy consumption at real properties owned or managed by the state and, with

respect to transportation, fuel used by the employees of the state, on a Btu basis.

Sec. 48. 29 V.S.A. § 168 is amended to read:

§ 168. STATE RESOURCE MANAGEMENT; REVOLVING FUND

(a) Resource management. The department shall be responsible for administering the interest of the state in all resource conservation measures, including equipment replacement, studies, weatherization, and construction of improvements affecting the use of energy resources. All resource conservation measures taken for the benefit of departments or agencies to which this section applies shall, beginning on July 1, 2004, be made and executed by and in the name of the commissioner.

(b) Revolving fund.

(1) There is established a resource management revolving fund to provide revenue for implementation of resource conservation measures anticipated to generate a life cycle cost benefit to the state. All state agencies responsible for development and operations and maintenance of state infrastructure shall have access to the revolving fund on a priority basis established by the commissioner.

(2) The fund shall consist of:

(A) ~~Moneys~~ Monies appropriated to the fund, or which are paid to it under authorization of the emergency board.

(B) ~~Moneys~~ Monies saved by the implementation of resource management conservation measures.

(C) Fees for administrative costs paid by departments and agencies, which shall be fixed by the commissioner subject to the approval of the secretary of administration.

(D) Monies associated with all incentives received by the state of Vermont from an entity appointed under 30 V.S.A. § 209(d)(2) (electric energy efficiency entities).

(3) ~~Moneys~~ Monies from the fund shall be expended by the commissioner for resource conservation measures anticipated to generate a life cycle cost benefit to the state and all necessary costs involved with the administration of state agency energy planning as determined by the commissioner.

(4) The commissioner shall establish criteria to determine eligibility for funding of resource conservation measures.

(5) Agencies or departments receiving funding shall repay the fund through their regular operating budgets according to a schedule established by the commissioner. Repayment shall include charges of fees for administrative costs over the term of the repayment.

(6) The commissioner of finance and management may anticipate receipts to this fund and issue warrants based thereon.

(7) The commissioner of buildings and general services shall maintain accurate and complete records of all receipts by and expenditures from the fund.

(8) All balances remaining at the end of a fiscal year shall be carried over to the following year.

\* \* \* Vermont Telecommunications Authority \* \* \*

Sec. 49. ADMINISTRATION; VERMONT TELECOMMUNICATIONS AUTHORITY

(a) The sums appropriated in Sec. 3 of this act to the Vermont telecommunications authority (VTA) shall be used to develop infrastructure to meet the cellular and broadband needs of unserved and underserved Vermonters. Such infrastructure may include:

(1) Fiber optic facilities.

(2) Telecommunications towers or other support structures.

(3) Equipment needed to deliver cellular service.

(4) Equipment needed to deliver broadband Internet services having combined download and upload speeds of at least five megabits per second.

(b) Funds appropriated under this section may be used for direct investments in infrastructure, to be owned by the VTA, and for grants to retail service providers.

(c) To the extent possible, the VTA shall leverage the funds with bonding or borrowing capacity or other available sources of public or private funding.

(d) Infrastructure owned and leased by the VTA under this section, including towers and fiber optic facilities, shall be available for use by as many retail service providers as the technology will permit to prevent the state from establishing a monopoly service territory for one provider, and shall be available for use by providers on a nondiscriminatory basis and according to published terms and conditions.

(e) Prior to the construction or installation of VTA-owned fiber optic facilities under this section, the VTA shall consult with the secretary of

administration or designee to identify those areas of the state having the greatest need for fiber optic facilities and to determine the extent of needed state investment in new fiber optic facilities, and shall issue a request for public comment. In making the determinations required under this subsection, the VTA and the secretary shall consider:

(1) The location and availability of existing fiber optic networks, to the extent such information is available, and the terms and conditions for the use of those networks.

(2) The availability of broadband and cellular services in various parts of the state, the likelihood of planned expansions to services known to the VTA, and the need for fiber optic facilities to support expansion of services in unserved and underserved areas.

(3) The speed of broadband services available in various parts of the state for residential, business, and institutional uses, and the increase in speed that new fiber optic facilities would support.

(4) Prior investments of public and private funds in the development of fiber optic facilities.

(5) The technical and economic feasibility of potential fiber optic routes.

(6) The objectives of the telecommunications plan adopted by the department of public service under 30 V.S.A. § 202d.

(f) Fiber optic facilities owned by the VTA pursuant to this section shall include fiber strands which may be used by a retail service provider to deliver broadband Internet access directly to homes, businesses, and institutional users (last-mile connectivity), in addition to strands which may be used to interconnect with other broadband and cellular facilities (middle mile).

(g) With respect to fiber optic facilities owned by the VTA pursuant to this section, the VTA may contract with an entity to provide transport services, provided that:

(1) The entity is not owned or controlled by a single broadband provider and is otherwise carrier neutral.

(2) The transport services are offered to any provider of broadband Internet access on a nondiscriminatory basis and according to published terms and conditions.

(3) Dark fiber leases and indefeasible rights of use are made available to providers on a nondiscriminatory basis and according to published terms and conditions. For purposes of this subdivision, "dark fiber" means fiber that is

not in use; and “indefeasible right of use” means an exclusive, long-term use of fiber optic capacity.

(h) Grants awarded to retail service providers under this section shall be to support the capital cost of equipment and facilities used to provide broadband Internet access or cellular service in unserved areas of the state. Prior to awarding a grant, the VTA shall find that the grant is economically necessary to provide service in an unserved area and is likely to result in a lower long-term cost to the state than would direct investment in VTA-owned infrastructure. In addition, in awarding grants, the VTA shall adhere to the competitive bidding process established under 30 V.S.A. § 8078, except where inconsistent with the provisions of this section, and shall solicit public comment prior to issuing a request for proposals.

(i) The VTA shall ensure that any investments made or grants awarded under this section are in furtherance of the goals stated in 30 V.S.A. § 8060(b) and shall use the telecommunications measures established pursuant to No. 146 of the Acts of the 2009 Adj. Sess. (2010) (an act relating to implementation of challenges for change) to track the progress made in attaining those goals through such investments and grants. Beginning October 1, 2011, and for the next succeeding two years, on a quarterly basis, the VTA shall submit to the house committees on commerce and economic development and on corrections and institutions, the senate committees on economic development, housing and general affairs and on finance, and the joint fiscal committee a progress report reflecting the outcomes and measures as applied to the projects funded under this section. This report shall include location-specific information on the progress of deployment of telecommunications technology that does not require the utilization of towers.

\* \* \* Authorization of Borrowing by Assistant Judges of Orleans County \* \* \*

Sec. 50. ORLEANS COUNTY; BORROWING AUTHORIZED;  
ASSISTANT JUDGES

Notwithstanding 24 V.S.A. § 82, the assistant judges of Orleans County may borrow a sum not to exceed \$325,000 to pay for a sheriff’s department facility in Derby, as authorized by 24 V.S.A. § 77(a). Notes or other evidence of indebtedness not exceeding that amount, payable in not more than ten years from the date of execution, may be issued by the county treasurer on behalf of the County of Orleans. All such notes or evidence of indebtedness shall contain on their face a statement of the purpose for which they are issued and of the authority conferred by this section and shall be evidence of the county’s liability to the bona fide holder of the instrument. The form, denominations, maturities, interest rates, and other terms, conditions, and details of the note or other evidence of indebtedness shall be determined by resolution of the

assistant judges of Orleans County. Notes or other evidence of indebtedness issued under the provisions of this section shall be paid from county funds raised by taxation pursuant to 24 V.S.A. § 133.

Sec. 51. DURATION OF AUTHORITY; ORLEANS COUNTY BORROWING

The authority to borrow conferred by Sec. 50 of this act shall terminate on January 1, 2012. Any funds borrowed and notes or other forms of indebtedness issued prior to that date shall be subject to the terms of this act until repaid.

\* \* \* Treasurer \* \* \*

Sec. 52. 24 V.S.A. § 4572 is amended to read:

§ 4572. MEMBERSHIP; VACANCIES

The bank established by section 4571 of this title shall consist of the following five directors: the state treasurer, or his or her designee, who shall be a director ex officio, and four directors appointed by the governor with the advice and consent of the senate for terms of two years. The four directors appointed by the governor must be residents of the state and must be qualified voters therein for at least one year next preceding the time of appointment. The governor shall first appoint two directors to serve until February 1, 1971 and two directors to serve until February 1, 1972. Each director shall hold office for the term of his or her appointment and until his or her successor shall have been appointed and qualified. A director shall be eligible for reappointment. Any vacancy in a directorship occurring other than by expiration of term shall be filled in the same manner as the original appointment, except that the advice and consent of the senate shall not be required if it is not in session, but for the unexpired term only.

Sec. 53. 16 V.S.A. § 3852 is amended to read:

§ 3852. VERMONT EDUCATIONAL AND HEALTH BUILDINGS FINANCING AGENCY; CREATION; MEMBERS

(a) A board of ~~thirteen~~ 13 members known as the Vermont educational and health buildings financing agency is created. It is a body corporate and politic constituting a public instrumentality of the state. The commissioner of education, the secretary of human services, the state treasurer, or his or her designee, and the secretary of administration shall be members ex officio. The governor, with the advice and consent of the senate, shall appoint seven members for six-year terms. The members appointed by the governor shall appoint two additional members whose term of office shall be two years.

\* \* \*

Sec. 54. 16 V.S.A. § 2831 is amended to read:

§ 2831. MEMBERSHIP; VACANCIES

The corporation shall be governed and all of its powers exercised by a board of directors consisting of 11 members. The governor shall appoint five members as follows: one person to be the financial aid officer of an institution of postsecondary education in the state of Vermont; one person to be a guidance counselor from a Vermont secondary school, and three members representing the general public. In making the appointments of the members representing the general public, the governor shall give due consideration to the board's needs for expertise and experience in the management of a financial institution. The state treasurer or his or her designee shall be a member. The speaker of the Vermont house of representatives and the committee on committees of the Vermont senate shall each appoint one member from their respective legislative bodies to serve on the board. The board shall elect three additional members. All members shall be of full age, citizens of the United States and residents of Vermont. All appointments shall be for terms of six years with the exception of legislative members whose terms shall expire at the end of six years or when their service in the Vermont legislature is completed, whichever shall first occur. The date of the expiration of the term of appointment in each case shall be June 30. Vacancies which may occur by reason of death or resignation shall be filled in the same manner as original appointments.

Sec. 55. 10 V.S.A. § 632a(f) is amended to read:

(f) In order to assure the maintenance of the debt service reserve fund requirement in each debt service reserve fund established by the agency under this section, there may be appropriated annually and paid to the agency for deposit in each fund a sum as shall be certified by the chair of the agency to the governor, the president of the senate, and the speaker of the house as is necessary to establish or restore each such debt service reserve fund to an amount equal to the requirement for each such fund. The chair shall annually, on or about February 1, make, execute, and deliver to the governor, the president of the senate, and the speaker of the house a certificate stating the sum required to restore each such fund to the amount required by this section; ~~and the sum,~~ and the governor shall, on or before March 1, submit a request for appropriations in the amount so certified, and such amount may be appropriated and, if appropriated, shall be paid to the agency during the then-current state fiscal year. In order to assure the funding of the pledged equity fund requirement in each pledged equity fund established by the agency under this section at the time and in the amount determined at the time of entering into any credit enhancement agreement related to a pledged equity

fund, there may be appropriated and paid to the agency for deposit in each fund a sum as shall be certified by the chair of the agency to the governor, the president of the senate, and the speaker of the house as is necessary to establish each pledged equity fund to an amount equal to the amount determined by the agency at the time of entering into any credit enhancement agreement related to a pledged equity fund; provided that the amount requested, together with any amounts previously appropriated pursuant to this subsection for a particular pledged equity fund, shall not exceed the maximum amount of the state's commitment as determined by the agency pursuant to subsection (d) of this section. The chair shall, on or about the February 1 next following the designated date for fully funding a pledged equity fund, make, execute, and deliver to the governor, the president of the senate, and the speaker of the house a certificate stating the sum required to bring each fund to the amount required by this section or to otherwise satisfy the state's commitment with respect to each fund, and ~~the sum~~ the governor shall, on or before March 1, submit a request for appropriations in the amount so certified, and such amount may be appropriated and, such amount, if appropriated, shall be paid to the agency during the then-current state fiscal year. The combined principal amount of bonds, notes, and other debt instruments outstanding at any time and secured in whole or in part by a debt service reserve fund established under this section and the aggregate commitment of the state to fund pledged equity funds pursuant to this subsection shall not exceed \$155,000,000.00 at any time, provided that the foregoing shall not impair the obligation of any contract or contracts entered into by the agency in contravention of the Constitution of the United States. Notwithstanding anything in this section to the contrary, the state's obligation with respect to funding any pledged equity fund shall be limited to its maximum commitment, as determined by the agency pursuant to subsection (d) of this section, and the state shall have no other obligation to replenish or maintain any pledged equity fund.

Sec. 55a. 16 V.S.A. § 2867 is amended to read:

§ 2867. RESERVE AND PLEDGED EQUITY FUNDS

\* \* \*

(f) In order to assure the maintenance of the debt service reserve fund requirement in each debt service reserve fund established by the corporation under this section, there may be appropriated annually and paid to the corporation for deposit in each such fund such sum as shall be certified by the chair of the corporation to the governor, the president of the senate, and the speaker of the house as is necessary to establish or restore each such debt service reserve fund to an amount equal to the requirement for each such fund. The chair shall annually, on or about February 1, make, execute, and deliver to

the governor, the president of the senate, and the speaker of the house, a certificate stating the sum required to restore each such fund to the amount aforesaid, and the ~~sum~~ governor shall, on or before March 1, submit a request for appropriations in the amount so certified, and such amount may be appropriated, and if appropriated, shall be paid to the corporation during the then current state fiscal year. In order to assure the funding of the pledged equity fund requirement in each pledged equity fund established by the corporation under this section at the time and in the amount determined at the time of entering into any credit enhancement agreement related to a pledged equity fund, there may be appropriated and paid to the corporation for deposit in each such fund, such sum as shall be certified by the chair of the corporation, to the governor, the president of the senate, and the speaker of the house, as is necessary to establish each such pledged equity fund to an amount equal to the amount determined by the corporation at the time of entering into any credit enhancement agreement related to a pledged equity fund; provided that the amount requested, together with any amounts previously appropriated pursuant to this subsection for a particular pledged equity fund, shall not exceed the maximum amount of the state's commitment, as determined by the corporation pursuant to subsection (d) of this section. The chair shall, on or about the February 1 next following the designated date for fully funding a pledged equity fund, make, execute, and deliver to the governor, the president of the senate, and the speaker of the house, a certificate stating the sum required to bring each such fund to the amount aforesaid or to otherwise satisfy the state's commitment with respect to each such fund, and the ~~sum~~ governor shall, on or before March 1, submit a request for appropriations in the amount so certified, and such amount may be appropriated, and if appropriated, shall be paid to the corporation during the then-current state fiscal year. The combined principal amount of bonds, notes, and other debt instruments outstanding at any time and secured in whole or in part by a debt service reserve fund established under this section and the aggregate commitment of the state to fund pledged equity funds pursuant to this subsection shall not exceed \$50,000,000.00, provided that the foregoing shall not impair the obligation of any contract or contracts entered into by the corporation in contravention of the Constitution of the United States. Notwithstanding anything in this section to the contrary, the state's obligation with respect to funding any pledged equity fund shall be limited to its maximum commitment, as determined by the corporation pursuant to subsection (d) of this section and the state shall have no other obligation to replenish or maintain any pledged equity fund.

Sec. 55b. 24 V.S.A. § 4675 is amended to read:

§ 4675. ANNUAL APPROPRIATION

In order to assure the maintenance of the required debt service reserve in each reserve fund established pursuant to this chapter, there shall be appropriated annually and paid to the bank for deposit in each reserve fund, such sum as shall be certified by the chair of the bank to the governor or to the governor-elect, as is necessary to restore such fund to an amount equal to the required debt service reserve. ~~The chairman~~ chair shall annually, on or before February 1, make and deliver to the governor or to the governor-elect, his or her certificate stating the sum required to restore the fund to the amount aforesaid, and the governor or governor-elect shall, on or before March 1, submit a request for appropriations for the sum so certified, and the sum so certified shall be appropriated and paid to the bank during the then current state fiscal year.

\* \* \* Agriculture \* \* \*

Sec. 56. AGRICULTURE; REALLOCATION

Of the funds appropriated for in Sec. 16 of No. 161 of the Acts of the 2009 Adj. Sess. (2010) for the best management practice implementation cost share program, the agency of agriculture, food and markets is authorized to:

(1) Redirect the sum of \$200,000 in FY 2012 to the Conservation Reserve Enhancement Program for the purpose of installing water quality conservation buffers.

(2) Redirect the sum of \$50,000 in FY 2012 to the Farmers Watershed Alliance for the purpose of conducting water quality improvement programs and practices in the northern watershed of Lake Champlain.

\* \* \* Effective Dates; Statutory Revision \* \* \*

Sec. 57. EFFECTIVE DATES; STATUTORY REVISION

(a) This act shall take effect on passage, except:

(1) Sec. 36 (liability of the state) shall take effect July 1, 2011;

(2) Secs. 2(c) (BGS, FY 2013), 3(a)(2) (maps, FY 2013), 4(c) and (d) (human services, FY 2013), 5(b) (judiciary, FY 2013), 6(b) (BGS for commerce and community development, FY 2013), 6(d) (commerce and community development, FY 2013), 7(b) (building communities grants, FY 2013), 8(b) (education, FY 2013), 10(b) (University of Vermont, FY 2013), 11(b) (Vermont State Colleges, FY 2013), 12(b) (natural resources, FY 2013), 13(b) (military, FY 2013), 14(b) and (d) (public safety, FY 2013), 16(b) (agriculture, FY 2013), 17(b) (Vermont Public Television, FY 2013),

18(b) (rural fire protection, FY 2013), 20(b) (Vermont Center for Crime Victim Services, FY 2013), 21 (department of information and innovation), and 23(b) (Vermont Interactive Television, FY 2013) shall take effect on June 1, 2012.

(b) Pursuant to the statutory revision authority provided in 16 V.S.A. chapter 13, after passage of this act and H.441 of this session (appropriations bill), the office of legislative council shall revise Secs. 21 and 22 of this act to refer to the appropriate section and act numbers of H.441 as enacted.

*ROBERT M. HARTWELL  
JOSEPH C. BENNING  
RICHARD T. MAZZA*

*Committee on the part of the Senate*

*ALICE M. EMMONS  
MARY S. HOOPER  
LINDA K. MYERS*

*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 28, Nays 0.

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

### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Sears, Snelling, Starr, White.

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

**Those Senators absent and not voting were:** Kittell, Westman.

### **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:

**H. 73, H. 436, H. 446, H. 455.**

**Rules Suspended; Bill Delivered**

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

**S. 34.****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 considered Senate proposal of amendment to House bill of the following title:

**H. 201.** An act relating to hospice and palliative care.

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

**Rules Suspended; Report of Committee of Conference Accepted and Adopted on the Part of the Senate; Bill Messaged****H. 441.**

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

An act relating to making appropriations for the support of government.

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 House bill entitled:

H. 441. An act relating to 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 proposals of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

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Sec. A.100 SHORT TITLE

(a) This bill may be referred to as the BIG BILL - Fiscal Year 2012 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 2012. 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, 2011. Agency and department heads are directed to implement staffing and service levels at the beginning of fiscal year 2012 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 2012.

(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, 2012.

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 2012, 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 2012, federal funds available to the state of Vermont and designated as federal in this and other acts of the 2011 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 2012 except for new positions authorized by the 2011 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:

<u>B.100–B.199 and E.100–E.199</u>	<u>General Government</u>
<u>B.200–B.299 and E.200–E.299</u>	<u>Protection to Persons and Property</u>
<u>B.300–B.399 and E.300–E.399</u>	<u>Human Services</u>
<u>B.400–B.499 and E.400–E.499</u>	<u>Labor</u>
<u>B.500–B.599 and E.500–E.599</u>	<u>General Education</u>
<u>B.600–B.699 and E.600–E.699</u>	<u>Higher Education</u>
<u>B.700–B.799 and E.700–E.799</u>	<u>Natural Resources</u>
<u>B.800–B.899 and E.800–E.899</u>	<u>Commerce and Community Development</u>
<u>B.900–B.999 and E.900–E.999</u>	<u>Transportation</u>

B.1000–B.1099 and E.1000–E.1099 Debt ServiceB.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	640,938
Operating expenses	<u>74,914</u>
Total	715,852
Source of funds	
General fund	<u>715,852</u>
Total	715,852

## Sec. B.101 Information and innovation - communications and information technology

Personal services	7,111,349
Operating expenses	5,466,512
Grants	<u>900,000</u>
Total	13,477,861
Source of funds	
General fund	20,911
Internal service funds	<u>13,456,950</u>
Total	13,477,861

## Sec. B.102 Finance and management - budget and management

Personal services	1,080,093
Operating expenses	<u>216,873</u>
Total	1,296,966
Source of funds	
General fund	1,053,132
Interdepartmental transfers	<u>243,834</u>
Total	1,296,966

## Sec. B.103 Finance and management - financial operations

Personal services	2,645,289
Operating expenses	<u>279,851</u>
Total	2,925,140
Source of funds	
Internal service funds	<u>2,925,140</u>
Total	2,925,140

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**Sec. B.104 Human resources - operations**

Personal services	5,454,543
Operating expenses	<u>720,455</u>
Total	6,174,998
Source of funds	
General fund	1,819,211
Special funds	280,835
Internal service funds	3,361,536
Interdepartmental transfers	<u>713,416</u>
Total	6,174,998

**Sec. B.105 Human resources - employee benefits & wellness**

Personal services	1,086,751
Operating expenses	<u>697,287</u>
Total	1,784,038
Source of funds	
Internal service funds	1,734,044
Interdepartmental transfers	<u>49,994</u>
Total	1,784,038

**Sec. B.106 Libraries**

Personal services	1,850,467
Operating expenses	1,471,123
Grants	<u>55,080</u>
Total	3,376,670
Source of funds	
General fund	2,297,383
Special funds	99,156
Federal funds	878,355
Interdepartmental transfers	<u>101,776</u>
Total	3,376,670

**Sec. B.107 Tax - administration/collection**

Personal services	12,618,208
Operating expenses	<u>2,883,734</u>
Total	15,501,942
Source of funds	
General fund	13,922,041
Special funds	1,463,901
Tobacco fund	58,000
Interdepartmental transfers	<u>58,000</u>
Total	15,501,942

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Sec. B.108 Buildings and general services - administration	
Personal services	1,635,705
Operating expenses	<u>182,552</u>
Total	1,818,257
Source of funds	
Interdepartmental transfers	<u>1,818,257</u>
Total	1,818,257
Sec. B.109 Buildings and general services - engineering	
Personal services	2,095,457
Operating expenses	<u>333,346</u>
Total	2,428,803
Source of funds	
Interdepartmental transfers	<u>2,428,803</u>
Total	2,428,803
Sec. B.110 Buildings and general services - information centers	
Personal services	2,930,114
Operating expenses	1,064,165
Grants	<u>45,000</u>
Total	4,039,279
Source of funds	
General fund	3,989,279
Special funds	<u>50,000</u>
Total	4,039,279
Sec. B.111 Buildings and general services - purchasing	
Personal services	737,204
Operating expenses	<u>152,999</u>
Total	890,203
Source of funds	
General fund	<u>890,203</u>
Total	890,203
Sec. B.112 Buildings and general services - postal services	
Personal services	619,966
Operating expenses	<u>115,831</u>
Total	735,797
Source of funds	
General fund	35,716
Internal service funds	<u>700,081</u>
Total	735,797

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**Sec. B.113 Buildings and general services - copy center**

Personal services	636,262
Operating expenses	<u>115,240</u>
Total	751,502
Source of funds	
Internal service funds	<u>751,502</u>
Total	751,502

**Sec. B.114 Buildings and general services - fleet management services**

Personal services	549,846
Operating expenses	<u>131,690</u>
Total	681,536
Source of funds	
Internal service funds	<u>681,536</u>
Total	681,536

**Sec. B.115 Buildings and general services - federal surplus property**

Personal services	71,447
Operating expenses	<u>36,555</u>
Total	108,002
Source of funds	
Enterprise funds	<u>108,002</u>
Total	108,002

**Sec. B.116 Buildings and general services - state surplus property**

Personal services	87,630
Operating expenses	<u>86,143</u>
Total	173,773
Source of funds	
Internal service funds	<u>173,773</u>
Total	173,773

**Sec. B.117 Buildings and general services - property management**

Personal services	1,047,876
Operating expenses	<u>1,080,972</u>
Total	2,128,848
Source of funds	
Internal service funds	<u>2,128,848</u>
Total	2,128,848

Sec. B.118 Buildings and general services - workers' compensation insurance	
Personal services	1,158,422
Operating expenses	<u>277,763</u>
Total	1,436,185
Source of funds	
Internal service funds	<u>1,436,185</u>
Total	1,436,185
Sec. B.119 Buildings and general services - general liability insurance	
Personal services	268,325
Operating expenses	<u>63,700</u>
Total	332,025
Source of funds	
Internal service funds	<u>332,025</u>
Total	332,025
Sec. B.120 Buildings and general services - all other insurance	
Personal services	29,129
Operating expenses	<u>23,389</u>
Total	52,518
Source of funds	
Internal service funds	<u>52,518</u>
Total	52,518
Sec. B.121 Buildings and general services - fee for space	
Personal services	13,773,992
Operating expenses	<u>14,126,008</u>
Total	27,900,000
Source of funds	
Internal service funds	<u>27,900,000</u>
Total	27,900,000
Sec. B.122 Geographic information system	
Grants	<u>378,700</u>
Total	378,700
Source of funds	
Special funds	<u>378,700</u>
Total	378,700
Sec. B.123 Executive office - governor's office	
Personal services	1,193,165
Operating expenses	<u>423,879</u>

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Total	1,617,044
Source of funds	
General fund	1,423,544
Interdepartmental transfers	<u>193,500</u>
Total	1,617,044
Sec. B.124 Legislative council	
Personal services	2,078,823
Operating expenses	<u>198,606</u>
Total	2,277,429
Source of funds	
General fund	<u>2,277,429</u>
Total	2,277,429
Sec. B.125 Legislature	
Personal services	3,633,861
Operating expenses	<u>3,336,583</u>
Total	6,970,444
Source of funds	
General fund	<u>6,970,444</u>
Total	6,970,444
Sec. B.126 Legislative information technology	
Personal services	364,696
Operating expenses	<u>577,057</u>
Total	941,753
Source of funds	
General fund	<u>941,753</u>
Total	941,753
Sec. B.127 Joint fiscal committee	
Personal services	1,359,656
Operating expenses	<u>105,773</u>
Total	1,465,429
Source of funds	
General fund	<u>1,465,429</u>
Total	1,465,429
Sec. B.128 Sergeant at arms	
Personal services	443,809
Operating expenses	<u>67,855</u>
Total	511,664

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Source of funds	
General fund	<u>511,664</u>
Total	511,664
Sec. B.129 Lieutenant governor	
Personal services	143,631
Operating expenses	<u>26,771</u>
Total	170,402
Source of funds	
General fund	<u>170,402</u>
Total	170,402
Sec. B.130 Auditor of accounts	
Personal services	3,758,362
Operating expenses	<u>150,345</u>
Total	3,908,707
Source of funds	
General fund	396,853
Special funds	53,099
Internal service funds	<u>3,458,755</u>
Total	3,908,707
Sec. B.131 State treasurer	
Personal services	2,561,936
Operating expenses	348,248
Grants	<u>16,484</u>
Total	2,926,668
Source of funds	
General fund	1,065,828
Special funds	1,744,843
Interdepartmental transfers	<u>115,997</u>
Total	2,926,668
Sec. B.132 State treasurer - unclaimed property	
Personal services	660,757
Operating expenses	<u>253,238</u>
Total	913,995
Source of funds	
Private purpose trust funds	<u>913,995</u>
Total	913,995

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Sec. B.133 Vermont state retirement system	
Personal services	6,065,656
Operating expenses	<u>29,015,880</u>
Total	35,081,536
Source of funds	
Pension trust funds	<u>35,081,536</u>
Total	35,081,536
Sec. B.134 Municipal employees' retirement system	
Personal services	1,992,423
Operating expenses	<u>486,556</u>
Total	2,478,979
Source of funds	
Pension trust funds	<u>2,478,979</u>
Total	2,478,979
Sec. B.135 State labor relations board	
Personal services	169,121
Operating expenses	<u>40,334</u>
Total	209,455
Source of funds	
General fund	203,879
Special funds	2,788
Interdepartmental transfers	<u>2,788</u>
Total	209,455
Sec. B.136 VOSHA review board	
Personal services	7,038
Operating expenses	<u>44,190</u>
Total	51,228
Source of funds	
General fund	25,614
Interdepartmental transfers	<u>25,614</u>
Total	51,228
Sec. B.137 Homeowner rebate	
Grants	<u>15,190,000</u>
Total	15,190,000
Source of funds	
General fund	<u>15,190,000</u>
Total	15,190,000

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Sec. B.138 Renter rebate	
Grants	<u>8,300,000</u>
Total	8,300,000
Source of funds	
General fund	2,500,000
Education fund	<u>5,800,000</u>
Total	8,300,000
Sec. B.139 Tax department - reappraisal and listing payments	
Grants	<u>3,240,000</u>
Total	3,240,000
Source of funds	
Education fund	<u>3,240,000</u>
Total	3,240,000
Sec. B.140 Municipal current use	
Grants	<u>12,400,000</u>
Total	12,400,000
Source of funds	
General fund	<u>12,400,000</u>
Total	12,400,000
Sec. B.141 Lottery commission	
Personal services	1,629,989
Operating expenses	<u>1,262,972</u>
Total	2,892,961
Source of funds	
Enterprise funds	<u>2,892,961</u>
Total	2,892,961
Sec. B.142 Payments in lieu of taxes	
Grants	<u>5,800,000</u>
Total	5,800,000
Source of funds	
Special funds	<u>5,800,000</u>
Total	5,800,000
Sec. B.143 Payments in lieu of taxes - Montpelier	
Grants	<u>184,000</u>
Total	184,000
Source of funds	
Special funds	<u>184,000</u>
Total	184,000

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Sec. B.144	Payments in lieu of taxes - correctional facilities	
	Grants	<u>40,000</u>
	Total	40,000
	Source of funds	
	Special funds	<u>40,000</u>
	Total	40,000
Sec. B.145	Total General government	196,680,589
	Source of funds	
	General fund	70,286,567
	Special funds	10,097,322
	Tobacco fund	58,000
	Education fund	9,040,000
	Federal funds	878,355
	Internal service funds	59,092,893
	Interdepartmental transfers	5,751,979
	Enterprise funds	3,000,963
	Pension trust funds	37,560,515
	Private purpose trust funds	<u>913,995</u>
	Total	196,680,589
Sec. B.200	Attorney general	
	Personal services	7,147,070
	Operating expenses	<u>1,097,153</u>
	Total	8,244,223
	Source of funds	
	General fund	3,835,621
	Special funds	968,000
	Tobacco fund	625,000
	Federal funds	685,000
	Interdepartmental transfers	<u>2,130,602</u>
	Total	8,244,223
Sec. B.201	Vermont court diversion	
	Grants	<u>1,831,011</u>
	Total	1,831,011
	Source of funds	
	General fund	1,311,014
	Special funds	<u>519,997</u>
	Total	1,831,011

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Sec. B.202 Defender general - public defense	
Personal services	7,931,011
Operating expenses	<u>941,292</u>
Total	8,872,303
Source of funds	
General fund	8,359,015
Special funds	<u>513,288</u>
Total	8,872,303
Sec. B.203 Defender general - assigned counsel	
Personal services	3,443,180
Operating expenses	<u>48,909</u>
Total	3,492,089
Source of funds	
General fund	3,366,825
Special funds	<u>125,264</u>
Total	3,492,089
Sec. B.204 Judiciary	
Personal services	29,103,880
Operating expenses	10,175,038
Grants	<u>70,000</u>
Total	39,348,918
Source of funds	
General fund	31,331,211
Special funds	4,175,542
Tobacco fund	39,871
Federal funds	1,129,259
Interdepartmental transfers	<u>2,673,035</u>
Total	39,348,918
Sec. B.205 State's attorneys	
Personal services	9,433,100
Operating expenses	<u>1,141,004</u>
Total	10,574,104
Source of funds	
General fund	8,297,085
Special funds	60,699
Federal funds	31,000
Interdepartmental transfers	<u>2,185,320</u>
Total	10,574,104

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Sec. B.206 Special investigative unit	
Grants	<u>1,253,719</u>
Total	1,253,719
Source of funds	
General fund	1,153,719
Federal funds	<u>100,000</u>
Total	1,253,719
Sec. B.207 Sheriffs	
Personal services	3,361,419
Operating expenses	<u>276,917</u>
Total	3,638,336
Source of funds	
General fund	<u>3,638,336</u>
Total	3,638,336
Sec. B.208 Public safety - administration	
Personal services	1,434,666
Operating expenses	<u>407,048</u>
Total	1,841,714
Source of funds	
General fund	1,658,186
Federal funds	<u>183,528</u>
Total	1,841,714
Sec. B.209 Public safety - state police	
Personal services	44,208,236
Operating expenses	7,046,296
Grants	<u>971,590</u>
Total	52,226,122
Source of funds	
General fund	21,233,922
Transportation fund	25,238,498
Special funds	1,003,612
Federal funds	3,401,866
ARRA funds	296,107
Interdepartmental transfers	<u>1,052,117</u>
Total	52,226,122
Sec. B.210 Public safety - criminal justice services	
Personal services	7,267,663
Operating expenses	2,565,979

Grants	<u>5,989,000</u>
Total	15,822,642
Source of funds	
General fund	6,124,932
Special funds	1,468,701
Federal funds	7,890,543
ARRA funds	<u>338,466</u>
Total	15,822,642
Sec. B.211 Public safety - emergency management	
Personal services	1,826,537
Operating expenses	970,828
Grants	<u>1,379,913</u>
Total	4,177,278
Source of funds	
General fund	10,000
Federal funds	<u>4,167,278</u>
Total	4,177,278
Sec. B.212 Public safety - fire safety	
Personal services	5,027,821
Operating expenses	1,441,685
Grants	<u>157,000</u>
Total	6,626,506
Source of funds	
General fund	718,790
Special funds	5,623,744
Federal funds	238,972
Interdepartmental transfers	<u>45,000</u>
Total	6,626,506
Sec. B.213 Public safety - homeland security	
Personal services	9,501,852
Operating expenses	220,709
Grants	<u>3,000,000</u>
Total	12,722,561
Source of funds	
General fund	427,007
Federal funds	12,227,400
ARRA funds	<u>68,154</u>
Total	12,722,561

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Sec. B.214 Radiological emergency response plan	
Personal services	729,645
Operating expenses	184,314
Grants	<u>1,220,350</u>
Total	2,134,309
Source of funds	
Special funds	<u>2,134,309</u>
Total	2,134,309
Sec. B.215 Military - administration	
Personal services	468,699
Operating expenses	376,507
Grants	<u>100,000</u>
Total	945,206
Source of funds	
General fund	<u>945,206</u>
Total	945,206
Sec. B.216 Military - air service contract	
Personal services	5,148,174
Operating expenses	<u>1,214,629</u>
Total	6,362,803
Source of funds	
General fund	467,309
Federal funds	<u>5,895,494</u>
Total	6,362,803
Sec. B.217 Military - army service contract	
Personal services	3,718,269
Operating expenses	<u>9,185,720</u>
Total	12,903,989
Source of funds	
General fund	112,435
Federal funds	<u>12,791,554</u>
Total	12,903,989
Sec. B.218 Military - building maintenance	
Personal services	979,453
Operating expenses	<u>386,580</u>
Total	1,366,033
Source of funds	
General fund	<u>1,366,033</u>
Total	1,366,033

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Sec. B.219 Military - veterans' affairs	
Personal services	478,017
Operating expenses	146,431
Grants	<u>173,815</u>
Total	798,263
Source of funds	
General fund	631,808
Special funds	84,049
Federal funds	<u>82,406</u>
Total	798,263
Sec. B.220 Center for crime victims' services	
Personal services	1,271,163
Operating expenses	284,975
Grants	<u>9,499,251</u>
Total	11,055,389
Source of funds	
General fund	1,154,480
Special funds	5,931,945
Federal funds	<u>3,968,964</u>
Total	11,055,389
Sec. B.221 Criminal justice training council	
Personal services	1,291,238
Operating expenses	<u>1,286,070</u>
Total	2,577,308
Source of funds	
General fund	2,324,636
Interdepartmental transfers	<u>252,672</u>
Total	2,577,308
Sec. B.222 Agriculture, food and markets - administration	
Personal services	774,589
Operating expenses	367,534
Grants	<u>448,910</u>
Total	1,591,033
Source of funds	
General fund	1,091,802
Special funds	250,031
Federal funds	150,928
Global Commitment fund	56,272

Interdepartmental transfers	<u>42,000</u>
Total	1,591,033
Sec. B.223 Agriculture, food and markets - food safety and consumer protection	
Personal services	2,786,723
Operating expenses	759,173
Grants	<u>2,443,235</u>
Total	5,989,131
Source of funds	
General fund	2,212,524
Special funds	3,139,114
Federal funds	596,487
Global Commitment fund	34,006
Interdepartmental transfers	<u>7,000</u>
Total	5,989,131
Sec. B.224 Agriculture, food and markets - agricultural development	
Personal services	943,019
Operating expenses	305,995
Grants	<u>1,626,000</u>
Total	2,875,014
Source of funds	
General fund	446,897
Special funds	1,438,588
Federal funds	689,529
Interdepartmental transfers	<u>300,000</u>
Total	2,875,014
Sec. B.225 Agriculture, food and markets - laboratories, agricultural resource management and environmental stewardship	
Personal services	2,912,179
Operating expenses	761,268
Grants	<u>751,674</u>
Total	4,425,121
Source of funds	
General fund	1,655,565
Special funds	1,998,115
Federal funds	569,113
Interdepartmental transfers	<u>202,328</u>
Total	4,425,121

Sec. B.226 Banking, insurance, securities, and health care administration -  
administration

Personal services	1,808,446
Operating expenses	<u>181,201</u>
Total	1,989,647
Source of funds	
Special funds	<u>1,989,647</u>
Total	1,989,647

Sec. B.227 Banking, insurance, securities, and health care administration -  
banking

Personal services	1,343,681
Operating expenses	<u>240,853</u>
Total	1,584,534
Source of funds	
Special funds	<u>1,584,534</u>
Total	1,584,534

Sec. B.228 Banking, insurance, securities, and health care administration -  
insurance

Personal services	3,027,935
Operating expenses	<u>437,345</u>
Total	3,465,280
Source of funds	
Special funds	<u>3,465,280</u>
Total	3,465,280

Sec. B.229 Banking, insurance, securities, and health care administration -  
captive

Personal services	3,262,719
Operating expenses	<u>428,723</u>
Total	3,691,442
Source of funds	
Special funds	<u>3,691,442</u>
Total	3,691,442

Sec. B.230 Banking, insurance, securities, and health care administration -  
securities

Personal services	442,445
Operating expenses	<u>149,514</u>
Total	591,959

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Source of funds	
Special funds	<u>591,959</u>
Total	591,959
Sec. B.231 Banking, insurance, securities, and health care administration - health care administration	
Personal services	5,581,274
Operating expenses	<u>343,127</u>
Total	5,924,401
Source of funds	
Special funds	3,497,875
Federal funds	527,702
Global Commitment fund	<u>1,898,824</u>
Total	5,924,401
Sec. B.232 Secretary of state	
Personal services	5,698,916
Operating expenses	2,038,667
Grants	<u>1,000,000</u>
Total	8,737,583
Source of funds	
General fund	1,529,127
Special funds	5,133,456
Federal funds	2,000,000
Interdepartmental transfers	<u>75,000</u>
Total	8,737,583
Sec. B.233 Public service - regulation and energy	
Personal services	7,428,529
Operating expenses	847,636
Grants	<u>21,096,788</u>
Total	29,372,953
Source of funds	
Special funds	12,341,218
Federal funds	1,157,800
ARRA funds	<u>15,873,935</u>
Total	29,372,953
Sec. B.234 Public service board	
Personal services	2,860,205
Operating expenses	<u>387,160</u>
Total	3,247,365

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Source of funds	
Special funds	3,001,980
ARRA funds	<u>245,385</u>
Total	3,247,365
Sec. B.235 Enhanced 9-1-1 Board	
Personal services	4,181,478
Operating expenses	853,778
Grants	<u>810,000</u>
Total	5,845,256
Source of funds	
Special funds	<u>5,845,256</u>
Total	5,845,256
Sec. B.236 Human rights commission	
Personal services	412,199
Operating expenses	<u>65,683</u>
Total	477,882
Source of funds	
General fund	332,882
Federal funds	<u>145,000</u>
Total	477,882
Sec. B.237 Liquor control - administration	
Personal services	1,619,092
Operating expenses	<u>595,953</u>
Total	2,215,045
Source of funds	
Tobacco fund	6,661
Interdepartmental transfers	250,000
Enterprise funds	<u>1,958,384</u>
Total	2,215,045
Sec. B.238 Liquor control - enforcement and licensing	
Personal services	1,875,103
Operating expenses	<u>387,833</u>
Total	2,262,936
Source of funds	
Tobacco fund	285,284
Enterprise funds	<u>1,977,652</u>
Total	2,262,936

Sec. B.239 Liquor control - warehousing and distribution	
Personal services	766,123
Operating expenses	<u>344,985</u>
Total	1,111,108
Source of funds	
Enterprise funds	<u>1,111,108</u>
Total	1,111,108
Sec. B.240 Total Protection to persons and property	294,212,516
Source of funds	
General fund	105,736,367
Transportation fund	25,238,498
Special funds	70,577,645
Tobacco fund	956,816
Federal funds	58,629,823
ARRA funds	16,822,047
Global Commitment fund	1,989,102
Interdepartmental transfers	9,215,074
Enterprise funds	<u>5,047,144</u>
Total	294,212,516
Sec. B.300 Human services - agency of human services - secretary's office	
Personal services	8,161,616
Operating expenses	3,097,481
Grants	<u>5,235,805</u>
Total	16,494,902
Source of funds	
General fund	4,913,133
Special funds	7,517
Tobacco fund	290,330
Federal funds	7,752,402
Global Commitment fund	415,000
Interdepartmental transfers	<u>3,116,520</u>
Total	16,494,902
Sec. B.301 Secretary's office - global commitment	
Grants	<u>1,080,785,264</u>
Total	1,080,785,264
Source of funds	
General fund	139,267,121
Special funds	18,630,961
Tobacco fund	36,978,473

State health care resources fund	221,579,040
Catamount fund	23,948,700
Federal funds	639,692,834
Interdepartmental transfers	<u>688,135</u>
Total	1,080,785,264
Sec. B.302 Rate setting	
Personal services	852,330
Operating expenses	<u>80,608</u>
Total	932,938
Source of funds	
Global Commitment fund	<u>932,938</u>
Total	932,938
Sec. B.303 Developmental disabilities council	
Personal services	236,037
Operating expenses	58,218
Grants	<u>248,388</u>
Total	542,643
Source of funds	
Federal funds	<u>542,643</u>
Total	542,643
Sec. B.304 Human services board	
Personal services	301,586
Operating expenses	<u>49,606</u>
Total	351,192
Source of funds	
General fund	114,505
Federal funds	150,844
Interdepartmental transfers	<u>85,843</u>
Total	351,192
Sec. B.305 AHS - administrative fund	
Personal services	350,000
Operating expenses	<u>4,650,000</u>
Total	5,000,000
Source of funds	
Interdepartmental transfers	<u>5,000,000</u>
Total	5,000,000

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 Sec. B.306 Department of Vermont health access - administration

Personal services	85,804,852
Operating expenses	2,761,571
Grants	<u>7,625,573</u>
Total	96,191,996
Source of funds	
General fund	945,014
Special funds	1,579,123
Federal funds	43,169,600
ARRA funds	2,505,044
Global Commitment fund	43,916,098
Interdepartmental transfers	<u>4,077,117</u>
Total	96,191,996

## Sec. B.307 Department of Vermont health access - Medicaid program - global commitment

Grants	<u>640,777,596</u>
Total	640,777,596
Source of funds	
Global Commitment fund	<u>640,777,596</u>
Total	640,777,596

## Sec. B.308 Department of Vermont health access - Medicaid program - long term care waiver

Grants	<u>205,491,171</u>
Total	205,491,171
Source of funds	
General fund	86,593,979
Federal funds	<u>118,897,192</u>
Total	205,491,171

## Sec. B.309 Department of Vermont health access - Medicaid program - state only

Grants	<u>26,979,994</u>
Total	26,979,994
Source of funds	
General fund	25,896,529
Global Commitment fund	<u>1,083,465</u>
Total	26,979,994

Sec. B.310 Department of Vermont health access - Medicaid non-waiver  
matched

Grants	<u>42,553,092</u>
Total	42,553,092
Source of funds	
General fund	17,931,272
Federal funds	<u>24,621,820</u>
Total	42,553,092

Sec. B.311 Health - administration and support

Personal services	5,485,409
Operating expenses	1,932,004
Grants	<u>2,781,190</u>
Total	10,198,603
Source of funds	
General fund	1,059,487
Special funds	324,063
Federal funds	5,152,054
ARRA funds	81,815
Global Commitment fund	<u>3,581,184</u>
Total	10,198,603

Sec. B.312 Health - public health

Personal services	33,496,002
Operating expenses	7,145,652
Grants	<u>33,438,566</u>
Total	74,080,220
Source of funds	
General fund	7,262,449
Special funds	11,012,411
Tobacco fund	1,594,000
Federal funds	32,903,499
ARRA funds	460,165
Global Commitment fund	19,862,288
Interdepartmental transfers	975,408
Permanent trust funds	<u>10,000</u>
Total	74,080,220

Sec. B.313 Health - alcohol and drug abuse programs

Personal services	2,650,944
Operating expenses	371,158

Grants	<u>25,881,381</u>
Total	28,903,483
Source of funds	
General fund	3,211,543
Special funds	233,884
Tobacco fund	1,386,234
Federal funds	5,955,677
Global Commitment fund	17,766,145
Interdepartmental transfers	<u>350,000</u>
Total	28,903,483
Sec. B.314 Mental health - mental health	
Personal services	5,486,339
Operating expenses	1,117,984
Grants	<u>124,369,250</u>
Total	130,973,573
Source of funds	
General fund	811,295
Special funds	6,836
Federal funds	6,555,971
Global Commitment fund	123,579,471
Interdepartmental transfers	<u>20,000</u>
Total	130,973,573
Sec. B.315 Mental health - Vermont state hospital	
Personal services	20,479,188
Operating expenses	2,056,312
Grants	<u>82,335</u>
Total	22,617,835
Source of funds	
General fund	17,016,067
Special funds	835,486
Federal funds	213,564
Global Commitment fund	4,252,718
Interdepartmental transfers	<u>300,000</u>
Total	22,617,835
Sec. B.316 Department for children and families - administration & support services	
Personal services	38,009,556
Operating expenses	7,835,052
Grants	<u>1,206,996</u>
Total	47,051,604

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Source of funds	
General fund	16,383,046
Federal funds	14,330,642
Global Commitment fund	16,125,416
Interdepartmental transfers	<u>212,500</u>
Total	47,051,604
Sec. B.317 Department for children and families - family services	
Personal services	23,318,476
Operating expenses	3,408,618
Grants	<u>60,116,513</u>
Total	86,843,607
Source of funds	
General fund	20,908,063
Special funds	1,691,637
Tobacco fund	275,000
Federal funds	27,652,387
Global Commitment fund	36,216,520
Interdepartmental transfers	<u>100,000</u>
Total	86,843,607
Sec. B.318 Department for children and families - child development	
Personal services	3,165,567
Operating expenses	520,809
Grants	<u>58,804,943</u>
Total	62,491,319
Source of funds	
General fund	23,492,835
Special funds	1,820,000
Federal funds	29,131,536
Global Commitment fund	7,907,441
Interdepartmental transfers	<u>139,507</u>
Total	62,491,319
Sec. B.319 Department for children and families - office of child support	
Personal services	8,739,557
Operating expenses	<u>4,162,561</u>
Total	12,902,118
Source of funds	
General fund	2,638,576
Special funds	455,718
Federal funds	9,420,224

Interdepartmental transfers	<u>387,600</u>
Total	12,902,118
Sec. B.320 Department for children and families - aid to aged, blind and disabled	
Personal services	1,827,113
Grants	<u>11,044,541</u>
Total	12,871,654
Source of funds	
General fund	9,121,654
Global Commitment fund	<u>3,750,000</u>
Total	12,871,654
Sec. B.321 Department for children and families - general assistance	
Grants	<u>6,500,000</u>
Total	6,500,000
Source of funds	
General fund	5,048,680
Federal funds	1,111,320
Global Commitment fund	<u>340,000</u>
Total	6,500,000
Sec. B.322 Department for children and families - 3SquaresVT	
Grants	<u>23,756,778</u>
Total	23,756,778
Source of funds	
Federal funds	<u>23,756,778</u>
Total	23,756,778
Sec. B.323 Department for children and families - reach up	
Grants	<u>49,155,572</u>
Total	49,155,572
Source of funds	
General fund	19,481,509
Special funds	19,916,856
Federal funds	7,882,807
Global Commitment fund	<u>1,874,400</u>
Total	49,155,572
Sec. B.324 Department for children and families - home heating fuel assistance/LIHEAP	
Personal services	20,000
Operating expenses	90,000

Grants	<u>11,502,664</u>
Total	11,612,664
Source of funds	
Federal funds	<u>11,612,664</u>
Total	11,612,664
Sec. B.325 Department for children and families - office of economic opportunity	
Personal services	262,256
Operating expenses	80,518
Grants	<u>4,759,371</u>
Total	5,102,145
Source of funds	
General fund	1,251,040
Special funds	57,990
Federal funds	<u>3,793,115</u>
Total	5,102,145
Sec. B.326 Department for children and families - OEO - weatherization assistance	
Personal services	167,676
Operating expenses	131,124
Grants	<u>11,646,491</u>
Total	11,945,291
Source of funds	
Special funds	7,000,000
Federal funds	1,399,666
ARRA funds	<u>3,545,625</u>
Total	11,945,291
Sec. B.327 Department for children and families - Woodside rehabilitation center	
Personal services	3,691,894
Operating expenses	<u>590,115</u>
Total	4,282,009
Source of funds	
General fund	964,774
Global Commitment fund	3,262,343
Interdepartmental transfers	<u>54,892</u>
Total	4,282,009

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 Sec. B.328 Department for children and families - disability determination services

Personal services	4,513,664
Operating expenses	<u>1,142,442</u>
Total	5,656,106
Source of funds	
Federal funds	5,409,589
Global Commitment fund	<u>246,517</u>
Total	5,656,106

## Sec. B.329 Disabilities, aging, and independent living - administration &amp; support

Personal services	24,093,021
Operating expenses	<u>3,838,249</u>
Total	27,931,270
Source of funds	
General fund	7,126,532
Special funds	889,246
Federal funds	11,194,950
Global Commitment fund	6,230,760
Interdepartmental transfers	<u>2,489,782</u>
Total	27,931,270

## Sec. B.330 Disabilities, aging, and independent living - advocacy and independent living grants

Grants	<u>20,538,891</u>
Total	20,538,891
Source of funds	
General fund	8,782,473
Federal funds	7,645,317
Global Commitment fund	3,473,601
Interdepartmental transfers	<u>637,500</u>
Total	20,538,891

## Sec. B.331 Disabilities, aging, and independent living - blind and visually impaired

Grants	<u>1,481,457</u>
Total	1,481,457
Source of funds	
General fund	364,064
Special funds	223,450
Federal funds	648,943

Global Commitment fund	<u>245,000</u>
Total	1,481,457
Sec. B.332 Disabilities, aging, and independent living - vocational rehabilitation	
Grants	<u>5,968,971</u>
Total	5,968,971
Source of funds	
General fund	1,535,695
Federal funds	4,132,389
Global Commitment fund	7,500
Interdepartmental transfers	<u>293,387</u>
Total	5,968,971
Sec. B.333 Disabilities, aging, and independent living - developmental services	
Grants	<u>152,288,227</u>
Total	152,288,227
Source of funds	
General fund	155,125
Special funds	15,463
Federal funds	359,857
Global Commitment fund	<u>151,757,782</u>
Total	152,288,227
Sec. B.334 Disabilities, aging, and independent living - TBI home and community based waiver	
Grants	<u>4,744,899</u>
Total	4,744,899
Source of funds	
Global Commitment fund	<u>4,744,899</u>
Total	4,744,899
Sec. B.335 Corrections - administration	
Personal services	1,959,290
Operating expenses	<u>194,525</u>
Total	2,153,815
Source of funds	
General fund	<u>2,153,815</u>
Total	2,153,815

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Sec. B.336	Corrections - parole board	
	Personal services	262,434
	Operating expenses	<u>60,198</u>
	Total	322,632
	Source of funds	
	General fund	<u>322,632</u>
	Total	322,632
Sec. B.337	Corrections - correctional education	
	Personal services	4,391,210
	Operating expenses	<u>306,274</u>
	Total	4,697,484
	Source of funds	
	Education fund	4,321,425
	Interdepartmental transfers	<u>376,059</u>
	Total	4,697,484
Sec. B.338	Corrections - correctional services	
	Personal services	81,867,751
	Operating expenses	34,909,316
	Grants	<u>6,076,953</u>
	Total	122,854,020
	Source of funds	
	General fund	118,621,136
	Special funds	483,963
	Tobacco fund	87,500
	Federal funds	170,962
	Global Commitment fund	3,094,144
	Interdepartmental transfers	<u>396,315</u>
	Total	122,854,020
Sec. B.339	Correctional services-out of state beds	
	Personal services	<u>8,249,395</u>
	Total	8,249,395
	Source of funds	
	General fund	<u>8,249,395</u>
	Total	8,249,395
Sec. B.340	Corrections - correctional facilities - recreation	
	Personal services	475,408
	Operating expenses	<u>342,362</u>
	Total	817,770

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Source of funds	
Special funds	<u>817,770</u>
Total	817,770
Sec. B.341 Corrections - Vermont offender work program	
Personal services	910,776
Operating expenses	<u>553,114</u>
Total	1,463,890
Source of funds	
Internal service funds	<u>1,463,890</u>
Total	1,463,890
Sec. B.342 Vermont veterans' home - care and support services	
Personal services	14,924,037
Operating expenses	<u>4,004,439</u>
Total	18,928,476
Source of funds	
Special funds	10,635,885
Federal funds	6,881,635
Global Commitment fund	<u>1,410,956</u>
Total	18,928,476
Sec. B.343 Commission on women	
Personal services	235,779
Operating expenses	<u>68,279</u>
Total	304,058
Source of funds	
General fund	299,058
Special funds	<u>5,000</u>
Total	304,058
Sec. B.344 Retired senior volunteer program	
Grants	<u>131,096</u>
Total	131,096
Source of funds	
General fund	<u>131,096</u>
Total	131,096
Sec. B.345 Total Human services	3,095,921,720
Source of funds	
General fund	552,053,592
Special funds	76,643,259
Tobacco fund	40,611,537

State health care resources fund	221,579,040
Catamount fund	23,948,700
Education fund	4,321,425
Federal funds	1,052,142,881
ARRA funds	6,592,649
Global Commitment fund	1,096,854,182
Internal service funds	1,463,890
Interdepartmental transfers	19,700,565
Permanent trust funds	<u>10,000</u>
Total	3,095,921,720
Sec. B.400 Labor	
Personal services	24,811,666
Operating expenses	5,662,677
Grants	<u>975,000</u>
Total	31,449,343
Source of funds	
General fund	2,400,316
Special funds	3,765,862
Federal funds	23,888,739
Interdepartmental transfers	<u>1,394,426</u>
Total	31,449,343
Sec. B.402 Total Labor	31,449,343
Source of funds	
General fund	2,400,316
Special funds	3,765,862
Federal funds	23,888,739
Interdepartmental transfers	<u>1,394,426</u>
Total	31,449,343
Sec. B.500 Education - finance and administration	
Personal services	5,373,825
Operating expenses	2,336,262
Grants	<u>12,383,500</u>
Total	20,093,587
Source of funds	
General fund	3,011,957
Special funds	13,300,096
Education fund	1,020,090
Federal funds	2,041,473
Global Commitment fund	711,971

Interdepartmental transfers	<u>8,000</u>
Total	20,093,587
Sec. B.501 Education - education services	
Personal services	11,948,471
Operating expenses	1,562,985
Grants	<u>136,688,970</u>
Total	150,200,426
Source of funds	
General fund	5,839,205
Special funds	2,191,249
Federal funds	131,532,300
ARRA funds	10,613,000
Interdepartmental transfers	<u>24,672</u>
Total	150,200,426
Sec. B.502 Education - special education: formula grants	
Grants	<u>148,817,440</u>
Total	148,817,440
Source of funds	
Education fund	148,587,440
Global Commitment fund	<u>230,000</u>
Total	148,817,440
Sec. B.503 Education - state-placed students	
Grants	<u>15,000,000</u>
Total	15,000,000
Source of funds	
Education fund	<u>15,000,000</u>
Total	15,000,000
Sec. B.504 Education - adult education and literacy	
Grants	<u>7,463,656</u>
Total	7,463,656
Source of funds	
General fund	787,995
Education fund	5,800,000
Federal funds	<u>875,661</u>
Total	7,463,656
Sec. B.505 Education - adjusted education payment	
Grants	<u>1,126,630,000</u>
Total	1,126,630,000

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Source of funds	
Education fund	1,126,130,000
ARRA interdepartmental transfer	<u>500,000</u>
Total	1,126,630,000
Sec. B.506 Education - transportation	
Grants	<u>16,313,885</u>
Total	16,313,885
Source of funds	
Education fund	<u>16,313,885</u>
Total	16,313,885
Sec. B.507 Education - small school grants	
Grants	<u>7,100,000</u>
Total	7,100,000
Source of funds	
Education fund	<u>7,100,000</u>
Total	7,100,000
Sec. B.508 Education - capital debt service aid	
Grants	<u>160,000</u>
Total	160,000
Source of funds	
Education fund	<u>160,000</u>
Total	160,000
Sec. B.509 Education - tobacco litigation	
Personal services	130,418
Operating expenses	47,015
Grants	<u>804,511</u>
Total	981,944
Source of funds	
Tobacco fund	<u>981,944</u>
Total	981,944
Sec. B.510 Education - essential early education grant	
Grants	<u>5,782,900</u>
Total	5,782,900
Source of funds	
Education fund	<u>5,782,900</u>
Total	5,782,900

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Sec. B.511 Education - technical education	
Grants	<u>12,872,274</u>
Total	12,872,274
Source of funds	
Education fund	<u>12,872,274</u>
Total	12,872,274
Sec. B.512 Education - Act 117 cost containment	
Personal services	1,043,831
Operating expenses	130,269
Grants	<u>91,000</u>
Total	1,265,100
Source of funds	
Special funds	<u>1,265,100</u>
Total	1,265,100
Sec. B.513 Appropriation and transfer to education fund	
Grants	<u>276,240,000</u>
Total	276,240,000
Source of funds	
General fund	<u>276,240,000</u>
Total	276,240,000
Sec. B.514 State teachers' retirement system	
Personal services	6,830,976
Operating expenses	22,053,541
Grants	<u>51,672,307</u>
Total	80,556,824
Source of funds	
General fund	51,672,307
Pension trust funds	<u>28,884,517</u>
Total	80,556,824
Sec. B.515 Total General education	1,869,478,036
Source of funds	
General fund	337,551,464
Special funds	16,756,445
Tobacco fund	981,944
Education fund	1,338,766,589
Federal funds	134,449,434
ARRA funds	10,613,000
Global Commitment fund	941,971

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ARRA interdepartmental transfer	500,000
Interdepartmental transfers	32,672
Pension trust funds	<u>28,884,517</u>
Total	1,869,478,036
Sec. B.600 University of Vermont	
Grants	<u>40,746,633</u>
Total	40,746,633
Source of funds	
General fund	36,740,477
Global Commitment fund	<u>4,006,156</u>
Total	40,746,633
Sec. B.601 Vermont Public Television	
Grants	<u>547,683</u>
Total	547,683
Source of funds	
General fund	<u>547,683</u>
Total	547,683
Sec. B.602 Vermont state colleges	
Grants	<u>23,107,247</u>
Total	23,107,247
Source of funds	
General fund	<u>23,107,247</u>
Total	23,107,247
Sec. B.603 Vermont state colleges - allied health	
Grants	<u>1,116,503</u>
Total	1,116,503
Source of funds	
General fund	711,096
Global Commitment fund	<u>405,407</u>
Total	1,116,503
Sec. B.604 Vermont interactive television	
Grants	<u>785,679</u>
Total	785,679
Source of funds	
General fund	<u>785,679</u>
Total	785,679

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Sec. B.605 Vermont student assistance corporation	
Grants	<u>18,363,607</u>
Total	18,363,607
Source of funds	
General fund	<u>18,363,607</u>
Total	18,363,607
Sec. B.606 New England higher education compact	
Grants	<u>84,000</u>
Total	84,000
Source of funds	
General fund	<u>84,000</u>
Total	84,000
Sec. B.607 University of Vermont - Morgan Horse Farm	
Grants	<u>1</u>
Total	1
Source of funds	
General fund	<u>1</u>
Total	1
Sec. B.608 Total Higher education	84,751,353
Source of funds	
General fund	80,339,790
Global Commitment fund	<u>4,411,563</u>
Total	84,751,353
Sec. B.700 Natural resources - agency of natural resources - administration	
Personal services	2,739,259
Operating expenses	1,141,374
Grants	<u>45,510</u>
Total	3,926,143
Source of funds	
General fund	3,720,213
Special funds	54,484
Federal funds	25,000
Interdepartmental transfers	<u>126,446</u>
Total	3,926,143
Sec. B.701 Natural resources - state land local property tax assessment	
Operating expenses	<u>2,128,733</u>
Total	2,128,733

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Source of funds	
General fund	1,707,233
Interdepartmental transfers	<u>421,500</u>
Total	2,128,733
Sec. B.702 Fish and wildlife - support and field services	
Personal services	12,718,176
Operating expenses	5,253,194
Grants	<u>904,333</u>
Total	18,875,703
Source of funds	
General fund	983,713
Special funds	20,000
Fish and wildlife fund	17,531,844
Interdepartmental transfers	<u>340,146</u>
Total	18,875,703
Sec. B.703 Forests, parks and recreation - administration	
Personal services	980,517
Operating expenses	649,734
Grants	<u>1,815,492</u>
Total	3,445,743
Source of funds	
General fund	1,174,865
Special funds	1,307,878
Federal funds	<u>963,000</u>
Total	3,445,743
Sec. B.704 Forests, parks and recreation - forestry	
Personal services	4,377,380
Operating expenses	495,362
Grants	<u>501,000</u>
Total	5,373,742
Source of funds	
General fund	3,008,767
Special funds	975,069
Federal funds	1,259,906
Interdepartmental transfers	<u>130,000</u>
Total	5,373,742
Sec. B.705 Forests, parks and recreation - state parks	
Personal services	5,710,180
Operating expenses	<u>2,091,207</u>

Total	7,801,387
Source of funds	
General fund	265,454
Special funds	<u>7,535,933</u>
Total	7,801,387
Sec. B.706 Forests, parks and recreation - lands administration	
Personal services	447,753
Operating expenses	<u>1,209,470</u>
Total	1,657,223
Source of funds	
General fund	383,018
Special funds	179,205
Federal funds	1,050,000
Interdepartmental transfers	<u>45,000</u>
Total	1,657,223
Sec. B.707 Forests, parks and recreation - youth conservation corps	
Grants	<u>574,702</u>
Total	574,702
Source of funds	
General fund	42,320
Special funds	188,382
Federal funds	94,000
Interdepartmental transfers	<u>250,000</u>
Total	574,702
Sec. B.708 Forests, parks and recreation - forest highway maintenance	
Personal services	20,000
Operating expenses	<u>134,925</u>
Total	154,925
Source of funds	
General fund	<u>154,925</u>
Total	154,925
Sec. B.709 Environmental conservation - management and support services	
Personal services	3,958,930
Operating expenses	994,994
Grants	<u>109,800</u>
Total	5,063,724
Source of funds	
General fund	1,217,592
Special funds	1,695,813

Federal funds	1,400,917
ARRA funds	230,000
Interdepartmental transfers	<u>519,402</u>
Total	5,063,724
Sec. B.710 Environmental conservation - air and waste management	
Personal services	9,579,425
Operating expenses	6,851,818
Grants	<u>2,184,487</u>
Total	18,615,730
Source of funds	
General fund	413,960
Special funds	13,739,808
Federal funds	3,778,578
ARRA funds	378,384
Interdepartmental transfers	<u>305,000</u>
Total	18,615,730
Sec. B.711 Environmental conservation - office of water programs	
Personal services	13,597,174
Operating expenses	2,208,956
Grants	<u>2,672,351</u>
Total	18,478,481
Source of funds	
General fund	5,620,885
Special funds	4,915,687
Federal funds	7,224,982
ARRA funds	90,302
Interdepartmental transfers	<u>626,625</u>
Total	18,478,481
Sec. B.712 Environmental conservation - tax-loss-Connecticut river flood control	
Operating expenses	<u>34,700</u>
Total	34,700
Source of funds	
General fund	3,470
Special funds	<u>31,230</u>
Total	34,700
Sec. B.713 Natural resources board	
Personal services	2,349,214
Operating expenses	<u>374,166</u>

Total	2,723,380
Source of funds	
General fund	757,494
Special funds	<u>1,965,886</u>
Total	2,723,380
Sec. B.714 Total Natural resources	88,854,316
Source of funds	
General fund	19,453,909
Special funds	32,609,375
Fish and wildlife fund	17,531,844
Federal funds	15,796,383
ARRA funds	698,686
Interdepartmental transfers	<u>2,764,119</u>
Total	88,854,316
Sec. B.800 Commerce and community development - agency of commerce and community development - administration	
Personal services	1,855,620
Operating expenses	601,085
Grants	<u>1,439,570</u>
Total	3,896,275
Source of funds	
General fund	2,690,275
Federal funds	800,000
ARRA funds	350,000
Interdepartmental transfers	<u>56,000</u>
Total	3,896,275
Sec. B.801 Economic, housing, and community development	
Personal services	7,892,289
Operating expenses	1,294,316
Grants	<u>12,127,703</u>
Total	21,314,308
Source of funds	
General fund	5,875,933
Special funds	3,948,699
Federal funds	11,337,260
ARRA funds	52,416
Interdepartmental transfers	<u>100,000</u>
Total	21,314,308

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Sec. B.802	Historic sites - special improvements	
	Operating expenses	<u>13,000</u>
	Total	13,000
	Source of funds	
	Special funds	<u>13,000</u>
	Total	13,000
Sec. B.803	Community development block grants	
	Grants	<u>8,046,530</u>
	Total	8,046,530
	Source of funds	
	Federal funds	7,446,530
	ARRA funds	<u>600,000</u>
	Total	8,046,530
Sec. B.804	Downtown transportation and capital improvement fund	
	Personal services	78,828
	Grants	<u>305,138</u>
	Total	383,966
	Source of funds	
	Special funds	<u>383,966</u>
	Total	383,966
Sec. B.805	Tourism and marketing	
	Personal services	1,313,796
	Operating expenses	1,613,714
	Grants	<u>143,500</u>
	Total	3,071,010
	Source of funds	
	General fund	3,021,010
	Interdepartmental transfers	<u>50,000</u>
	Total	3,071,010
Sec. B.806	Vermont life	
	Personal services	663,467
	Operating expenses	<u>49,222</u>
	Total	712,689
	Source of funds	
	Enterprise funds	<u>712,689</u>
	Total	712,689

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Sec. B.807 Vermont council on the arts	
Grants	<u>507,607</u>
Total	507,607
Source of funds	
General fund	<u>507,607</u>
Total	507,607
Sec. B.808 Vermont symphony orchestra	
Grants	<u>113,821</u>
Total	113,821
Source of funds	
General fund	<u>113,821</u>
Total	113,821
Sec. B.809 Vermont historical society	
Grants	<u>807,694</u>
Total	807,694
Source of funds	
General fund	<u>807,694</u>
Total	807,694
Sec. B.810 Vermont housing and conservation board	
Grants	<u>21,612,916</u>
Total	21,612,916
Source of funds	
Special funds	8,772,500
Federal funds	<u>12,840,416</u>
Total	21,612,916
Sec. B.811 Vermont humanities council	
Grants	<u>172,670</u>
Total	172,670
Source of funds	
General fund	<u>172,670</u>
Total	172,670
Sec. B.812 Total Commerce and community development	
Source of funds	
General fund	13,189,010
Special funds	13,118,165
Federal funds	32,424,206
ARRA funds	1,002,416

Interdepartmental transfers	206,000
Enterprise funds	<u>712,689</u>
Total	60,652,486
Sec. B.900 Transportation - finance and administration	
Personal services	9,454,757
Operating expenses	2,197,029
Grants	<u>355,000</u>
Total	12,006,786
Source of funds	
Transportation fund	11,028,070
Federal funds	<u>978,716</u>
Total	12,006,786
Sec. B.901 Transportation - aviation	
Personal services	2,578,742
Operating expenses	5,005,242
Grants	<u>160,000</u>
Total	7,743,984
Source of funds	
Transportation fund	3,396,984
Federal funds	<u>4,347,000</u>
Total	7,743,984
Sec. B.902 Transportation - buildings	
Operating expenses	<u>2,111,000</u>
Total	2,111,000
Source of funds	
Transportation fund	1,001,000
TIB fund	<u>1,110,000</u>
Total	2,111,000
Sec. B.903 Transportation - program development	
Personal services	36,255,937
Operating expenses	199,450,849
Grants	<u>30,093,679</u>
Total	265,800,465
Source of funds	
Transportation fund	29,381,520
TIB fund	13,516,260
Federal funds	210,051,644
ARRA funds	5,328,993
Interdepartmental transfers	4,993,195

Local match	<u>2,528,853</u>
Total	265,800,465
Sec. B.904 Transportation - rest areas	
Personal services	270,000
Operating expenses	<u>7,175,000</u>
Total	7,445,000
Source of funds	
Transportation fund	259,460
TIB fund	926,134
Federal funds	<u>6,259,406</u>
Total	7,445,000
Sec. B.905 Transportation - maintenance state system	
Personal services	35,559,722
Operating expenses	31,657,070
Grants	<u>50,000</u>
Total	67,266,792
Source of funds	
Transportation fund	65,611,298
Federal funds	1,555,494
Interdepartmental transfers	<u>100,000</u>
Total	67,266,792
Sec. B.906 Transportation - planning, outreach and community affairs	
Personal services	3,181,304
Operating expenses	1,197,710
Grants	<u>5,660,280</u>
Total	10,039,294
Source of funds	
Transportation fund	1,958,857
Federal funds	7,739,556
Interdepartmental transfers	<u>340,881</u>
Total	10,039,294
Sec. B.907 Transportation - rail	
Personal services	4,271,926
Operating expenses	<u>50,367,435</u>
Total	54,639,361
Source of funds	
Transportation fund	9,354,381
TIB fund	1,431,668
Federal funds	10,079,589

ARRA funds	<u>33,773,723</u>
Total	54,639,361
Sec. B.908 Transportation - public transit	
Personal services	511,561
Operating expenses	182,347
Grants	<u>24,713,344</u>
Total	25,407,252
Source of funds	
Transportation fund	6,842,111
Federal funds	17,085,141
ARRA funds	<u>1,480,000</u>
Total	25,407,252
Sec. B.909 Transportation - central garage	
Personal services	3,464,636
Operating expenses	<u>13,822,279</u>
Total	17,286,915
Source of funds	
Internal service funds	<u>17,286,915</u>
Total	17,286,915
Sec. B.910 Department of motor vehicles	
Personal services	16,488,866
Operating expenses	8,873,827
Grants	<u>50,000</u>
Total	25,412,693
Source of funds	
Transportation fund	22,643,786
Federal funds	<u>2,768,907</u>
Total	25,412,693
Sec. B.911 Transportation - town highway structures	
Grants	<u>5,833,500</u>
Total	5,833,500
Source of funds	
Transportation fund	<u>5,833,500</u>
Total	5,833,500
Sec. B.912 Transportation - town highway Vermont local roads	
Grants	<u>390,000</u>
Total	390,000
Source of funds	

Transportation fund	235,000
Federal funds	<u>155,000</u>
Total	390,000
Sec. B.913 Transportation - town highway class 2 roadway	
Grants	<u>7,248,750</u>
Total	7,248,750
Source of funds	
Transportation fund	<u>7,248,750</u>
Total	7,248,750
Sec. B.914 Transportation - town highway bridges	
Personal services	3,600,000
Operating expenses	<u>14,111,776</u>
Total	17,711,776
Source of funds	
Transportation fund	673,867
TIB fund	2,025,875
Federal funds	14,075,835
Local match	<u>936,199</u>
Total	17,711,776
Sec. B.915 Transportation - town highway aid program	
Grants	<u>24,982,744</u>
Total	24,982,744
Source of funds	
Transportation fund	<u>24,982,744</u>
Total	24,982,744
Sec. B.916 Transportation - town highway class 1 supplemental grants	
Grants	<u>128,750</u>
Total	128,750
Source of funds	
Transportation fund	<u>128,750</u>
Total	128,750
Sec. B.917 Transportation - town highway emergency fund	
Grants	<u>750,000</u>
Total	750,000
Source of funds	
Transportation fund	<u>750,000</u>
Total	750,000

Sec. B.918 Transportation - municipal mitigation grant program	
Grants	<u>1,143,228</u>
Total	1,143,228
Source of funds	
Transportation fund	247,998
Federal funds	<u>895,230</u>
Total	1,143,228
Sec. B.919 Transportation - public assistance grant program	
Grants	<u>200,000</u>
Total	200,000
Source of funds	
Federal funds	<u>200,000</u>
Total	200,000
Sec. B.920 Transportation board	
Personal services	75,977
Operating expenses	<u>11,023</u>
Total	87,000
Source of funds	
Transportation fund	<u>87,000</u>
Total	87,000
Sec. B.921 Total Transportation	553,635,290
Source of funds	
Transportation fund	191,665,076
TIB fund	19,009,937
Federal funds	276,191,518
ARRA funds	40,582,716
Internal service funds	17,286,915
Interdepartmental transfers	5,434,076
Local match	<u>3,465,052</u>
Total	553,635,290
Sec. B.1000 Debt service	
Debt service	<u>72,390,394</u>
Total	72,390,394
Source of funds	
TIB debt service fund	991,563
General obligation bonds debt service fund	1,388,121
General fund	64,575,793
Transportation fund	3,371,825

Special funds	625,950
ARRA funds	<u>1,437,142</u>
Total	72,390,394
Sec. B.1001 Total Debt service	72,390,394
Source of funds	
General fund	64,575,793
General obligation bonds debt service fund	1,388,121
Transportation fund	3,371,825
TIB debt service fund	991,563
Special funds	625,950
ARRA funds	<u>1,437,142</u>
Total	72,390,394

Sec. B.1100 NEXT GENERATION; APPROPRIATIONS AND TRANSFERS

(a) In fiscal year 2012, \$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. \$1,861,000 as follows:

(A) Workforce Education and Training Fund (WETF). The sum of \$1,301,000 is transferred to the Vermont workforce education and training fund created in 10 V.S.A. § 543 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. Of this amount:

(i) \$350,000 shall be allocated for the Vermont career internship program pursuant to Secs. 11-13 of H.287 of 2011; and

(ii) Up to \$15,000 of these funds are allocated for transfer to the secretary of administration for the work of the executive economist, and to reimburse the joint fiscal office for the work of the legislative economist, to conduct a study on government contracting, and to develop an econometric model for the evaluation of net costs of government contracts pursuant to Sec. 71 of H.287 of 2011.

(B) Adult Technical Education Programs. The amount of \$360,000 is appropriated to the department of labor working with the workforce development council. This appropriation is for the purpose of awarding grants to regional technical centers and comprehensive high schools to provide adult technical education, as that term is defined in 16 V.S.A. § 1522, to unemployed and underemployed Vermont adults.

(C) UVM Technology Transfer Program. The amount of \$100,000 is appropriated to the University of Vermont. This appropriation is for patent

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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 \$100,000 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. \$330,000 as follows:

(A) Health care 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.

(B) Large animal veterinarians' loan forgiveness. \$30,000 is appropriated to the agency of agriculture, food and markets for a loan forgiveness program for large animal veterinarians pursuant to Sec. 39 of H.287 of 2011.

(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) National Guard Educational Assistance. 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. Each entity will target these funds in a manner that brings to bear the maximum benefits of its unique missions and constituencies to further the workforce and economic development objectives of the state, participation in postsecondary education by underrepresented groups, and support for promising economic sectors in Vermont. By July 1, 2011, each entity will present a plan to the workforce development council (WDC) for deploying the scholarships along with proposed measurable short- and long-term outcomes. This will form the basis for a WDC recommendation for funding in fiscal year 2013.

(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 institutions are better academically or geographically suited to student need.

(4) Southeast Vermont Economic Development Strategy. The sum of \$25,000 is appropriated to the agency of commerce and community development for workforce development and other activities of Sec. 65 of H.287 of 2011.

(5) Science Technology Engineering and Math (STEM) Incentive. The sum of \$32,500 is appropriated to the agency of commerce and community development for an incentive payment pursuant to Sec. 6 of H.287 of 2011.

Sec. B.1100.1 WORKFORCE DEVELOPMENT COUNCIL  
RECOMMENDATION FOR FISCAL YEAR 2013 NEXT GENERATION  
FUND DISTRIBUTION

(a) The department of labor, in coordination with the agency of commerce and community development, the agency of human services, and the department of education, and in consultation with the workforce development council, shall recommend to the governor no later than November 1, 2011, on how \$4,793,000 from the next generation fund should be allocated or appropriated in fiscal year 2013 to provide maximum benefit to workforce development, participation in postsecondary education by underrepresented groups, and support for promising economic sectors in Vermont

Sec. B.1101 FISCAL YEAR 2012 BASE REDUCTIONS

(a) In fiscal year 2012, the secretary of administration is authorized to reduce appropriations for labor savings due to unfilled vacant positions, voluntary reduced workweeks, modified health insurance plans for active and retired state employees, reduced state costs in supporting retirement plans,

close management of personal services contracts, reduced overtime costs, and for any other management initiatives within the executive branch, excluding reductions to grants, that are necessary to realize the base reductions. The executive branch shall provide status reports to the joint fiscal committee on achievement of this base reduction at meetings in July, September and November of 2011. The commissioner of finance and management is authorized to transfer other funds saved as a result of these initiatives to the general fund in fiscal year 2012:

General fund \$12,000,000

Sec. B.1102 FISCAL YEAR 2012 CONTRACT IMPLEMENTATION AND HEALTH INSURANCE CLAIMS ASSESSMENT

(a) There is appropriated to the secretary of administration for contract nonsalary items and costs from health insurance claims assessments, to be transferred to departments as the secretary may determine to be necessary:

General fund \$906,500

Sec. B.1103 FISCAL YEAR 2012 ONE-TIME APPROPRIATION

(a) In fiscal year 2012, there is appropriated to the department of tourism and marketing for the Vermont civil war sesquicentennial commission:

General fund \$50,000

Sec. B.1104 [DELETED]

Sec. B.1105 FISCAL YEAR 2012 CONTINGENT APPROPRIATIONS.

(a) In the event that the appropriation in Sec. 50(b) of No. 3 of the Acts of 2011 as amended by Sec. C.110 of this act is not made due to unavailable funds and the commissioner of finance determines that a payment to the federal government for unemployment insurance interest is required by September 20, 2011, to the extent necessary to fund the payment the amount of such payment is appropriated from the general fund to the department of labor. The commissioner of finance may unreserve funds as necessary up to the payment amount from the human services caseload reserve created 32 V.S.A. § 308b.

(b) In the event that any portion of the appropriation in Sec. 50(c) of No. 3 of the Acts of 2011 as amended by Sec. C.110 of this act is not made due to unavailable funds, then to the extent necessary to reach the appropriation level in that section, up to the first \$7,000,000 of any upgrade in the official revenue forecast for the general fund made in July 2011 for fiscal year 2012 is appropriated for the same purpose.

Sec. C.100 Sec. D.106(c)(1) of No. 156 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

(1) ~~\$10,000,000~~ \$9,397,500 is appropriated to the ~~department of buildings and general services for planning and construction of replacement for Vermont State Hospital beds.~~ following agencies and departments for information technology projects:

(A) to the agency of human services to replace legacy technologies to determine eligibility, enroll beneficiaries, and provide benefits in a faster and more efficient, secure, and accessible way: \$3,600,000

(B) to the department of corrections to replace outdated components of the offender case management system: \$2,000,000

(C) to the department of public service for a case management system for electronic tracking, organizing, and utilization of docket files:  
\$250,000

(D) to the agency of commerce and community development for an internet-based historic resources digital database: \$150,000

(E) to the department of finance and management to upgrade the Human Capital Management (HCM) system to process payroll and manage associated employee and financial data and retire the legacy Paradox application; and to upgrade the VISION financial management system to better integrate with HCM and the budget and planning application: \$3,397,500

Sec. C.101 Sec. 44(a)(4) of No. 3 of the Acts of 2011 is amended to read:

(4) The following amounts shall be transferred between special funds as indicated:

~~From the Transportation Infrastructure Bond Fund #20191 to the Transportation Revenue Bond Debt Service Fund #35200~~ 991,563.00

From the Transportation Infrastructure Bond Fund established by 19 V.S.A. § 11f to the Transportation Infrastructure Bonds Debt Service Fund for the purpose of funding fiscal year 2012 transportation infrastructure bond debt service: 991,562.50

\* \* \*

Sec. C.102 Sec. 45(a)(1) of No. 3 of the Acts of 2011 is amended to read:

(1) The following amounts shall revert to the general fund from the accounts indicated:

1100020000	Secretary of Administration	16,662.51
1100030000	Pay Plan Adjustment	184,031.00

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1120020000	Tuition Assistance Program	27,819.97
<del>1140040000</del>	<del>Homeowner Rebates</del>	<del>262,550.17</del>
1140070000	Use Tax Reimbursement Program	288,508.57
1140330000	Renter Rebates	2,069.27
1140891001	IT Reprogram-Sales Tax Holiday	10,000.00
1260080000	Interest-Temp Borrowing	550,000.00
1260890901	FY 2009 Short Term Borrowing	100,000.00
1260891001	Retirement Plan Study	19,838.49
2130100000	State's Attorneys	1,226.68
2130200000	Sheriffs	194,641.82
1260891003	Benefits Survivors Emergency Personnel	70,000.00

Sec. C.103 Sec. 282 of No. 65 of the Acts of 2007 is amended to read:

Sec. 282. TAX COMPUTER SYSTEM MODERNIZATION FUND

(a) Creation of fund.

(1) There is established the tax computer system modernization special fund to consist of:

(A) ~~Eighty percent of~~ The tax receipts received as a direct result of the Massachusetts sponsored data sharing warehouse project relative to non-state resident filers initiated by the department of taxes beginning in calendar year 2011; and

(B) Eighty percent of tax receipts received as a direct result of the data sharing and comparison project between the Vermont department of labor and the department of taxes relative to entity and employee filings at both departments and/or lack thereof.

(2) Balances in the fund shall be administered by the department of taxes and used for the exclusive purposes of funding ~~phase 3 of the tax department's computer system modernization project supporting: A) corporate tax; B) business income tax; C) property transfer tax; D) fuel gross receipts tax; and E) individual use tax;~~ A) ancillary development of the ETM system necessary for implementation of the data warehouse project and in preparation of the transfer of tax types from the current VIRCS system to the VIRCS/ETM system, including modernization of billing capability; B) payments due to the vendor under the data warehouse project contract; C) enhanced compliance costs related to the data warehouse project; and D) phase 1 of the transfer of five tax types, specifically income taxation of individuals, trusts and estates, withholding tax, sales and use tax, meals and rooms tax, and property tax adjustments, from the current VIRCS system to the VIRCS/ETM system. All balances in the fund at the end of any fiscal year shall be carried forward and remain part of the fund. Interest earned by the fund shall be deposited into the

fund. This fund is established in the state treasury pursuant to subchapter 5 of chapter 7 of Title 32.

(b) Appropriation.

(1) There is appropriated in fiscal year 2008 from the special fund the sum of up to \$7,800,000 to the department of taxes for the purposes described in subdivision (a)(2) of this section. The commissioner shall anticipate receipts in accordance with 32 V.S.A. § 588(4)(C).

(c) Transfer.

(1) Twenty percent of the tax receipts received pursuant to subdivision (a)(1)(A) of this section after payment to the vendor under the data warehouse contract shall be transferred to the general fund annually for the duration of that contract. Thereafter, 20 percent of the tax receipts received pursuant to subdivision (a)(1)(A) shall be transferred to the general fund annually until the expiration of the tax computer system modernization fund.

(d) Fund to terminate.

(1) This fund shall terminate on July 1, ~~2011~~ 2018 and any unexpended unencumbered balance in the fund shall be transferred to the general fund.

~~(d)~~(e) The tax commissioner shall report to the joint fiscal committee on fund receipts ~~through the first four months of fiscal year 2008~~ at or prior to the November joint fiscal committee meeting each year until the fund is terminated.

Sec. C.103.1 SPECIAL FUND APPROPRIATION FOR TAX COMPUTER SYSTEMS

(a) \$7,500,000 is appropriated from the tax computer system modernization special fund established pursuant to Sec. 282 of No. 65 of the Acts of 2007, as amended in Sec. C.103 of this act. This appropriation shall carry forward through fiscal year 2013. The commissioner shall anticipate receipts in accordance with 32 V.S.A. § 588(4)(C).

Sec. C.104 FISCAL YEAR 2011 MEDICAID STATE FUNDS - RESERVE

(a) To the extent that state funds in the state Medicaid programs are unexpended in fiscal year 2011, as a result of federal matching for the final quarter of fiscal year 2011, up to \$3,600,000 shall be reserved in the human services caseload reserve created by 32 V.S.A. § 308b to be used for potential state budget needs in human services as a result of reduced federal funds availability.

Sec. C.105 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. C.105.1 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. C.106 Sec. B.903 of No. 156 of the Acts of the 2009 Adj. Sess. (2010), as amended by Sec. 42 of No. 3 of the Acts of 2011, is further amended to read:

Sec. B.903 Transportation - program development

Personal services	36,339,478	36,339,478
Operating expenses	220,162,203	220,162,203
Grants	<u>26,819,421</u>	<u>26,819,421</u>
Total	283,321,102	283,321,102
Source of funds		
ARRA funds	45,034,600	45,034,600
TIB fund	<del>15,256,273</del>	15,851,273
Transportation fund	<del>18,246,575</del>	17,651,575
Local match	1,434,254	1,434,254
Federal funds	199,707,420	199,707,420
Interdepartmental transfers	<u>3,641,980</u>	<u>3,641,980</u>
Total	283,321,102	283,321,102

Sec. C.107 Sec. B.905 of No. 156 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

Sec. B.905 Transportation – maintenance state system

Personal services	34,530,658	34,530,658
Operating expenses	<del>34,821,229</del>	35,416,229
Grants	<u>30,000</u>	<u>30,000</u>
Total	<del>67,381,887</del>	67,976,887
Source of funds		
Transportation fund	<del>65,552,943</del>	66,147,943
Federal funds	1,728,944	1,728,944
Interdepartmental transfers	<u>100,000</u>	<u>100,000</u>
Total	<del>67,381,887</del>	67,976,887

Sec. C.108 Sec. B.914 of No. 156 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

Sec. B.914 Transportation – town highway bridges

Personal services	3,600,000	3,600,000
Operating expenses	<u>15,489,340</u>	<u>12,514,340</u>
Total	<del>19,089,340</del>	16,114,340
Source of funds		
ARRA funds	3,990,070	3,990,070

TIB fund	1,616,014	1,021,014
Transportation fund	658,224	658,244
Local match	766,631	766,631
Federal funds	<u>12,058,401</u>	<u>9,678,401</u>
Total	19,089,340	16,114,340

Sec. C.109 Sec. B.921 of No. 156 of the Acts of the 2009 Adj. Sess. (2010), as amended by Sec. 43 of No. 3 of the Acts of 2011, is further amended to read:

Sec. B.921 Total transportation 582,705,976 580,325,976

Source of funds

Transportation fund	182,691,502	182,691,502
TIB fund	19,454,143	19,454,143
Local match	2,450,885	2,450,885
Federal funds	<del>275,885,087</del>	273,505,087
ARRA funds	80,756,516	80,756,516
Internal service funds	17,477,863	17,477,863
Interdepartmental transfers	<u>3,989,980</u>	<u>3,989,980</u>
Total	582,705,976	580,325,976

Sec. C.110 Sec. 50 of No. 3 of 2011 is amended to read:

Sec. 50. FISCAL YEAR 2011 GENERAL FUND BALANCE

(a) Notwithstanding 32 V.S.A. §§ 308c and 308d, after the general fund budget stabilization reserve attains its statutory maximum, the first \$29,540,000 of any additional unreserved and undesignated general fund balance shall be deposited into the human services caseload reserve established in 32 V.S.A. § 308b in fiscal year 2011 to be used for caseload costs, offsets to federal funding changes, or related human service expenditures in fiscal year 2012.

(b) The next \$3,600,000 of any unreserved and undesignated general fund balance is appropriated to the department of labor for unemployment insurance interest. In the event that federal action is taken that results in a payment of unemployment insurance interest not being required, this appropriation shall not be made. Any payment returned to the state due to it not being required shall be deposited into the general fund.

(c) The next \$7,000,000 of any unreserved and undesignated general fund balance is appropriated to the secretary of administration to be reserved pending emergency board action to allocate these funds to offset reduced federal funding. Pursuant to 32 V.S.A. § 706 the emergency board is authorized to allocate and transfer, to the extent necessary, this appropriation to offset the loss of existing appropriations of federal funds in this act.

(d) Any remaining unreserved and undesignated general fund balance shall be deposited into the human service caseload reserve fund until unreserved and appropriated by act of the general assembly.

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 \$488,000 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 \$488,000 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 \$8,047,500 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 \$8,047,500 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 \$3,295,476 is appropriated from the municipal and regional planning fund. Notwithstanding 24 V.S.A. § 4306(a), amounts above \$3,295,476 from the property transfer tax that are deposited into the municipal and regional planning fund shall be transferred into the general fund. The \$3,295,476 shall be allocated as follows:

(A) \$2,508,076 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) \$378,700 to the Vermont center for geographic information.

Sec. D.101 FUND TRANSFERS AND RESERVES

(a) Notwithstanding any other provision of law, the following amounts are transferred from the funds indicated:

(1) from the general fund to the:

(A) communications and information technology internal service fund established by 22 V.S.A. § 902a: \$900,000.

(B) next generation initiative fund established by 16 V.S.A. § 2887: \$4,793,000.

(2) from the transportation fund to the downtown transportation and related capital improvement fund established by 24 V.S.A. § 2796 to be used by the Vermont downtown development board for the purposes of the fund: \$400,000.

(3) from the transportation fund to the general fund: \$3,989,279.

(4) from the transportation infrastructure bond fund established by 19 V.S.A. § 11f to the transportation infrastructure bonds debt service fund for the purpose of funding fiscal year 2013 transportation infrastructure bond debt service: \$990,063.

(5) from the DUI Enforcement Special Fund (#21140) established in 23 V.S.A. § 1220a to the general fund: \$1,500,343.

(b) The amount of \$29,500,000 is unreserved and made available for expenditure in fiscal year 2012 from the human services caseload reserve created by 32 V.S.A. § 308b.

#### 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 2011 in the tobacco litigation settlement fund shall remain for appropriation in fiscal year 2012.

#### 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 2012 and any additional amount necessary to ensure the balance in the tobacco litigation settlement fund at the close of fiscal year 2012 is not negative, shall be transferred from the tobacco trust fund to the tobacco litigation settlement fund in fiscal year 2012.

\*\*\* GENERAL GOVERNMENT \*\*\*

#### Sec. E.100 Secretary of administration – secretary's office

(a) It is the intent of the general assembly that in the budget process the administration, the legislature, funding recipients, and the public be able to evaluate state funding in terms of program outcomes. The budget process should support and align with this goal by including the established outcomes for each funded program as well as the existing performance measures by which the success of the program can be determined. For any program requesting funding that has outdated or does not currently have defined outcomes and related performance evaluation measures, the administration should include recommendations of such in the budget process.

(b) Of the funds appropriated to the secretary of administration in Sec. B.1103(a)(1)(A) of No. 156 of the Acts of the 2009 Adj. Sess. (2010) as amended by Sec. 56 of No. 3 of the Acts of 2011, up to \$1,000,000 may be carried forward and redirected to state costs that are the result of concluded or ongoing legal expenses.

Sec. E.101 Information and innovation - communications and information technology

(a) Of this appropriation, \$700,000 is for a grant to the Vermont telecommunications authority established in 30 V.S.A. § 8061. The secretary of administration is authorized to use \$200,000 of the appropriation for expenditures related to expanding and improving statewide telecommunications and internet accessibility.

Sec. E.103 32 V.S.A. § 183 is amended to read:

§ 183. FINANCIAL AND HUMAN RESOURCE INFORMATION  
INTERNAL SERVICE FUND

(a) There is established in the department of finance and management a financial and human resource information internal service fund, to consist of revenues from charges to agencies, departments, and similar units of Vermont state government, and to be available to fund the costs of the division of financial operations in the department of finance and management, and the technical support and services provided by the department of information and innovation for the statewide central accounting and encumbrance, budget development, and human resource management systems. ~~Expenditures shall be managed in accordance with subsection 462(b) of this title.~~

(b) The rate of the charges shall be proposed by the commissioner of finance and management, subject to the approval of the secretary of administration. Proposed rates of charges shall be based upon the cost of operations. ~~The proposed rates to be paid by departments and agencies shall be included in the administration budget recommendations each fiscal year for legislative authorization as part of the budget process. Any changes in rates shall be approved by subsequent legislative action.~~

Sec. E.103.1 32 V.S.A. § 307(e) is amended to read:

(e) The budget shall also include any proposed expenditures and charges for enterprise and internal service funds to be billed to departmental budgets for payment to the financial management, workers' compensation, and facilities operations internal service funds. ~~Such charges shall be subject to legislative approval. The departments of finance and management and buildings and general services shall include with their annual budget submissions details of any such charges to be made projected by department~~

~~and the financial ease for the proposed changes in charges for the three internal services funds. Expenditures from enterprise and internal service funds shall be managed in accordance with subsection 462(b) of this title.~~

Sec. E.104 3 V.S.A. § 2283 is amended to read:

§ 2283. DEPARTMENT OF HUMAN RESOURCES

(a) The department of human resources is created in the agency of administration. In addition to other responsibilities assigned to it by law, the department is responsible for the provision of centralized human resources management services for state government, including the administration of a classification and compensation system for state employees under chapter 13 of this title and the performance of duties assigned to the commissioner of human resources under chapter 27 of this title. ~~The department shall administer the human resources functions of the agency of administration in consultation with the agency of administration commissioners and the state librarian. A department~~ All agencies and departments of the agency of administration state which receives receive services of from the consolidated agency human resources unit department shall be charged for those services through an interdepartmental transfer assessment payable to the human resource services internal service fund on a basis established by the commissioner of finance and management in consultation with the commissioner of human resources and with the approval of the secretary of administration.

(b)(1) There is established in the department of human resources a human resource services internal service fund to consist of revenues from charges to agencies, departments, and similar units of Vermont state government and to be available to fund the costs of the consolidated human resource services in the department of human resources.

(2) The rate of the charges shall be proposed by the commissioner of human resources, subject to the approval of the secretary of administration. Proposed rates of charges shall be based upon the cost of operations associated with human resource services provided to agencies, departments, and similar units of Vermont state government.

Sec. E.107 Tax – administration/collection

(a) Of this appropriation, \$20,000 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.

## Sec. E.109 Buildings and general services - engineering

(a) The \$2,428,802 interdepartmental transfer in this appropriation shall be from the general bond fund appropriation in the Capital Appropriations Act of the 2011 session.

## Sec. E.110 Buildings and general services - information centers

(a) In fiscal year 2012, \$40,000 of general funds shall revert to the general fund.

## Sec. E.121 29 V.S.A. § 160a is amended to read:

§ 160a FACILITIES OPERATIONS ~~REVOLVING~~ INTERNAL SERVICE  
FUND

(a) There is created a facilities operations ~~revolving~~ internal service fund in the department of buildings and general services. The purpose of this fund is to provide for:

\* \* \*

(b) The fund shall consist of:

\* \* \*

(3) Fees paid by departments and agencies including the legislative and judicial branches. The rate of said fees shall be proposed ~~to the legislature~~ by the commissioner of buildings and general services subject to the approval of the secretary of administration. Proposed rates shall be based upon the cost of operations, debt service and depreciation. ~~The fees to be paid by departments and agencies shall be included in the administration budget recommendations each fiscal year for legislative approval as part of the budget process. Any changes in rates shall be approved by subsequent legislative action.~~

\* \* \*

## Sec. E.122 Geographic information system

(a) The Vermont Center for Geographic Information Inc. in consultation with the department of taxes, the agency of natural resources, and the agency of transportation shall report to the house and senate committees on government operations and on appropriations on or before January 15, 2012 on methods to reduce and prevent duplication of services and activities across state government with regard to mapping services and other geographic data resources.

Sec. E.125 Sec. 95 of No. 67 of the Acts of 2010 is amended to read:

Sec. 95. FIVE-PERCENT PAY CUT FOR MEMBERS OF THE GENERAL ASSEMBLY

(a) For the remainder of fiscal year 2010 and for fiscal year 2011 and fiscal year 2012, the annual, weekly, and daily compensation of all members of the general assembly shall be reduced by five percent from the rate of compensation which would otherwise be paid as of January 5, 2010, under the provisions of 32 V.S.A. §§ 1051(a) and 1052(a).

Sec. E.126 [DELETED]

Sec. E.127 Joint fiscal committee

(a) The joint fiscal office is authorized to make a transfer of up to \$65,000 to the office of the secretary of administration provided that the Capitol Health Associates contract and its related work are moved to the secretary's office.

(b) The joint fiscal office is further authorized to make a transfer of up to \$12,500 in fiscal year 2011 in the event that the contract can be moved at an earlier date.

Sec. E.128 Sergeant at arms

(a) Notwithstanding any other provision of law, in fiscal year 2012, the amount of \$20,000 from account #1230001000 shall revert to the general fund.

Sec. E.130 Auditor of accounts

(a) The office of the state auditor shall not increase the number of filled positions assigned to the state auditor's office, including both exempt and classified, above 14 during fiscal year 2011 and fiscal year 2012, and position number 090031 – senior auditor – shall be transferred to the statewide position pool as of July 1, 2011.

(b) The state auditor shall review the legislative changes made during the 2011 session and submit a revised work plan for the office of the state auditor, including an adjusted budget and preliminary audit schedule for fiscal year 2012, to the department of finance and management and the legislative joint fiscal committee on or before July 5, 2011. The work plan shall include all required audits and any plans for discretionary performance audits in place at that time. In addition the plan shall include a discussion of advance notification protocol options for single audit fund agency billings.

Sec. E.130.1 EVALUATION RECOMMENDATIONS ON THE STATE'S LONG-TERM CARE SYSTEM UNDER THE CHOICES FOR CARE WAIVER

(a) The state auditor shall report to the house and senate committees on appropriations, the senate committee on health and welfare, and the house committee on human services by January 15, 2012 with recommendations on how to evaluate the success of the Choices for Care waiver.

(b) The state auditor shall work with the department of disabilities, aging, and independent living to develop a series of outcome measures, including the relevant outcome measures delineated in No. 146 of the Acts of the 2009 Adj. Sess. (2010), to evaluate the Choices for Care waiver. These outcome measures shall be included in the recommendations on how to evaluate the success of the Choices for Care waiver. A copy of the auditor's report shall be sent to the government accountability committee.

Sec. E.133 Vermont state retirement system

(a) Notwithstanding 3 V.S.A. § 473(d), in fiscal year 2012, investment fees shall be paid from the corpus of the fund.

Sec. E.141 Lottery commission

(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

(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

(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

(a) Payments in lieu of taxes under this section shall be paid from the PILOT special fund under 32 V.S.A. § 3709.

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\* \* \* PROTECTION TO PERSONS AND PROPERTY \* \* \*

Sec. E.200 Attorney general

(a) Notwithstanding any other provisions of law, the office of the attorney general, Medicaid fraud and residential abuse unit, is authorized to retain, subject to appropriation, one-half of the state share of any recoveries from Medicaid fraud settlements, excluding interest, that exceed the state share of restitution to the Medicaid program. All such designated additional recoveries 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), \$610,000 is appropriated in Sec. B.200 of this act.

Sec. E.204 Judiciary

(a) For compensation paid from July 1, 2011 to June 30, 2012, 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 State's attorneys

(a) In fiscal year 2012, the annual salaries of all state's attorneys shall be reduced by five percent from the salaries which would otherwise be paid under the provisions of 32 V.S.A. § 1183.

Sec. E.206 Special investigative unit

(a) The director of the state's attorneys shall report to the joint fiscal committee and the house and senate committees on judiciary and appropriations by November 15, 2011 on issues related to the effectiveness of the special investigation units (SIU). The report shall be made in consultation with the state and local law enforcement agencies, the department for children and families, and victims' organizations. The report shall include information by SIU about the number of investigations and referrals; the number of reported claims of abuse, entity who first responded to the claim, response time, percentage of those cases that were referred to SIU; and total funding including state, county, and local direct and indirect support. The report shall also specifically report by SIU the region covered by each SIU and the support each county and community contribute to the SIU. The report shall make recommendations for changes in structure and practice that would increase SIU effectiveness.

## Sec. E.207 Sheriffs

(a) In fiscal year 2012, 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.208 Public safety–administration

(a) Of the funds appropriated to the department of public safety, \$25,000 shall be used to make a grant to the Essex County sheriff’s department for a performance-based contract to provide law enforcement service activities agreed upon by both the commissioner of public safety and the sheriff.

## Sec. E.209 Public safety - state police

(a) 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.

(b) Of the \$255,000 allocated for 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 shall be dedicated to enforcement efforts with respect to both regulated drugs as defined in subdivision 4201(29) of Title 18 and the diversion of legal prescription drugs. Any additional available funds shall remain as a “pool” available to local and county law enforcement to fund overtime costs associated with drug investigations. Any unexpended funds from prior fiscal years’ allocations under this section shall be carried forward.

## Sec. E.209.1 STATE POLICE – RECRUITMENT AND RETENTION

(a) The commissioner of public safety and the commissioner of human resources shall provide to the joint fiscal committee in November 2011 a five-year projection of the state trooper staffing needs that shows year by year the potential retirement vacancies based on age and years of service of current troopers and an update on actions planned or already under way that will address these staffing needs through improved recruitment and retention of state troopers.

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Sec. E.212 Public safety - fire safety

(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

(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

(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.

(b) In the event federal funding is not available subsequent to September 20, 2011 to the military department to provide outreach and hotline services for Vermont veterans recently separated from military service, the emergency board pursuant to 32 V.S.A. § 706 is authorized to transfer up to \$560,000 of general or special funds from existing appropriations to the military.

Sec. E.219 Military - veterans' affairs

(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 be 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

(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 2012 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).

## Sec. E.221 REPEAL

(a) 20 V.S.A. § 2363 (criminal justice training council special fund) is repealed. Upon repeal, balances in the fund shall be transferred to the general fund.

Sec. E.221.1 13 V.S.A. chapter 223, subchapter 4 is amended to read:

Subchapter 4. Assessment and Collection of Additional  
Fees Surcharges

\* \* \*

## Sec. E.221.2 REPEAL

(a) 13 V.S.A. § 7281 (statement of legislative intent) is repealed.

Sec. E.221.3 13 V.S.A. § 7282 is amended to read:

§ 7282. ASSESSMENT SURCHARGE

(a) In addition to any penalty or fine imposed by the court or judicial bureau for a criminal offense or any civil penalty imposed for a traffic violation, including any violation of a fish and wildlife statute or regulation, violation of a motor vehicle statute, or violation of any local ordinance relating to the operation of a motor vehicle, except violations relating to seat belts and child restraints and ordinances relating to parking violations, the clerk of the court or judicial bureau shall levy an additional fee surcharge of:

\* \* \*

(5) \$20.50 for any offense or violation committed after June 30, 2001, but before July 1, 2003, of which \$13.50 shall be deposited into a special fund account to be known as the victims' compensation fund, ~~and \$2.00 shall be deposited into the criminal justice training council special fund established in section 2363 of Title 20.~~

(6) For any offense or violation committed after June 30, 2003, but before July 1, 2005, \$21.00, of which \$13.75 shall be deposited into the victims' compensation special fund, ~~and \$2.25 shall be deposited into the criminal justice training council special fund established in section 2363 of Title 20.~~

(7) For any offense or violation committed after June 30, 2005, but before July 1, 2006, \$22.00, of which \$14.75 shall be deposited into the victims' compensation special fund ~~and \$2.25 shall be deposited into the criminal justice training council special fund established in section 2363 of Title 20.~~

(8)(A) For any offense or violation committed after June 30, 2006, but before July 1, 2008, \$26.00, of which \$18.75 shall be deposited in the victims' compensation special fund and ~~\$2.25 shall be deposited into the criminal justice training council special fund established in section 2363 of Title 20.~~

(B) For any offense or violation committed after June 30, 2008, \$36.00, of which \$28.75 shall be deposited in the victims' compensation special fund and ~~\$2.25 shall be deposited into the criminal justice training council special fund established in section 2363 of Title 20.~~

(C) For any offense or violation committed after June 30, 2009, \$41.00, of which \$33.75 shall be deposited in the victims' compensation special fund, and ~~\$2.25 shall be deposited into the criminal justice training council special fund established in section 2363 of Title 20.~~

\* \* \*

(b) The fees surcharges imposed by this section shall ~~be used for the purposes set out in section 7281 of this title and shall~~ not be waived by the court.

(c) SIU Assessment surcharge. ~~Notwithstanding section 7281 of this title and subsection (b) of this section, in~~ In addition to any penalty or fine imposed by the court or judicial bureau for a criminal offense committed after July 1, 2009, the clerk of the court or judicial bureau shall levy an additional fee surcharge of \$100.00 to be deposited ~~with~~ in the general fund, in support of the specialized investigative unit grants board created in 24 V.S.A. § 1940(c) to be, and used to pay for staffing for the costs of specialized investigative units.

#### Sec. E.221.4 REPEAL

(a) 13 V.S.A. § 7283 (collection and transmittal) is repealed.

#### Sec. E.221.5 Criminal justice training council

(a) It is the intent of the general assembly that there be accurate accounting and timely collection of council costs that are billed to third parties. As part of testimony on the fiscal year 2013 budget, the executive director of the criminal justice training council shall report the total fiscal year 2011 expenditures of the council and the amount billed for training and related room and board. In addition, the director shall report any remaining accounts receivable for fiscal year 2011. This report shall also include the same information for the first six months of fiscal year 2012.

## Sec. E.224 Agriculture, food and markets – agricultural development

(a) The \$75,000 appropriated in H.287 of 2011, an act relating to job creation and economic development, for the farm-to-school investment program shall be considered base funding.

## Sec. E.225 [DELETED]

## Sec. E.231 Banking, insurance, securities, and health care administration – health care administration

(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

(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(b).

\* \* \* HUMAN SERVICES \* \* \*

## Sec. E.300 Agency of human services – secretary's office

(a) The secretary of human services and the commissioner of disabilities, aging, and independent living are authorized to set the level for IADLs and respite/companion services within the Choices for Care program that is consistent both with the funding provided in this act and with what the commissioner determines will to the greatest extent possible minimize individuals from moving from his or her home to a nursing home, including the utilization of variances where the commissioner determines appropriate. Prior to reducing the level for these services from the current baseline, the secretary and the commissioner shall review actual fiscal year 2011 Choices for Care expenditures to determine if fiscal year 2012 funding in context with actual expenditure experience of fiscal year 2011 would require a reduction in the baseline. The secretary and the commissioner shall provide a report to the joint fiscal committee in July 2011 on the fiscal year 2012 levels for IADLs and respite/companion services as well as total actual expenditures of the Choices for Care waiver for fiscal year 2011. To the extent that fiscal year 2011 carryforward resources in the Choices for Care waiver are available to meet the determined IADL and respite needs in fiscal year 2012, the commissioner of finance and management after consultation with the secretary

and commissioner of disabilities, aging, and independent living is authorized to transfer up to \$1,340,000 of fiscal year 2012 state funds appropriated for the waiver to the human services caseload reserve. The secretary and the commissioner of disabilities, aging, and independent living shall provide a report to the joint fiscal committee in November 2011 on the status of the federal Money Follows the Person grant and how any state savings resulting from the grant will be used to strengthen the home and community-based services that allow eligible Vermonters to remain in their homes as well as the financial impact the grant may have on Vermont nursing homes.

(b) The secretary of human services, the commissioner of disabilities, aging, and independent living, the commissioner of mental health, and the designated providers of mental health and developmental disability services shall continue to work in partnership to ensure that to the greatest extent possible any negative impact to consumers of these services as a result of the funding levels provided for in this act is minimized. The secretary is encouraged to seek changes to the current regulatory or statutory provisions regarding these services if such changes result in a more cost-effective provision of high-quality services for Vermonters.

(c) The commissioner of disabilities, aging, and independent living shall report to the house and senate committees on appropriations, the house committee on human services, and the senate committee on health and welfare by January 15, 2012 with recommendations regarding the scope of providers that the department may contract with to provide services under the Choices for Care program. The recommendations shall be made in consultation with home health agencies and other partner organizations and shall consider, among other things: the relative impacts on provider cost structure of state assessments and requirements; whether a lack of access by patients to the services justifies expanding the scope of providers; whether contracting with additional providers will affect the ability of patients to access Choices for Care services; and whether Choices for Care services should be removed from being considered “designated” services.

(d) The secretary in consultation with the department of health access and the department of health shall report to the joint fiscal committee in September 2011 on the existing programs and scope of services including case management services available to pregnant women identified as high-risk. This shall include the resources available within state funded programs as well as other programs serving this population. The secretary shall include recommendations in the report for steps that may be taken to better coordinate services and reduce the potential for negative outcomes and higher costs related to these cases. The secretary is authorized to implement these

recommendations provided they will result in more cost-effective service and are net budget neutral.

Sec. E 300.1 Sec. 3 of No. 127 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

Sec. 3. APPLICABILITY AND EFFECTIVE DATE

(a) Sec. 2 of this act shall take effect on ~~July 1, 2011~~ October 1, 2011, and shall apply to all health insurance plans on and after ~~July 1, 2011~~ October 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. Coverage by the state Medicaid program shall take effect July 1, 2012.

\* \* \*

Sec. E.300.2. TASK FORCE - LONG-TERM CARE SERVICE NEEDS OF VERMONT VETERANS

(a) There is created a task force to study long-term care service needs of Vermont veterans.

(b)(1) The task force on long-term care service needs for Vermont veterans shall consist of 13 members. The task force shall consist of the following members or their designees:

(A) the deputy secretary of the agency of human services;

(B) the commissioner of disabilities, aging, and independent living;

(C) the veterans service director of the Vermont office of veterans' affairs;

(D) the state long-term care ombudsman;

(E) one representative each from the Vermont Council of Developmental and Mental Health Services; the Vermont Health Care Association; the Vermont Assembly of Home Health and Hospice Agencies; the Community of Vermont Elders; and the Vermont Center for Independent Living;

(F) the administrator of the Vermont Veterans' Home or his or her designee;

(G) the directors of the White River Junction VA Medical Center and the White River Junction VA Benefits Office; and

(H) one representative from the Military Health Project of the agency of human services appointed by the secretary.

(2) The deputy secretary of the agency of human services shall convene and chair the task force. The deputy secretary of the agency of human services shall call the first meeting no later than July 31, 2011.

(c)(1) Duties. The task force shall:

(A) identify the long-term care services available to Vermont veterans;

(B) identify existing or anticipated gaps in service or barriers to access;

(C) identify opportunities that exist to improve the care, coordination, and financing of long-term care for Vermont veterans; and

(D) make recommendations about how to improve the care, coordination, and financing of long-term care for Vermont veterans.

(2) For purposes of its study on these issues, the task force shall receive the assistance and staff services of the agency of human services.

(3) The task force, in performing its duties, shall seek the participation of veterans, families of veterans, organizations serving veterans, and Vermont's congressional delegation.

(d)(1) By November 15, 2011, the task force shall provide an interim report to the chairs and vice chairs of the house committee on human services, the house committee on general, housing, and military affairs, the senate committee on health and welfare, the senate committee on economic development, housing, and general affairs, and the house and senate committees on appropriations.

(2) By January 15, 2012, the task force shall provide a final report to the house committee on human services, the house committee on general, housing, and military affairs, the senate committee on health and welfare, the senate committee on economic development, housing, and general affairs, and the house and senate committees on appropriations.

(e) The task force shall meet no more than eight times and shall cease to exist on January 31, 2012.

Sec. E.301 Secretary's office – Global Commitment

(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 \$27,726,781 is anticipated to be certified as state matching funds under the Global Commitment as follows:

(1) \$17,066,700 certified state match available from local education agencies for eligible special education school-based Medicaid services under the Global Commitment. This amount combined with \$23,433,300 of federal funds appropriated in Sec. B.301 of this act 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) \$3,774,162 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) \$2,290,874 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) \$2,479,534 certified state match available via the University of Vermont’s child health improvement program for quality improvement initiatives for the Medicaid program.

(5) \$2,115,511 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 MEDICAID PHARMACY; RADIOLOGY TIER AUTHORIZATION

(a) The department of Vermont health access shall reduce spending on prescription drugs by managing over-the-counter drugs with the preferred drug list, establishing lower reimbursements for specialty drugs, and requiring justification for prescribing multi-source brand-name drugs.

(b) The department of Vermont health access shall reduce spending on radiology services by implementing a multiple procedure payment reduction to cases with multiple outpatient radiology imaging services.

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Sec. E.301.2 CATAMOUNT HEALTH; STATE SAVINGS DIFFERENTIAL ADJUSTMENT

(a) Notwithstanding the provisions of 8 V.S.A. § 4080f, effective July 1, 2011 and thereafter, the carriers offering Catamount Health shall in subscriber billing include in addition to the premium rates established pursuant to 8 V.S.A. § 4080f(g) a state savings differential adjustment of 11 percent based on the lowest premium established by the carriers of the plan. This adjustment shall be remitted by the carriers on a monthly or quarterly basis to the state and deposited into the catamount fund. This adjustment shall be waived or netted from the payments the state remits to the carriers for Catamount Health subscribers who are eligible for premium assistance pursuant to 33 V.S.A. chapter 19, subchapter 3A.

Sec. E.301.3 CATAMOUNT HEALTH; PROVIDER REIMBURSEMENTS

(a) Notwithstanding the reimbursement indexing provided in 8 V.S.A. § 4080f(f)(1), a carrier who sells, offers, or renews Catamount Health shall recalculate the reimbursements paid to health care professionals under Catamount Health to pay 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.

Sec. E.301.4 8 V.S.A. § 4080f(f)(2) is amended to read:

(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 ~~44~~ 100 percent of the hospital's actual cost for services. The commissioner may use individual hospital budgets established under 18 V.S.A. § 9456 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 ~~40~~ 100 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 established under chapter 13 of Title 18.

Sec. E.301.5 [DELETED]

Sec. E.301.6 CATAMOUNT HEALTH; ADMINISTRATION

(a) For fiscal year 2012, a carrier who sells, offers, or renews Catamount Health shall not charge more than six percent of the overall premium for amounts attributable to administrative costs excluding contributions to surplus.

as defined by the commissioner of banking, insurance, securities, and health care administration.

(b) Beginning July 1, 2012, a carrier who sells, offers, or renews Catamount Health shall file for rates which shall be for a 12-month period with the commissioner of banking, insurance, securities, and health care administration.

(c) Notwithstanding any conflicting provision in 8 V.S.A. chapter 107, the commissioner of banking, insurance, securities, and health care administration shall include the provisions of Secs. E.301.1 through E.301.4 of this act in the rate review and approval process.

#### Sec. E.301.7 CATAMOUNT TRANSITION PROVISIONS

(a) It is the intent of the general assembly that amendments to Catamount Health result in a full year of budgetary savings and the changes are implemented beginning July 1, 2011. To achieve this goal, notwithstanding any provision of law to the contrary, all subscribers' anniversary dates will be reset effective July 1, 2011. Rate filings to reflect these changes shall be submitted from the carriers, and the rate review processes by the department of banking, insurance, securities, and health care administration shall be made notwithstanding any provision of law to the contrary to be effective July 1, 2011. Notwithstanding any other provision as to the timing of rate filings, effective dates of rates, and dates of policy renewals for Catamount plans in statute or regulation, including Regulation H-2006-01 of the department of banking, insurance, securities, and health care administration, Catamount rates may change for all enrollees as of July 1, 2011 subject only to the filings being made in sufficient time for rate review and approval or disapproval by the department of banking, insurance, securities, and health care administration. Notwithstanding 8 V.S.A. § 4080f(i), all persons enrolled in Catamount shall have a July 1 anniversary date.

(b) For fiscal year 2012, a carrier who sells, offers, or renews Catamount Health, other than those that accumulate cost sharing on a calendar-year basis and provide a calendar-year fourth quarter deductible carryover, shall offer participants in the program as of June 30, 2011 a one-time option to apply their expenditures made from April 1, 2011 to June 30, 2011 in excess of any prior deductible toward the deductible requirements incurred for fiscal year 2012. The participants shall be informed of this opportunity and provided with an application process to access this option.

Sec. E.301.8 [DELETED]

Sec. E.302 PAYMENT RATES FOR PRIVATE NONMEDICAL INSTITUTIONS PROVIDING RESIDENTIAL CHILD CARE SERVICES

(a) Notwithstanding any other provision of law, for state fiscal year 2012, 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 2012 as 100 percent of each program's final per diem rate in effect on June 30, 2011. 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 their 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 2012.

(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 2012 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, 2011. 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 2012, the program shall submit the prior month's census to the division of rate setting. The per diem rate shall be set for the prior month by dividing the monthly allowable budget amount by the total number of resident days for the month just ended.

(4) Adjustments to rates. Rate adjustment applications may not be used as a tool to circumvent the rate setting process for state fiscal year 2012 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 2012.

(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 shall 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.

(B) Adjustments to rates based on changes in licensed capacity. Programs that increase or decrease licensed capacity in state fiscal year 2012 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 2012, programs must have prior written approval from the PADs before applying to the division for an adjustment to the state fiscal year 2012 per diem rate.

(I) The allowable budget amount for state fiscal year 2012 may be no more than the final approved budget for the rate year which includes June 30, 2011.

(II) In its application for a rate adjustment, a program shall 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 2012, 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, 2011.

(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.

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(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

(a) The establishment of one (1) new classified position - Palliative Care Nurse Manager - is authorized in fiscal year 2012.

Sec. E.306.1 3 V.S.A. § 3051 is amended to read:

§ 3051. COMMISSIONERS; DEPUTY COMMISSIONERS;  
APPOINTMENT; TERM

(a) The secretary, with the approval of the governor, shall appoint a commissioner of each department, who shall be the chief executive and administrative officer and shall serve at the pleasure of the secretary.

(b) For the department of health, the secretary, with the approval of the governor, shall appoint deputy commissioners for the following divisions of the department:

- (1) public health;
- (2) substance abuse.

(c) For the department for children and families, the secretary, with the approval of the governor, shall appoint deputy commissioners for the following divisions of the department:

- (1) economic services;
- (2) child development;
- (3) family services.

(d) For the department of Vermont health access, the secretary, with the approval of the governor, shall appoint deputy commissioners for the following divisions of the department:

- (1) Medicaid health services and managed care;
- (2) Medicaid policy, fiscal, and support services;
- (3) health care reform;
- (4) Vermont health benefit exchange.

(e) Deputy commissioners shall be exempt from the classified service. Their appointments shall be in writing and shall be filed in the office of the secretary of state.

Sec. E.306.2 [DELETED]

Sec. E.307 CATAMOUNT HEALTH ASSISTANCE; WAIVER AMENDMENT

(a) If necessary, the commissioner of Vermont health access shall seek an amendment to Global Commitment to include the provisions in Secs. E.301.1 through E.301.7 of this act.

Sec. E.307.1 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 8 V.S.A. § 4080f; 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 contribution amount shall not be less than the contribution amount for the previous year. The agency shall establish family contributions by income bracket based on the individual contribution amounts and the average family size.

Sec. E.307.2 REPEAL

(a) Subsections (a), (b), and (c) of Sec. E.309.3 of No. 156 of the Acts of the 2009 Adj. Sess. (2010) as further amended by Sec. 64 of No. 3 of the Acts of 2011 (suspension of automatic premium increases) are repealed.

Sec. E.307.3 EMERGENCY RULES

(a) In order to implement the amendments to the Catamount Health and Catamount Health Assistance program provided in Secs. E.301.2 through E.301.7 of this act no later than July 1, 2011, the agency of human services shall be deemed to have met the standard for the adoption of emergency rules as required in 3 V.S.A. § 844(a).

(b) In order to implement Sec. E.309.1 (health care coverage; legal immigrant children and pregnant women), Sec. E.309 (State Children's Health Insurance Program (SCHIP) and Medicaid programs covering children premium grace period), and Sec. E.301.1 (Medicaid pharmacy; radiology tier authorization) of this act no later than July 1, 2011, 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.307.4 [DELETED]

Sec. E.307.5 [DELETED]

Sec. E.307.6 [DELETED]

Sec. E.307.7 [DELETED]

Sec. E.307.8 [DELETED]

Sec. E.307.9 [DELETED]

Sec. E.307.10 [DELETED]

Sec. E.307.11 REPEAL

(a) Sec. 22 of No. 61 of the Acts of 2009 (Global Commitment waiver amendments; rulemaking) is repealed.

Sec. E.307.12 REPEAL

(a) Sec 2(c) of No. 71 of the Acts of 2007, as amended by Sec. 5.903 of No. 192 of the Acts of the 2007 Adj. Sess. (2008) and Sec. 103 of No. 4 of the Acts of 2009 (VHAP payment beginning with date of application) is repealed.

Sec. E.308 FISCAL YEAR 2012 NURSING HOME RATE SETTING

(a) Notwithstanding any other provision of law, the division of rate setting shall maintain the decrease by one-half in 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). The decrease by one-half in these case-mix weights shall be maintained in each facility's average case-mix score for Medicaid residents from picture dates in the January 2010, April 2010, and July 2010 quarters, which were used to set the July 2010, October 2010, and January 2011 rates.

Sec. E.309 STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP) AND MEDICAID PROGRAMS COVERING CHILDREN PREMIUM GRACE PERIOD

(a) Notwithstanding any other provisions of law, effective beginning fiscal year 2012 and continuing thereafter, the commissioner shall make such changes in the billing and collection process as are necessary to achieve state compliance with the premium grace period and notice requirements of section 504 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (42 U.S.C. § 1397cc(e)(3)(C)). These changes shall:

(1) Afford children enrolled in state health programs a grace period of at least 30 days from the beginning of a new coverage period to make premium payments before coverage may be terminated. The new coverage period will

begin the month immediately following the last month for which a premium was paid.

(2) Inform children in state health care programs not later than seven days after the first day of such grace period provided under subdivision (1) of this subsection:

(A) that failure to make a required premium payment within the grace period will result in termination of coverage; and

(B) of the individual's right to challenge the proposed termination pursuant to applicable rules.

(3) Provide this same grace period and notice as provided under this subsection for each coverage period for which a premium has not been received.

#### Sec. E.309.1 HEALTH CARE COVERAGE; LEGAL IMMIGRANT CHILDREN AND PREGNANT WOMEN

(a) In accordance with the provisions of the federal Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111-3, section 214, the agency of human services shall provide coverage under Medicaid and CHIP to legal immigrant children and pregnant women who are residing lawfully in Vermont and who have not met the five-year waiting period required under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

#### Sec. E.309.2 FAMILY PLANNING OPTION

(a) Beginning April 1, 2012, the commissioner of Vermont health access shall modify necessary rules and procedures related to eligibility and services to implement the family planning option of section 2303 of the Affordable Care Act of 2010, Public Law 111-148.

Sec. E.311 18 V.S.A. § 4622(a)(3) is amended to read:

(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~~ population-based medication management.

Sec. E.311.1 Secs. 15 and 15a of No. 80 of the Acts of 2007 as amended by Secs. 1 and 2 of No. 89 of the 2007 Adj. Sess. (2008) are further amended to read:

Sec. 15. ~~GENERIC DRUG VOUCHER~~ POPULATION-BASED MEDICATION MANAGEMENT PILOT PROJECT

(a) As part of the evidence-based education program established in subchapter 2 of chapter 91 of Title 18, the department of health, in collaboration with the ~~office~~ department of Vermont health access and the University of Vermont ~~area health education centers program~~ office of primary care, shall establish a population-based medication management pilot project to distribute vouchers for a sample of generic drugs equivalent to frequently prescribed prescription drugs that are used to treat common health conditions include a collaborative pharmacist practice using principles consistent with the Vermont Blueprint for Health.

(b) The ~~office~~ department of Vermont health access shall fund the ~~vouchers pilot project~~ from the fee established in ~~section 2004 of Title 33 V.S.A. § 2004~~ and shall ~~provide payment to the pharmacy dispensing the prescription drugs in exchange for the voucher. The office shall establish a payment rate, including a dispensing fee, using the rules and procedures for the Medicaid program transfer funds to the department of health for implementation of the pilot.~~

Sec. 15a. ~~GENERIC DRUG VOUCHER~~ POPULATION-BASED MEDICATION MANAGEMENT PILOT; REPORT

(a) By ~~January 15, 2010~~ January 15, 2014, the ~~office~~ department of Vermont health access, the ~~department of banking, insurance, securities, and health care administration,~~ the ~~area health education centers~~ University of Vermont office of primary care, and the joint fiscal office shall provide a report to the house committee on health care and the senate committee on health and welfare describing and evaluating the effects of the ~~generic drug voucher~~ population-based medication management pilot program.

(b) The report shall describe how the pilot project is implemented, including which ~~health conditions~~ medications were targeted, ~~the generic drugs provided with the vouchers,~~ and the ~~geographic regions participating.~~ The report shall ~~compare the distribution of prescribing among generic drugs provided through the vouchers and brand name drugs before and after the first year of the generic drug sample pilot project and will review a year of prescribing data prior to the implementation of the pilot project to a year of~~

prescribing data during the first year of the pilot project's implementation. The data shall be adjusted to reflect how and where the pilot was implemented assess the pilot program in terms of improvements to patient care and increases in evidence-based prescribing through improvements to prescriber-pharmacist communication and collaboration.

Sec. E.312 Health - public health

(a) AIDS/HIV funding:

(1) In fiscal year 2012 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, \$84,488;

(B) HIV/HCV Resource Center (formerly ACORN), \$24,599;

(C) VT CARES, \$157,213;

(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 No. 1 of the 2009 special session, the department of health shall carry forward \$70,000 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 carryforward general funds remaining at the

end of fiscal year 2012 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 2012, 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) The commissioner of health in consultation with AIDS service organizations shall report to the joint fiscal committee by November 15, 2011 on whether the base level of funding for AIDS service organizations should be revised in lieu of providing supplemental funding to these organizations from unexpended AIDS/HIV medication allocations.

(c) Funding for the tobacco programs in fiscal year 2012 shall consist of the \$1,594,000 in tobacco funds and \$302,507 in Global Commitment funds appropriated in Sec. B.312 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.

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Sec. E.313 Health - alcohol and drug abuse programs

(a) For the purpose of meeting the need for outpatient substance abuse services when the preferred provider system has a waiting list of five days or more or there is a lack of qualified clinicians to provide services in a region of the state, a state-qualified alcohol and drug abuse counselor may apply to the department of health, division of alcohol and drug abuse programs, for time-limited authorization to participate as a Medicaid provider to deliver clinical and case coordination services, as authorized.

(b)(1) In accordance with federal law, the division of alcohol and drug abuse programs may use the following criteria to determine whether to enroll a state-supported Medicaid and uninsured population substance abuse program in the division's network of designated providers, as described in the state plan:

(A) The program is able to provide the quality, quantity, and levels of care required under the division's standards, licensure standards, and accreditation standards established by the commission of accreditation of rehabilitation facilities, the joint commission on accreditation of health care organizations, or the commission on accreditation for family services.

(B) Any program that is currently being funded in the existing network shall continue to be a designated program until further standards are developed, provided the standards identified in this subdivision (b)(1) are satisfied.

(C) All programs shall continue to fulfill grant or contract agreements.

(2) The provisions of subdivision (1) of this subsection shall not preclude the division's "request for bids" process.

(c) In fiscal year 2012, all funding appropriated to the department of health for student assistance professionals shall be directly administered by the department. The grant funding for student assistance program counselors shall be distributed to school districts utilizing the same methodology as in fiscal year 2011. The department of health shall send a description of the allowable activities to be funded by the grant with the award and a notice that data on performance of the grantees in meeting program outcomes will be collected by the department in 2012. By November 2011 the department shall inform school districts, if funding is available in fiscal year 2013, it will be distributed competitively, based upon individual program performance measures and demonstrated outcomes. In fiscal year 2013, criteria for grant award shall include matching funds or in-kind services provided by the grantee as well as a determination of need, based on the youth risk behavior assessment survey.

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The department shall develop evidence-based prevention activities and a process for evaluating the performance of the grantees which shall be submitted to the joint fiscal committee in November 2011.

Sec. E.315 Mental health - Vermont state hospital

(a) Effective July 1, 2011 the classified position of Chief Executive Officer (Position # 840184) shall be converted to the exempt position of Vermont State Hospital Chief Executive Officer.

Sec. E.315.1 18 V.S.A. § 7205 is amended to read:

§ 7205. SUPERVISION OF INSTITUTIONS

(a) The department of mental health shall operate the Vermont State Hospital and shall be responsible for patients receiving involuntary treatment at a hospital designated by the department of mental health.

(b) The commissioner of the department of mental health, in consultation with the secretary, shall appoint a chief executive officer of the Vermont State Hospital to oversee the operations of the hospital. The chief executive officer position shall be an exempt position.

Sec. E.316 Department for children and families – administration and support services

(a) The establishment of one (1) new position - Eligibility Worker - in the department for children and families is authorized during fiscal year 2012 to support Sec. E.309.2.

Sec. E.317 Department for children and families - family services

(a) The commissioner for children and families shall provide to the house and senate committees on appropriations, the house committee on human services, and the senate committee on health and welfare by January 15, 2012 a geographic inventory of the state-funded residential and nonresidential services that are available to serve youth between the ages of 12 through 22. The department shall also provide recommendations on how to evaluate this system.

Sec. E.319 [DELETED]

Sec. E.320 Department for children and families – aid to aged, blind and disabled

(a) The department for children and families shall analyze the actions necessary for the department to perform the function of transmitting the state supplement to the federal SSI benefit to AABD clients rather than relying on the federal government to perform this function. Should the analysis result in

it being fiscally advantageous for the state to issue the state supplemental benefit, the department shall implement the process.

Sec. E.321 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. Eligible activities shall include, among others, the provision of shelter, overflow shelter, case management, transitional housing, deposits, down payments, rental assistance, and related services that assure that all Vermonters have access to shelter, housing, and the services they need to become safely housed. 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.321.1 GENERAL ASSISTANCE; EMERGENCY SHELTER GRANTS; OUTCOME MEASURES

(a) The agency of human services shall develop a baseline to measure results of the investment in the emergency shelter grants and case management to assist the homeless population. These measurements shall include homelessness prevention outcome measures for the clients served by the investment. The outcomes shall be reported annually to the house and senate committees on appropriations during the department's budget testimony.

Sec. E.321.2 33 V.S.A. § 2101(1) is amended to read:

(1) “District welfare director” means an employee of the ~~department~~ agency of human services so designated by the ~~commissioner~~ secretary.

Sec. E.323 33 V.S.A. § 1121 is amended to read:

§ 1121. AUTHORIZATION TO SEGREGATE STATE FUNDS AND  
CREATE SEPARATE STATE AND SOLELY STATE-FUNDED  
PROGRAMS

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(g)(1) Any family receiving or applying for Reach Up financial assistance who is being referred by the department to apply for or who is applying for Supplemental Security Insurance (SSI) or aid to the aged, blind, or disabled (AABD) under chapter 13 of this title shall authorize the department to reimburse the state for the amounts described in subdivision (2) of this subsection from any initial SSI payment owed the individual that includes SSI payment for retroactive amounts. The family shall authorize the Social Security Administration to send the initial SSI payment directly to the department. The department may require an individual to sign a recovery of financial assistance agreement as authorization.

(2) The department may deduct an amount equal to the state-funded Reach Up financial assistance paid to the family for the needs of the SSI applicant during the period or periods in which the family received Reach Up financial assistance paid for with state funds. The deduction shall be for no more than the prorated portion of Reach Up financial assistance provided for those family members receiving SSI who are included in the SSI grant. The department shall send any remainder due to the family within 10 days of receiving the payment from the Social Security Administration.

(h) In furtherance of the policy goals of this section and in order to establish an excess of maintenance-of-effort state funds, the commissioner shall maximize maintenance-of-effort state funds in the reports to the U.S. Administration for Children and Families.

Sec. E.324 Department for children and families – home heating fuel assistance/LIHEAP

(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, 2011, 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 2011–2012 crisis set-aside and for seasonal home heating fuel assistance through December 31, 2011, and if LIHEAP funds awarded as of December 31, 2011, for fiscal year 2012 do not exceed \$2,550,000, subsequent payments under the home heating fuel assistance program shall not be made prior to January 30, 2012. 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, 2011, 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

(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 2012, the funding for the individual development (IDA) savings program established in 33 V.S.A. § 1123 shall be from \$75,300 in general funds and \$60,000 from community services block grant funds.

Sec. E.326 Department for children and families - OEO - weatherization assistance

(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.

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Sec. E.327 Department for children and families – Woodside rehabilitation center

(a) The establishment of one (1) new classified position – nurse – is authorized in fiscal year 2012.

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 33 V.S.A. § 7111(i) and (j) are added to read:

(i) The licensing agency may enforce a final order by filing a civil action in the superior court in the county in which the facility is located, or in Washington superior court.

(j) The remedies provided in this chapter are cumulative.

Sec. E.329.2 33 V.S.A. § 7112 is added to read:

§ 7112. CONFIDENTIAL INFORMATION

(a) Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under this chapter, except information that pertains to unsubstantiated complaints or the identity of residents and complainants, shall be made available to the public.

(b) Prior to release of information, the commissioner shall consult with representatives from the nursing home industry and the office of state long-term care ombudsman to develop:

(1) Guidelines for the release of information to the public that ensure the confidentiality and privacy of complainants and individuals who are receiving or have received care or services in nursing facilities in conformance with state and federal requirements.

(2) Indicators, derived from information databases maintained by the licensing agency and the division of rate setting, shall be disseminated to consumers in a readily understandable format designed to facilitate consumers' ability to compare the quality of care provided by nursing facilities. The commissioner shall continually update quality indicators and refine and improve the information disseminated to consumers.

Sec. E.330 Disabilities, aging, and independent living - advocacy and independent living

(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, \$209,995 in general funds shall be allocated for base funds to adult day programs in the same proportion as they were allocated in fiscal year 2011. The commissioner of finance and management is authorized to transfer the state share of funding contained in the Choices for Care program for adult day services to this appropriation upon determination by the secretary of human services in consultation with the commissioner of disabilities, aging, and independent living that state funds and corresponding federal matching funds will not be expended for adult day services due to the need requirements of Choices for Care eligible enrollees. Any transfer of funds made under this authorization shall be reported to the joint fiscal committee at the time of transfer.

(c) The department shall manage the budget for the attendant services program for people whose incomes are over the level required for Medicaid eligibility by reviewing client's service packages prior to freezing enrollment or creating a waiting list. The department shall review the expenditures of this program to determine if any of these expenditures are eligible for inclusion as an investment in the Global Commitment waiver. The commissioner shall include with the fiscal year 2013 budget proposal a recommendation on whether the state should include an income and/or asset based test for eligibility for this program.

Sec. E.330.1 EXPEDITED RULES; LONG-TERM CARE AND DISABILITIES, AGING, AND INDEPENDENT LIVING

(a) In order to administer the provisions of this act in Sections B.308, B.330, and B.333, relating to the changes in Choices for Care 1115 Medicaid Waiver Programs, Attendant Services Programs, Developmental Disabilities Services Waiver Program, notwithstanding the provisions of 3 V.S.A. chapter 25, the department of disabilities, aging, and independent living shall adopt rules pursuant to the following:

(1) The commissioner shall file final proposed rules with the secretary of state and the legislative committee on administrative rules under 3 V.S.A. § 841 after publication in three daily newspapers with the highest average circulation in the state of a notice that lists the rules to be adopted pursuant to this process and a seven-day public comment period following publication.

(2) The commissioner shall file final proposed rules with the legislative committee on administrative rules no later than 28 days after the effective date of this act.

(3) The legislative committee on administrative rules shall review and may approve or object to the final proposed rules under 3 V.S.A. § 842, except that its action shall be completed no later than 14 days after the final proposed rules are filed with the committee.

(4) The commissioner may adopt a properly filed final proposed rule after the passage of 14 days from the date of filing final proposed rules with the legislative committee on administrative rules or after receiving notice of approval from the committee, provided the secretary:

(A) has not received a notice of objection from the legislative committee on administrative rules; or

(B) after having received a notice of objection from the committee, has responded pursuant to 3 V.S.A. § 842.

(5) Rules adopted under this section shall be effective upon being filed with the secretary of state and shall have the full force and effect of rules adopted pursuant to 3 V.S.A. chapter 25. Rules filed by the commissioner of disabilities, aging, and independent living with the secretary of state pursuant to this section shall be deemed to be in full compliance with 3 V.S.A. § 843, and shall be accepted by the secretary of state if filed with a certification by the commissioner of disabilities, aging, and independent living that the rule is required to meet the purposes of this section.

Sec. E.333 Disabilities, aging, and independent living – developmental services

(a) Providers shall include developmental service program participants in decisions regarding changes in their service plans.

Sec. E.337 REPEAL

(a) 28 V.S.A. § 120(g) (annual budget: appropriation to the department of corrections based on full-time equivalent students times statewide per pupil spending) is repealed.

Sec. E.338 Corrections – correctional services

(a) The establishment of ten (10) new classified positions–Correctional Officer I–is authorized in fiscal year 2012 to accommodate the expansion of the Caledonia Community Work Camp (two positions), and the conversion of temporary Correctional Officer I to full-time classified positions (eight positions).

(b) The department of corrections shall develop a plan in regard to the use of uniforms at correctional facilities and report this plan to the joint corrections oversight committee in November or December 2011 for consideration during the 2012 legislative session. In developing this plan, the department of corrections shall review the current policy utilized by the department, policies of other jurisdictions, and whether or not a comprehensive or selective uniform policy has a beneficial impact in meeting overall department outcomes. In fiscal year 2012, the commissioner may not expand the use of uniforms for incarcerated persons at any correctional facility where uniforms were not used as of January 1, 2011.

(c) The commissioner of corrections shall report to the joint corrections oversight committee and the joint fiscal committee by September 2011 on the proposed distribution of justice reinvestment funds.

Sec. E.339 Correctional services – out-of-state beds

(a) The level of funding in this appropriation is contingent upon enactment of separate legislation related to reduced incarceration of specified nonviolent misdemeanants.

Sec. E.342 Vermont veterans' home – care and support services

(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

(a) The workforce development council shall allocate funding to the workforce investment boards based upon the performance of the local workforce investment boards, measured according to standards established by the council.

\* \* \* K-12 EDUCATION \* \* \*

Sec. E.500 Education – finance and administration

(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.502 Education – special education: formula grants

(a) 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

(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

(a) Of this appropriation, \$4,000,000 from the education fund shall be distributed to school districts for reimbursement of high school completion services pursuant to 16 V.S.A. § 1049a(c).

Sec. E.512 Education – Act 117 cost containment

(a) Notwithstanding any other provision 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

(a) Notwithstanding the provisions of 16 V.S.A. § 4025(a)(2), for fiscal year 2012, the general fund transfer to the education fund shall be \$276,240,000.

Sec. E.513.1 16 V.S.A. § 4025(a)(2) is amended to read:

(2) For each fiscal year, the amount of the general funds appropriated or transferred to the education fund shall be ~~\$280,200,000.00~~ \$276,240,000.00 increased by the most recent New England economic project cumulative price index, as of November 15, for state and local government purchases of goods and services from fiscal year ~~2008~~ 2012 through the fiscal year for which the payment is being determined, plus an additional one-tenth of one percent.

Sec. E.513.2 16 V.S.A. § 4025(b)(1) is amended to read:

(1) To make payments to school districts and supervisory unions for the support of education in accordance with the provisions of section 4028 of this title, other provisions of this chapter, and the provisions of chapter 135 of Title 32, ~~and~~ to make payments to carry out programs of adult education in accordance with section 1049(a) of this title, and to provide funding for the community high school of Vermont.

Sec. E.514 State teachers' retirement system

(a) The annual contribution to the Vermont state teachers' retirement system shall be \$52,991,932, of which \$51,241,932 shall be contributed in accordance with 16 V.S.A. § 1944(g)(2) and an additional \$1,750,000 in general funds.

(b) In accordance with 16 V.S.A. § 1944(c)(2), of the annual contribution, \$10,574,040 is the "normal contribution," and \$40,667,892 is the "accrued liability contribution."

(c) A combination of \$51,672,307 in general funds and an estimated \$1,319,625 of Medicare Part D reimbursement funds is utilized to achieve funding at \$1,750,000 above the actuarially recommended level of \$51,241,932.

Sec. E.515 [DELETED]

\* \* \* HIGHER EDUCATION \* \* \*

Sec. E.600 University of Vermont

(a) The commissioner of finance and management shall issue warrants to pay one-twelfth of this appropriation to the University of Vermont on or about the 15th day of each calendar month of the year.

(b) Of this appropriation, \$380,326 shall be transferred to EPSCoR (Experimental Program to Stimulate Competitive Research) for the purpose of complying with state matching fund requirements necessary for the receipt of available federal or private funds or both.

(c) If Global Commitment fund monies are unavailable, the total grant funding for the University of Vermont shall be maintained through the general fund or other state funding sources.

(d) The University of Vermont will use the Global Commitment funds appropriated in this section to support Vermont physician training. The University of Vermont prepares students, both Vermonters and out-of-state, and awards approximately 100 medical degrees annually. Graduates of this program, currently representing a significant number of physicians practicing

in Vermont, deliver high-quality health care services to Medicaid beneficiaries and to the uninsured or underinsured persons or both in Vermont and across the nation.

Sec. E.600.1 HIGHER EDUCATION TRUST FUND APPROPRIATION

(a) Notwithstanding 16 V.S.A. § 2885(a)(2), amounts over \$11,000,000 which would otherwise be deposited into the higher education trust fund shall be deposited into the revenue shortfall reserve established pursuant to 32 V.S.A. § 308d.

Sec. E.602 Vermont state colleges

(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, \$427,898 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

(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

(a) Of this appropriation, \$25,000 is appropriated from the general fund to the Vermont Student Assistance Corporation to be deposited into the trust fund established in 16 V.S.A. § 2845.

(b) Except as provided in subsection (a) of this section, not less than 93 percent of grants shall be used for direct student aid.

(c) Of state funds available to the Vermont Student Assistance Corporation pursuant to Secs. E.215(a) and B.1100(a)(3)(B) of this act, \$250,000 shall be used for the purposes of 16 V.S.A. § 2856. Any unexpended funds from these allocations shall carry forward for this purpose.

## \* \* \* NATURAL RESOURCES \* \* \*

Sec. E.700 10 V.S.A. § 8020 is added to chapter 201 to read:

§ 8020. PUBLIC PARTICIPATION IN ENFORCEMENT

The environmental division shall hold an administrative order or an assurance of discontinuance for 10 calendar days after receipt to allow a person with standing who has provided written comment on the proposed enforcement action the opportunity to permissively intervene pursuant to Rule 24(b) of the Vermont Rules of Civil Procedure. When the environmental division permits a person with standing to intervene, it shall be for the sole purpose of establishing by a preponderance of the evidence that the proposed enforcement action is insufficient to carry out the purposes of this chapter. As used in this section, a person with standing means a person who alleges an injury to a particularized interest protected by a statute listed under subsection 8003(a) of this title, and the alleged injury is attributable to a violation addressed by an assurance of discontinuance or administrative order issued under this chapter.

Sec. E.702 Fish and wildlife - support and field services

(a) The commissioner of fish and wildlife shall report to the joint fiscal committee on November 15, 2011 on the status of recruitment for vacant game warden positions.

Sec. E.704 Forests, parks and recreation - forestry

(a) This special fund appropriation shall be authorized, notwithstanding the provisions of 3 V.S.A. § 2807(c)(2).

Sec. E.704.1 10 V.S.A. § 2603(h) is added to read:

(h) All interest accrued from bonds deposited in the agency fund and forfeited bonds in the agency fund for the department of forests, parks and recreation's timber management program may be transferred annually by the commissioner, with the approval of the commissioner of finance and management, to the natural resources management fund.

## \* \* \* COMMERCE AND COMMUNITY DEVELOPMENT \* \* \*

Sec. E.800 10 V.S.A. § 280a is amended to read:

§ 280a. ELIGIBLE PROJECTS; AUTHORIZED FINANCING PROGRAMS

(a) The authority may develop, modify, and implement any existing or new financing program, provided that any specific project that benefits from such program shall meet the criteria contained in the Vermont sustainable jobs strategy adopted under section 280b of this title, and provided further that the program shall meet the criteria contained in the Vermont sustainable jobs strategy adopted under section 280b of this title. Such programs may include:

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\* \* \*

(8) one or more programs targeting economically distressed regions of the state, and specifically including the authority to develop a program to finance or refinance up to 100 percent of the existing assets or debts of a health, recreation, and fitness organization which is exempt under Section 501(c)(3) of the Internal Revenue Code, the income of which is entirely used for its exempt purpose, that owns and operates a recreation facility located in a distressed region of the state;

\* \* \*

Sec. E.803 Community development block grants

(a) Community development block grants shall carry forward until expended.

(b) Community development block grant (CDBG) funds shall be expended in accordance with and in the order of the following priorities.

(1) The greatest priority for the use of CDBG funds will be the creation and retention of affordable housing and jobs.

(2) The overarching priority and fundamental objective in the use of funds for all affordable housing is to achieve perpetual affordability through the use of mechanisms that produce housing resources that will continue to remain affordable over time. It is the goal of the state to maintain at least 45 to 55 percent of CDBG funds for affordable housing applications.

(3) Among affordable housing applications, the highest priorities are to preserve and increase the supply of affordable family housing, to reduce and strive to eliminate childhood homelessness, to preserve affordable housing developments and extend their useful life, and to 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 focus 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.

\* \* \* TRANSPORTATION \* \* \*

Sec. E.909 Transportation – central garage

(a) Of this appropriation, \$6,070,010 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

(a) This appropriation is authorized, notwithstanding the provisions of 19 V.S.A. § 306(a).

Sec. E.922 [DELETED]

\* \* \* TRANSPORTATION INFRASTRUCTURE BOND AND DEBT  
SERVICE FUNDS \* \* \*

Sec. F.100 19 V.S.A. § 11f is amended to read:

§ 11f. TRANSPORTATION INFRASTRUCTURE BOND FUND

(a) There is created a special ~~account~~ fund within the transportation fund known as the transportation infrastructure bond fund to consist of funds raised from the motor fuel transportation infrastructure assessments levied pursuant to 23 V.S.A. §§ 3003(a) and 3106(a). Interest from the fund shall be credited ~~annually~~ to the fund, and the amount in the ~~account~~ fund shall carry forward from year to year.

(b)(1) ~~Monies~~ As used in this section, the terms “transportation infrastructure bonds debt service fund” and “debt service obligations” are as defined in 32 V.S.A. § 951a.

(c) Monies in the transportation infrastructure bond fund shall be transferred to the transportation infrastructure bonds debt service fund to cover all debt service obligations of transportation infrastructure bonds that are due in the current fiscal year and as otherwise required in accordance with any trust agreement pertaining to such bonds.

(d) Provided that resources in the transportation infrastructure bonds debt service fund are sufficient in amount to cover all debt service obligations of transportation infrastructure bonds that are due in the current fiscal year and to meet all other obligations set forth in any trust agreement pertaining to any such bonds, any remaining balance in the transportation infrastructure bond fund may be used to pay for:

~~(A) to pay principal, interest, and related costs on transportation infrastructure bonds issued pursuant to 32 V.S.A. § 972; and~~

~~(B) to pay for:~~

~~(i)(1) the rehabilitation, reconstruction, or replacement of state bridges, culverts, roads, railroads, airports, and necessary buildings which, after such work, have an estimated minimum remaining useful life of 10 years;~~

~~(ii)(2) the rehabilitation, reconstruction, or replacement of municipal bridges, culverts, and highways which, after such work, have an estimated minimum remaining useful life of 10 years; and~~

~~(iii)(3) up to \$100,000.00 per year for operating costs associated with administering the capital expenditures.~~

~~(2) However, in any fiscal year, no payments shall be made under this subsection unless the amount needed to pay for the following items for that fiscal year, to the extent required by the terms of any trust agreement applicable to the transportation infrastructure bonds, is either in the fund and available to pay for those items, or the items have been paid: debt service due on the bonds for that fiscal year; any associated reserve or sinking funds; and any associated costs of the bonds as defined in 32 V.S.A. § 972(b).~~

(e) To the extent in the current fiscal year any balance remains in the transportation infrastructure bond fund after all transfers required by subsection (c) of this section have been made and all appropriations authorized by subsection (d) of this section are accounted for, such remaining balance may be transferred to the transportation infrastructure bonds debt service fund to cover debt service obligations of transportation infrastructure bonds that are due in future fiscal years.

~~(e)(f) The assessments for motor fuel transportation infrastructure assessments paid pursuant to 23 V.S.A. §§ 3003(a) and 3106(a) shall not be reduced below the rates in effect at the time of issuance of any transportation infrastructure bond until the principal, interest, and all costs which must be paid in order to retire the bond have been paid.~~

(g) Except as provided in subsection (h) of this section, all transfers of funds from the transportation infrastructure bond fund to the transportation infrastructure bonds debt service fund shall be approved by the general assembly.

(h) To minimize disruption of summer construction schedules, it is the policy of the state to have a balance in the transportation infrastructure bonds debt service fund at the end of each fiscal year that is sufficient in amount to cover all debt service obligations of transportation infrastructure bonds that are

due or are anticipated to be due in the succeeding fiscal year. To achieve the policy objective of ensuring the state's transportation infrastructure bond obligations are fulfilled with a minimum of disruption to the construction schedules of approved projects, in the event that revenue, economic, or other conditions vary from those assumed in the consensus forecast and in the budget process in which the general assembly approved transfers to the transportation infrastructure bonds debt service fund, the secretary of transportation with the approval of the secretary of administration may, notwithstanding the provisions of 32 V.S.A. § 706:

(1) transfer appropriations of transportation infrastructure bond funds to the transportation infrastructure bonds debt service fund; and

(2) transfer appropriations of transportation funds to replace transportation infrastructure bond funds transferred under subdivision (1) of this subsection, provided no significant delay in the construction schedule of any approved project results from the transfer.

(i) After executing a transfer authorized by subsection (h) of this section, the administration shall give prompt notice thereof to the joint fiscal office and submit an explanation and description of the action taken to the joint fiscal committee at its next scheduled meeting.

Sec. F.101 32 V.S.A. § 951a is added to read:

§ 951a. DEBT SERVICE FUNDS

(a) Three governmental debt service funds are hereby established:

(1) the general obligation bonds debt service fund to fulfill debt service obligations of general obligation bonds from all funding sources;

(2) the transportation infrastructure bonds debt service fund to fulfill debt service obligations of transportation infrastructure bonds funded primarily by the revenues of the transportation infrastructure bond fund; and

(3) other debt service funds to fulfill debt service obligations of other long-term debt funded by governmental fund dedicated revenue sources.

(b) Financial resources in each fund shall consist of appropriations by the general assembly to fulfill debt service obligations, the transfer of funding sources by the general assembly to fulfill future debt service obligations, bond proceeds raised to fund a permanent reserve required by a trust agreement entered into to secure bonds, transfers of appropriations effected pursuant to section 706 of this title, investment income earned on balances held in trust agreement accounts as required by a trust agreement, and such other amounts as directed by the general assembly or that are specifically authorized by provisions of this title. Each debt service fund shall account for the

accumulation of resources and the fulfillment of debt service obligations within the current fiscal year and the accumulation of resources for debt service obligations maturing in future fiscal years.

(c) Debt service obligations of general obligation bonds, transportation infrastructure bonds, or other authorized long-term obligations shall be fulfilled from the respective governmental debt service funds established in this section.

(d) As used in this section, "debt service obligations" of bonds include requirements to:

(1) pay principal and interest, sinking fund obligations, and redemption premiums;

(2) pay investment return on and the maturity value of capital appreciation bonds;

(3) provide for reserves required by a trust agreement entered into to secure bonds; and

(4) provide any additional security, insurance, or other form of credit enhancement required by a trust agreement entered into to secure bonds.

Sec. F.102 32 V.S.A. § 954 is amended to read:

§ 954. PROCEEDS

(a) The proceeds arising from the sale of such bonds, except premiums, shall be applied to the purposes for which they were authorized and such purposes shall be considered to include the expenses of preparing, issuing, and marketing such bonds and any notes issued under section 955 of this title, and amounts for reserves, but no purchasers of such bonds shall be in any way bound to see to the proper application of the proceeds thereof. The state treasurer shall pay the interest on, principal of, investment return on, and maturity value of such bonds and notes as the same fall due or accrue without further order or authority. Any premium received upon the sale of such bonds or notes shall be applied to the payment of the first principal or interest to come due thereon. The state treasurer with the approval of the governor, may establish sinking funds, reserve funds, or other special funds of the state as he or she may deem for the best interest of the state. To the extent not otherwise provided, the amount necessary each year to ~~pay~~ fulfill the maturing principal and interest of, investment return and maturity value of, and sinking fund installments on all such bonds then outstanding shall be included in and made a part of the annual appropriation bill for the expense of state government, and such principal and interest on, investment return and maturity value of, and sinking fund installments on the bonds as may come due before appropriations

for the ~~payment fulfillment~~ thereof have been made shall be ~~paid fulfilled~~ from the ~~general fund or from the transportation or other applicable special debt service fund~~.

\* \* \*

Sec. F.103 32 V.S.A. § 972 is amended to read:

§ 972. TRANSPORTATION INFRASTRUCTURE BONDS

\* \* \*

(b) As used in this subchapter, the term "debt service obligations" is as defined in section 951a of this title.

~~(c) Principal and interest on Debt service obligations of the bonds and associated costs shall be paid fulfilled or satisfied in accordance with the terms of any trust agreement pertaining to the bonds from the transportation infrastructure bond fund established in 19 V.S.A. § 11f bonds debt service fund. Associated costs of bonds include sinking fund payments; reserves; redemption premiums; additional security, insurance, or other form of credit enhancement required or provided for in any trust agreement entered to secure bonds; and related costs of issuance.~~

~~(e)~~(d) Funds raised from bonds issued under this section may be used to pay for or fund:

(1) the rehabilitation, reconstruction, or replacement of state bridges and culverts;

(2) the rehabilitation, reconstruction, or replacement of municipal bridges and culverts; ~~and~~

(3) the rehabilitation, reconstruction, or replacement of state roads, railroads, airports, and necessary buildings which, after such work, have an estimated minimum remaining useful life of 30 years or more; and

(4) a permanent reserve required by a trust agreement entered into to secure the bonds.

~~(d)~~(e) Pursuant to section 953 of this title, interest and the investment return on the bonds shall be exempt from taxation in this state.

~~(e)~~(f) Bonds issued under this section shall be legal investments for all persons without limit as to the amount held, regardless of whether they are acting for their own account or in a fiduciary capacity. The bonds shall likewise be legal investments for all public officials authorized to invest in public funds.

Sec. F.104 32 V.S.A. § 973 is amended to read:

§ 973. ISSUANCE OF BONDS

\* \* \*

(d) The ~~principal, interest, investment returns, and maturity value~~ debt service obligations of transportation infrastructure bonds which require a cash payment shall be payable in lawful money of the United States or of the country in which the bonds are sold.

\* \* \*

Sec. F.105 32 V.S.A. § 974 is amended to read:

§ 974. SECURITY DOCUMENTS

\* \* \*

(d) For payment of ~~principal, interest, investment returns, and maturity value~~ debt service obligations of transportation infrastructure bonds, the full faith and credit of the state is hereby pledged. However:

~~(1)~~, if pledging of full faith and credit of the state is not necessary to market a transportation infrastructure bond in the best interest of the state, the treasurer shall enter into an agreement which establishes that the full faith and credit of the state is not pledged for payment of ~~principal, interest, investment returns, and maturity value~~ debt service obligations of the bond. In determining whether to pledge the full faith and credit of the state, the state treasurer shall consider the anticipated effect of such a pledge on the credit standing of the state, the marketability of the transportation infrastructure bond, and other factors he or she deems appropriate; ~~and~~.

~~(2) the treasurer shall only use other revenues to pay for debt service and associated costs as defined in section 972 of this title on transportation infrastructure bonds to which the full faith and credit of the state has been pledged in the event that monies in the transportation infrastructure bond fund are insufficient to pay for it.~~

Sec. F.106 32 V.S.A. § 975 is amended to read:

§ 975. PROCEEDS

~~(a)~~ Proceeds from the sale of bonds may be expended for the authorized purposes of the bonds; including the expenses of preparing, issuing, and marketing the bonds; any notes issued under section 976 of this title; and amounts for any reserves. However, no purchasers of the bonds shall be bound to see to the proper application of the proceeds thereof.

~~(b) The treasurer may pay for the interest on, principal of, investment return on, maturity value of, and associated costs as defined in subsection 972(b) of this title of bonds issued under this subchapter from the transportation infrastructure bond fund as they fall due without further order or authority.~~

~~(c) The general assembly shall appropriate the amount necessary to pay the maturing principal and interest of, investment return and maturity value of, and sinking fund installments on transportation infrastructure bonds then outstanding in the annual appropriations bill and the principal and interest on, investment return and maturity value of, and sinking fund installments on the transportation infrastructure bonds as may come due before appropriations for payment have been made shall be paid from the transportation infrastructure bond fund, or with respect to bonds to which the full faith and credit of the state has been pledged and in accordance with subdivision 974(d)(2) of this title, from the general fund or other applicable fund.~~

Sec. F.107 32 V.S.A. § 975a is added to read:

§ 975a. AUTHORITY OF TREASURER

The treasurer may fulfill debt service obligations of bonds issued under this subchapter as they fall due without further order or authority. All such fulfillments shall be accounted for as a payment or provision made from the transportation infrastructure bonds debt service fund.

Sec. F.108 32 V.S.A. § 975b is added to read:

§ 975b. DEBT SERVICE APPROPRIATIONS

The general assembly shall appropriate in the annual appropriations bill the amount necessary from the appropriate funds to pay the debt service obligations of transportation infrastructure bonds which are due in the fiscal year covered by the appropriations bill.

Sec. F.109 32 V.S.A. § 979 is amended to read:

§ 979. AUTHORITIES

In addition to the provisions of this subchapter, the following provisions of this title shall apply to transportation infrastructure bonds:

- (1) sections 951a, 953, 956, 958, and 960;
- (2) subsection 954(c), except that transfers shall be made only among projects to be funded with transportation infrastructure bonds; and
- (3) section 957, except that consolidation may be only among transportation infrastructure bonds, and the bonds shall be the lawful obligation of the transportation infrastructure bond fund and not of the remaining

revenues of the state unless the treasurer has agreed to pledge the full faith and credit of the state pursuant to ~~subdivision 974(e)(2)~~ subsection 974(d) of this title.

\* \* \* REPEAL OF REFERENCES TO HCRC \* \* \*

Sec. G.100 8 V.S.A. § 4089k is amended to read:

§ 4089k. HEALTH CARE INFORMATION TECHNOLOGY REINVESTMENT FEE

\* \* \*

(e) No later than June 30, 2011, the secretary of administration, or his or her designee, shall assess the adequacy of funding and make recommendations to the ~~commission on health care reform~~ joint fiscal committee concerning the appropriateness of the duration of the health care information technology reinvestment fee.

Sec. G.101 18 V.S.A. § 702(b)(1)(A) is amended to read:

(b)(1)(A) The 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~~ include 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 department of Vermont health access; an individual appointed jointly by the president pro tempore of the senate and the speaker of the house of representatives; 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 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~~ commissioner 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. G.102 18 V.S.A. § 709(a) is amended to read:

(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, and the health access oversight committee, ~~and the joint legislative commission on health care reform.~~

Sec. G.103 18 V.S.A. § 9351(c) is amended to read:

(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 commissioner 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. G.104 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 commissioner 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. G.105 32 V.S.A. § 10301 is amended to read:

§ 10301. HEALTH IT-FUND

\* \* \*

(e) VITL and any other entity requesting disbursements from the health IT-fund shall develop a detailed annual plan for proposed expenditures from the health IT-fund for the upcoming fiscal year. The expenditure plan shall be included within the context of the entity's overall budget, including all revenue and expenditures. ~~Beginning with the fiscal quarter commencing October 1, 2008, VITL and any other entity requesting disbursements from the health IT-fund shall submit proposed quarterly spending plans for review by the health care reform commission and approval by the secretary of administration. Upon the general assembly beginning its consideration of the expenditure plans for fiscal year 2010, this quarterly plan requirement shall cease.~~

(f) The plan developed under subsection (e) of this section shall be submitted to the secretary of administration or his or her designee, ~~who shall then submit his or her recommendations on the plan to the health care reform commission~~ the Green Mountain Care board, the house and senate committees on appropriations, the house committee on health care, and the senate committee on health and welfare.

(g) The secretary of administration or his or her designee shall submit an annual report on the receipts, expenditures, and balances in the health IT-fund to the joint fiscal committee at its September meeting and to the ~~commission on health care reform by October 1~~ Green Mountain Care board. The report shall include information on the results of an annual independent study of the effectiveness of programs and initiatives funded through the health IT-fund, with reference to a baseline, benchmarks, and other measures for monitoring progress and including data on return on investments made.

(h) VITL and any other beneficiary receiving funding shall submit quarterly expenditure reports to the secretary of administration and ~~the health care reform commission~~ to the Green Mountain Care board, including a year-end report by August 1.

\* \* \*

Sec. G.106 33 V.S.A. § 1974(h) is amended to read:

(h) The agency shall report monthly to the joint fiscal committee, and the health access oversight committee, ~~and the commission on health care reform~~ with on the number of individuals enrolled in the premium assistance program, the income levels of the individuals, a description of the range and types of employer-sponsored plans that have been approved, the percentage of premium

and cost-sharing amounts paid by employers whose employees participate in the premium assistance program, and the net savings or cost of the program.

Sec. G.107 REPEAL

(a) 2 V.S.A. chapter 25 (joint legislative commission on health care reform) is repealed on July 1, 2011.

\* \* \* RETIREMENT \* \*

Sec. H.1 3 V.S.A. § 470 is amended to read:

§ 470. ~~POST-RETIREMENT~~ POSTRETIREMENT ADJUSTMENTS TO RETIREMENT ALLOWANCES

\* \* \*

(c) For purposes of this section, Consumer Price Index shall mean the Northeast Region Consumer Price Index for all urban consumers, designated as “CPI-U,” in the northeast region, as published by the United States Department of Labor, Bureau of Labor Statistics.

\* \* \*

Sec. H.2 16 V.S.A. § 1949 is amended to read:

§ 1949. ~~POST-RETIREMENT~~ POSTRETIREMENT ADJUSTMENTS TO RETIREMENT ALLOWANCES

\* \* \*

(c) For the purposes of this section, “consumer price index” shall mean the Northeast Region consumer price index for all urban consumers, designated as “CPI-U,” in the northeast region, as published by the United States Department of Labor, Bureau of Labor Statistics.

\* \* \*

Sec. H.3 24 V.S.A. § 5067 is amended to read:

§ 5067. ~~COST-OF-LIVING~~ POSTRETIREMENT ADJUSTMENTS TO RETIREMENT ALLOWANCES

\* \* \*

(b) For purposes of this section, Consumer Price Index shall mean the Northeast Region Consumer Price Index for all urban consumers, designated as “CPI-U,” in the northeast region, as published by the United States Department of Labor, Bureau of Labor Statistics.

\* \* \*

Sec. H.4 3 V.S.A. § 473 is amended to read:

§ 473. FUNDS

(a) All of the assets of the retirement system shall be credited to the Vermont state retirement fund.

(b) Member contributions.

\* \* \*

(2) Contributions shall be made on and after the date of establishment at the rate of ~~five~~ 6.3 percent of compensation ~~except for each group A, D, and F member and~~ at a rate of ~~6.18~~ 8.18 percent of compensation for each group C member ~~unless the member was a group C member on June 30, 1998 in which case contributions shall be at the rate of six percent of compensation for each group C member who has elected not to have his or her compensation from the state be subject to Social Security withholding or at the rate of five percent of compensation if the member elected to have compensation from the state subject to Social Security withholding and at the rate of five percent of compensation for each group F member and, commencing July 1, 2019, at the rate of 4.75 percent of compensation for each group F member. For the period of July 1, 2011 through June 30, 2016, should the annual value of the total increased contributions of group C, D, and F member contributions exceed \$5,300,000.00 on an aggregate basis, any amount in excess of \$5,300,000.00 shall remain in the retirement system and the state's contribution shall not be reduced by the amount in excess of \$5,300,000.00. Commencing July 1, 2016 or when the state employees' retirement system has been determined by the actuary to have assets at least equal to its accrued liability, whichever occurs first, contributions shall be five percent of compensation for group A, D, and F members and 6.88 percent of compensation for group C members. Commencing July 1, 2019, the rate of contribution applicable to all active group F members shall be 4.75 percent of compensation.~~ In determining the amount earnable by a member in a payroll period, the retirement board may consider the annual or other periodic rate of earnable compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deduction from compensation for any period less than a full payroll period if an employee was not a member on the first day of the payroll period, and to facilitate the making of deductions it may modify the deduction required of any member by such an amount as, on an annual basis, shall not exceed one-tenth of one percent of the annual earnable compensation upon the basis of which such deduction is to be made. Each of the amounts shall be deducted until the member retires or otherwise withdraws from service, and when deducted shall be paid into the annuity savings fund,

and shall be credited to the individual account of the member from whose compensation the deduction was made.

\* \* \*

#### Sec. H.5 VERMONT MUNICIPAL RETIREMENT FUND

(a) Notwithstanding the provisions of 24 V.S.A. § 5064(b), for the period July 1, 2011 through June 30, 2012, contributions shall be made by group A members at the rate of 2.5 percent of earnable compensation, by group B members at the rate of 4.5 percent of earnable compensation, and by group C members at the rate of 9.25 percent of earnable compensation.

#### Sec. H.6 REVIEW OF VERMONT STATE EMPLOYEES' RETIREMENT MEMBER CONTRIBUTION RATE STRUCTURE

(a) By July 1, 2016, the governor or his or her designee, the treasurer and representatives from the judicial branch, the Vermont state employees' association, and the Vermont troopers' association shall meet to review and evaluate the Vermont state employees' member contribution rate structure applicable to groups C, D, and F.

Sec. H.7 3 V.S.A. § 457(e) is added to read:

(e) For purposes of benefits available under this chapter, former county court employees hired by the counties to court positions on or before June 30, 2008 who became state employees on February 1, 2011 pursuant to No. 154 of the Acts of the 2009 Adj. Sess. (2010) shall be deemed to have been first included in membership of the system on or before June 30, 2008.

#### Sec. I.100 EFFECTIVE DATES

(a) This section and Secs. C.100 (human services caseload reserve appropriation), C.101 (transportation infrastructure bond fund debt service transfer), C.102 (reversions to general fund), C.103–C.103.1 (tax computer system special fund), C.104 (Medicaid state funds reserve), C.105–C.105.1 (DCF tiered sanctions), C.106–C.109 (transportation appropriations), C.110 (fiscal year 2011 general fund balance), D.102 (tobacco litigation settlement fund balance), E.100(b) (fiscal year 2011 one-time appropriations), E.127(b) (contract transfer), E.130(a) (auditor positions), E.130.1(b) (auditor work plan), E.301.7(a) (Catamount transition provisions), E.307 (waiver), E.307.2 (suspension of automatic premium increases repeal), E.307.3 (emergency rules), E.329.1–E.329.2 (long-term care facility receivership technical correction), E.330.1 (expedited rules – long-term care and disabilities, aging, and independent living), E.600.1 (higher education trust fund), F.100–F.109 (transportation infrastructure bond and debt service funds), and G.100 (health

care information technology reinvestment fee) of this act shall take effect upon passage.

(b) Sec. E.513.1 shall take effect July 1, 2012.

(c) Secs. H.1–H.3 of this act shall take effect on July 1, 2011, with determinations for cost-of-living adjustments as required by 3 V.S.A. § 470, 16 V.S.A. § 1949, and 24 V.S.A. § 5067 being made on January 1, 2012 pursuant to the Northeast Region Consumer Price Index as of June 30, 2011.

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.

\*\*\*The Committee of Conference **further submitted a signed “Addendum” for inclusion in their Committee report** as a means of supplying some text for the purpose of correcting certain errata.

The details of this “Addendum” are set forth below.

**Addendum to the Report of the Committee of Conference on H. 441**

By striking out Sec. E.700 in its entirety.

*M. JANE KITCHEL  
RICHARD W. SEARS  
DIANE B. SNELLING*

*Committee on the part of the Senate*

*MARTHA P. HEATH  
MITZI JOHNSON  
JOSEPH N. ACINAPURA*

*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 27, Nays 1.

Senator Kitchel 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, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Sears, Snelling, Starr, White.

**The Senator who voted in the negative was:** Pollina.

**Those Senators absent and not voting were:** Kittell, Westman.

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

**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 passed House bills of the following titles:

**H. 97.** An act relating to early childhood educators.

**H. 460.** An act relating to amending the charter of the city of Barre.

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

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

**S. 15.** An act relating to insurance coverage for midwifery services and home births.

**S. 17.** An act relating to licensing a nonprofit organization to dispense marijuana for therapeutic purposes.

**S. 104.** An act relating to modifications to the ban on gifts by manufacturers of prescribed products.

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

The House has considered the report of the Committee of Conference upon the disagreeing votes of the two Houses on Senate bill of the following title:

**S. 100.** An act relating to making miscellaneous amendments to education laws.

And has adopted the same on its part.

**Rules Suspended; Bills on Notice Calendar for Immediate Consideration**

On motion of Senator Campbell, the rules were suspended, and the following bills, pending entry on the Calendar for notice, were ordered to be brought up for immediate consideration:

**S. 15, S. 100, S. 104, H. 201.**

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**House Proposal of Amendment Concurred In****S. 104.**

House proposal of amendment to Senate bill entitled:

An act relating to modifications to the ban on gifts by manufacturers of prescribed products.

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. 18 V.S.A. § 4631a is amended to read:

§ 4631a. 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 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 or for health care services on behalf of an employee of the manufacturer.

(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 for free to a health care provider ~~for free~~ or to a member of the Green Mountain Care board established in chapter 220 of this title; or

(B) 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 or to a member of the Green Mountain Care board established in chapter 220 of this title, unless:

(i) it is an allowable expenditure as defined in subdivision (a)(1) of this section; or

(ii) the health care provider or board member 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.

(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 (7)(A); or

(iii) an officer, employee, agent, or contractor of a person described in subdivision (i) of this subdivision (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 (7) who is employed solely by a manufacturer.

(8) "Health care provider" means a health care professional, 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.

(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, repackaging, 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. The term also does not include a manufacturer whose only prescribed products are classified as Class I by the U.S. Food and Drug Administration, are exempt from pre-market notification under Section 510(k) of the federal Food, Drug and Cosmetic Act, and are sold over-the-counter without a prescription.

(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.

(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.

(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, 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

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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. The term does not include prescribed products distributed free of charge or at a discounted price pursuant to a manufacturer-sponsored or manufacturer-funded patient assistance program.

(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 education credit, features multiple presenters on scientific research, or is authorized by the 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 or to a member of the Green Mountain Care board established in chapter 220 of this title.

(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~~ 120 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.~~ Prescribed products distributed free of charge or at a discounted price pursuant to a manufacturer-sponsored or manufacturer-funded 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) Except as described in subdivisions (a)(1)(B) and (C) of this section, no manufacturer or other entity on behalf of a manufacturer shall provide any fee, payment, subsidy, or other economic benefit to a health care provider in connection with the provider's participation in research.

(d) 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. 2. 18 V.S.A. § 4632 is amended to read:

§ 4632. DISCLOSURE OF ALLOWABLE EXPENDITURES AND GIFTS BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a)(1)(A) Annually on or before ~~October~~ April 1 of each year, every manufacturer of prescribed products shall disclose to the office of the attorney general for the ~~fiscal~~ preceding calendar 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 or to a member of the Green Mountain Care board established in chapter 220 of this title, 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 to health care providers 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 for the use for which the clinical trial is being conducted or ~~two~~ four 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;

(iv) interview or health care 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;

(vi) loans of medical devices for short-term trial periods pursuant to subdivision 4631a(b)(2)(B) of this title, provided the loan results in the purchase, lease, or other comparable arrangement of the medical device after issuance of a certificate of need pursuant to chapter 221, subchapter 5 of this title, and

(vii) prescribed products distributed free of charge or at a discounted price pursuant to a manufacturer-sponsored or manufacturer-funded patient assistance program

(B) Annually on or before April 1 of each year, every manufacturer of prescribed products shall disclose to the office of the attorney general for the preceding calendar year

(C) Annually on or before April 1 of each year, every manufacturer of prescribed products shall disclose to the office of the attorney general for the preceding calendar year the value, nature, purpose, and recipient information of any allowable expenditure or gift 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 for the use for which the clinical trial is being conducted or ~~two~~ four calendar years after the date the payment was made. For a clinical trial for which disclosure is delayed under this subdivision (iii), the manufacturer shall identify to the attorney general the clinical trial, the start date, and the web link to the clinical trial registration on the national clinical trials registry.

(2)(A)(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~~ determines 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.

(3) Annually on ~~July~~ January 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.

(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~~ subdivisions ~~(a)(1)(B) and (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 or, in the case of an institution, foundation, or organization, the federal tax identification number or the identification number assigned by the attorney general.

(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~~ October 1. The report shall include:

(A) Information on allowable expenditures and permitted gifts required to be disclosed under this section, which shall ~~be presented in both present information in~~ aggregate form ~~and~~ by selected types of health care providers or individual health care providers, as prioritized each year by the office; and showing the amounts expended on the Green Mountain Care board established in chapter 220 of this title. In accordance with subdivisions (1)(B) and (2)(A) of this subsection, information on samples of prescribed products

and of over-the-counter drugs, nonprescription medical devices, and items of nonprescription durable medical equipment shall be presented in aggregate form.

(B) Information on violations and enforcement actions brought pursuant to this section and section 4631a of this title.

(6) After issuance of the report required by subdivision (5) of this subsection and except as otherwise provided in ~~subdivision~~ subdivisions (1)(B) and (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.

(7) The 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 department may select the data most relevant to its analysis. The department shall report its analysis annually to the general assembly and the governor on or before ~~October 1~~ March 1.

(b)(1) ~~Annually on July 1~~ Beginning January 1, 2013 and annually thereafter, 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 section 4631a of 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.

### Sec. 3. REPORTING FEES

(a) Notwithstanding the provisions of 18 V.S.A. § 4632(b)(1), on July 1, 2011, 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 18 V.S.A. § 4632(a) for the fiscal year ending June 30, 2011.

(b) Notwithstanding the provisions of 18 V.S.A. § 4632(b)(1), on January 1, 2012, the office of the attorney general shall collect a \$250.00 fee from each manufacturer of prescribed products filing disclosures of expenditures greater than zero described in 18 V.S.A. § 4632(a) for the six-month period from July 1, 2011 through December 31, 2011.

#### Sec. 4. ELECTRONIC PRIOR AUTHORIZATION

The commissioner of Vermont health access and the Vermont information technology leaders (VITL), in collaboration with health insurers, prescribers, representatives of the independent pharmacy community, and other interested parties, shall evaluate the use of electronic means for requesting and granting prior authorization for prescription drugs. No later than January 15, 2012, the commissioner and VITL shall report their findings to the senate committee on health and welfare and the house committee on health care and make recommendations for processes to develop standards for electronic prior authorizations.

#### Sec. 5. SPECIALTY TIER DRUGS

(a) Prior to July 1, 2012, no health insurer or pharmacy benefit manager shall utilize a cost-sharing structure for prescription drugs that imposes on a consumer for any drug a greater co-payment, deductible, coinsurance, or other cost-sharing requirement than that which applies for a nonpreferred brand-name drug.

(b) The commissioner of banking, insurance, securities, and health care administration shall not approve any form for a health insurance policy prior to July 1, 2012 that imposes on a consumer for any prescription drug a greater co-payment, deductible, coinsurance, or other cost-sharing requirement than that which applies for a nonpreferred brand-name drug.

#### Sec. 6. EFFECTIVE DATES

(a) Secs. 1, 2, and 3 of this act shall take effect on July 1, 2011, except that, in Sec. 2, the amendments to 18 V.S.A. § 4632(a)(1)(B) shall take effect on January 1, 2012.

(b) Sec. 4 of this act and this section shall take effect on passage.

(c) Sec. 5 of this act shall take effect on passage and shall apply to all forms that have previously been approved by the department of banking, insurance, securities, and health care administration or that may be approved by the department after passage of this act.

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

**House Proposal of Amendment; Consideration Postponed**

**S. 15.**

House proposal of amendment to Senate bill entitled:

An act relating to insurance coverage for midwifery services and home births.

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. 8 V.S.A. § 4099d is added to read:

§ 4099d. MIDWIFERY COVERAGE; HOME BIRTHS

(a) A health insurance plan or health benefit plan providing maternity benefits shall also provide coverage for services rendered by a midwife licensed pursuant to chapter 85 of Title 26 or an advanced practice registered nurse licensed pursuant to chapter 28 of Title 26 who is certified as a nurse midwife for services within the licensed midwife's or certified nurse midwife's scope of practice and provided in a hospital or other health care facility or at home.

(b) Coverage for services provided by a licensed midwife or certified nurse midwife shall not be subject to any greater co-payment, deductible, or coinsurance than is applicable to any other similar benefits provided by the plan.

(c) A health insurance plan may require that the maternity services be provided by a licensed midwife or certified nurse midwife under contract with the plan.

(d) As used in this section, "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 shall not include policies or plans providing coverage for specific disease or other limited benefit coverage.

Sec. 2. 18 V.S.A. chapter 30 is added to read:

CHAPTER 30. MATERNAL MORTALITY REVIEW PANEL

§ 1551. DEFINITIONS

As used in this chapter:

(1) “Maternal mortality” or “maternal death” means:

(A) pregnancy-associated death;

(B) pregnancy-related death; or

(C) pregnancy-associated but not pregnancy-related death.

(2) “Pregnancy-associated death” means the death of a woman while pregnant or within one year following the end of pregnancy, irrespective of cause.

(3) “Pregnancy-associated, but not pregnancy-related death” means the death of a woman while pregnant or within one year following the end of pregnancy due to a cause unrelated to pregnancy.

(4) “Pregnancy-related death” means the death of a woman while pregnant or within one year following the end of pregnancy, irrespective of the duration and site of the pregnancy, from any cause related to or aggravated by her pregnancy or its management, but not from accidental or incidental causes.

§ 1552. MATERNAL MORTALITY REVIEW PANEL ESTABLISHED

(a) There is established a maternal mortality review panel to conduct comprehensive, multidisciplinary reviews of maternal deaths in Vermont for the purposes of identifying factors associated with the deaths and making recommendations for system changes to improve health care services for women in this state. The members of the panel shall be appointed by the commissioner of health as follows:

(1) Two members from the Vermont section of the American College of Obstetricians and Gynecologists, one of whom shall be a generalist obstetrician and one of whom shall be a maternal fetal medicine specialist.

(2) One member from the Vermont chapter of the American Academy of Pediatrics, specializing in neonatology.

(3) One member from the Vermont chapter of the American College of Nurse-Midwives.

(4) One member who is a midwife licensed pursuant to chapter 85 of Title 26.

(5) One member from the Vermont section of the Association of Women's Health, Obstetric and Neonatal Nurses.

(6) The director of the division of maternal and child health in the Vermont department of health, or designee.

(7) An epidemiologist from the department of health with experience analyzing perinatal data, or designee.

(8) The chief medical examiner or designee.

(9) A representative of the community mental health centers.

(10) A member of the public.

(b) The term of each member shall be three years and the terms shall be staggered. The commissioner shall appoint the initial chair of the panel, who shall call the first meeting of the panel and serve as chair for six months, after which time the panel shall elect its chair. Members of the panel shall receive no compensation.

(c) The commissioner may delegate to the Northern New England Perinatal Quality Improvement Network (NNEPQIN) the functions of collecting, analyzing, and disseminating maternal mortality information; organizing and convening meetings of the panel; and such other substantive and administrative tasks as may be incident to these activities. The activities of the NNEPQIN and its employees or agents shall be subject to the same confidentiality provisions as apply to members of the panel.

#### § 1553. DUTIES

(a) The panel, in collaboration with the commissioner of health or designee, shall conduct comprehensive, multidisciplinary reviews of maternal mortality in Vermont.

(b) Each member of the panel shall be responsible for disseminating panel recommendations to his or her respective institution and professional organization, as applicable. All such information shall be disseminated through the institution's or organization's quality assurance program in order to protect the confidentiality of all participants and patients involved in any incident.

(c) On or before January 15 of each year, the commissioner of health shall submit a report to the house committees on health care and on human services and the senate committee on health and welfare containing at least the following information:

(1) a description of the adverse events reviewed by the panel during the preceding 12 months, including statistics and causes;

(2) corrective action plans to address, in the aggregate, such adverse events; and

(3) recommendations for system changes and legislation relating to the delivery of health care in Vermont.

(d) The panel shall not:

(1) Call witnesses or take testimony from any individual involved in the investigation of a maternal death.

(2) Enforce any public health standard or criminal law or otherwise participate in any legal proceeding, except to the extent that a member of the panel is involved in the investigation of a maternal death or resulting prosecution and must participate in a legal proceeding in the course of performing his or her duties outside the panel.

#### § 1554. CONFIDENTIALITY

(a) The panel's proceedings, records, and opinions shall be confidential and shall not be subject to inspection or review under subchapter 3 of chapter 5 of Title 1 or to discovery, subpoena, or introduction into evidence in any civil or criminal proceeding; provided, however, that nothing in this subsection shall be construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and entirely independent of the panel's proceedings.

(b) Members of the panel shall not be questioned in any civil or criminal proceeding regarding the information presented in or opinions formed as a result of a meeting of the panel; provided, however, that nothing in this subsection shall be construed to prevent a member of the panel from testifying to information obtained independently of the panel or which is public information.

#### § 1555. INFORMATION RELATED TO MATERNAL MORTALITY

(a)(1) Health care providers; health care facilities; clinics; laboratories; medical records departments; and state offices, agencies, and departments shall report all maternal mortality deaths to the chair of the maternal mortality review panel and to the commissioner of health or designee.

(2) The commissioner and the chair may acquire the information described in subdivision (1) of this subsection from health care facilities, maternal mortality review programs, and other sources in other states to ensure that the panel's records of Vermont maternal mortality cases are accurate and complete.

(b)(1) The commissioner shall have access to individually identifiable information relating to the occurrence of maternal deaths only on a case-by-case basis where public health is at risk. As used in this section, "individually identifiable information" includes vital records; hospital discharge data; prenatal, fetal, pediatric, or infant medical records; hospital or clinic records; laboratory reports; records of fetal deaths or induced terminations of pregnancies; and autopsy reports.

(2) The commissioner or designee may retain identifiable information regarding facilities where maternal deaths occur and geographic information on each case solely for the purposes of trending and analysis over time. In accordance with the rules adopted pursuant to subdivision 1556(4) of this title, all individually identifiable information on individuals and identifiable information on facilities shall be removed prior to any case review by the panel.

(3) The chair shall not acquire or retain any individually identifiable information.

(c) If a root cause analysis of a maternal mortality event has been completed, the findings of such analysis shall be included in the records supplied to the review panel.

#### § 1556. RULEMAKING

The commissioner of health, with the advice and recommendation of a majority of the members of the panel, shall adopt rules pursuant to chapter 25 of Title 3 related to the following:

(1) The system for identifying and reporting maternal deaths to the commissioner or designee.

(2) The form and manner through which the panel may acquire information under section 1555 of this title.

(3) The protocol to be used in carefully and sensitively contacting a family member of the deceased woman for a discussion of the events surrounding the death, including allowing grieving family members to delay or refuse such an interview.

(4) Ensuring de-identification of all individuals and facilities involved in the panel's review of cases.

Sec. 3. 18 V.S.A. § 5087 is amended to read:

#### § 5087. ESTABLISHMENT OF BIRTH INFORMATION NETWORK

(a) The commissioner of health shall establish a statewide birth information network designed to identify newborns who have specified health conditions

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which may respond to early intervention and treatment by the health care system.

(b) The department of health is authorized to collect information for the birth information network for the purpose of preventing and controlling disease, injury, and disability. The commissioner of health, in collaboration with appropriate partners, shall coordinate existing data systems and records to enhance the network's comprehensiveness and effectiveness, including:

- (1) Vital records (birth, death, and fetal death certificates).
- (2) The children with special health needs database.
- (3) Newborn metabolic screening.
- (4) Universal newborn hearing screening.
- (5) The hearing outreach program.
- (6) The cancer registry.
- (7) The lead screening registry.
- (8) The immunization registry.
- (9) The special supplemental nutrition program for women, infants, and children.
- (10) The Medicaid claims database.
- (11) The hospital discharge data system.
- (12) Health records (such as discharge summaries, disease indexes, nursery logs, pediatric logs, and neonatal intensive care unit logs) from hospitals, outpatient specialty clinics, genetics clinics, and cytogenetics laboratories.
- (13) The Vermont health care claims uniform reporting and evaluation system.

(c) The commissioner of health shall refer to the report submitted to the general assembly by the birth information council, pursuant to section 5086 of this title, for the purpose of establishing guiding principles for the research and decision-making necessary for the development of the birth information network.

(d) The network shall provide information on public health activities, such as surveillance, assessment, and planning for interventions to improve the health and quality of life for Vermont's infants and children and their families. This information shall be used for improving health care delivery systems and outreach and referral services for families with children with special health

needs and for determining measures that can be taken to prevent further medical conditions.

(e) The network shall be designed to follow infants and children up to one year of age with the 40 medical conditions listed in the matrix developed by the birth information council which have been selected as identifiable via existing Vermont data systems and are considered to be representative of the most significant health conditions of newborns in Vermont, including conditions relating to upper and lower limbs. The department of health is authorized to amend the list of medical conditions through rulemaking pursuant to chapter 25 of Title 3 to meet the objectives of this section.

(f) The network's data system shall be designed to coordinate with the data systems of other states so that data on out-of-state births to Vermont residents will be captured for vital records, case ascertainment, and follow-up services. The commissioner of health is authorized to enter into interstate agreements containing the necessary conditions for information transmission.

(g) The commissioner of health shall compile information every two years to document possible links between environmental and chemical exposure with the special health conditions of Vermont's infants and children.

(h) The department of health shall develop a form that contains a description of the birth information network and the purpose of the network. The form shall include a statement that the parent or guardian of a child may contact the department of health and have his or her child's personally identifying information removed from the network, using a process developed by the advisory committee.

Sec. 4. 18 V.S.A. chapter 104 is added to read:

#### CHAPTER 104. BIRTH RECORDS

##### § 5112. ISSUANCE OF NEW BIRTH CERTIFICATE; CHANGE OF SEX

(a) Upon receiving from the probate division of the superior court a court order that an individual's sexual reassignment has been completed, the state registrar shall issue a new birth certificate to show that the sex of the individual born in this state has been changed.

(b) An affidavit by a licensed physician who has treated or evaluated the individual stating that the individual has undergone surgical, hormonal, or other treatment appropriate for that individual for the purpose of gender transition shall constitute sufficient evidence for the court to issue an order that sexual reassignment has been completed. The affidavit shall include the medical license number and signature of the physician.

(c) A new certificate issued pursuant to subsection (a) of this section shall be substituted for the original birth certificate in official records. The new certificate shall not show that a change in name or sex, or both, has been made. The original birth certificate, the probate court order, and any other records relating to the issuance of the new birth certificate shall be confidential and shall not be subject to public inspection pursuant to 1 V.S.A. § 317(c); however an individual may have access to his or her own records and may authorize the state registrar to confirm that, pursuant to court order, it has issued a new birth certificate to the individual that reflects a change in name or sex, or both.

(d) If an individual born in this state has an amended birth certificate showing that the sex of the individual has been changed, and the birth certificate is marked "Court Amended" or otherwise clearly shows that it has been amended, the individual may receive a new birth certificate from the state registrar upon application.

Sec. 5. 26 V.S.A. § 4187 is amended to read:

§ 4187. RENEWALS

(a)(1) Biennially, the director shall forward a renewal form to each licensed midwife. The completed form shall include verification that during the preceding two years, the licensed midwife has:

(A) completed 20 hours of continuing education approved by the director by rule;

(B) participated in at least four peer reviews;

(C) submitted individual practice data; ~~and~~

(D) maintained current cardiopulmonary resuscitation certification; and

(E) filed a timely certificate of birth for each birth at which he or she was the attending midwife, as required by law.

(2) Upon receipt of the completed form and of the renewal fee, the director shall issue a renewal license to applicants who qualify under this section.

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Sec. 6. 26 V.S.A. § 4190 is amended to read:

§ 4190. WRITTEN PLAN FOR CONSULTATION, EMERGENCY TRANSFER, AND TRANSPORT

(a) Every licensed midwife shall develop a written plan for consultation with physicians licensed under chapter 23 of this title and other health care providers for emergency transfer, for transport of an infant to a newborn nursery or neonatal intensive care nursery, and for transport of a woman to an appropriate obstetrical department or patient care area. The written plan shall be submitted to the director on an approved form with the application required by section 4184 of this title and biennially thereafter with the renewal form required by section 4187 of this title. The written transport plan shall be reviewed and approved by the advisors appointed pursuant to section 4186 of this title and shall be provided to any health care facility or health care professional identified in the plan. The director, in consultation with the advisors, the commissioner of health, and other interested parties, shall develop a single, uniform form for use in all cases in which a transfer or transport occurs, which shall include the medical information needed by the facility or professional receiving the transferred or transported patient.

(b)(1) A licensed midwife shall, within 30 days of a birth or sentinel event, complete any peer review that is both required by rules governing licensed midwives and which is generated due to a death, significant morbidity to client or child, transfer to hospital, or to practice performed outside the standards for midwives as set forth in the rules governing licensed midwives. This peer review report shall be submitted to the office of professional regulation within 30 days of its completion.

(2) During the peer review process, other health care professionals engaged in the care or treatment of the client may provide written input to the peer review panel related to quality assurance and other matters within or related to the licensed midwife's scope of practice. The written comments shall be filed with the office of professional regulation and subject to the same confidentiality provisions as apply to other documents related to peer reviews. Upon completion of the peer review process, the director shall provide notice of the final disposition of the peer review to all health care professionals who submitted input pursuant to this subdivision.

Sec. 7. DATA SUBMISSION

Each midwife licensed pursuant to chapter 85 of Title 26 and each advanced practice registered nurse licensed pursuant to chapter 28 of Title 26 who is certified as a nurse midwife shall submit data to the database maintained by the Division of Research of the Midwives Alliance of North America regarding each home birth in Vermont for which he or she is the attending midwife.

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**Sec. 8. DEPARTMENT OF HEALTH; REPORTING REQUIREMENT**

(a) The department of health shall access the database maintained by the Division of Research of the Midwives Alliance of North America to obtain information relating to care provided in Vermont by midwives licensed pursuant to chapter 85 of Title 26 and by advanced practice registered nurses licensed pursuant to chapter 28 of Title 26 who are certified as nurse midwives.

(b) No later than March 15 of each year from 2012 through 2016, inclusive, the commissioner of health or designee shall provide testimony to the house committee on health care and the senate committee on health and welfare regarding the activities of licensed midwives and certified nurse midwives performing home births and providing prenatal and postnatal care in a nonmedical environment during the preceding year. The testimony shall include the number of home births in Vermont, the number of hospital transports associated with home births, the treatment of high-risk patients, and other relevant data, as well as the level of compliance of the licensed midwives and certified nurse midwives with the laws and rules governing their scope of practice.

**Sec. 9. EFFECTIVE DATES**

(a) Sec. 1 of this act shall take effect on October 1, 2011, and shall apply to all health insurance plans and health benefit plans on and after October 1, 2011, on such date as a health insurer issues, offers, or renews the plan, but in no event later than October 1, 2012.

(b) The remaining sections of this act shall take effect on passage.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, consideration of the bill was postponed.

**House Proposals of Amendment to Senate Proposal of Amendment  
Concurred In**

**H. 201.**

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

An act relating to hospice and palliative care.

Was taken up.

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

By striking out “Fifth” instance of amendment in its entirety.

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

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

**S. 100.**

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

To the Senate and House of Representatives:

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

An act relating to making miscellaneous amendments to education laws.

Respectfully reports that it has met and considered the same and recommends that the Senate accede to the House proposal of amendment with the following additional amendments thereto:

First: By striking out Sec. 27 (special education information management system) in its entirety and inserting in lieu thereof the following: Sec. 27. [Deleted.]

Second: In Sec. 32, 16 V.S.A. § 562, subdivision (11), by striking out the following: “\$200,000.00” and inserting in lieu thereof the following: \$350,000.00

Third: Immediately prior to Sec. 39, by inserting a reader assistance note to read as follows: \* \* \* Student Athletes; Concussions \* \* \*

Fourth: In Sec. 40, 16 V.S.A. § 1431, in subsection (a), by striking out subdivision (4) in its entirety.

Fifth: In Sec. 40, 16 V.S.A. § 1431, in subsection (b), by striking out the words “and the Vermont School Boards Association” and also in subsection (b), by striking out the words “those associations” and inserting in lieu thereof the words following: that association

Sixth: In Sec. 40, 16 V.S.A. § 1431, by striking out subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

(d) Participation in athletic activity. A coach shall not permit a youth athlete to train or compete with a school athletic team if the athlete has been removed or prohibited from participating in a training session or competition associated with the school athletic team due to symptoms of a concussion or

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other head injury until the athlete has been examined by and received written permission to participate in athletic activities from a health care provider licensed pursuant to Title 26 and trained in the evaluation and management of concussions and other head injuries.

*KEVIN J. MULLIN  
SARA BRANON KITTELL  
PHILIP E. BARUTH*

*Committee on the part of the Senate*

*HOWARD T. CRAWFORD  
JOHANNAH L. DONOVAN  
GARY L. GILBERT*

*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. 287.**

Appearing on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to job creation and economic development.

Was taken up for immediate consideration.

Senator Ashe, 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. 287.** An act relating to job creation and economic development.

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

\* \* \* Incentive Grants; VEGI \* \* \*

Sec. 1. VEGI STUDY

On or before January 15, 2012, the secretary of commerce and community development shall conduct a comprehensive study of the Vermont employment growth incentive program and shall submit a report to the house committees on commerce and economic development and on ways and means, and to the senate committees on finance and on economic development, housing and general affairs. The study shall address the overall effectiveness of the program; the appropriate term and use of the “look back” provision and the wage threshold; the appropriate use of company-specific and industry background growth rates; the administrative burden the program imposes both on employers and on government; a comparison to similar programs in other states; and such other issues as the secretary deems necessary to evaluate changes to or elimination of the program.

Sec. 2. Sec. 3(c) of No. 184 of the Acts of the 2005 Adj. Sess. (2006) is amended to read:

(c) Beginning April 1, 2009, the economic incentive review board is authorized to grant payroll-based growth incentives pursuant to the Vermont employment growth incentive program established by Sec. 9 of this act. Unless extended by act of the General Assembly, as of ~~January~~ July 1, 2012, no new Vermont employment growth incentive (VEGI) awards under 32 V.S.A. § 5930b may be made. Any VEGI awards granted prior to ~~January~~ July 1, 2012 may remain in effect until used.

Sec. 3. 32 V.S.A. § 5930a(c)(1) is amended to read:

(1) The enterprise should create new, full-time jobs to be filled by individuals who are Vermont residents. The new jobs shall not include jobs or employees transferred from an existing business in the state, or replacements for vacant or terminated positions in the applicant’s business. The new jobs include those that exceed the applicant’s average annual employment level in Vermont during the two preceding ~~five~~ years, unless the council determines that the enterprise will establish a significantly different, new line of business and create new jobs in the new line of business that were not part of the enterprise prior to filing its application for incentives with the council. The enterprise should provide opportunities that increase income, reduce unemployment, and reduce facility vacancy rates. Preference should be given to projects that enhance economic activity in areas of the state with the highest levels of unemployment and the lowest levels of economic activity.

Sec. 4. [RESERVED]

Sec. 5. 32 V.S.A. § 5930b(e) is amended to read:

(e) Reporting. By May 1, 2008 and by May 1 each year thereafter, the council and the department of taxes shall file a joint report on the employment growth incentives authorized by this section with the chairs of the house committee on ways and means, the house committee on commerce and economic development, the senate committee on finance, the senate committee on economic development, housing and general affairs, the house and senate committees on appropriations, and the joint fiscal committee of the general assembly and provide notice of the report to the members of those committees. The joint report shall contain the total authorized award amount of incentives granted during the preceding year, amounts actually earned and paid from inception of the program to the date of the report, including the date and amount of the award, the expected calendar year or years in which the award will be exercised, whether the award is currently available, the date the award will expire, and the amount and date of all incentives exercised. The joint report shall also include information on recipient performance in the year in which the incentives were applied, including the number of applications for the incentive, the number of approved applicants who complied with all their requirements for the incentive, the aggregate number of new jobs created, the aggregate payroll of those jobs and the identity of businesses whose applications were approved. The council and department shall use measures to protect proprietary financial information, such as reporting information in an aggregate form. Data and information in the joint report made available to the public shall be presented in a searchable format.

Sec. 6. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS (STEM) INCENTIVE PROGRAM

(a) In this section:

(1) “Accredited institution” means an educational institution that is accredited by ABET, Inc., a regional accrediting association, or by one of the specialized accrediting agencies recognized by the United States secretary of education.

(2) “Qualified new employee” means a person who:

(A) is hired by a qualified employer for a STEM position on or before December 31, 2012;

(B) graduated from an accredited institution with an associate’s degree or higher not more than 18 months before the date of hire; and

(C) is paid annual compensation of not less than \$50,000.00, including the value of benefits.

(3) “Qualified employer” means a person doing business in Vermont that is registered with the Vermont secretary of state, is current with all payments and filings required by the Vermont departments of taxes and of labor, and has a valid workers’ compensation policy.

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

(5) “STEM position” means an employment position in the field of science, technology, engineering, or mathematics that requires, as determined by the secretary in his or her discretion, a high level of scientific or mathematical knowledge and skill. The term shall not include a position of academic instruction with a college or university.

(6) “Student loan” means debt incurred for the purpose of paying tuition and expenses at an accredited institution, excluding any debt or other financial assistance provided by a family member, relative, or other private person.

(b)(1) A qualified new employee who is hired by and remains in a STEM position with one or more qualified employers for a period of not less than five years shall be eligible for an incentive to pay a qualified student loan in the amount of \$1,500.00 per year for five years.

(2) A qualified new employee shall notify the secretary of his or her initial employment in a STEM position within 30 days of the date of hire and shall provide the secretary an annual notice of employment in a STEM position in each of the five years thereafter.

(3) Following receipt of an annual notice of employment in a STEM position and verification of employment with one or more qualified employers, the secretary shall deliver an incentive to the qualified new employee pursuant to subdivision (1) of this subsection.

(4) The secretary shall award up to a maximum of \$75,000.00 per year for incentives in accordance with this section, which shall be made in the order in which they are claimed, as determined by the secretary in his or her discretion, and not to exceed a total program cap of \$375,000.00.

(c) The secretary shall design and make available on the agency of commerce and community development website:

(1) any forms necessary for a new employee to apply for an incentive available under this section; and

(2) a list of STEM positions for which a new employee may be eligible for an incentive under this section.

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**Sec. 7. LONG-TERM UNEMPLOYED HIRING INCENTIVE****(a) In this section:**

(1) “New full-time employment” means employment by a qualified employer in a permanent position at least 35 hours each week in the year for which an incentive is claimed at a compensation of not less than the average wage for the corresponding economic sector in the county of the state as determined by the Vermont department of labor.

(2) “Qualified employer” means a person doing business in Vermont that is registered with the Vermont secretary of state, is current with all payments and filings required by the Vermont departments of taxes and of labor, and has a valid workers’ compensation policy.

(3) “Qualified long-term unemployed Vermonter” means a legal resident of Vermont who collected unemployment insurance benefits in the state of Vermont for five months or more or whose collection of unemployment insurance benefits has expired within 30 days of the date of new employment with a qualified employer and who was hired through a referral from the Vermont department of labor.

(b) A qualified employer who hires a qualified long-term unemployed Vermonter on or before December 31, 2012 shall be eligible to receive a hiring incentive one year after the employee’s date of hire in the amount of \$500.00 per employee. Incentive awards shall be made in the order in which they are claimed, as determined by the commissioner in his or her discretion, not to exceed \$5,000.00 per recipient per year, and not to exceed a total program cap of \$25,000.00.

(c) The commissioner of labor shall administer payment of incentives consistent with this section and shall develop:

(1) an application form for qualified employers; and

(2) a process for verifying compliance with the eligibility requirements of the program.

(d) The commissioner may, in his or her discretion, modify any requirement of and use the funds appropriated for this section in any other manner that furthers the goal of reducing the number of long-term unemployed Vermonters.

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\* \* \* Labor; Workforce Training \* \* \*

Sec. 8. 10 V.S.A. § 541(d) is amended to read:

(d) The governor shall appoint one of the business or employer members to chair the council for a term of two years. A member shall not serve more than three consecutive terms as chair.

Sec. 8a. DEPARTMENT OF LABOR; WORKFORCE DEVELOPMENT DIRECTOR; REPEAL

10 V.S.A. 541(h) (executive director of workforce development council) is repealed.

Sec. 9. FINDINGS: VERMONT TRAINING PROGRAM

The general assembly finds:

(1) The Vermont training program provides funds for the training of employees in new and existing businesses in the sectors of manufacturing, information technology, health care, telecommunications, and environmental engineering. The state offers three training initiatives: new employment, upgrade, and crossover training for incumbent workers. These individually designed training programs may include on-the-job, classroom, skill upgrade, or other specialized training which is mutually agreed upon between the state and employer.

(2) A report conducted by the legislative joint fiscal office pursuant to Sec. 14a. of No. 78 of the 2009 Adj. Sess. (2010) found that businesses that are served by the Vermont training program (VTP) see it as a valuable state program in support of small business and the workforce in Vermont.

(3) Currently, as is the case with many programs that receive state funding and are included in the unified economic development budget, the VTP is not collecting and reporting sufficient data, nor are sufficient performance measures and benchmarks in place, to measure effectively the program's performance.

Sec. 10. 10 V.S.A. § 531 is amended to read:

§ 531. ~~EMPLOYMENT TRAINING~~ VERMONT TRAINING PROGRAM

(a) The secretary of commerce and community development may issue performance-based grants to any employer, consortium of employers, or ~~contract with~~ providers of training, either individuals or organizations, as necessary, to conduct training under the following circumstances:

(1) when issuing grants to an employer or consortium of employers, the employer promises as a condition of the grant to increase employment or provide training to enhance employment stability at an existing or expanded

eligible facility within the state where eligible facility is defined as in subdivision 212(6) of this title relating to Vermont economic development authority, or the employer or consortium of employers promises to open an eligible facility within the state which will employ persons, provided that for the purposes of this section, eligible facility may be broadly interpreted to include employers in sectors other than manufacturing ~~including the fields of information technology, telecommunications, health care, and environmental technologies;~~ and

\* \* \*

(b) Eligibility for grant. The secretary of commerce and community development ~~shall find in the grant or contract that~~ may award a grant to an employer if:

(1) the employer's new or expanded ~~facility~~ initiative will enhance employment opportunities for Vermont residents;

~~(2) the existing labor force within the state will probably be unable to provide the employer with sufficient numbers of employees with suitable training and experience; and~~

~~(3)~~ the employer provides its employees with at least three of the following:

(A) health care benefits with 50 percent or more of the premium paid by the employer;

(B) dental assistance;

(C) paid vacation and holidays;

(D) child care;

(E) other extraordinary employee benefits; ~~and~~

(F) retirement benefits; and

(3) the training is directly related to the employment responsibilities of the trainee.

(c) The employer promises as a condition of the grant to:

\* \* \*

(4) submit a customer satisfaction report to the secretary of commerce and community development, on a form prepared by the secretary for that purpose, no more than 30 days from the last day of the training program.

(d) In ~~issuing a grant or entering a contract for the conduct of~~ order to avoid duplication of programs or services and to provide the greatest return on

investment from training provided under this section, the secretary of commerce and community development shall:

(1) first consult with: the commissioner of education regarding vocational technical education; the commissioner of labor regarding apprenticeship programs, on the job training programs, and recruiting services provided through Vermont Job Service and available federal training funds; the commissioner for children and families regarding welfare to work priorities; and the University of Vermont and the Vermont state colleges whether the grantee has accessed, or is eligible to access, other workforce development and training resources offered by public or private workforce development partners;

(2) disburse grant funds only for training hours that have been successfully completed by employees; provided that a grant for on-the-job training shall either provide not more than 50 percent of wages for each employee in training, or not more than 50 percent of trainer expense, but not both, and further provided that training shall be performed in accordance with a training plan that defines the subject of the training, the number of training hours, and how the effectiveness of the training will be evaluated; and

(3) use funds under this section only to supplement training efforts of employers and not to replace or supplant training efforts of employers.

(e) The secretary of commerce and community development shall administer all training programs under this section, may select and use providers of training as appropriate, and shall adopt rules and may accept services, money or property donated for the purposes of this section. The secretary may promote awareness of, and may give priority to, training that enhances critical skills, productivity, innovation, quality, or competitiveness, such as training in Innovation Engineering, "Lean" systems, and ISO certification for expansion into new markets.

\* \* \*

(h) The secretary may designate the commissioner of economic, housing and community development to carry out his or her powers and duties under this chapter.

~~(i)(1) Program Outcomes. The joint fiscal office shall prepare a training program performance report based on the following information submitted to it by the Vermont training program, which is to be collected from each participating employer and then aggregated:~~

~~(A) The number of full time employees six months prior to the training and six months after its completion.~~

~~(B) For all existing employees, the median hourly wages prior to and after the training.~~

~~(C) The number of "new hires," "upgrades," and "crossovers" deemed eligible for the waivers authorized by statute and the median wages paid to employees in each category upon completion.~~

~~(D) A list and description of the benefits required under subdivision (e)(3) of this section for all affected employees, including the number of employees that receive each type of benefit.~~

~~(E) The number of employers allowed to pay reduced wages in high unemployment areas of the state, along with the number of affected workers and their median wage.~~

~~(2) Upon request by the secretary of commerce and community development, participating employers shall provide the information necessary to conduct the performance report required by this subsection. The secretary, in turn, shall provide such information to the joint fiscal office in a manner agreed upon by the secretary and the joint fiscal office. The secretary and the joint fiscal office shall take measures to ensure that company-specific data and information remain confidential and are not publicly disclosed except in aggregate form. The secretary shall submit to the joint fiscal office any program outcomes, measurement standards, or other evaluative approaches in use by the training program.~~

~~(3) The joint fiscal office shall review the information collected pursuant to subdivisions (1) and (2) of this subsection and prepare a training program performance report with recommendations relative to the program. The joint fiscal office shall submit its first training program performance report on or before January 15, 2011, to the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development. A second performance report shall be submitted on or before January 15, 2016. In addition to the information evaluated pursuant to subdivision (1) of this subsection, the second report shall include recommendations as to the following:~~

~~(A) whether the outcomes achieved by the program are sufficient to warrant its continued existence.~~

~~(B) whether training program outcomes can be improved by legislative or administrative changes.~~

~~(C) whether continued program performance reports are warranted and, if so, at what frequency and at what level of review.~~

~~(4) The joint fiscal office may contract with a consultant to conduct the performance reports required by this subsection. Costs incurred in preparing each report shall be reimbursed from the training program fund up to \$15,000.00.~~

Program Outcomes.

(1) On or before September 1, 2011, the agency of commerce and community development, in coordination with the department of labor, and in consultation with the workforce development council and the legislative joint fiscal office, shall develop, to the extent appropriate, a common set of benchmarks and performance measures for the training program established in this section and the workforce education and training fund established in section 543 of this title, and shall collect employee-specific data on training outcomes regarding the performance measures; provided, however, that the secretary shall redact personal identifying information from such data.

(2) On or before January 15, 2013, the joint fiscal office shall prepare a performance report using the benchmarks and performance measures created pursuant to subdivision (1) of this subsection. The joint fiscal office shall submit its report to the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development.

(3) The secretary shall use information gathered pursuant to this subsection and customer satisfaction reports submitted pursuant to subdivision (c)(4) of this section to evaluate the program and make necessary changes that fall within the secretary's authority or, if beyond the scope of the secretary's authority, to recommend necessary changes to the appropriate committees of the general assembly.

\* \* \*

(k) Annually on or before January 15, the secretary shall submit a report to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs summarizing all active and completed contracts and grants, the types of training activities provided, the number of employees served, and the average wage by employer, and addressing any waivers granted.

Sec. 10a. VERMONT TRAINING PROGRAM; ELIGIBILITY CRITERIA; REPORT; REPEAL

(a) On or before January 15, 2012, the secretary of commerce and community development shall review and report his or her recommendations to the house committee on commerce and economic development and the

senate committee on economic development, housing and general affairs concerning:

(1) appropriate eligibility criteria to supplement or replace the criteria in 10 V.S.A. § 531(b); and

(2) the appropriate amounts by which the secretary may reduce or waive the program wage requirements to adequately account for:

(A) the value of benefits offered by an employer; and

(B) economic and employment conditions in different regions of the state.

(b) 10 V.S.A. § 531(b) shall be repealed on June 30, 2012.

Sec. 11. 10 V.S.A. § 544 is added to read:

§ 544. VERMONT CAREER INTERNSHIP PROGRAM

(a)(1) The department of labor, in consultation with the department of education, shall develop and implement a statewide Vermont career internship program for Vermonters who are in high school or in college and for those who are recent graduates of 24 months or less.

(2) The department of labor shall coordinate and provide funding to public and private entities for internship programs that match Vermont employers with students from public and private secondary schools, regional technical centers, the Community High School of Vermont, colleges, and recent graduates of 24 months or less.

(3) Funding awarded through the Vermont career internship program may be used to administer an internship program and to provide participants with a stipend during the internship, based on need. Funds may be made only to programs or projects that do all the following:

(A) do not replace or supplant existing positions;

(B) create real workplace expectations and consequences;

(C) provide a process that measures progress toward mastery of skills, attitude, behavior, and sense of responsibility required for success in that workplace;

(D) are designed to motivate and educate secondary and postsecondary students and recent graduates through work-based learning opportunities with Vermont employers that are likely to lead to real employment;

(E) include mechanisms that promote employer involvement with secondary and postsecondary students and curriculum and the delivery of education at the participating schools; and

(F) offer participants a continuum of learning, experience, and relationships with employers that will make it financially possible and attractive for graduates to continue to work and live in Vermont.

(4) For the purposes of this section, "internship" means a learning experience working with an employer where the intern may, but does not necessarily, receive academic credit, financial remuneration, a stipend, or any combination of these.

(b) The department of labor, in collaboration with the agency of agriculture, food and markets, the department of education and state-funded postsecondary educational institutions, the workforce development council, and other state agencies and departments that have workforce development and training monies, shall:

(1) identify new and existing funding sources that may be allocated to the Vermont career internship program;

(2) collect data and establish program goals and quantifiable performance measures for internship programs funded through the Vermont career internship program;

(3) develop or enhance a website that will connect students and graduates with internship opportunities with Vermont employers;

(4) engage appropriate agencies and departments of the state in the internship program to expand internship opportunities with state government and with entities awarded state contracts; and

(5) work with other public and private entities to develop and enhance internship programs, opportunities, and activities throughout the state.

#### Sec. 12. IMPLEMENTATION OF THE VERMONT CAREER INTERNSHIP PROGRAM; WORKERS' COMPENSATION

(a)(1) Program costs in fiscal year 2012 for the Vermont career internship program created in 10 V.S.A. § 544 shall be funded through an appropriation from the next generation initiative fund established in 16 V.S.A. § 2887.

(2) Funding in subsequent years shall be recommended by the department of labor, in collaboration with the agency of agriculture, food and markets, the department of education and state-funded postsecondary educational institutions, the workforce development council, and other state

agencies and departments that have workforce development and training monies.

(b) The state may provide workers' compensation coverage to participants in the Vermont career internship program authorized in 10 V.S.A. § 544. The state shall be considered a single entity solely for purposes of purchasing a single workers' compensation insurance policy providing coverage for interns. This subsection is intended to permit the state to provide workers' compensation coverage, and the state shall not be considered the employer of the participants for any other purposes. The cost of coverage may be deducted from grants provided for the internship program.

Sec. 13. 10 V.S.A. § 543(f) is amended to read:

(f) Awards. Based on guidelines set by the council, the commissioners of labor and of education shall jointly make awards to the following:

\* \* \*

~~(2) Vermont Career Internship Program. Public and private entities for internship programs that match Vermont employers with students from public and private secondary schools, regional technical centers, the Community High School of Vermont, and colleges. For the purposes of this section, "internship" means a learning experience working with an employer where the intern may, but does not necessarily receive academic credit, financial remuneration, a stipend, or any combination of these. Awards under this subdivision may be used to fund the cost of administering an internship program and to provide students with a stipend during the internship, based on need. Awards may be made only to programs or projects that do all the following:~~

~~(A) do not replace or supplant existing positions;~~

~~(B) create real workplace expectations and consequences;~~

~~(C) provide a process that measures progress toward mastery of skills, attitude, behavior, and sense of responsibility required for success in that workplace;~~

~~(D) are designed to motivate and educate secondary and postsecondary students through work-based learning opportunities with Vermont employers that are likely to lead to real employment;~~

~~(E) include mechanisms that promote employer involvement with secondary and postsecondary students and curriculum and the delivery of education at the participating schools;~~

~~(F) involve Vermont employers or interns who are Vermont residents; and~~

~~(G) offer students a continuum of learning, experience, and relationships with employers that will make it financially possible and attractive for graduates to continue to work and live in Vermont. Funding for eligible internship programs and activities under the Vermont career internship program established in section 544 of this section.~~

Sec. 14. 10 V.S.A. § 542 is amended to read:

§ 542. REGIONAL WORKFORCE DEVELOPMENT

~~(a) 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) 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. The amount of funding to each WIB so authorized shall be based on the performance contract entered into between the council and the WIB.~~

~~(c) (d) [Repealed.]~~

(a) The commissioner of labor, in coordination with the secretary of commerce and community development, and in consultation with the workforce development council, is authorized to issue performance grants to one or more persons to perform workforce development activities in a region.

(b) Each grant shall specify the scope of the workforce development activities to be performed and the geographic region to be served, and shall include outcomes and measures to evaluate the grantee's performance.

(c) The commissioner of labor and the secretary of commerce and community development shall jointly develop a grant process and eligibility criteria, as well as an outreach process for notifying potential participants of the grant program. The commissioner of labor shall have final authority to approve each grant.

\* \* \* Entrepreneurship; Creative Economy \* \* \*

Sec. 15. 3 V.S.A. § 2471c is added read:

§ 2471c. OFFICE OF CREATIVE ECONOMY; VERMONT FILM COMMISSION

(a) The office of creative economy is created within the agency of commerce and community development in order to build upon the years of work and energy around creative economy initiatives in Vermont, including the work of the Vermont film commission. The office shall provide business, networking, and technical support to establish, grow, and attract enterprises involved with the creative economy, primarily focused on but not limited to such areas as film, new and emerging media, software development, and innovative commercial goods. The office shall work in collaboration with Vermont's private and public sectors, including educational institutions, to raise the profile and economic productivity of these activities.

(b) The office shall be administered by a director appointed by the secretary pursuant to section 2454 of this title and shall be supervised by the commissioner of the department of economic, housing and community development.

Sec. 16. REPEAL; ASSIGNMENT OF DUTIES; VERMONT FILM CORPORATION

(a) 10 V.S.A. chapter 26 (Vermont film corporation; Vermont film production incentive program) is repealed.

(b) The duties of the Vermont film corporation shall be transferred to the agency of commerce and community development.

Sec. 17. 3 V.S.A. § 2471d is added read:

§ 2471d. VERMONT FILM AND NEW MEDIA ADVISORY BOARD

The secretary of commerce and community development shall appoint a film and new media advisory board to make recommendations to the secretary on promoting Vermont as a location for commercial film and television production and facilitating the participation of local individuals and companies in such productions. The primary function of the advisory board is to recommend to the secretary strategies to link Vermonters employed in the film and new media, video, or other creative arts, to economic opportunities in their trades in Vermont.

Sec. 18. 11A V.S.A. § 8.20 is amended to read:

§ 8.20. MEETINGS

(a) The board of directors may hold regular or special meetings, as defined in subdivision 1.40(26) of this title, in or outside this state.

(b) The board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication, including an electronic, telecommunications, and video- or audio-conferencing conference telephone call, by which all directors participating may simultaneously or sequentially communicate with each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Sec. 19. 11B V.S.A. § 8.20 is amended to read:

§ 8.20. REGULAR AND SPECIAL MEETINGS

(a) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

(b) A board of directors may hold regular or special meetings in or out of this state.

(c) Unless the articles of incorporation or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication, including an electronic, telecommunications, and video- or audio-conferencing conference telephone call, by which all directors participating may simultaneously or sequentially communicate with each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Sec. 20. [RESERVED]

\* \* \* Finance; Access to Capital \* \* \*

Sec. 21. 10 V.S.A. chapter 3 is added to read:

CHAPTER 3. EB-5 INVESTMENT

§ 21. EB-5 ENTERPRISE FUND

(a) An EB-5 enterprise fund is created for the operation of the state of Vermont regional center for immigrant investment under the federal EB-5 program. The fund shall consist of revenues derived from administrative charges by the agency of commerce and community development pursuant to subsection (c) of this section, any interest earned by the fund, and all sums

which are from time to time appropriated for the support of the regional center and its operations.

(b)(1) The receipt and expenditure of moneys from the enterprise fund shall be under the supervision of the secretary of commerce and community development.

(2) The secretary shall maintain accurate and complete records of all receipts and expenditures by and from the fund, and shall make an annual report on the condition of the fund to the secretary of administration, the house committees on commerce and on ways and means, and the senate committees on finance and on economic development, housing and general affairs.

(3) Expenditures from the fund shall be used only to administer the EB-5 program. At the end of each fiscal year, the secretary of administration shall transfer from the EB-5 enterprise fund to the general fund any amount that the secretary of administration determines, in his or her discretion, exceeds the funds necessary to administer the program.

(c) Notwithstanding 32 V.S.A. § 603, the secretary of commerce and community development is authorized to impose an administrative charge for the costs of administering the regional center and providing specialized services in support of participating economic development projects.

#### Sec. 22. EB-5 ENTERPRISE FUND REPORT

On or before January 15, 2012, the secretary of commerce and community development shall submit a memorandum to the house committee on ways and means and the senate committee on finance concerning the performance of the EB-5 enterprise fund, including the number of projects and investors served, the amount of the charges imposed and collected, and recommendations concerning the EB-5 enterprise fund.

\* \* \* Housing and Development \* \* \*

#### Sec. 23. FINDINGS: VERMONT NEIGHBORHOODS

The general assembly finds:

(1) The Vermont neighborhoods program offers benefits to municipalities and developers with projects that promote affordable, high-density, smart growth principles in areas of the municipality most suitable for targeted growth and infill development.

(2) Among the benefits afforded by the program, projects within designated Vermont neighborhoods can be designed to reduce the scope and cost of Act 250 jurisdiction, can reduce environmental permitting costs, and in some cases can eliminate land gains tax.

(3) The process for achieving a Vermont neighborhoods designation has proven to be either too costly or administratively burdensome for most towns in Vermont, and as a result, very few designations have been made since the creation of the designation.

(4) By providing landowners the ability to apply for Vermont neighborhood designation directly and in compliance with procedures designed to ensure public notice and participation, developers, municipalities, and Vermonters will likely benefit from expansion of the Vermont neighborhoods program and the types of smart growth development it promotes.

Sec. 23a. 24 V.S.A. § 2793d is amended to read:

§ 2793d. DESIGNATION OF VERMONT NEIGHBORHOODS

(a) ~~A~~ The Vermont downtown development board may designate a Vermont neighborhood in 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. An application for designation may be made by a municipality or by a landowner who meets the criteria under subsection (f) of this section. A municipal decision to apply for designation shall be made by the municipal legislative body after at least one duly warned public hearing. An application by a municipality or a landowner shall be made after at least one duly warned public hearing by the legislative body. If the application is submitted by a landowner, the legislative body shall duly warn a joint public hearing with the appropriate municipal panel, which hearing shall be held concurrently with the local permitting process. Designation pursuant to this subsection is possible in two different situations:

(1) Per se approval. If a municipality or landowner submits an application in compliance with this subsection for a designated Vermont neighborhood that would have boundaries that are entirely within the boundaries of a designated downtown district, designated village center, designated new town center, or designated growth center, the downtown board shall issue the designation.

(2) Designation by downtown board in towns without growth centers. If an application is submitted in compliance with this subsection by a municipality or a landowner in 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 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 or landowner has notified the regional planning commission and the regional development corporation of its application for this designation.

\* \* \*

(f) Alternative designation in towns without density or design standards. If a municipality has not adopted either the minimum density requirements or design standards, or both, set out in subdivision (c)(5) of this section in its zoning bylaw, a landowner within a proposed Vermont neighborhood may apply to the downtown board for designation of a Vermont neighborhood that meets the standards set out in subdivision (c)(5) of this section by submitting:

(1) a copy of the plans and necessary municipal permits obtained for a project; and

(2) a letter of support for the project issued to the landowner from the municipality within 30 days of the effective date of a final municipal permit.

#### Sec. 24. FINDINGS: SMALL CONDOMINIUM EXCEPTION TO UCIOA

##### The general assembly finds:

(1) There are two kinds of common interest communities governed by the Vermont Common Interest Ownership Act: planned communities and condominiums, either of which may be used for the subdivision of land or for the subdivision of a building.

(2) Under current law, a small planned community of 24 or fewer units is exempt from all but three sections of Title 27A, but only if a declarant does not reserve any development rights.

(3) Certain projects require a reservation of development rights because they are developed in phases, and later phases are often not completely designed when a developer begins construction, particularly in cases that blend affordable rentals with subsidized home ownership units, or in projects that include rental housing mixed with commercial space.

(4) By including an exception for small condominium projects, developers of affordable housing and mixed use projects have the statutory authority necessary to utilize most effectively monies available through

programs such as the new markets tax credit program, the low income housing tax credit, the community development institutions fund, and diverse private and nonprofit capital streams to maximize funding opportunities for these projects.

Sec. 25. 27A V.S.A. § 1-209 is amended to read:

§ 1-209. SMALL CONDOMINIUMS; EXCEPTION; ACCESS TO MIXED FUNDING SOURCES

~~A condominium that will contain no more than 12 units and is not subject to any development rights, unless the declaration provides that the entire act is applicable, shall not be subject to subsection~~ Subsection 2-101(b), subdivisions 2-109(b)(2) and (11), subsection 2-109(g), section 2-115, and Article 4 of this title shall not apply to a condominium if the declaration:

(1) creates fewer than ten units; and

(2) restricts ownership of a unit to entities that are controlled by, affiliated with, or managed by the declarant.

Sec. 26. REPEAL

Sec. 12 of No. 155 of the Acts of the 2009 Adj. Sess. (2010) (repeal of 27A V.S.A. § 1-209, effective January 1, 2012) is repealed.

Secs. 27–28. [RESERVED]

\* \* \* Economic Development Planning \* \* \*

Sec. 29. 3 V.S.A. § 2293 is amended to read:

§ 2293. DEVELOPMENT CABINET

(a) Legislative purpose. The general assembly deems it prudent to establish a permanent and formal mechanism to assure collaboration and consultation among state agencies and departments, in order to support and encourage Vermont's economic development, while at the same time conserving and promoting Vermont's traditional settlement patterns, its working and rural landscape, its strong communities, and its healthy environment, all in a manner set forth in this section.

(b) Development cabinet. A development cabinet is created, to consist of the secretaries of the agencies of administration, of natural resources, of commerce and community affairs, and of transportation, and the secretary of the agency of agriculture, food and markets. The governor or the governor's designee shall chair the development cabinet. The development cabinet shall advise the governor on how best to implement the purposes of this section, and shall recommend changes as appropriate to improve implementation of those purposes. The development cabinet may establish interagency work groups to

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support its mission, drawing membership from any agency or department of state government.

(c) All state agencies that have programs or take actions affecting land use, including those identified under 3 V.S.A. chapter 67, shall, through or in conjunction with the members of the development cabinet:

(1) Support conservation of working lands and open spaces.

(2) Strengthen agricultural and forest product economies, and encourage the diversification of these industries.

(3) Develop and implement plans to educate the public by encouraging discussion at the local level about the impacts of poorly designed growth, and support local efforts to enhance and encourage development and economic growth in the state's existing towns and villages.

(4) Administer tax credits, loans, and grants for water, sewer, housing, schools, transportation, and other community or industrial infrastructure, in a manner consistent with the purposes of this section.

(5) To the extent possible, endeavor to make the expenditure of state appropriations consistent with the purposes of this section.

(6) Encourage development in, and work to revitalize, land and buildings in existing village and urban centers, including "brownfields," housing stock, and vacant or underutilized development zones. Each agency is to set meaningful and quantifiable benchmarks.

(7) Encourage communities to approve settlement patterns based on maintaining the state's compact villages, open spaces, working landscapes, and rural countryside.

(8) Encourage relatively intensive residential development close to resources such as schools, shops, and community centers and make infrastructure investments to support this pattern.

(9) Support recreational opportunities that build on Vermont's outstanding natural resources, and encourage public access for activities such as boating, hiking, fishing, skiing, hunting, and snowmobiling. Support and work collaboratively to make possible sound development and well-planned growth in existing recreational infrastructure.

(10) Provide means and opportunity for downtown housing for mixed social and income groups in each community.

(11) ~~Report annually to the governor and the legislature, through the chair of the development cabinet and the secretary of administration, on the effectiveness and impact of this section on the state's economic growth and~~

~~land use development and the activities of the council of regional commissions.~~

(12) Encourage timely and efficient processing of permit applications affecting land use, including 10 V.S.A. chapter 151 and the subdivision regulations adopted under 18 V.S.A. § 1218, in order to encourage the development of affordable housing and small business expansion, while protecting Vermont's natural resources.

(13) Participate in creating a long-term economic development plan, including making available the members of any agency or department of state government as necessary and appropriate to support the mission of an interagency work group established under subsection (b) of this section.

(d)(1) Pursuant to the recommendations of the oversight panel on economic development created in Sec. G6 of No. 146 of the Acts of the 2009 Adj. Sess. (2010), the development cabinet shall create an interagency work group as provided in subsection (b) of this section with the secretary of commerce and community development serving as its chair.

(2) The mission of the work group shall be to develop a long-term economic development plan for the state, which shall identify goals and recommend actions to be taken over ten years, and which shall be consistent with the four goals of economic development identified in 10 V.S.A. § 3 and the outcomes for economic development identified in Sec. 8 of No. 68 of the Acts of the 2009 Adj. Sess. (2010).

(e)(1) On or before January 15, 2014, and every two years thereafter, the development cabinet or its work-group shall complete a long-term economic development plan as required under subsection (d) of this section and recommend it to the governor.

(2) Commencing with the plan due on or before January 15, 2016, the development cabinet or its work-group may elect only to prepare and recommend to the governor an update of the long-term economic development plan.

(3) Administrative support for the economic development planning efforts of the development cabinet or its work-group shall be provided by the agency of commerce and community development.

~~(d)(f)~~ Limitations. This cabinet is strictly an information gathering and coordinating cabinet and confers no additional enforcement powers.

Sec. 30. 24 V.S.A. chapter 117 is amended to read:

CHAPTER 117. MUNICIPAL AND REGIONAL PLANNING AND  
DEVELOPMENT

\* \* \*

§ 4348b. READOPTION OF REGIONAL PLANS

(a) Unless they are readopted, all regional plans, including all prior amendments, shall expire every eight years.

(b)(1) 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 re adoption, 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~~ prepare an assessment report which shall be submitted to the agency of commerce and community development and the municipalities within the region. The assessment report may include:

(A) the extent to which the plan has been implemented since adoption or re adoption;

(B) an evaluation of the goals and policies and any amendments necessary due to changing conditions of the region;

(C) an evaluation of the land use element and any amendments necessary to reflect changes in land use within the region or changes to regional goals and policies;

(D) priorities for implementation in the next five years; and

(E) updates to information and data necessary to support goals and policies.

(2) The readopted plan shall remain in effect for the ensuing eight 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.

\* \* \*

Sec. 31. [RESERVED]

Sec. 32. 24 V.S.A. § 4348a is amended to read:

§ 4348a. ELEMENTS OF A REGIONAL PLAN

(a) A regional plan shall be consistent with the goals established in section 4302 of this title and shall include but need not be limited to the following:

\* \* \*

(10) An economic development element that describes present economic conditions and the location, type, and scale of desired economic development, and identifies policies, projects, and programs necessary to foster economic growth.

\* \* \*

Sec. 33. 24 V.S.A. § 4382 is amended to read:

§ 4382. THE PLAN FOR A MUNICIPALITY

(a) A plan for a municipality may be consistent with the goals established in section 4302 of this title and compatible with approved plans of other municipalities in the region and with the regional plan and shall include the following:

\* \* \*

(11) An economic development element that describes present economic conditions and the location, type, and scale of desired economic development, and identifies policies, projects, and programs necessary to foster economic growth.

\* \* \*

\* \* \* Agriculture; Vermont Sustainable Jobs Fund \* \* \*

Sec. 34. SLAUGHTERHOUSE AND MEAT PROCESSING FACILITY CAPACITY

The agency of agriculture, food and markets is authorized to issue one or more competitive matching grants to increase slaughterhouse and meat processing facility capacity throughout the state. Funds made available in a fiscal year for this section shall be used exclusively for direct grants and shall not be used for administration of the program.

Sec. 35. FINDINGS: VERMONT SUSTAINABLE JOBS FUND (VSJF)

The general assembly finds:

(1) In order to access funds available from the community development financial institutions fund, the nonprofit corporation Vermont sustainable jobs must demonstrate that it is sufficiently independent from control of government.

(2) The general assembly has made a substantial investment in recent years to enable the work of VSJF in enhancing the agricultural sector and resources within the state, and finds it important to maintain a presence on the board while allowing VSJF to access additional sources of funding.

(3) Therefore, the purpose and intent of Secs. 35a through 38 of this act is to authorize a change in the composition of the VSJF board to allow it to access necessary funds.

Sec. 35a. 10 V.S.A. § 328 is amended to read:

§ 328. CREATION OF THE SUSTAINABLE JOBS FUND PROGRAM

\* \* \*

(c)(1) Notwithstanding the provisions of 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 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;~~

(A) the secretary of commerce and community development or his or her designee;

(B) the secretary of agriculture, food and markets or his or her designee;

(C) a director appointed by the governor; and

(D) eight independent directors, no more than two of whom shall be state government employees or officials, and who shall be selected as vacancies occur by vote of the existing directors from a list of names offered by a nominating committee of the board created for that purpose.

(2)(A) Each independent director shall serve a term of three years or until his or her earlier resignation.

(B) A director may be reappointed, but no independent director and no director appointed by the governor shall serve for more than three terms.

(C) The director appointed by the governor shall serve at the pleasure of the governor and may be removed at any time with or without cause.

(3) A director of the board who is or is appointed by a state government official or employee shall not be eligible to hold the position of chair, vice chair, secretary, or treasurer of the board.

\* \* \*

Sec. 36. VERMONT SUSTAINABLE JOBS FUND BOARD OF DIRECTORS; TRANSITION

Notwithstanding any other provision of law to the contrary, and notwithstanding any provision of the articles of incorporation or the bylaws of the corporation:

(1) The chair, vice chair, and secretary of the Vermont sustainable jobs fund board of directors as of January 1, 2011 shall constitute an initial nominating committee charged with appointing eight independent directors who shall take office on July 1, 2011.

(2) The initial nominating committee shall appoint each independent director to serve a term of one, two, or three years. Independent director terms shall be staggered so that the terms of no more than three members expire during a calendar year.

(3) The terms of the directors in office on the date of passage of this act shall expire on July 1, 2011.

Sec. 37. REPEAL

Secs. G18 and G19 of No. 146 of the Acts of the 2009 Adj. Sess. (2010) are repealed.

Sec. 38. Sec. G28 of No. 146 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

Sec. G28. EFFECTIVE DATES

Secs. G1 through G28 of this act (economic development) shall take effect upon passage, ~~except that Secs. G18 and G19 (Vermont sustainable jobs~~

~~(A) Secs. G18 and G19 (Vermont sustainable job fund program) shall take effect upon the cessation of state funding to the program from the general fund.~~

Sec. 39. 6 V.S.A. § 20 is amended to read:

§ 20. VERMONT LARGE ANIMAL VETERINARIAN EDUCATIONAL LOAN REPAYMENT FUND

(a) There is created a special fund to be known as the Vermont large animal veterinarian educational loan repayment fund that shall be used for the purpose of ensuring a stable and adequate supply of large animal veterinarians ~~throughout~~ in regions of the state as determined by the secretary. The fund shall be established and held separate and apart from any other funds or monies of the state and shall be used and administered exclusively for the purpose of this section. The money in the fund shall be invested in the same manner as permitted for investment of funds belonging to the state or held in the treasury.

---

\* \* \*

Sec. 40. 6 V.S.A. chapter 207 is amended to read:

~~CHAPTER 207. STATE AGENCIES AND STATE FUNDED  
INSTITUTIONS TO PURCHASE PROMOTION AND MARKETING OF  
VERMONT FOODS AND PRODUCTS~~

\* \* \*

§ 4602. GOOD AGRICULTURAL PRACTICES GRANT PROGRAM

(a) A good agricultural practices grant program (GAP) is established in the agency of agriculture, food and markets for the purpose of providing matching grant funds to agricultural producers whose markets require them to obtain or maintain GAP certification.

(b) The secretary may award matching grants for capital upgrades that will support Vermont agricultural producers in obtaining GAP certification. The amount of matching funds required by an applicant for a GAP certification grant shall be determined by the secretary.

(c) An applicant may receive no more than 10 percent of the total funds appropriated for the program in a fiscal year.

Sec. 41. 6 V.S.A. § 3319 is added to read:

§ 3319. SKILLED MEAT CUTTER TRAINING

The secretary shall issue a request for proposals to develop a curriculum and provide classroom and on-the-job training for the occupation of skilled meat cutter.

Sec. 42. 6 V.S.A. § 4724 is added to read:

§ 4724. LOCAL FOODS COORDINATOR

(a) The position of local food coordinator is established in the agency of agriculture, food and markets for the purpose of assisting Vermont producers to increase their access to commercial markets and institutions, including schools, state and municipal governments, and hospitals.

(b) The duties of the local foods coordinator shall include:

(1) working with institutions, distributors, producers, commercial markets, and others to create matchmaking opportunities that increase the number of Vermont institutions that purchase foods grown or produced in Vermont;

(2) coordinating funding and providing support to the farm-to-school and farm-to-institutions programs within the agency of agriculture, food and

markets, and coordinating with interested parties to create matchmaking opportunities that increase participation in those programs;

(3) encouraging and facilitating the enrollment of state employees in a local community supported agriculture (CSA) organization;

(4) developing a database of producers and potential purchasers and enhancing the agency's website to improve and support local foods coordination through the use of information technology; and

(5) providing technical support to local communities with their food security efforts.

(c) The local foods coordinator, working with the commissioner of buildings and general services pursuant to rules adopted under 29 V.S.A. § 152(14), shall:

(1) encourage and facilitate CSA enrollment by state employees through the use of approved advertisements and solicitations on state-owned property; and

(2) implement guidelines for the appropriate use of state property for employee participation in CSA organizations, including reasonable restrictions on the time, place, and manner of solicitations, advertisements, deliveries, and related activities to ensure the safety and welfare of state property and its occupants.

(d) The local foods coordinator shall administer a local foods grant program, the purpose of which shall be to provide grants to allow Vermont producers to increase their access to commercial and institutional markets.

Sec. 43. FARM-TO-PLATE INVESTMENT PROGRAM IMPLEMENTATION

(a)(1) The agency of agriculture, food and markets shall coordinate with the Vermont sustainable jobs fund program established under 10 V.S.A. § 328, stakeholders, and other interested parties, including the agriculture development board, to implement actions necessary to fulfill the goals of the farm-to-plate investment program as established under 10 V.S.A. § 330.

(2) The actions shall be guided by, but not limited to, the strategies outlined in the farm-to-plate strategic plan.

(3) The agency shall develop and maintain a report of the actions undertaken to achieve the goals of the farm-to-plate investment program and the farm-to-plate strategic plan.

(b) The secretary of agriculture, food and markets may contract with a third party to assist the agency with implementation of the program, to track those activities over time, and to develop a report on the progress of the program.

Sec. 44. [RESERVED]

\* \* \* Consumer Protection; Local Florists \* \* \*

Sec. 45. 9 V.S.A. § 2465b is added to read:

§ 2465b. MISREPRESENTATION OF A FLORAL BUSINESS AS LOCAL

(a) In connection with the sale of floral products, it shall be an unlawful and deceptive act and practice in commerce in violation of section 2453 of this title for a floral business to misrepresent in an advertisement, on the Internet, on a website, or in a listing of the floral business in a telephone directory or other directory assistance database the geographic location of the floral business as “local,” “locally owned,” or physically located within Vermont.

(b) A floral business is considered to misrepresent its geographic location that it is “local,” “locally owned,” or located within Vermont in violation of subsection (a) of this section if the floral business is not physically located in Vermont and:

(1) the advertisement, Internet, web site, or directory listing would lead a reasonable consumer to conclude that the floral business is physically located in Vermont; or

(2) the advertisement, Internet, web site, or directory listing uses the name of a floral business that is physically located in Vermont, with geographic terms that would lead a reasonable consumer to understand the advertised floral business to be physically located in Vermont.

(c) A retail floral business physically located in Vermont shall be deemed a consumer for the purposes of enforcing this section under § 2461(b) of this chapter.

\* \* \* Study of Vermont Building Codes \* \* \*

Sec. 46. STUDY; VERMONT BUILDING CODES

(a) Findings.

(1) The state of Vermont has two codes that are used to regulate construction in public buildings: one is the International Code Council (ICC) that publishes the International Building Code (IBC) which is adopted by the State, the other is the National Fire Protection Association (NFPA), that publishes the Life Safety Code and Uniform Fire Code adopted by the state. In most cases, the life safety codes do not regulate the actual construction of

buildings, but rather, are designed to protect life safety and property. Other states may use only the International Code Council codes; however, these codes have greater than 300 references to the NFPA codes; in addition, these states also have modified the code for particular local or state issues. Some states have no building codes at all.

(2) Construction is regulated under the division of fire safety and by municipal code officials. Application of these codes should be consistent throughout the state. This would help to reduce confusion with contractors, design professionals, and the enforcement staff located in regional offices and municipalities. It would also reduce time during the design process and improve efficiency. The issues are further complicated when determining the appropriate application of one or more codes to both new buildings and to existing buildings. It is realized that the IBC code is not appropriate to use for existing buildings which may present differing concerns from the perspective of both construction and design professionals; however, those working in the field of existing building renovation understand that the use of the NFPA codes is applied by public safety.

(3) Notwithstanding these competing perspectives, Vermont's blend of codes remains difficult for most professionals from all perspectives to interpret and apply. It is appropriate for design professionals to meet with division staff during preconstruction of complex design; this is a free service which is encouraged. A better understanding of the codes through education and cooperation would substantially reduce public resources.

(4) The general assembly therefore has determined that it should create an interim committee to consider whether the process may be simplified to improve clarity and reduce regulatory costs without reducing life safety for occupants and for first responders in the case of emergency.

(b) Creation of committee. There is created a building code study committee to evaluate the present use of multiple building and life safety codes, to assess the costs and benefits of each, to recommend to the general assembly whether one or more codes should be used going forward, and to what types of buildings or classes of buildings they should be applied.

(c) Membership. The building code study committee shall be composed of the following:

(1) one member appointed by the commissioner of public safety who shall be an employee of the division of fire safety and who shall serve as chair of the committee;

(2) one member appointed by the AIA-VT who shall be a licensed architect;

(3) one member appointed by the Structural Engineers Association of Vermont who shall be a structural engineer;

(4) two members from the emergency services sector, one of whom shall be appointed by the Vermont Coalition of Fire and Rescue Services and shall be a professional firefighter, and one of whom shall be appointed by the Vermont Ambulance Association and who shall be an emergency medical technician;

(5) one member appointed by the Associated General Contractors of Vermont who is a general contractor;

(6) one member appointed by the governor who shall be a representative of a nonprofit developer;

(7) two members appointed by the Vermont League of Cities and Towns, one from a city and one from a town, and each of whom represents the interests of municipalities that administer building code programs;

(8) one member appointed by the secretary of commerce and community development who shall have expertise in historic preservation.

(9) the commissioner of buildings and general services or his or her designee.

(d) Report. On or before January 15, 2011, the committee shall report its findings and any recommendations for legislative action to the house committees on commerce and economic development and on general, housing and military affairs, and to the senate committee on economic development, housing and general affairs.

(e) The committee may meet no more than six times, shall serve without compensation, and shall cease to exist on January 31, 2012.

Sec. 47–49. [RESERVED]

\* \* \* Website for Affiliates of Online Retailers Collecting  
Sales Tax \* \* \*

Sec. 50. ACCD; WEBSITE FOR AFFILIATES OF ONLINE BUSINESSES

The agency of commerce and community development shall create a website, or a new section of its website, the purpose of which shall be to provide matchmaking opportunities for Vermont companies to affiliate with online retailers that collect and remit sales tax on purchases made online.

Sec. 51–59. [RESERVED]

\* \* \* First and Second Class Liquor Licenses; Food Service \* \* \*

Sec. 60. 7 V.S.A. § 222 is amended to read:

§ 222. FIRST AND SECOND CLASS LICENSES, GRANTING OF; SALE TO MINORS; CONTRACTING FOR FOOD SERVICE

\* \* \*

~~(4)(A) A holder of a first class license may contract with another person to prepare and dispense food on the license holder's premises. The first class license holder may have no more than 75 events each year under this subdivision. At least five days prior to each event under this subdivision, the first class license holder shall provide to the department of liquor control written notification that includes the name and address of the license holder, the date and time of the event and the name and address of the person who will provide the food.~~

(B) The first class license holder shall provide to the department written notification five business days prior to start of the contract the following information:

(i) the name and address of the license holder;

(ii) a signed copy of the contract;

(iii) the name and address of the person contracted to provide the food;

(iv) a copy of the person's license from the department of health for the facility in which food is served; and

(v) the person's rooms and meals tax certificate from the department of taxes.

(C) The holder of the first class license shall notify the department within five business days of the termination of the contract to prepare and dispense food. It is the responsibility of the first class licensee to control all conduct on the premises at all times, including the area in which the food is prepared and stored.

Secs. 61–63. [RESERVED]

Sec. 64. STUDY; PRIVATE ACTIVITY BONDS

(a) Findings.

(1) Due to changes in federal law governing underwriting and servicing student loans, the Vermont student assistance corporation (VSAC) has experienced a substantial decrease in its ability to generate revenue and is currently downsizing its operation.

(2) As a result, the general assembly finds that VSAC's private activity bond allocation, which in recent years has exceeded \$100 million, may be available for use as an economic development tool, and that the secretary of administration should review the process of allocation and the potential uses to which the state's allocation should be dedicated.

(b) On or before November 1, 2011, the secretary of administration, in collaboration with the office of the treasurer, shall review and report his or her findings to the house committee on commerce and economic development and to the senate committee on economic development, housing and general affairs concerning:

(1) the state's current process for allocation of private activity bond capacity, including whether the process should be modified to increase participation by the public and interested parties; and

(2) a cost-benefit analysis of one or more projects that may be suitable for private activity bond funding.

\* \* \* Southeast Vermont Economic Development Strategy \* \* \*

Sec. 65. SOUTHEAST VERMONT ECONOMIC DEVELOPMENT STRATEGY

The general assembly finds:

(1) In light of the scheduled closure of the Vermont Yankee nuclear facility in March 2012, Windham County will experience dramatic regional economic dislocation and will require additional support beyond background economic development programs.

(2) Windham County is currently undertaking an economic development planning process, the Southeast Vermont Economic Development Strategy (SeVEDS), the purpose of which is to prepare for the economic shift that will occur upon closure of Vermont Yankee. The process is now funded by Fairpoint Communications, but that funding will expire prior to completion of the process.

(3) The general assembly therefore finds it appropriate to provide funding to support the completion of the SeVEDS and to support workforce development and other activities that will assist Windham County in addressing the adverse economic consequences of the closure of Vermont Yankee, with particular emphasis on supporting Vermont Yankee employees and their families in securing new employment in Windham County.

\* \* \* Next Generation Initiative Fund;  
Appropriations, Transfers, and Funding \* \* \*

Sec. 66. Sec. B.1100(a)(1)(B) of H.441 of 2011 (Sec. B.1100 of No. \_\_ of the Acts of 2011) is amended to read:

(B) Adult Technical Education Programs. The amount of \$360,000 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. ~~Notwithstanding any other provision of law to the contrary, the funds appropriated pursuant to this subdivision (B) shall be evenly divided among the regional technical centers and the comprehensive high schools based on the level of resources provided pursuant to performance contracts.~~

Sec. 67. Sec. B.1100.1(a) of H. 441 of 2011 (Sec. B.1100.1 of No. \_\_ of the Acts of 2011) is amended by striking subsection B.1100.1(a) in its entirety and inserting a new Sec. B.1100.1 to read:

Sec. B.1100.1 WORKFORCE DEVELOPMENT COUNCIL  
RECOMMENDATION FOR FISCAL YEAR 2013 NEXT GENERATION  
FUND DISTRIBUTION

The department of labor, in coordination with the agency of commerce and community development, the agency of human services, and the department of education, and in consultation with the workforce development council, shall recommend to the governor no later than November 1, 2011, on how \$4,793,000 from the next generation fund should be allocated or appropriated in fiscal year 2013 to provide maximum benefit to workforce development, participation in postsecondary education by underrepresented groups, and support for promising economic sectors in Vermont.

Secs. 68–69. [RESERVED]

\* \* \* State Contracting; Net Costs of Contracting \* \* \*

Sec. 70. FINDINGS: NET COSTS OF GOVERNMENT CONTRACTING

The general assembly finds:

(1) The state of Vermont is a significant purchaser of goods and services. As a result, the purchasing policies of the state of Vermont both influence the practices of vendors and have a fiscal impact on the state.

(2) Although multiple factors are considered in the procurement process, Vermont often selects the lowest bids for goods and services contracts and

does not consistently account for the true economic costs of procurement from out-of-state providers relative to local and socially responsible providers.

(3) This policy fails to account for the fact that procurement decisions based on a bid price alone do not necessarily account for the total fiscal impact to the state of the bid award. Among the fiscal impacts to the state inherent in bid proposals are: the amount of wages paid to Vermont resident employees, the local spending effect of earned wages and profits in the Vermont economy by Vermont residents, revenue effects of purchasing of goods and services from other Vermont businesses in support of the primary vendor's submitting the bid, the possible reduction of Vermont unemployment, and the possible reduction in public assistance programs that result from earned wages.

(4) In recognition of the total fiscal impacts of state procurement practices, new procurement policies are required to ensure that the state of Vermont makes sound financial decisions that reflect the whole cost of contracts.

#### Sec. 71. STUDY; NET COST OF GOVERNMENT CONTRACTING; ECONOMETRIC MODELING

(a) The secretary of administration shall conduct a study on the net economic costs and benefits of government contracting and how the state may most effectively increase purchasing of in-state products and services.

(b) As a component of the study, the secretary shall investigate the development of an econometric model, based on or similar to the REMI model currently used by the executive and legislative economists, to allow state agencies and departments to evaluate the net costs and economic impacts of government contracts for goods and services. The secretary may, in his or her discretion, contract for the development of an econometric model that would:

(1) consider the net fiscal impact to the state of all significant elements of bids, including the level of local employment, wages and benefits, source of goods, and domicile of bidder;

(2) be designed to be easily updated from year to year; and

(3) be designed such that state employees administering bid processes can easily utilize the model in an expedient fashion.

(c) On or before January 15, 2012, the secretary shall submit a report of his or her findings to the senate committees on finance, on economic development, housing and general affairs, and on government operations, and to the house committees on commerce and economic development and on government operations.

Sec. 72. 29 V.S.A. § 909 is added to read:

§ 909. STATE PURCHASE OF FOOD AND AGRICULTURAL PRODUCTS

(a) When procuring food and agricultural products for the state, its agencies, departments, instrumentalities, and institutions, the commissioner of buildings and general services shall consider the interests of the state relating to the proximity of the supplier and the costs of transportation, and relating to the economy of the state and the need to maintain and create jobs in the state.

(b) When making purchases pursuant to this section, the secretary of administration, the commissioner of buildings and general services, and any state-funded institutions shall, other considerations being equal and considering the results of any econometric analysis conducted, purchase products grown or produced in Vermont when available.

Sec. 73. REPEAL

6 V.S.A. § 4601 (purchase of Vermont agricultural products) is repealed.

Sec. 72–75. [RESERVED]

Sec. 76. 7 V.S.A. § 2 is amended to read:

§ 2. DEFINITIONS

The following words as used in this title, unless a contrary meaning is required by the context, shall have the following meaning:

\* \* \*

(32) “Art gallery or bookstore permit”: a permit granted by the liquor control board permitting an art gallery or bookstore to conduct an event at which malt or vinous beverages or both are served by the glass to the public, provided that the event is approved by the local licensing authority. A permit holder may purchase malt or vinous beverages directly from a licensed retailer. A permit holder shall be subject to the provisions of this title and the rules of the board regarding the service of alcoholic beverages. A request for a permit shall be submitted to the department in a form required by the department at least five days prior to the event and shall be accompanied by the permit fee required by subdivision 231(a)(22) of this title.

Sec. 77. 7 V.S.A. § 231 is amended to read:

§ 231. FEES FOR LICENSES; DISPOSITION OF FEES

(a) The following fees shall be paid:

\* \* \*

(22) For an art gallery or bookstore permit, \$15.00.

\* \* \*

Sec.78. 9 V.S.A. § 2466 is amended to read:

§ 2466. GOODS AND SERVICES APPEARING ON TELEPHONE BILL

(a) ~~No~~ Except as provided in subsection (f) of this section, a seller shall not bill a consumer for goods or services that will appear as a charge on the person's local telephone bill without the consumer's express authorization bill for telephone service provided by any local exchange carrier.

~~(b) No later than the tenth business day after a seller has entered into a contract or other agreement with a consumer to sell or lease or otherwise provide for consideration goods or services that will appear as a charge on the consumer's local telephone bill, the seller shall send, or cause to be sent, to the consumer, by first class mail, postage prepaid, a notice of the contract or agreement.~~

~~(c) The notice shall clearly and conspicuously disclose:~~

~~(1) The nature of the goods or services to be provided;~~

~~(2) The cost of the goods or services;~~

~~(3) Information on how the consumer may cancel the contract or agreement;~~

~~(4) The consumer assistance address and telephone number specified by the attorney general;~~

~~(5) That the charges for the goods or services may appear on the consumer's local telephone bill; and~~

~~(6) Such other information as the attorney general may prescribe by rule.~~

~~(d) The notice shall be a separate document sent for the sole purpose of providing to the consumer the information required by subsection (c) of this section. The notice shall not be combined with any sweepstakes offer or other inducement to purchase goods or services.~~

~~(e) The sending of the notice required by this section is not a defense to a claim that a consumer did not consent to enter into the contract or agreement.~~

~~(f) No person shall arrange on behalf of a seller of goods or services, directly or through an intermediary, with a local exchange carrier, to bill a consumer for goods or services unless the seller complies with other than as permitted by this section. This prohibition applies, but is not limited, to persons who aggregate consumer billings for a seller and to persons who serve as a clearinghouse for aggregated billings.~~

~~(g)~~(c) Failure to comply with this section is an unfair and deceptive act and practice in commerce under this chapter.

~~(h)~~(d) The attorney general may make rules and regulations to carry out the purposes of this section.

~~(i)~~(e) Nothing in this section limits the liability of any person under existing statutory or common law.

~~(j)~~(f)(1) This section shall apply to billing aggregators described in 30 V.S.A. § 231a, but shall ~~does not apply to: sellers regulated by~~

(A) billing for goods or services marketed or sold by persons subject to the jurisdiction of the Vermont public service board under Title 30, other than section 231a of Title 30 30 V.S.A. § 203;

(B) billing for direct dial or dial around services initiated from the consumer's telephone; or

(C) operator-assisted telephone calls, collect calls, or telephone services provided to facilitate communication to or from correctional center inmates.

(2) Nothing in this section affects any rule issued by the Vermont public service board.

\* \* \* Appropriations and Allocations \* \* \*

## Sec. 100. APPROPRIATIONS AND ALLOCATIONS

(a) In fiscal year 2012:

(1) The amount of \$25,000.00 is appropriated from the general fund to the department of labor for the long-term unemployed hiring incentive in Sec. 7 of this act.

(2) The amount of \$475,000.00 is appropriated from the general fund to the agency of agriculture, food and markets as follows:

(A) \$100,000.00 for the good agricultural practices grant program in Sec. 40 of this act.

(B) \$25,000.00 for the skilled meat cutter apprenticeship program in Sec. 41 of this act.

(C) \$125,000.00 for the local foods coordinator and the local foods grant program in Sec. 42 of this act, not more than \$75,000.00 of which funds shall be used for the total annual compensation of the coordinator, and not less than \$50,000.00 of which funds shall be used for the performance of the local foods coordinator's duties under this act and for competitive matching grants from the agency to Vermont producers, unless in the secretary's discretion it

shall be necessary to increase the amount of total compensation of the local foods coordinator in order to retain a highly qualified candidate for the position.

(D) \$100,000.00 for implementation of the farm-to-plate investment program in Sec. 43 of this act.

(E) \$75,000.00 for competitive matching grants for the farm-to-school program established in 6 V.S.A. § 4721.

(F) \$50,000.00 for competitive matching grants to increase slaughterhouse and meat processing facility capacity as authorized in Sec. 34 of this act.

(3) The amount of \$25,000.00 is appropriated from the general fund to the agency of commerce and community development for a matching grant to the Vermont Employee Ownership Center.

(b) The following Next Generation funds are appropriated in Sec. B 1100 of H.441 of 2011 in fiscal year 2012:

(1) \$350,000.00 to the department of labor for the Vermont career internship program in Secs. 11–13 of this act.

(2) \$30,000.00 to the agency of agriculture, food and markets for the Vermont large animal veterinarian educational loan repayment fund in Sec. 39 of this act.

(3) \$25,000.00 to the agency of commerce and community development to fund the completion of the southeast Vermont economic development strategy, workforce development, and other activities pursuant to Sec. 65 of this act.

(4) \$32,500.00 to the agency of commerce and community development for the STEM incentive program in Sec. 6 of this act.

(5) Of the amount appropriated to the workforce education and training fund, and notwithstanding 10 V.S.A. § 543(d), up to \$15,000.00 for transfer to the secretary of administration for the work of the executive economist, and to reimburse the joint fiscal office for the work of the legislative economist, to conduct a study on government contracting, and to develop an econometric model for the evaluation of net costs of government contracts pursuant to Sec. 71 of this act.

(c) Of the funds appropriated to the agency of commerce and community development in fiscal year 2012, \$100,000.00 shall be allocated for the office of creative economy created in Secs. 15–16 of this act.

(d) Of the general funds appropriated to the department of labor in H.441 of 2011:

(1) \$106,395.00 shall be allocated to fund performance grants for regional workforce development activities pursuant to Sec. 14 of this act, not more than seven percent of which funds may be used for administration of the program.

(2) \$25,000.00 shall be allocated for transfer to the secretary of commerce and community development to fund the completion of the southeast Vermont economic development strategy, workforce development, and other activities pursuant to Sec. 65 of this act.

(3) Up to \$15,000.00 shall be allocated for transfer to the secretary of administration for the work of the executive economist, and to reimburse the joint fiscal office for the work of the legislative economist, to conduct a study on government contracting, and to develop an econometric model for the evaluation of net costs of government contracts pursuant to Sec. 71 of this act.

#### Sec. 101. REPORTING

On or before January 15, 2012, the agency of commerce and community development shall coordinate with each agency, department, or outside entity charged with oversight or implementation of a program or policy change in this act and submit in its annual report to the house committees on commerce and economic development and on agriculture, and to the senate committees on economic development, housing and general affairs and on agriculture:

(1) a performance analysis of each program or policy change following passage of this act;

(2) an analysis of the number of private sector jobs created as a result of each program or policy in this act that has a direct financial impact to the state;

(3) an analysis of each program or policy in this act and the proportion of opportunities distributed to each gender; and

(4) recommendations for future actions in light of performance relative to the intended outcomes for each program or policy change.

#### Sec. 102. EFFECTIVE DATES; IMPLEMENTATION

(a) This act shall take effect upon passage, except that Secs. 30–33 shall take effect July 1, 2012.

(b) Notwithstanding any other provision of law to the contrary, no program funds shall be expended or allocated prior to July 1, 2011.

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

An act relating to job creation, economic development, and buy local agriculture.

*TIMOTHY R. ASHE  
WILLIAM H. CARRIS*

*Committee on the part of the Senate*

*WILLIAM G. F. BOTZOW  
JAMES O. CONDON  
MICHAEL J. MARCOTTE*

*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 27, 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, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Kitchel, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Sears, Snelling, Starr, White.

**The Senator who voted in the negative was:** Illuzzi.

**Those Senators absent and not voting were:** Kittell, Westman.

**Consideration Resumed; Bill Amended; Third Reading Ordered**

#### **S. 15.**

Consideration was resumed on House bill entitled:

An act relating to insurance coverage for midwifery services and home births.

Thereupon, pending the question, Shall the Senate concur in the House 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. 104, H. 201, H. 287.**

**Rules Suspended; Bills Delivered**

On motion of Senator Campbell, the rules were suspended, and the following bills were severally ordered delivered to the Governor forthwith:

**S. 15, S. 100.**

**Adjournment**

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

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**FRIDAY, MAY 6, 2011**

The Senate was called to order by the President.

**Devotional Exercises**

A moment of silence was observed in lieu of devotions.

**Pages Honored**

In appreciation of their many services to the members of the General Assembly, the President recognized the following named pages who are completing their services today and presented them with letters of appreciation.

Zachary Akey of Williston  
Rosie Boucher of Montpelier  
Annik Buley of East Montpelier  
Brenna Coombs of North Chittenden  
Maya Gershun-Half of Hardwick  
Benjamin Janis of Brattleboro  
Isabelle Moody of North Ferrisburg  
Colhoun Rawlings of South Burlington  
August Vitzthum of Montpelier  
Asah Whalen of Marshfield

**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 bills originating in the Senate of the following titles:

**S. 78.** An act relating to the advancement of cellular, broadband, and other technology infrastructure in Vermont.

**S. 96.** An act relating to technical corrections to the workers' compensation statutes.

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

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

**H. 56.** An act relating to the Vermont Energy Act of 2011.

**H. 198.** An act relating to a transportation policy to accommodate all users.

**H. 369.** An act relating to health professionals regulated by the board of medical practice.

**H. 420.** An act relating to the office of professional regulation.

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. 91.** An act relating to the management of fish and wildlife.

And has adopted the same on its part.

#### **Bills Referred**

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

#### **H. 97.**

An act relating to early childhood educators.

To the Committee on Rules.

#### **H. 460.**

An act relating to amending the charter of the city of Barre.

To the Committee on Rules.

#### **Rules Suspended; Committee Relieved of Further Consideration; Bill Committed**

#### **H. 460.**

On motion of Senator Campbell, the rules were suspended, and H. 460 was taken up for immediate consideration, for the purpose of relieving the Committee on Rules from further consideration of the bill. Thereupon, on

motion of Senator Campbell, the Committee on Rules was relieved of House bill entitled:

An act relating to amending the charter of the city of Barre,  
and the bill was committed to the Committee on Government Operations.

**Recess**

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

**Called to Order**

The Senate was called to order by the President.

**Rules Suspended; Third Reading Ordered; Rules Suspended; Bill Passed; Bill Messaged**

**H. 460.**

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 the charter of the city of Barre,

Was taken up for immediate consideration.

Senator Pollina, for the Committee on Government Operations, to which the bill was referred, reported that the bill ought to pass in concurrence.

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

Thereupon, on motion of Senator 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.

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

**Action Reconsidered; House Proposal of Amendment Concurred In**

**S. 104.**

Assuring the Chair that he voted with the majority whereby the bill was messaged to the House, Senator Mullin moved that the Senate reconsider its action on Senate bill entitled:

An act relating to modifications to the ban on gifts by manufacturers of prescribed products.

Which was agreed to.

Thereupon, assuring the Chair he voted with the majority whereby the bill was passed in concurrence by the Senate, Senator Mullin moved that the Senate reconsider its action on Senate Bill S. 104.

Which was agreed to.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, the corrected version of the House proposal of amendment was offered and is as follows:

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

Sec. 1. 18 V.S.A. § 4631a is amended to read:

§ 4631a. 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 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 or for health care services on behalf of an employee of the manufacturer.

(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 for free to a health care provider ~~for free~~ or to a member of the Green Mountain Care board established in chapter 220 of this title; or

(B) 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 or to a member of the Green Mountain Care board established in chapter 220 of this title, unless:

(i) it is an allowable expenditure as defined in subdivision (a)(1) of this section; or

(ii) the health care provider or board member 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.

(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 (7)(A); or

(iii) an officer, employee, agent, or contractor of a person described in subdivision (i) of this subdivision (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 (7) who is employed solely by a manufacturer.

(8) "Health care provider" means a health care professional, 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.

(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, repackaging, 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. The term also does not include a manufacturer whose only prescribed products are classified as Class I by the U.S. Food and Drug Administration, are exempt from pre-market notification under Section 510(k) of the federal Food, Drug and Cosmetic Act, and are sold over-the-counter without a prescription.

(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.

(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.

(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, 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

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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. The term does not include prescribed products distributed free of charge or at a discounted price pursuant to a manufacturer-sponsored or manufacturer-funded patient assistance program.

(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 education credit, features multiple presenters on scientific research, or is authorized by the 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 or to a member of the Green Mountain Care board established in chapter 220 of this title.

(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~~ 120 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.~~ Prescribed products distributed free of charge or at a discounted price pursuant to a manufacturer-sponsored or manufacturer-funded 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) Except as described in subdivisions (a)(1)(B) and (C) of this section, no manufacturer or other entity on behalf of a manufacturer shall provide any fee, payment, subsidy, or other economic benefit to a health care provider in connection with the provider's participation in research.

(d) 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. 2. 18 V.S.A. § 4632 is amended to read:

§ 4632. DISCLOSURE OF ALLOWABLE EXPENDITURES AND GIFTS BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a)(1)(A) Annually on or before ~~October~~ April 1 of each year, every manufacturer of prescribed products shall disclose to the office of the attorney general for the ~~fiscal~~ preceding calendar 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 or to a member of the Green Mountain Care board established in chapter 220 of this title, 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 to health care providers 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 for the use for which the clinical trial is being conducted or ~~two~~ four 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;

(iv) interview or health care 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;

(vi) loans of medical devices for short-term trial periods pursuant to subdivision 4631a(b)(2)(B) of this title, provided the loan results in the purchase, lease, or other comparable arrangement of the medical device after issuance of a certificate of need pursuant to chapter 221, subchapter 5 of this title; and

(vii) prescribed products distributed free of charge or at a discounted price pursuant to a manufacturer-sponsored or manufacturer-funded patient assistance program.

(B) Annually on or before April 1 of each year, every manufacturer of prescribed products shall disclose to the office of the attorney general for the preceding calendar year if the manufacturer is reporting other allowable expenditures or permitted gifts pursuant to subdivision (a)(1)(A) of this section, the product, dosage, number of units, and recipient information of over-the-counter drugs, nonprescription medical devices, and items of nonprescription durable medical equipment provided to a health care provider for free distribution to patients pursuant to subdivision 4631a(b)(2)(A) of this title; provided that any public reporting of such information 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.

(C) Annually on or before April 1 of each year, every manufacturer of prescribed products shall disclose to the office of the attorney general for the preceding calendar year the value, nature, purpose, and recipient information of any allowable expenditure or gift 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 for the use for which the clinical trial is being conducted or two ~~two~~ four calendar years after the date the payment was made. For a clinical trial for which disclosure is delayed under this subdivision (iii), the manufacturer shall identify to the attorney general the clinical trial, the start date, and the web link to the clinical trial registration on the national clinical trials registry.

(2)(A)(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~~ determines 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.

(3) Annually on ~~July~~ January 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.

(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~~ subdivisions (a)(1)(B) and (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 or, in the case of an institution, foundation, or organization, the federal tax identification number or the identification number assigned by the attorney general.

(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~~ October 1. The report shall include:

(A) Information on allowable expenditures and permitted gifts required to be disclosed under this section, which shall ~~be presented in both present information in~~ aggregate form ~~and~~ by selected types of health care providers or individual health care providers, as prioritized each year by the office; and showing the amounts expended on the Green Mountain Care board established in chapter 220 of this title. In accordance with subdivisions (1)(B) and (2)(A) of this subsection, information on samples of prescribed products and of over-the-counter drugs, nonprescription medical devices, and items of nonprescription durable medical equipment shall be presented in aggregate form.

(B) Information on violations and enforcement actions brought pursuant to this section and section 4631a of this title.

(6) After issuance of the report required by subdivision (5) of this subsection and except as otherwise provided in ~~subdivision~~ subdivisions (1)(B) and (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.

(7) The 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 department may select the data most relevant to its analysis. The department shall report its analysis annually to the general assembly and the governor on or before ~~October 1~~ March 1.

(b)(1) ~~Annually on July 1~~ Beginning January 1, 2013 and annually thereafter, 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 section 4631a of 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.

### Sec. 3. REPORTING FEES

(a) Notwithstanding the provisions of 18 V.S.A. § 4632(b)(1), on July 1, 2011, 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 18 V.S.A. § 4632(a) for the fiscal year ending June 30, 2011.

(b) Notwithstanding the provisions of 18 V.S.A. § 4632(b)(1), on January 1, 2012, the office of the attorney general shall collect a \$250.00 fee from each manufacturer of prescribed products filing disclosures of expenditures greater than zero described in 18 V.S.A. § 4632(a) for the six-month period from July 1, 2011 through December 31, 2011.

### Sec. 4. ELECTRONIC PRIOR AUTHORIZATION

The commissioner of Vermont health access and the Vermont information technology leaders (VITL), in collaboration with health insurers, prescribers, representatives of the independent pharmacy community, and other interested parties, shall evaluate the use of electronic means for requesting and granting prior authorization for prescription drugs. No later than January 15, 2012, the commissioner and VITL shall report their findings to the senate committee on health and welfare and the house committee on health care and make recommendations for processes to develop standards for electronic prior authorizations.

### Sec. 5. SPECIALTY TIER DRUGS

(a) Prior to July 1, 2012, no health insurer or pharmacy benefit manager shall utilize a cost-sharing structure for prescription drugs that imposes on a consumer for any drug a greater co-payment, deductible, coinsurance, or other cost-sharing requirement than that which applies for a nonpreferred brand-name drug.

(b) The commissioner of banking, insurance, securities, and health care administration shall not approve any form for a health insurance policy prior to July 1, 2012 that imposes on a consumer for any prescription drug a greater co-payment, deductible, coinsurance, or other cost-sharing requirement than that which applies for a nonpreferred brand-name drug.

## Sec. 6. EFFECTIVE DATES

(a) Secs. 1, 2, and 3 of this act shall take effect on July 1, 2011, except that, in Sec. 2, the amendments to 18 V.S.A. § 4632(a)(1)(B) shall take effect on January 1, 2012.

(b) Sec. 4 of this act and this section shall take effect on passage.

(c) Sec. 5 of this act shall take effect on passage and shall apply to all forms that have previously been approved by the department of banking, insurance, securities, and health care administration or that may be approved by the department after passage of this act.

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

**Appointment Confirmed**

Under suspension of the rules (and particularly, Senate Rule 93), as moved by Senator Mazza, the following Gubernatorial appointment was confirmed by the Senate, without report given by the Committee to which it was referred and without debate:

Sherm, Ron of Duxbury - Chair, of the Natural Resources Board – April 1, 2011, to January 31, 2013.

**Rules Suspended; House Proposal of Amendment; Consideration Postponed****S. 96.**

Appearing on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and House proposal of amendment to bill entitled:

An act relating to technical corrections to the workers' compensation statutes.

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 it is important to ensure that an injured worker's medical records and personal information are kept secure and that health care providers, workers' compensation insurers, and the department of labor adopt practices that are consistent with relevant state and federal statutes regarding medical and personal privacy.

Sec. 2. 21 V.S.A. § 641 is amended to read:

§ 641. VOCATIONAL REHABILITATION

\* \* \*

(c) Any vocational rehabilitation plan for a claimant presented to the employer shall be deemed valid if the employer was provided an opportunity to participate in the development of the plan and has made no objections or changes within 21 days after submission. A vocational rehabilitation counselor shall provide the employer with a written invitation to participate in plan development, including the date, time, and place to provide an opportunity to participate in the development of the plan, with a copy to the department. The participation in the development of the plan may be conducted by telephone. The written notice shall be evidence of the opportunity to participate in plan development and shall be appended to the proposed plan.

\* \* \*

Sec. 3. 21 V.S.A. § 640b is added to read:

§ 640b. REQUEST FOR PREAUTHORIZATION TO DETERMINE IF PROPOSED TREATMENT IS NECESSARY

(a) Within 14 days of receiving a request for preauthorization for a proposed medical treatment and medical evidence supporting the requested treatment, a workers' compensation insurer shall:

(1) authorize the treatment and notify the health care provider, the injured worker, and the department; or

(2)(A) deny the treatment because the entire claim is disputed and the commissioner has not issued an interim order to pay benefits; or

(B) deny the treatment if, based on a preponderance of credible medical evidence specifically addressing the proposed treatment, it is unreasonable or unnecessary. The insurer shall notify the health care provider, the injured worker, and the department of the decision to deny treatment; or

(3) notify the health care provider, the injured worker, and the department that the insurer has scheduled an examination of the employee or ordered a medical record review pursuant to section 655 of this title. Based on the examination or review, the insurer shall authorize or deny the treatment and notify the department and the injured worker of the decision within 45 days of a request for preauthorization. The commissioner may in his or her sole discretion grant a 10-day extension to the insurer to authorize or deny treatment, and such an extension shall not be subject to appeal.

(b) If the insurer fails to authorize or deny the treatment pursuant to subsection (a) of this section within 14 days of receiving a request, the claimant or health care provider may request that the department issue an order authorizing treatment. After receipt of the request, the department shall issue an interim order within five days after notice to the insurer, and five days in which to respond, absent evidence that the entire claim is disputed. Upon request of a party, the commissioner shall notify the parties that the treatment has been authorized by operation of law.

(c) If the insurer denies the preauthorization of the treatment pursuant to subdivision (a)(2) or (3) of this section, the commissioner may on his or her own initiative or upon a request by the claimant issue an order authorizing the treatment if he or she finds that the evidence shows that the treatment is reasonable, necessary, and related to the work injury.

Sec. 4. 21 V.S.A. § 655a is added to read:

§ 655a. RELEASE OF RELEVANT MEDICAL RECORDS BY HEALTH CARE PROVIDERS; DEPARTMENT TO OVERSEE RELEASE AND USE OF RELEVANT MEDICAL INFORMATION

(a) Health care providers examining or attending the examination of an injured worker pursuant to this chapter shall provide relevant medical records and reports as requested by the injured worker, the employer, or the department regarding the diagnosis, condition, or treatment of the worker, permanent impairment, or any restrictions or limitations on the worker's ability to work upon receiving a written medical release authorization from the injured worker. The authorization shall be on a form approved by the department. If the relevance of any medical information is disputed, the department shall determine whether the requested medical information is relevant.

(b) Medical information relevant to the specific claim includes a past history of complaints or treatment of a condition similar to that presented in the claim or other conditions related to the same body part. Information that may be requested includes:

(1) Minimum data to justify services and payment, including that on the standard paper 1500 form or electronic 837 form.

(2) Office notes of the examination relating to the injury diagnosis or treatment.

(3) Any other relevant provider records contained in the file.

(c) An injured worker shall only be obligated to sign a medical record release authorization approved by the department.

(d) Any medical information received by the employer or the insurance carrier that is found not to be relevant to the claim may not be used to deny or limit a claim. The commissioner may order that specific disclosure requests be denied or rescinded and may make such other interim orders as are appropriate.

(e) Any medical information received in conjunction with a claim shall be used only for the purpose of advancing or defending a claim relating to the injury or of investigating a claim of false representation or of ensuring compliance with the workers' compensation statutes and rules.

Sec. 5. 21 V.S.A. § 692 is amended to read:

§ 692. PENALTIES; FAILURE TO INSURE; STOP WORK ORDERS

(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 for the first seven days the employer neglected to secure liability and not more than \$150.00 for every day thereafter.

\* \* \*

Sec. 6. Sec. 32 of No. 54 of the Acts of 2009 is amended to read:

Sec. 32. WORKERS' COMPENSATION; STATE CONTRACTS; COMPLIANCE WITH DAVIS-BACON

(a) The agencies of administration and transportation shall establish procedures to assure that state contracting procedures and contracts are designed to minimize the incidents of miscoding of employees in NCCI job codes and misclassification of the status of workers as independent contractors rather than employees by state contractors on projects with a total project cost of more than \$250,000.00 by requiring those contractors to provide, at a minimum, all the following:

\* \* \*

(3) For construction and transportation projects over \$250,000.00, a payroll process by which during every pay period the contractor collects from the subcontractors or independent contractors a list of all workers who were on the jobsite during the pay period, the work performed by those workers on the jobsite, and a daily census of the jobsite. This information, including confirmation that contractors, subcontractors, and independent contractors have the appropriate workers' compensation coverage for all workers at the job site, and similar information for the subcontractors regarding their subcontractors shall also be provided to the department of labor and to the

department of banking, insurance, securities, and health care administration, upon request, and shall be available to the public.

\* \* \*

(c) The agencies shall assure that any state contract funded in whole or in part with American Recovery and Reinvestment Act of 2009 (ARRA) monies or any project for which the state granted, allocated, or awarded ARRA monies shall comply with the payment of Davis-Bacon wages when required by ARRA. However, in the event the applicable Davis-Bacon wages in any county have not been updated in the previous three years, the minimum state required wage for a state contract subject to Davis-Bacon wages under ARRA shall be that of the Vermont county that has most recently updated its applicable Davis-Bacon wages, provided this provision does not result in the loss of ARRA funds and is not otherwise contrary to federal law. In the event that the most recently updated Davis-Bacon wages cannot be determined due to the simultaneous updating by two or more counties, the agencies may select the minimum state-required wage for a state contract subject to Davis-Bacon wages under ARRA from among those counties.

Sec. 7. 21 V.S.A. § 1314 is amended to read:

§ 1314. REPORTS AND RECORDS; SEPARATION INFORMATION; DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT EMPLOYMENT INFORMATION; DISCLOSURE OF INFORMATION TO OTHER STATE AGENCIES TO INVESTIGATE MISCLASSIFICATION OR MISCODING

\* \* \*

(d)(1) Except as otherwise provided in this chapter, information obtained from any employing unit or individual in the administration of this chapter, and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or open to public inspection in any manner revealing the individual's or employing unit's identity, nor be admissible in evidence in any action or proceeding other than one arising out of this chapter, or to support or facilitate an investigation by a public agency identified in subdivision (e)(1) of this section.

(2) An individual or his or her duly authorized agent may be supplied with information from those records to the extent necessary for the proper presentation of his or her claims for benefits or to inform him or her of his or her existing or prospective rights to benefits; an employing unit may be furnished with such information as may be deemed proper, within the discretion of the commissioner, to enable it to fully discharge its obligations and safeguard its rights under this chapter.

~~(2)~~(3) Automatic data processing services and systems and programming services within the department of labor shall be the responsibility and under the direct control of the commissioner in the administration of this chapter and chapter 15 of this title.

~~(3)~~(4) Notwithstanding the provisions in subdivision (2) of this section, the department of labor shall, at the request of the agency of administration, perform such services for other departments and agencies of the state as are within the capacity of its data processing equipment and personnel, provided that such services can be accomplished without undue interference with the designated work of the department of labor

(e)(1) Subject to such restrictions as the board may by regulation prescribe, information from unemployment insurance records may be made available to any public officer or public agency of this or any other state or the federal government dealing with the administration or regulation of relief, public assistance, unemployment compensation, a system of public employment offices, wages and hours of employment, workers' compensation, misclassification or miscoding of workers, occupational safety and health, or a public works program for purposes appropriate to the necessary operation of those offices or agencies. The commissioner may also make information available to colleges, universities, and public agencies of the state for use in connection with research projects of a public service nature, and to the Vermont economic progress council with regard to the administration of subchapter 11E of chapter 151 of Title 32; but no person associated with those institutions or agencies may disclose that information in any manner which would reveal the identity of any individual or employing unit from or concerning whom the information was obtained by the commissioner.

\* \* \*

Sec. 8. 21 V.S.A. § 1453 is amended to read:

§ 1453. APPROVAL OR REJECTION; RESUBMISSION

The commissioner shall approve or reject a plan in writing within ~~15~~ 30 days of its receipt, and in the case of rejection shall state the reasons therefor. The reasons for rejection shall be final and nonappealable, but the employer shall be allowed to submit another plan for approval.

Sec. 9. REPORT

The department of labor shall review and assess information relating to workers' compensation medical information and records to determine whether the scope of information contained in the medical records exceeds that relating only to a work-related injury and whether nonrelevant medical information is being sent to the department without redaction. The department shall report its

findings and any recommendations to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs by January 15, 2012.

Sec. 10. EFFECTIVE DATES

This section and Secs. 5, 6, 7, 8, and 9 of this act shall take effect on passage. The remaining sections shall take effect on July 1, 2011.

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

An act relating to the workers' compensation and unemployment compensation statutes.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, consideration was postponed.

**Rules Suspended; Report of Committee of Conference Accepted and Adopted on the Part of the Senate; Rules Suspended; Bill Messaged**

**H. 264.**

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

An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles .

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

**H. 264.** An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles.

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. PURPOSE

This act is intended to help prevent the harm caused to Vermonters and their families and friends by chronic DUI offenders who operate motor vehicles while under the influence of alcohol or other drugs.

\* \* \* Registration, licensing, and insurance \* \* \*

\* \* \* Permitting Unlicensed or Impaired Person to Operate \* \* \*

Sec. 2. 23 V.S.A. § 1130 is amended to read:

§ 1130. PERMITTING UNLICENSED OR IMPAIRED PERSON TO OPERATE

(a) No person shall ~~knowingly employ, as operator of a motor vehicle, a~~ another person as an operator of a motor vehicle knowing that the other person is not licensed as provided in this title.

(b) No person shall ~~knowingly permit a motor vehicle owned by him or her or under his or her control to be operated by a~~ another person ~~who~~ if the person who owns or controls the vehicle knows that the other person has no legal right to do so, or in violation of a provision of this title operate the vehicle.

(c)(1) No person who owns or is in control of a vehicle shall intentionally create a direct and immediate opportunity for another person to operate the motor vehicle if the person who owns or controls the vehicle has actual knowledge that the operator is:

(A) under the influence of intoxicating liquor; or

(B) under the influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely.

(2) This subsection shall not apply if the defendant was placed under duress or subjected to coercion by the other person at the time the defendant enabled the other person to operate the motor vehicle.

(d)(1) A person who violates subsection (c) of this section shall be fined not more than \$1,000.00 or imprisoned for not more than six months, or both.

(2) If death or if serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of subsection (c) of this section, the person convicted of the violation shall be fined not more than \$5,000.00 or imprisoned not more than two years, or both. The provisions of this subdivision do not limit or restrict prosecutions for manslaughter.

\* \* \* DUI penalties, alternative sanctions, and innovative responses \* \* \*

Sec. 3. 23 V.S.A. § 1201 is amended to read:

§ 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR OTHER SUBSTANCE; CRIMINAL REFUSAL; ENHANCED PENALTY FOR BAC OF 0.16 OR MORE

(a) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway:

(1) when the person's alcohol concentration is 0.08 or more, or 0.02 or more if the person is operating a school bus as defined in subdivision 4(34) of this title; or

(2) when the person is under the influence of intoxicating liquor; or

(3) when the person is under the influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely; or

(4) when the person's alcohol concentration is 0.04 or more if the person is operating a commercial motor vehicle as defined in subdivision 4103(4) of this title.

\* \* \*

(d)(1) A person who is convicted of a second or subsequent violation of subsection (a), (b), or (c) of this section when the person's alcohol concentration is proven to be 0.16 or more shall not, for three years from the date of the conviction for which the person's alcohol concentration is 0.16 or more, operate, attempt to operate, or be in actual physical control of any vehicle on a highway when the person's alcohol concentration is 0.02 or more. The prohibition imposed by this subsection shall be in addition to any other penalties imposed by law.

(2) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway when the person's alcohol concentration is 0.02 or more if the person has previously been convicted of a second or subsequent violation of subsection (a), (b), or (c) of this section within the preceding three years and the person's alcohol concentration for the second or subsequent violation was proven to be 0.16 or greater. A violation of this subsection shall be considered a third or subsequent violation of this section and shall be subject to the penalties of subsection 1210(d) of this title.

~~(d)~~(e) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state shall not constitute a defense against any charge of violating this section.

~~(e)~~(f) A person may not be convicted of more than one violation of subsection (a) of this section arising out of the same incident.

~~(f)~~(g) For purposes of this section and section 1205 of this title, the defendant may assert as an affirmative defense that the person was not operating, attempting to operate, or in actual physical control of the vehicle because the person:

- (1) had no intention of placing the vehicle in motion; and
- (2) had not placed the vehicle in motion while under the influence.

Sec. 4. 23 V.S.A. § 1205(a)(3) is added to read:

(3) 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(d)(2) of this title and that the person submitted to a test and the test results indicated that the person's alcohol concentration was 0.02 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 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 collision resulting in serious bodily injury or death to another.

Sec. 5. 23 V.S.A. § 1210 is amended to read:

§ 1210. PENALTIES

\* \* \*

(d) ~~Third or subsequent~~ offense. A person convicted of violating section 1201 of this title who has ~~twice~~ previously been convicted two times of a violation of that section shall be fined not more than \$2,500.00 or imprisoned not more than five years, or both. ~~At least 400 hours of community service shall be performed, or 100~~ 96 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed. The court may impose a sentence that does not include a term of imprisonment or that does not require that the 96 hours of imprisonment be served consecutively only if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

(e)(1) Fourth or subsequent offense. A person convicted of violating section 1201 of this title who has previously been convicted three times of a violation of that section shall be fined not more than \$5,000.00 or imprisoned not more than ten years, or both. At least 192 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol treatment facility pursuant to sentence if the program is successfully completed. The court shall not impose a sentence that does not include a term of imprisonment unless the court makes written findings on the record that there are compelling reasons why such a sentence will serve the interests of justice and public safety.

(2) The department of corrections shall provide alcohol and substance abuse treatment, when appropriate, to any person convicted of a violation of this subsection.

~~(e)(1)~~(f)(1) Death resulting. If the death of any person results from a violation of section 1201 of this title, the person convicted of the violation shall be fined not more than \$10,000.00 or imprisoned not less than one year nor more than 15 years, or both. The provisions of this subsection do not limit or restrict prosecutions for manslaughter.

(2) If the death of more than one person results from a violation of section 1201 of this title, the operator may be convicted of a separate violation of this subdivision for each decedent.

(3)(A) Death resulting; third or subsequent offense. If the death of any person results from a violation of section 1201 of this title and the person convicted of the violation previously has been convicted two or more times of a violation of that section, a sentence ordered pursuant to this subsection shall, except as provided in subdivision (B) of this subdivision (3), include at least a five-year term of imprisonment. The five-year minimum term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year term of imprisonment.

(B) Notwithstanding subdivision (A) of this subdivision (3), if the death of any person results from a violation of section 1201 of this title and the person convicted of the violation previously has been convicted two or more times of a violation of that section, the court may impose a sentence that does not include a term of imprisonment or which includes a term of imprisonment of less than five years if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

~~(f)(1)~~(g)(1) Injury resulting. If serious bodily injury, as defined in 13 V.S.A. § 1021(2), results to any person other than the operator from a violation of section 1201 of this title, the person convicted of the violation shall be fined not more than \$5,000.00, or imprisoned not more than 15 years, or both.

(2) If serious bodily injury as defined in 13 V.S.A. § 1021(2) results to more than one person other than the operator from a violation of section 1201 of this title, the operator may be convicted of a separate violation of this subdivision for each person injured.

(3)(A) Injury resulting; third or subsequent offense. If serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of section 1201 of this title and the person convicted of the violation previously has been convicted two or more times of a violation of section 1201, a sentence ordered pursuant to this subsection shall, except as provided in subdivision (B) of this subdivision (3), include at least a five-year term of imprisonment. The five-year minimum term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year term of imprisonment.

(B) Notwithstanding subdivision (A) of this subdivision (3), if serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of section 1201 of this title and the person convicted of the violation previously has been convicted two or more times of a violation of section 1201, the court may impose a sentence that does not include a term of imprisonment or which includes a term of imprisonment of less than five years if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

~~(g)~~(h) Determination of fines. In determining appropriate fines under this section, the court may take into account the total cost to a defendant of alcohol screening, participation in the alcohol and driving education program and therapy, and the income of the defendant.

~~(h)~~(i) A person convicted of violating section 1201 of this title shall be assessed a surcharge of \$60.00, which shall be added to any fine imposed by the court. The court shall collect and transfer such surcharge to the department of health for deposit in the health department's laboratory services special fund.

~~(i)~~(j) A person convicted of violating section 1201 of this title shall be assessed a surcharge of \$50.00, which shall be added to any fine or surcharge imposed by the court. The court shall collect and transfer the surcharge

assessed under this subsection to the office of defender general for deposit in the public defender special fund specifying the source of the monies being deposited. The collection procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of this surcharge.

~~(j)~~(k) A person convicted of violating section 1201 of this title shall be assessed a surcharge of \$50.00, which shall be added to any fine or surcharge imposed by the court. The court shall collect and transfer the surcharge assessed under this subsection to be credited to the DUI enforcement fund. The collection procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of this surcharge.

Sec. 6. 23 V.S.A. § 1220a is amended to read:

§ 1220a. DUI ENFORCEMENT SPECIAL FUND

(a) There is created a DUI enforcement special fund which shall be a special fund established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5. The DUI enforcement special fund shall be a continuation of and successor to the DUI enforcement special fund established under subsection 1205(r) of this title.

(b) The DUI enforcement special fund shall consist of:

(1) receipts from the surcharges assessed under section 206 and subsections 674(i), 1091(d), 1094(f), 1128(d), 1133(d), 1205(r), and ~~1210(j)~~ 1210(k) of this title;

(2) beginning in fiscal year 2000 and thereafter, the first \$150,000.00 of revenues collected from fines imposed under subchapter 13 of chapter 13 of this title pertaining to DUI related offenses;

(3) beginning in fiscal year 2000 and thereafter, two percent of the revenues raised by the motor fuel tax on gasoline imposed by chapter 28 of this title; and

(4) any additional funds transferred or appropriated by the general assembly.

(c) The DUI enforcement special fund shall be used for the implementation and enforcement of this subchapter for purposes specified and in amounts appropriated by the general assembly. Effort shall be given to awarding grants to municipalities or law enforcement agencies for innovative programs designed to reduce DUI offenses, and priority shall be given to grants requested jointly by more than one law enforcement agency or municipality.

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**Sec. 7. DUI ENFORCEMENT SPECIAL FUND REPORT**

On or before December 1, 2011, the joint fiscal office, in consultation with the department of public safety, shall report to the house and senate committees on judiciary and on appropriations on the funding and expenditures of the DUI enforcement special fund established by 23 V.S.A. § 1220a. The report shall include:

(1) the amount and sources of the fund's revenues and the amount and recipients of the fund's expenditures and grants with respect to each year from the time of the fund's inception through fiscal year 2011, to the extent that such data is available;

(2) particular detail regarding grants provided by the fund to support local law enforcement agencies and dedicated state DUI troopers with respect to each year from the time of the fund's inception through fiscal year 2011, to the extent that such data is available; and

(3) the amount and sources of the fund's projected future revenues and the fund's projected future expenditures and grants.

Sec. 8. 13 V.S.A. § 5239 is amended to read:

**§ 5239. PUBLIC DEFENDER SPECIAL FUND**

(a) The public defender special fund is hereby created. All co-payments, reimbursements, and assignment fees paid by persons receiving representation under this chapter, as well as all amounts recovered pursuant to section 5255 of this title and ~~23 V.S.A. § 1210(i)~~ 23 V.S.A. § 1210(j), shall be deposited in the fund.

\* \* \*

**Sec. 9. DEDICATED BEDS FOR CHRONIC REPEAT DUI OFFENDERS**

The department of corrections shall report to the joint committee on corrections oversight on or before November 15, 2011 on the feasibility of dedicating 25 beds at the southeast state correctional facility exclusively for chronic repeat DUI offenders. As used in this section, "chronic repeat DUI offender" means a person convicted three or more times of a violation of 23 V.S.A. § 1201.

**Sec. 10. COMPREHENSIVE SYSTEM TO REDUCE REPEAT DUI OFFENSES**

On or before January 15, 2012, the director of the Governor's highway safety program, in consultation with the defender general and the departments of motor vehicles, of public safety, of health, and of corrections shall report to the house and senate committees on judiciary on a plan for implementation of a

comprehensive system of penalties, alternative sanctions, and treatment to reduce the number of persons with repeat offenses of operating motor vehicles while under the influence of alcohol or other drugs. The system may include, among other measures, the following:

(1) a mandatory sobriety program for repeat DUI offenders similar to South Dakota's "24/7 Sobriety Program";

(2) increased penalties for operating a vehicle with an alcohol concentration substantially greater than the legal limit;

(3) methods of responding to DUI offenders who fail to complete the alcohol and driving education program (CRASH) required by 23 V.S.A. § 1209a(a)(1);

(4) enhanced use of ignition interlock devices, with respect to which the ignition interlock effectiveness study required by Sec. 14 of No. 126 of the Acts of the 2009 Adj. Sess. (2010) shall be considered;

(5) mandatory alcohol and drug counseling and treatment for persons convicted of operating a motor vehicle while under the influence of alcohol or other drugs;

(6) establishment of a secure facility for housing and treatment of persons convicted of operating a motor vehicle while under the influence of alcohol or drugs;

(7) the circumstances under which the operator of a motor vehicle may be required to submit to a blood test to determine whether he or she has been operating the vehicle while under the influence of a drug other than alcohol;

(8) revisions that may be appropriate to the DUI statutes when the circumstances involve operating a motor vehicle under the influence of a drug that has been legally prescribed to the operator; and

(9) a proposal to permit conditional operator's licenses, which may be issued to a person who has been convicted of DUI for travel to limited places such as work, drug or alcohol treatment, school, or a doctor's office.

\* \* \* Detention of operator; forfeiture and immobilization of vehicle \* \* \*

Sec. 11. 23 V.S.A. § 1212 is amended to read:

§ 1212. CONDITIONS OF RELEASE AND PAROLE; ARREST UPON VIOLATION

\* \* \*

(d) A law enforcement officer who observes a person violating a condition of parole requiring that the person not operate a motor vehicle may promptly

arrest the person for violating the condition and may detain the person pursuant to 28 V.S.A. § 551. The officer may immobilize the vehicle and shall immediately notify the parole board of the suspected violation. If the parole board determines pursuant to 28 V.S.A. § 552 that a parole violation has occurred, the board shall notify the state's attorney in the county where the violation occurred, who may institute forfeiture proceedings against the vehicle under section 1213c of this title.

Sec. 12. 23 V.S.A. § 1213b is amended to read:

§ 1213b. FORFEITURE OF VEHICLE

At the time of sentencing after a third or subsequent conviction under section 1201 of this title or after a conviction under subdivision 1130(c)(2) of this title, or upon a determination by the parole board that a person has violated a condition of parole requiring that the person not operate a motor vehicle, the court may, upon motion of the state and in addition to any penalty imposed by law and after notice and hearing, order the motor vehicle operated by the defendant or parolee at the time of the offense forfeited and sold as provided in section 1213c of this title.

\* \* \* Miscellaneous \* \* \*

Sec. 13. REPORTS; STUDIES

(a) The court administrator shall report to the senate and house committees on judiciary on or before January 15, 2012 on the number of persons convicted of violating 23 V.S.A. § 1130(c) (permitting impaired person to operate motor vehicle) since the passage of this act.

(b) Notwithstanding any other provision of law, the court administrator shall conduct a weighted caseload study and analysis or equivalent compensation study within the probate division of the superior court for use by the senate and house committees on appropriations during development of the fiscal year 2013 budget. The results of the study shall be reported to the senate and house committees on judiciary and on appropriations on or before January 15, 2012. The study may be used to review and consider adjustments to the compensation of probate judges.

(c)(1) A committee is established to study modifying the number of interested parties who must be served with notice when a probate proceeding is commenced involving a decedent's estate and reducing the amount of time notice by publication is required to be published in newspapers. The committee shall consider whether reducing the number of interested parties would reduce costs to the estate without unduly prejudicing the rights of potential beneficiaries, and whether constitutional issues would be raised if such changes were made. The committee shall report its findings, together

with any recommendations for legislative action, to the senate and house committees on judiciary no later than December 15, 2011.

(2) The committee established by this subsection shall consist of the following members:

(A) one probate judge appointed by the chief justice;

(B) one member with experience in probate practice appointed by the Vermont Bar Association; and

(C) one member appointed by the Committee on Vermont Elders.

(3) Members of the committee who are not employees of the state of Vermont shall be entitled to reimbursement at the per diem rate set in 32 V.S.A. § 1010.

Sec. 14. 23 V.S.A. § 1203 is amended to read:

§ 1203. ADMINISTRATION OF TESTS; RETENTION OF TEST AND VIDEOTAPE

\* \* \*

(c) When a breath test which is intended to be introduced in evidence is taken with a crimper device or when blood is withdrawn at an officer's request, a sufficient amount of breath or blood, as the case may be, shall be taken to enable the person to have made an independent analysis of the sample, and shall be held for at least 45 days from the date the sample was taken. At any time during that period the person may direct that the sample be sent to an independent laboratory of the person's choosing for an independent analysis. The department of ~~health~~ public safety shall adopt rules providing for the security of the sample. At no time shall the defendant or any agent of the defendant have access to the sample. A preserved sample of breath shall not be required when an infrared breath-testing instrument is used. A person tested with an infrared breath-testing instrument shall have the option of having a second infrared test administered immediately after receiving the results of the first test.

(d) In the case of a breath test administered using an infrared breath testing instrument, the test shall be analyzed in compliance with rules adopted by the department of ~~health~~ public safety. The analyses shall be retained by the state. A sample is adequate if the infrared breath testing instrument analyzes the sample and does not indicate the sample is deficient. Analysis of the person's breath or blood which is available to that person for independent analysis shall be considered valid when performed according to methods approved by the department of ~~health~~ public safety. The analysis performed by the state shall be considered valid when performed according to a method or methods

selected by the department of ~~health~~ public safety. The department of ~~health~~ public safety shall use rule making procedures to select its method or methods. Failure of a person to provide an adequate breath sample constitutes a refusal.

(e) [Repealed.]

(f) When a law enforcement officer has reason to believe that a person may be violating or has violated section 1201 of this title, the officer may request the person to provide a sample of breath for a preliminary screening test using a device approved by the commissioner of ~~health~~ public safety for this purpose. The person shall not have the right to consult an attorney prior to submitting to this preliminary breath alcohol screening test. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made and whether to request an evidentiary test and shall not be used in any court proceeding except on those issues. Following the screening test additional tests may be required of the operator pursuant to the provisions of section 1202 of this title.

\* \* \*

(i) The commissioner of ~~health~~ public safety shall adopt emergency rules relating to the operation, maintenance and use of preliminary alcohol screening devices for use by law enforcement officers in enforcing the provisions of this title. The commissioner shall consider relevant standards of the National Highway Traffic Safety Administration in adopting such rules. Any preliminary alcohol screening device authorized for use under this title shall be on the qualified products list of the National Highway Traffic Safety Administration.

\* \* \*

Sec. 15. 23 V.S.A. § 1203a is amended to read:

§ 1203a. INDEPENDENT CHEMICAL TEST; BLOOD TESTS

\* \* \*

(d) The physician, licensed nurse, medical technician, physician's assistant, medical technologist, or laboratory assistant drawing a sample of blood shall use a sample collection kit provided by the department of ~~health~~ public safety or another type of collection kit. The sample shall be identified as to donor, date, and time, sealed and mailed to the department of ~~health~~ public safety where it shall be held for a period of at least 45 days from the date the sample was taken. At any time during that period the person may direct that the sample be sent to an independent laboratory of the person's choosing for an independent analysis. The department of ~~health~~ public safety may recover its costs of supplies, handling, and storage.

\* \* \*

Sec. 16. 23 V.S.A. § 1205(h)(1)(D) is amended to read:

(D) whether the test was taken and the test results indicated that the person's alcohol concentration was 0.08 or more, or 0.02 or more for a violation of subsection 1201(d) of this title, at the time of operating, attempting to operate or being in actual physical control of a vehicle in violation of section 1201 of this title, whether the testing methods used were valid and reliable and whether the test results were accurate and accurately evaluated. Evidence that the test was taken and evaluated in compliance with rules adopted by the department of ~~health~~ public safety shall be prima facie evidence that the testing methods used were valid and reliable and that the test results are accurate and were accurately evaluated;

Sec. 17. 23 V.S.A. § 1210(i) is amended to read:

(i) A person convicted of violating section 1201 of this title shall be assessed a surcharge of \$60.00, which shall be added to any fine imposed by the court. The court shall collect and transfer such surcharge to the department of ~~health~~ public safety for deposit in the blood and breath alcohol testing special fund established by section 1220b of this title.

Sec. 18. 23 V.S.A. § 1216 is amended to read:

§ 1216. PERSONS UNDER 21; ALCOHOL CONCENTRATION OF 0.02 OR MORE

\* \* \*

(d) If a law enforcement officer has reasonable grounds to believe that a person is violating this section, the officer may request the person to submit to a breath test using a preliminary screening device approved by the commissioner of ~~health~~ public safety. A refusal to submit to the breath test shall be considered a violation of this section. Notwithstanding any provisions to the contrary in sections 1202 and 1203 of this title:

\* \* \*

Sec. 19. 23 V.S.A. § 1220b is added to read:

§ 1220b. BLOOD AND BREATH ALCOHOL TESTING SPECIAL FUND

(a) There is created a blood and breath alcohol testing special fund which shall be a special fund established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5.

(b) The blood and breath alcohol testing special fund shall consist of receipts from the surcharges assessed under subsection 1210(i) of this title.

(c) The blood and breath alcohol testing special fund shall be used for the implementation and support of the blood and breath alcohol testing program within the department of public safety.

Sec. 20. BLOOD ALCOHOL TESTING AND ALCOHOL SCREENING DEVICES; AUTHORITY OF DEPARTMENT OF PUBLIC SAFETY; RULEMAKING

(a) The department of public safety shall adopt rules, which may include emergency rules, to govern the operation, maintenance, and use of blood and breath alcohol testing and alcohol screening devices, and to describe the methods used to exercise the authority granted by this act. Prior to the effective date of the rules required to be adopted by this subsection, the department of public safety may take such steps as are necessary to prepare to assume authority and supervision over operation, maintenance, and use of blood and breath alcohol testing and alcohol screening devices. The rules of the agency of human services pertaining to the blood and breath alcohol testing and alcohol screening program shall remain in effect and govern the program until revised or repealed by rules adopted by the department of public safety, including emergency rules adopted pursuant to this subsection.

(b) The administration shall, in consultation with the Vermont state employees association, ensure that no reduction in positions occurs as a result of the transfer required by this section. The administration shall transfer positions to the department of public safety so that the department may implement the authority granted to it by this act.

(c) On or before January 15, 2012, and on or before January 15 of each of the following two years, the department of public safety shall report to the senate and house committees on judiciary on progress toward identifying and implementing an accreditation process for the blood alcohol testing and alcohol screening program transferred to the department by this section.

(d) Notwithstanding any other provision of law, on March 1, 2012, or on the effective date of the rules required to be adopted by subsection (a) of this section, whichever is earlier, the department of public safety shall assume the authority transferred to it by this act over the blood and breath alcohol testing and alcohol screening program.

Sec. 21. 21 V.S.A. § 308 is added to read:

§ 308. EMPLOYERS OF INDIVIDUALS WHO WORK WITH MINORS OR VULNERABLE ADULTS; JOB REFERENCE INFORMATION FROM FORMER EMPLOYERS; LIMITATION FROM LIABILITY

(a) As used in this section:

(1) "Job performance" means:

(A) The suitability of the employee for employment;

(B) The employee's work-related duties, skills, abilities, attitude, effort, knowledge, and habits as they may relate to suitability for future employment;

(C) In the case of a former employee, the reason for the employee's separation; and

(D) Any illegal or wrongful act committed by the employee.

(2) "Prospective employer" means a person or organization who employs or contracts with one or more individuals whose duties may place that individual in a position of power, authority, or supervision over a minor or vulnerable adult, or whose duties are likely to permit regular and unsupervised contact with a minor or vulnerable adult, on either a paid or volunteer basis.

(3) "Vulnerable adult" shall have the same meaning as in 13 V.S.A. § 1375(8).

(b)(1) An employer who in good faith provides information about a current or former employee's job performance to a prospective employer of the current or former employee upon request of the prospective employer or the current or former employee shall not be subject to liability for such disclosure. An employer who provides the information in writing to a prospective employer shall provide a copy of the writing to the employee.

(2) The limitation on liability set forth in this subsection shall not apply if the employee shows, by a preponderance of the evidence, that the current or former employer:

(A) disclosed information which was false and which the employer providing the information knew or reasonably should have known was false;

(B) knowingly disclosed materially misleading information; or

(C) disclosed information in violation of the law.

## Sec. 22. REPORT; EMPLOYER LIMITATION FROM LIABILITY

(a) On or before January 15, 2013, the legislative council shall report to the house and senate committees on judiciary on the impacts on employment and hiring practices in Vermont, if any, of the enactment of 21 V.S.A. § 308 in Sec. 21 of this act, including consideration of whether this enactment has resulted in an increase in job performance information provided to prospective employers by past and current employers. For purposes of compiling the report, the legislative council shall consult with and solicit information from interested parties, including the Vermont chamber of commerce, the University

of Vermont, the Vermont Hospitals Association, the Vermont department of labor, the Vermont state employees association, the Vermont School Boards Association, the Vermont-NEA, and the Vermont Association for Justice.

(b) As used in this section, “job performance” and “prospective employer” shall have the same meanings as in 21 V.S.A. § 308(a).

#### Sec. 23. MINOR GUARDIANSHIP STUDY COMMITTEE

(a) There is created a committee to study jurisdiction over proceedings involving guardianship of minors. The committee shall study issues related to probate and family division jurisdiction over minor guardianship proceedings, including:

(1) the circumstances under which it is appropriate to transfer minor guardianship proceedings between the probate and family divisions, including which division should have authority to order the transfer and the criteria which should govern whether the transfer should proceed;

(2) the involvement of the department for children and families in open cases in the family division when a CHINS proceeding has not been filed;

(3) the unofficial involvement of the department for children and families in minor guardianship proceedings in the probate division;

(4) whether the probate division should have the authority to make the department for children and families a party to minor guardianship proceedings in the probate division instead of transferring the proceeding to the family division; and

(5) whether and which substantive, procedural, or jurisdictional changes to minor guardianship proceedings would best serve the interests of children.

(b) The minor guardianship study committee shall consist of the following members:

(1) The commissioner of the department for children and families or designee, who shall convene the first meeting.

(2) The defender general or designee.

(3) A guardian ad litem appointed by the court administrator.

(4) A probate judge appointed by the chief justice.

(5) A judge with experience in family proceedings appointed by the chief justice.

(6) An advocate for parents appointed by the Vermont Parent Representation Center.

(7) A community-based social worker appointed by Casey Family Services.

(8) A kin advocate appointed by Vermont Kin as Parents.

(9) An attorney with experience in family and probate proceedings appointed by the Vermont Bar Association.

(c) The committee shall report its findings and any recommendations for legislative action to the house and senate committees on judiciary and on human services on or before January 12, 2012.

Sec. 24. 3 V.S.A. § 164(c) is amended to read:

(c) All adult court diversion projects receiving financial assistance from the attorney general shall adhere to the following provisions:

(1) The diversion project shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. If the prosecuting attorney refers a case to diversion, the information and affidavit related to the charges shall be confidential and shall remain confidential unless:

(A) the board declines to accept the case;

(B) the person declines to participate in diversion; or

(C) the board accepts the case, but the person does not successfully complete diversion.

\* \* \*

Sec. 25. 14 V.S.A. chapter 114 is added to read:

CHAPTER 114. UNIFORM ADULT GUARDIANSHIP AND  
PROTECTIVE PROCEEDINGS JURISDICTION ACT

Subchapter 1. General Provisions

§ 3151. SHORT TITLE

This act may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 3152. DEFINITIONS

In this act:

(1) "Adult" means an individual who has attained 18 years of age.

(2) "Conservator" means a person appointed by the court to administer the property of an adult.

(3) “Guardian” means a person appointed by the court to make decisions regarding an adult, including a person appointed under this title.

(4) “Guardianship order” means an order appointing a guardian.

(5) “Guardianship proceeding” means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) “Incapacitated person” means an adult for whom a guardian has been appointed.

(7) “Party” means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(8) “Person,” except in the term “incapacitated person” or “protected person,” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) “Protected person” means an adult for whom a protective order has been issued.

(10) “Protective order” means an order appointing a conservator or other order related to the management of an adult’s property.

(11) “Protective proceeding” means a judicial proceeding in which a protective order is sought or has been issued.

(12) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) “Respondent” means an adult for whom a protective order or the appointment of a guardian is sought.

(14) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

#### § 3153. INTERNATIONAL APPLICATION OF ACT

A court of this state may treat a foreign country as if it were a state for the purpose of applying this subchapter and subchapters 2, 3, and 5 of this chapter.

#### § 3154. COMMUNICATION BETWEEN COURTS

(a) The probate division of the superior court in this state may communicate with a court in another state concerning a proceeding arising

under this act. The probate division may allow the parties to participate in the communication. Except as otherwise provided in subsection (b) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

#### § 3155. COOPERATION BETWEEN COURTS

(a) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(1) hold an evidentiary hearing;

(2) order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(3) order that an evaluation or assessment be made of the respondent;

(4) order any appropriate investigation of a person involved in a proceeding;

(5) forward to the court of this state a certified copy of the transcript or other record of a hearing under subdivision (1) of this subsection or any other proceeding, any evidence otherwise produced under subdivision (2) of this subsection, and any evaluation or assessment prepared in compliance with an order under subdivision (3) or (4) of this subsection;

(6) issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;

(7) issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. Section 164.504, as amended, but any information so disclosed may be admitted in a proceeding in this state only in accordance with the laws of this state.

(b) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (a) of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request in accordance with the laws of this state.

#### § 3156. TAKING TESTIMONY IN ANOTHER STATE

(a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in

another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The probate division of the superior court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, a probate division of the superior court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. The probate division of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a probate division of the superior court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

#### Subchapter 2. Jurisdiction

#### § 3161. DEFINITIONS; SIGNIFICANT CONNECTION FACTORS

(a) In this subchapter:

(1) “Emergency” means a circumstance that likely will result in serious and irreparable harm to a respondent’s physical health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent’s behalf.

(2) “Home state” means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

(3) “Significant-connection state” means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(b) In determining under section 3163 and subsection 3171(e) of this title whether a respondent has a significant connection with a particular state, the probate court shall consider:

(1) the location of the respondent’s family and other persons required to be notified of the guardianship or protective proceeding;

(2) the length of time the respondent at any time was physically present in the state and the duration of any absence;

(3) the location of the respondent's property; and

(4) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, or receipt of services.

#### § 3162. EXCLUSIVE BASIS

This subchapter provides the exclusive jurisdictional basis for a probate division of the superior court of this state to appoint a guardian or issue a protective order for an adult. The probate division of the superior court shall have exclusive original jurisdiction to determine whether this state has jurisdiction pursuant to this subchapter.

#### § 3163. JURISDICTION

A probate division of the superior court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) this state is the respondent's home state;

(2) on the date the petition is filed, this state is a significant-connection state and:

(A) the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(B) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the probate division makes the appointment or issues the order:

(i) a petition for an appointment or order is not filed in the respondent's home state;

(ii) an objection to the probate division's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) the probate division of the superior court in this state concludes that it is an appropriate forum under the factors set forth in section 3166 of this title;

(3) this state does not have jurisdiction under either subdivision (1) or (2) of this section, the respondent's home state, and all significant-connection states have declined to exercise jurisdiction because this state is the more

appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) the requirements for special jurisdiction under section 3164 of this title are met.

#### § 3164. SPECIAL JURISDICTION

(a) A probate division of the superior court of this state lacking jurisdiction under section 3163 of this title has special jurisdiction to do any of the following:

(1) appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in this state;

(2) issue a protective order with respect to real or tangible personal property located in this state;

(3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 3171 of this title.

(b) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the probate division shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

#### § 3165. EXCLUSIVE AND CONTINUING JURISDICTION

Except as otherwise provided in section 3164 of this title, a court that has appointed a guardian or issued a protective order consistent with this act has exclusive jurisdiction over the proceeding until jurisdiction is terminated by the probate court or the appointment or order expires by its own terms.

#### § 3166. APPROPRIATE FORUM

(a) A probate division of the superior court of this state having jurisdiction under section 3163 of this title to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a probate division of the superior court of this state declines to exercise its jurisdiction under subsection (a) of this section, it shall either dismiss or stay the proceeding. The court division may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the probate division shall consider all relevant factors, including:

(1) any expressed preference of the respondent;

(2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(3) the length of time the respondent was physically present in or was a legal resident of this or another state;

(4) the distance of the respondent from the court in each state;

(5) the financial circumstances of the respondent's estate;

(6) the nature and location of the evidence;

(7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) the familiarity of the court of each state with the facts and issues in the proceeding; and

(9) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

#### § 3167. JURISDICTION DECLINED BY REASON OF CONDUCT

(a) If at any time a probate division of the superior court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(1) decline to exercise jurisdiction;

(2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) continue to exercise jurisdiction after considering:

(A) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the probate court's jurisdiction;

(B) whether it is a more appropriate forum than the court of any other state under the factors set forth in subsection 3166(c) of this title; and

(C) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 3163 of this title.

(b) If a probate division of the superior court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against the party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this chapter.

#### § 3168. NOTICE OF PROCEEDING

If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, the petitioner shall comply with the notice requirements of this state and shall give notice of the petition to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

#### § 3169. PROCEEDINGS IN MORE THAN ONE STATE

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under subdivision 3164(a)(1) or (2) of this title, if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the probate division of the superior court in this state has jurisdiction under section 3163 of this title, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 3163 of this title before the appointment or issuance of the order.

(2) If the probate division of the superior court in this state does not have jurisdiction under section 3163 of this title, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the probate division shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the probate division in this state shall dismiss the petition unless the court in the other state determines that the probate division of the superior court in this state is a more appropriate forum.

Subchapter 3. Transfer of Guardianship or Conservatorship§ 3171. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE

(a) A guardian or conservator appointed in this state may petition the probate division of the superior court to transfer the guardianship or conservatorship to another state.

(b) Notice of a petition under subsection (a) of this section must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(c) On the probate division's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on the petition filed pursuant to subsection (a) of this section.

(d) The probate division shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the probate court finds that:

(1) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) an objection to the transfer has not been made or, if any objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(3) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(e) The probate division shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in subsection 3161(b) of this chapter;

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) adequate arrangements will be made for management of the protected person's property.

(f) The probate division shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 3172 of this title; and

(2) the documents required to terminate a guardianship or conservatorship in this state.

§ 3172. ACCEPTING GUARDIANSHIP TRANSFERRED FROM ANOTHER STATE

(a) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to section 3171 of this title, the guardian or conservator must petition the probate division of the superior court in this state to accept the guardianship or conservatorship. The petition must also include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subsection (a) of this section must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(c) On the probate division's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (a) of this section.

(d) The probate division shall issue an order provisionally granting a petition filed under subsection (a) of this section unless:

(1) an objection is made, and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) the guardian or conservator is ineligible for appointment in this state.

(e) The probate division shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 3171 of this title transferring the proceeding to this state.

(f) Not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, the probate division shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(g) In granting a petition under this section, the probate division shall recognize a guardianship or conservatorship order from another state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(h) The denial by a probate division of the superior court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian in this state under this title if the probate division has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

#### Subchapter 4. Registration and Recognition of Orders from Other States

##### § 3181. REGISTRATION OF GUARDIANSHIP ORDERS

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a probate division of the superior court, in any appropriate county of this state, certified copies of the order and letters of office.

##### § 3182. REGISTRATION OF PROTECTIVE ORDERS

If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a probate division of the superior court of this state, in any county of this state in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

##### § 3183. EFFECT OF REGISTRATION

(a) Upon registration of a guardianship or protective order from another state, the guardian may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(b) A probate division of the superior court of this state may grant any relief available under this act and other law of this state to enforce a registered order.

Subchapter 5. Miscellaneous Provisions

§ 3191. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 3192. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. § 7003(b).

§ 3193. TRANSITIONAL PROVISION

(a) This act applies to guardianship and protective proceedings begun on or after July 1, 2011.

(b) Subchapters 1, 3, and 4 of this chapter and sections 3191 and 3192 of this title apply to proceedings begun before July 1, 2011, regardless of whether a guardianship or protective order has been issued.

Sec. 26. 14 V.S.A. § 3062 is amended to read:

§ 3062. JURISDICTION; REVIEW OF GUARDIAN'S ACTIONS

(a) If this state has jurisdiction of a guardianship proceeding pursuant to chapter 114 of this title, then the probate division of the superior court shall have exclusive jurisdiction over the proceedings. All proceedings to determine whether this court has jurisdiction pursuant to chapter 114 of this title shall be brought in probate division of the superior court.

(b) 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 18 V.S.A. § 9718.

~~(b)~~(c) 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. 27. REPEALS

The following are repealed:

(1) Sec. 2 of No. 126 of the Acts of the 2009 Adj. Sess. (2010).

(2) Secs. 18 (requiring employers to disclose employee conduct potentially jeopardizing safety of a minor or vulnerable adult) and 22(a) (April 1, 2011 effective date of Sec. 18 disclosure requirement) of No. 157 of the Acts of the 2009 Adj. Sess. (2010), as amended by Sec. 1 of No. 5 of the Acts of 2011.

Sec. 28. EFFECTIVE DATES; SUNSET

This act shall take effect on passage, except as follows:

(1) Secs. 3, 4, 14, 15, 16, 17, 18, and 19 shall take effect on March 1, 2012.

(2) Sec. 21 of this act shall take effect on July 1, 2011, shall apply to disclosures made on and after that date, and shall be repealed effective July 1, 2013.

(3) Sec. 24, 25, and 26 of this act shall take effect on July 1, 2011.

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

An act relating to driving while intoxicated, forfeiture and registration of motor vehicles, the blood and breath alcohol testing and alcohol screening program, the minor guardianship study committee, confidentiality of cases accepted by the court diversion project, and the uniform adult guardianship and protective proceedings jurisdiction act.

*ALICE W. NITKA  
DIANE B. SNELLING  
JEANETTE K. WHITE*

*Committee on the part of the Senate*

*WILLIAM J. LIPPERT  
MAXINE JO GRAD  
THOMAS F. KOCH*

*Committee on the part of the House*

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

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

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**Report of Committee of Conference Accepted and Adopted on the Part of  
the Senate; Rules Suspended; Bill Messaged**

**H. 275.**

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

To the Senate and House of Representatives:

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

An act relating to the recently deployed veteran tax credit.

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

Sec. 1. 32 V.S.A. chapter 151, subchapter 11N is added to read:

Subchapter 11N. Recently Deployed Veteran  
Tax Credit

§ 5930nn. RECENTLY DEPLOYED VETERAN TAX CREDIT

(a) A qualified employer shall be eligible for a nonrefundable credit against the income tax liability imposed under this chapter in an amount equal to \$2,000.00 for each new full-time employee hired after the passage of this act but on or before December 31, 2012 for a position, the majority of the duties of which are at a business location within Vermont.

(b) A recently deployed veteran shall be eligible for a nonrefundable credit against the income tax liability imposed under this chapter in an amount up to a total of \$2,000.00 for expenses associated with one start-up business in which the recently deployed veteran holds at least a 50-percent ownership interest. A credit under this subsection may only be taken for a business started after the passage of this act but on or before December 31, 2012, that is located within Vermont, and that shows a net profit of at least \$3,000.00 for the year in which the credit is taken.

(c) A credit earned under this section shall be claimed in the tax year following the new full-time employee's date of hire, or in the tax year following the date that the start-up business was created, and may be carried forward one year.

(d) In this section:

(1) "Expense associated with a start-up business" means the following expenses:

(A) expenses associated with the development of a business plan;

(B) professional services associated with the formation of the business (e.g., attorney and accounting services);

(C) an analysis or survey of potential markets, products, labor supply, or transportation facilities;

(D) advertisements for the opening of the business;

(E) salaries and wages for employees who are being trained and their instructors;

(F) travel and other necessary costs for securing prospective distributors, suppliers, or customers;

(G) salaries and fees for executives and consultants, or for similar professional services.

(2) "New full-time employee" means a recently deployed veteran:

(A) who works at least 35 hours per week for not less than 45 of the 52 weeks following the individual's date of hire;

(B) whose compensation equals or exceeds the prevailing compensation level, including wages and benefits, for the particular employment sector and region of the state as determined by the commissioner of labor;

(C) who has certification by the department of labor at the time of hire of:

(i) collecting or being eligible to collect unemployment benefits; or

(ii) having exhausted his or her unemployment benefits;

(D) who has not been employed by the qualified employer for 90 days prior to the date of hire.

(3) "Qualified employer" means a person who:

(A) is in good standing with respect to applicable registration, fee, and filing requirements with the secretary of state, the department of taxes, and the department of labor; and

(B) has in place a valid workers' compensation policy.

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(4) “Recently deployed veteran” means an individual who:

(A)(i) was a resident of Vermont at the time of entry into military service; or

(ii) was mobilized to active, federal military service while a member of the Vermont National Guard or other reserve unit located in Vermont, regardless of the resident’s home of record.

(B) received an honorable or general discharge from active, federal military service within the two-year period preceding the date of hire.

(C) for the purposes of the credit in subsection (b) of this section, a person who at the time of starting up a new business has been certified by the department of labor as:

(i) collecting or being eligible to collect unemployment benefits; or

(ii) having exhausted his or her unemployment benefits.

(e) The department of labor, in coordination with the department of taxes, the agency of commerce and community development, and the office of veterans’ affairs, shall:

(1) promote awareness of the recently deployed veteran tax credit authorized in this section to employers and eligible veterans;

(2) establish procedures for prequalifying an individual as a recently deployed veteran and for providing notice to the department of labor when a new full-time employee is hired;

(3) establish procedures for certifying a qualified employer’s compliance, or in the case of a credit under subsection (b) of this section, a recently deployed veteran’s compliance, with the eligibility and expense verification requirements to claim the credit authorized under this section;

(4) adopt measurable goals, outcomes, and an audit strategy to assess the utilization and performance of the credit authorized in this section;

(5) on or before January 15, 2012, submit a written report on its assessment of the credit to the house committees on commerce and economic development and on ways and means, and to the senate committees on finance and on economic development, housing and general affairs;

(6) engage in efforts to promote the hiring of recently deployed veterans through the hiring practices of the state of Vermont.

(f) An employer shall not claim the credit in subsection (a) of this section for an employee who has claimed the credit under subsection (b) of this

section, and a recently deployed veteran shall not claim the credit in subsection (b) if an employer has claimed his or her hire for the credit in subsection (a).

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

*MARK A. MACDONALD  
RICHARD J. MCCORMACK  
RICHARD A. WESTMAN*

*Committee on the part of the Senate*

*RACHEL WESTON  
WARREN F. KITZMILLER  
MICHAEL J. MARCOTTE*

*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 28, Nays 2.

Senator Galbraith 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, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Fox, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

**Those Senators who voted in the negative were:** Galbraith, Illuzzi.

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

**Consideration Resumed; House Proposal of Amendment Concurred In with Further Proposal of Amendment**

**S. 96.**

Consideration was resumed on Senate bill entitled:

An act relating to technical corrections to the workers' compensation statutes.

Thereupon, pending the question, Shall the Senate concur in the House Proposal of amendment?, Senator Illuzzi moved that the Senate concur in the House proposal of amendment with further proposal of amendment as follows:

By adding five new sections to be numbered Secs. 9a, 9b, 9c, 9d, and 9e to read as follows:

Sec. 9a. FINDINGS

The general assembly finds that:

(1) Federal law allows employees who work in a noninstructional, research, or principal administrative capacity in an educational institution to receive unemployment benefits between academic terms. This law allows bus drivers, custodians, and cafeteria staff, among others, to receive benefits.

(2) During the time Vermont allowed the receipt of these benefits, the Vermont supreme court held in Riddel v. Department of Employment Security that teachers' aides and para-educators were not eligible for unemployment benefits between academic terms because they were considered to be working in an instructional capacity.

(3) More study is needed to determine the impact of reinstating unemployment benefits between school terms.

Sec. 9b. STUDY

(a) The commissioner of labor in consultation with the Vermont school boards association and any other interested parties shall study the issue of allowing the receipt of unemployment benefits between academic terms for noninstructional employees. The study shall consider the costs of allowing receipt of such benefits, the employees who would be eligible for benefits, and any other relevant issues. In addition, the study shall consider the potential benefit to those employees of school-district-coordinated job placement services for the months between academic terms.

(b) The commissioner shall also study the issue of whether wages paid by an elderly individual for in-home assistance should be subject to the unemployment insurance statutes.

(c) The commissioner shall also study the issue of allowing the employees of a school district to elect to have their wages paid over the course of a calendar year.

(d) The commissioner shall report his or her findings and any recommendations to the senate committee on economic development, housing and general affairs and the house committees on commerce and economic development and on general, housing and military affairs by January 15, 2012.

Sec. 9c. 21 V.S.A. § 1325 is amended to read:

§ 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS; DISCLOSURE TO SUCCESSOR ENTITY; EMPLOYEE PAID \$1,000.00 OR LESS DURING BASE PERIOD

(a) The commissioner shall maintain an experience-rating record for each employer. Benefits paid shall be charged against the experience-rating record of each subject employer who provided base-period wages to the eligible individual. Each subject employer's experience-rating charge shall bear the same ratio to total benefits paid as the total base-period wages paid by that employer bear to the total base-period wages paid to the individual by all base-period employers. The experience-rating record of an individual subject base-period employer shall not be charged for benefits paid to an individual under any of the following conditions:

(1) The individual's employment with that employer was terminated under disqualifying circumstances.

(2) The individual's employment or right to reemployment with that employer was terminated by retirement of the individual pursuant to a retirement or lump-sum retirement pay plan under which the age of mandatory retirement was agreed upon by the employer and its employees or by the bargaining agent representing those employees.

(3) As of the date on which the individual filed an initial claim for benefits, the individual's employment with that employer had not been terminated or reduced in hours.

(4) The individual was employed by that employer as a result of another employee taking leave under subchapter 4A of chapter 5 of this title, and the individual's employment was terminated as a result of the reinstatement of the other employee under subchapter 4A of chapter 5 of this title.

(5) The individual was paid wages of \$1,000.00 or less by the employer in the individual's base period.

\* \* \*

Sec. 9d. STUDY; EMPLOYER FURNISHING REQUIRED APPAREL

(a) The department of labor shall study the issue of requiring employers that require their employees to wear apparel that displays the employer's trademark, logo, or other identifying characteristic to furnish the apparel free of charge to their employees. The study shall consider the economic impact of such a requirement on employers and employees and any other relevant issues.

(b) The department shall report its findings and any recommendations to the senate committee on economic development, housing and general affairs and the house committees on commerce and economic development and on general, housing and military affairs by January 15, 2012.

Sec. 9e. SUNSET

21 V.S.A. § 1325(a)(5) (relating to relieving an employer's experience record of charges) shall be repealed on July 1, 2012.

Thereupon, the question, Shall the Senate concur in the House Proposal of amendment with further proposal of amendment, was agreed to.

### **Rules Suspended; Bill Delivered**

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

**S. 104.**

### **Bill Called Up; Rules Suspended; Bill Committed**

**S. 38.**

Senator Sears called up House bill entitled:

An act relating to the Uniform Collateral Consequences of Conviction Act.

Thereupon, pending entry of the bill on the Calendar for action the next legislative day, on motion of Senator Sears, the rules were suspended and the bill was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Judiciary, on motion of Senator Sears, the rules were suspended and the bill was committed to the Committee on Judiciary, *intact*.

### **Rules Suspended; Bill Messaged**

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

**S. 96.**

### **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 Senate proposal of amendment to Senate bill of

the following title:

**S. 108.** An act relating to effective strategies to reduce criminal recidivism.

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

### **Adjournment**

On motion of Senator Campbell, the Senate adjourned until three o'clock in the afternoon.

### **Called to Order**

The Senate was called to order by the President.

### **Rules Suspended; House Proposal of Amendment Concurred In**

#### **S. 17.**

Appearing on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and House proposal of amendment to bill entitled:

An act relating to licensing a nonprofit organization to dispense marijuana for therapeutic purposes.

Was taken up for immediate consideration.

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

Sec. 1. 18 V.S.A. chapter 86, subchapter 2 is amended to read:

Subchapter 2. Marijuana for Medical Symptom Use by Persons  
with Severe Illness

#### § 4472. DEFINITIONS

For the purposes of this subchapter:

(1) “Bona fide ~~physician-patient~~ health care professional-patient relationship” means a treating or consulting relationship of not less than six months duration, in the course of which a ~~physician~~ health care professional has completed a full assessment of the registered patient’s medical history and current medical condition, including a personal physical examination.

(2) “Clone” means a plant section from a female marijuana plant not yet root-bound, growing in a water solution, which is capable of developing into a new plant.

(3) “Criminal history record” means all information documenting an individual’s contact with the criminal justice system, including data regarding

identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

(4) “Debilitating medical condition,” provided that, in the context of the specific disease or condition described in subdivision (A) or (B) of this subdivision ~~(2)~~(4), reasonable medical efforts have been made over a reasonable amount of time without success to relieve the symptoms, means:

(A) cancer, multiple sclerosis, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions, if the disease or the treatment results in severe, persistent, and intractable symptoms; or

(B) a disease, medical condition, or its treatment that is chronic, debilitating, and produces severe, persistent, and one or more of the following intractable symptoms: cachexia or wasting syndrome; severe pain; severe nausea; or seizures.

(5) “Dispensary” means a nonprofit entity registered under section 4474e of this title which acquires, possesses, cultivates, manufactures, transfers, transports, supplies, sells, or dispenses marijuana, marijuana-infused products, and marijuana-related supplies and educational materials for or to a registered patient who has designated it as his or her center and to his or her registered caregiver for the registered patient’s use for symptom relief. A dispensary may provide marijuana for symptom relief to registered patients at only one facility or location but may have a second location associated with the dispensary where the marijuana is cultivated. Both locations are considered to be part of the same dispensary.

(6) “Health care professional” means an individual licensed to practice medicine under chapter 23 or 33 of Title 26, an individual certified as a physician’s assistant under chapter 31 of Title 26, or an individual licensed as an advanced practice registered nurse under chapter 28 of Title 26. This definition includes individuals who are professionally licensed under substantially equivalent provisions in New Hampshire, Massachusetts, or New York.

(7) “Immature marijuana plant” means a female marijuana plant that has not flowered and which does not have buds that may be observed by visual examination.

~~(3)~~(8) “Marijuana” shall have the same meaning as provided in subdivision 4201(15) of this title.

~~(4) “Physician” means a person who is:~~

~~(A) licensed under chapter 23 or chapter 33 of Title 26, and is licensed with authority to prescribe drugs under Title 26; or~~

~~(B) a physician, surgeon, or osteopathic physician licensed to practice medicine and prescribe drugs under comparable provisions in New Hampshire, Massachusetts, or New York.~~

(9) “Mature marijuana plant” means a female marijuana plant that has flowered and which has buds that may be observed by visual examination.

~~(5)~~(10) “Possession limit” means the amount of marijuana collectively possessed between the registered patient and the patient’s registered caregiver which is no more than two mature marijuana plants, seven immature plants, and two ounces of usable marijuana.

~~(6)~~(11) “Registered caregiver” means a person who is at least 21 years old who has never been convicted of a drug-related crime and who has agreed to undertake responsibility for managing the well-being of a registered patient with respect to the use of marijuana for symptom relief.

~~(7)~~(12) “Registered patient” means a ~~person~~ resident of Vermont who has been issued a registration card by the department of public safety identifying the person as having a debilitating medical condition pursuant to the provisions of this subchapter. “Resident of Vermont” means a person whose domicile is Vermont.

~~(8)~~(13) “Secure indoor facility” means a building or room equipped with locks or other security devices that permit access only by a registered caregiver ~~or~~ registered patient, or a principal officer or employee of a dispensary.

~~(9)~~(14) “Usable marijuana” means the dried leaves and flowers of marijuana, and any mixture or preparation thereof, and does not include the seeds, stalks, and roots of the plant.

~~(10)~~(15) “Use for symptom relief” means the acquisition, possession, cultivation, use, transfer, or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a registered patient’s debilitating medical condition which is in compliance with all the limitations and restrictions of this subchapter. For the purposes of this definition, “transfer” is limited to the transfer of marijuana and paraphernalia between a registered caregiver and a registered patient.

#### § 4473. REGISTERED PATIENTS; QUALIFICATION STANDARDS AND PROCEDURES

(a) To become a registered patient, a person must be diagnosed with a debilitating medical condition by a ~~physician~~ health care professional in the

course of a bona fide ~~physician-patient~~ health care professional-patient relationship.

(b) The department of public safety shall review applications to become a registered patient using the following procedures:

(1) A patient with a debilitating medical condition shall submit, under oath, a signed application for registration to the department. If the patient is under the age of 18, the application must be signed by both the patient and a parent or guardian. The application shall require identification and contact information for the patient and the patient's registered caregiver applying for authorization under section 4474 of this title, if any, and the patient's designated dispensary under section 4474e of this title, if any. The applicant shall attach to the application a medical verification form developed by the department pursuant to subdivision (2) of this subsection.

(2) The department of public safety shall develop a medical verification form to be completed by a ~~physician~~ health care professional and submitted by a patient applying for registration in the program. The form shall include:

(A) A cover sheet which includes the following:

(i) A statement of the penalties for providing false information.

(ii) Definitions of the following statutory terms:

(I) "Bona fide ~~physician-patient~~ health care professional-patient relationship" as defined in ~~subdivision 4472(1)~~ section 4472 of this title.

(II) "Debilitating medical condition" as defined in ~~subdivision 4472(2)~~ section 4472 of this title.

(III) "~~Physician~~ Health care professional" as defined in ~~subdivision 4472(4)~~ section 4472 of this title.

(B) A verification sheet which includes the following:

(i) A statement that a bona fide ~~physician-patient~~ health care professional-patient relationship exists under ~~subdivision 4472(1)~~ section 4472 of this title, or that under subdivision (3)(A) of this subsection (b), the debilitating medical condition is of recent or sudden onset, and the patient has not had a previous ~~physician~~ health care professional who is able to verify the nature of the disease and its symptoms.

(ii) A statement that reasonable medical efforts have been made over a reasonable amount of time without success to relieve the symptoms.

(iii) A statement that the patient has a debilitating medical condition as defined in ~~subdivision 4472(2)~~ section 4472 of this title, including the specific disease or condition which the patient has and whether the patient meets the criteria under ~~subdivision 4472(2)(A) or (B)~~ section 4472.

(iv) A signature line which provides in substantial part: "I certify that I meet the definition of ~~'physician' under 18 V.S.A. § 4472(4)(A) or 4472(4)(B)~~ 'health care professional' under 18 V.S.A. § 4472, that I am a ~~physician~~ health care professional in good standing in the state of ....., and that the facts stated above are accurate to the best of my knowledge and belief."

(v) The ~~physician's~~ health care professional's contact information, license number, category of his or her health care profession as defined in subdivision 4472(6) of this title, and contact information for the out-of-state licensing agency, if applicable. The department of public safety shall adopt rules for verifying the goodstanding of out-of-state health care professionals.

(3)(A) The department of public safety shall transmit the completed medical verification form to the ~~physician~~ health care professional and contact him or her for purposes of confirming the accuracy of the information contained in the form. The department may approve an application, notwithstanding the six-month requirement in ~~subdivision 4472(1)~~ section 4472 of this title, if the department is satisfied that the medical verification form confirms that the debilitating medical condition is of recent or sudden onset, and that the patient has not had a previous ~~physician~~ health care professional who is able to verify the nature of the disease and its symptoms.

(B) If the ~~physician~~ health care professional is licensed in another state as provided by ~~subdivision 4472(4)(B)~~ section 4472 of this title, the department shall ~~contact the state's medical practice board and~~ verify that the ~~physician~~ health care professional is in good standing in that state.

(4) The department shall approve or deny the application for registration in writing within 30 days from receipt of a completed registration application. If the application is approved, the department shall issue the applicant a registration card which shall include the registered patient's name and photograph, ~~as well as~~ the registered patient's designated dispensary, if any, and a unique identifier for law enforcement verification purposes under section 4474d of this title.

(5)(A) A review board is established. The medical practice board shall appoint three physicians licensed in Vermont to constitute the review board. If an application under subdivision (1) of this subsection is denied, within seven days the patient may appeal the denial to the board. Review shall be limited to information submitted by the patient under subdivision (1) of this subsection,

and consultation with the patient's treating ~~physician~~ health care professional. All records relating to the appeal shall be kept confidential. An appeal shall be decided by majority vote of the members of the board.

(B) The board shall meet periodically to review studies, data, and any other information relevant to the use of marijuana for symptom relief. The board may make recommendations to the general assembly for adjustments and changes to this chapter.

(C) Members of the board shall serve for three-year terms, beginning February 1 of the year in which the appointment is made, except that the first members appointed shall serve as follows: one for a term of two years, one for a term of three years, and one for a term of four years. Members shall be entitled to per diem compensation authorized under ~~section 1010 of Title 32~~ 32 V.S.A. § 1010. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term vacated.

#### § 4474. REGISTERED CAREGIVERS; QUALIFICATION STANDARDS AND PROCEDURES

(a) A person may submit a signed application to the department of public safety to become a registered patient's registered caregiver. The department shall approve or deny the application in writing within 30 days. The department shall approve a registered caregiver's application and issue the person an authorization card, including the caregiver's name, photograph, and a unique identifier, after verifying:

(1) the person will serve as the registered caregiver for one registered patient only; and

(2) the person has never been convicted of a drug-related crime.

(b) Prior to acting on an application, the department shall obtain from the Vermont criminal information center a Vermont criminal record, an out-of-state criminal record, and a criminal record from the Federal Bureau of Investigation for the applicant. For purposes of this subdivision, "criminal record" means a record of whether the person has ever been convicted of a drug-related crime. Each applicant shall consent to release of criminal records to the department on forms substantially similar to the release forms developed by the center pursuant to ~~section 2056c of Title 20~~ 20 V.S.A. § 2056c. The department shall comply with all laws regulating the release of criminal history records and the protection of individual privacy. The Vermont criminal information center shall send to the requester any record received pursuant to this section or inform the department of public safety that no record exists. If the department disapproves an application, the department shall promptly provide a copy of any record of convictions and pending criminal charges to

the applicant and shall inform the applicant of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the Vermont criminal information center. No person shall confirm the existence or nonexistence of criminal record information to any person who would not be eligible to receive the information pursuant to this subchapter.

(c) A registered caregiver may serve only one registered patient at a time, and a registered patient may have only one registered caregiver at a time.

§ 4474a. REGISTRATION; FEES

(a) The department shall collect a fee of \$50.00 for the application authorized by sections 4473 and 4474 of this title. The fees received by the department shall be deposited into a registration fee fund and used to offset the costs of processing applications under this subchapter.

(b) A registration card shall expire one year after the date of issue, with the option of renewal, provided the patient submits a new application which is approved by the department of public safety, pursuant to section 4473 or 4474 of this title, and pays the fee required under subsection (a) of this section.

§ 4474b. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES; SEIZURE OF PROPERTY

(a) A person who has in his or her possession a valid registration card issued pursuant to this subchapter and who is in compliance with the requirements of this subchapter, including the possession limits in ~~subdivision 4472(4)~~ section 4472 of this title, shall be exempt from arrest or prosecution under subsection 4230(a) of this title and from seizure of marijuana, marijuana-infused products, and marijuana-related supplies.

(b) A ~~physician~~ health care professional who has participated in a patient's application process under subdivision 4473(b)(2) of this title shall not be subject to arrest, prosecution, or disciplinary action under chapter 23 of Title 26, penalized in any manner, or denied any right or privilege under state law, except for giving false information, pursuant to subsection 4474c(f) of this title.

(c) No person shall be subject to arrest or prosecution for constructive possession, conspiracy, or any other offense for simply being in the presence or vicinity of a registered patient or registered caregiver engaged in use of marijuana for symptom relief.

(d) A law enforcement officer shall not be required to return marijuana ~~or paraphernalia relating to its use,~~ marijuana-infused products, and marijuana-related supplies seized from a registered patient or registered caregiver. However, if marijuana or marijuana-infused products are seized by

a law enforcement officer and if there is a subsequent determination that the patient or caregiver was in compliance with this subchapter, the seized marijuana and marijuana-infused products shall not count toward the possession limits or dispensary allocation set forth in this subchapter for the patient or caregiver.

(e) A dispensary may donate marijuana, marijuana-infused products, and marijuana-related supplies to another dispensary in Vermont provided that no consideration is paid and that the recipient does not exceed the possession limits specified in this subchapter.

§ 4474c. PROHIBITIONS, RESTRICTIONS, AND LIMITATIONS REGARDING THE USE OF MARIJUANA FOR SYMPTOM RELIEF

(a) This subchapter shall not exempt any person from arrest or prosecution for:

(1) Being under the influence of marijuana while:

(A) operating a motor vehicle, boat, or vessel, or any other vehicle propelled or drawn by power other than muscular power;

(B) in a workplace or place of employment; or

(C) operating heavy machinery or handling a dangerous instrumentality.

(2) The use or possession of marijuana or marijuana-infused products by a registered patient or the possession of marijuana or marijuana-infused products by a registered caregiver:

(A) for purposes other than symptom relief as permitted by this subchapter; or

(B) in a manner that endangers the health or well-being of another person.

(3) The smoking of marijuana in any public place, including:

(A) a school bus, public bus, or other public vehicle;

(B) a workplace or place of employment;

(C) any school grounds;

(D) any correctional facility; or

(E) any public park, public beach, public recreation center, or youth center.

(b) This chapter shall not be construed to require that coverage or reimbursement for the use of marijuana for symptom relief be provided by:

(1) a health insurer as defined by section 9402 of this title, or any insurance company regulated under Title 8;

(2) Medicaid, Vermont health access plan, and any other public health care assistance program;

(3) an employer; or

(4) for purposes of workers' compensation, an employer as defined in 21 V.S.A. § 601(3).

(c) A registered patient or registered caregiver who elects to grow marijuana to be used for symptom relief by the patient may do so only if the marijuana is cultivated in a single, secure indoor facility.

(d) A registered patient or registered caregiver may not transport marijuana in public unless it is secured in a locked container.

(e) Within 72 hours after the death of a registered patient, the patient's registered caregiver shall return to the department of public safety for disposal any marijuana or marijuana plants in the possession of the patient or registered caregiver at the time of the patient's death. If the patient did not have a registered caregiver, the patient's next of kin shall contact the department of public safety within 72 hours after the patient's death and shall ask the department to retrieve such marijuana and marijuana plants for disposal.

(f) Notwithstanding any law to the contrary, a person who knowingly gives to any law enforcement officer false information to avoid arrest or prosecution, or to assist another in avoiding arrest or prosecution, shall be imprisoned for not more than one year or fined not more than \$1,000.00 or both. This penalty shall be in addition to any other penalties that may apply for the possession or use of marijuana.

§ 4474d. LAW ENFORCEMENT VERIFICATION OF INFORMATION;  
RULEMAKING

(a) The department of public safety shall maintain and keep confidential, except as provided in subsection (b) of this section and except for purposes of a prosecution for false swearing under 13 V.S.A. § 2904, the records of all persons registered under this subchapter or registered caregivers in a secure database accessible by authorized department of public safety ~~employee's~~ employees only.

(b) In response to a person-specific or property-specific inquiry by a law enforcement officer or agency made in the course of a bona fide investigation or prosecution, the department may verify the identities and registered property addresses of the registered patient and the patient's registered caregiver, a

dispensary, and the principal officer, the board members, or the employees of a dispensary.

(c) The department shall maintain a separate secure electronic database accessible to law enforcement personnel 24 hours a day that uses a unique identifier system to allow law enforcement to verify that a person or entity is a registered patient, or a registered caregiver, a dispensary, or the principal officer, a board member, or an employee of a dispensary.

(d) The department of public safety shall implement the requirements of this act within 120 days of its effective date. The department may adopt rules under chapter 25 of Title 3 and shall develop forms to implement this act.

#### § 4474e. DISPENSARIES; CONDITIONS OF OPERATION

(a) A dispensary registered under this section may:

(1) Acquire, possess, cultivate, manufacture, transfer, transport, supply, sell, and dispense marijuana, marijuana-infused products, and marijuana-related supplies and educational materials for or to a registered patient who has designated it as his or her dispensary and to his or her registered caregiver for the registered patient's use for symptom relief. For purposes of this section, "transport" shall mean the movement of marijuana or marijuana-infused products from registered growing locations to their associated dispensaries, between dispensaries, or as otherwise allowed under this subchapter.

(A) Marijuana-infused products shall include tinctures, oils, solvents, and edible or potable goods. Only the portion of any marijuana-infused product that is attributable to marijuana shall count toward the possession limits of the dispensary and the patient. The department of public safety shall establish by rule the appropriate method to establish the weight of marijuana that is attributable to marijuana-infused products.

(B) Marijuana-related supplies shall include pipes, vaporizers, and other items classified as drug paraphernalia under chapter 69 of this title.

(2) Acquire marijuana seeds or parts of the marijuana plant capable of regeneration from or dispense them to registered patients or their caregivers or acquire them from another registered Vermont dispensary, provided that records are kept concerning the amount and the recipient.

(3) Cultivate and possess at any one time up to 28 mature marijuana plants, 98 immature marijuana plants, and 28 ounces of usable marijuana. However, if a dispensary is designated by more than 14 registered patients, the dispensary may cultivate and possess at any one time two mature marijuana

plants, seven immature plants, and two ounces of usable marijuana for every registered patient for which the dispensary serves as the designated dispensary.

(b)(1) A dispensary shall be operated on a nonprofit basis for the mutual benefit of its patients but need not be recognized as a tax-exempt organization by the Internal Revenue Service.

(2) A dispensary shall have a sliding-scale fee system that takes into account a registered patient's ability to pay.

(c) A dispensary shall not be located within 1,000 feet of the property line of a preexisting public or private school or licensed or regulated child care facility.

(d)(1) A dispensary shall implement appropriate security measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft of marijuana and shall ensure that each location has an operational security alarm system. All cultivation of marijuana shall take place in an enclosed, locked facility which is either indoors or otherwise not visible to the public and which can only be accessed by principal officers and employees of the dispensary who have valid registry identification cards. The department of public safety shall perform an annual on-site assessment of each dispensary and may perform on-site assessments of a dispensary without limitation for the purpose of determining compliance with this subchapter and any rules adopted pursuant to this subchapter and may enter a dispensary at any time for such purpose. During an inspection, the department may review the dispensary's confidential records, including its dispensing records, which shall track transactions according to registered patients' registry identification numbers to protect their confidentiality.

(2) A registered patient or registered caregiver may obtain marijuana from the dispensary facility by appointment only.

(3) The operating documents of a dispensary shall include procedures for the oversight of the dispensary and procedures to ensure accurate record-keeping.

(4) A dispensary shall submit the results of an annual financial audit to the department of public safety no later than 60 days after the end of the dispensary's fiscal year. The annual audit shall be conducted by an independent certified public accountant, and the costs of any such audit shall be borne by the dispensary. The department may also periodically require, within its discretion, the audit of a dispensary's financial records by the department.

(5) A dispensary shall destroy or dispose of marijuana, marijuana-infused products, clones, seeds, parts of marijuana that are not

usable for symptom relief or are beyond the possession limits provided by this subchapter, and marijuana-related supplies only in a manner approved by rules adopted by the department of public safety.

(e) A registered patient shall not consume marijuana for symptom relief on dispensary property.

(f) A person may be denied the right to serve as a principal officer, board member, or employee of a dispensary because of the person's criminal history record in accordance with section 4474g of this title and rules adopted by the department of public safety pursuant to that section.

(g)(1) A dispensary shall notify the department of public safety within 10 days of when a principal officer, board member, or employee ceases to be associated with or work at the dispensary. His or her registry identification card shall be deemed null and void, and the person shall be liable for any penalties that may apply.

(2) A dispensary shall notify the department of public safety in writing of the name, address, and date of birth of any proposed new principal officer, board member, or employee and shall submit a fee for a new registry identification card before a new principal officer, board member, or employee begins his or her official duties related to the dispensary and shall submit a complete set of fingerprints for the prospective principal officer, board member, or employee.

(h) A dispensary shall include a label on the packaging of all marijuana that is dispensed. The label shall identify the particular strain of marijuana contained therein. Cannabis strains shall be either pure breeds or hybrid varieties of cannabis and shall reflect properties of the plant. The label also shall contain a statement to the effect that the state of Vermont does not attest to the medicinal value of cannabis.

(i) Each dispensary shall develop, implement, and maintain on the premises employee policies and procedures to address the following requirements:

(1) A job description or employment contract developed for all employees which includes duties, authority, responsibilities, qualification, and supervision;

(2) Training in and adherence to confidentiality laws; and

(3) Training for employees required by subsection (j) of this section.

(j) Each dispensary shall maintain a personnel record for each employee that includes an application for employment and a record of any disciplinary action taken. Each dispensary shall provide each employee, at the time of his or her initial appointment, training in the following:

(1) The proper use of security measures and controls that have been adopted; and

(2) Specific procedural instructions on how to respond to an emergency, including robbery or violent incident.

(k)(1) No dispensary, principal officer, board member, or employee of a dispensary shall:

(A) Acquire, possess, cultivate, manufacture, transfer, transport, supply, sell, or dispense marijuana for any purpose except to assist a registered patient with the use of marijuana for symptom relief directly or through the qualifying patient's designated caregiver.

(B) Acquire usable marijuana or marijuana plants from any source other than registered dispensary principal officers, board members, or employees who cultivate marijuana in accordance with this subchapter.

(C) Dispense more than two ounces of usable marijuana to a registered patient directly or through the qualifying patient's registered caregiver during a 30-day period.

(D) Dispense an amount of usable marijuana to a qualifying patient or a designated caregiver that the principal officer, board member, or employee knows would cause the recipient to possess more marijuana than is permitted under this subchapter.

(E) Dispense marijuana to a person other than a registered patient who has designated the dispensary to provide for his or her needs or other than the patient's registered caregiver.

(2) A person found to have violated subdivision (1) of this subsection may no longer serve as a principal officer, board member, or employee of any dispensary, and such person's registry identification card shall be immediately revoked by the department of public safety.

(3) The board of a dispensary shall be required to report to the department of public safety any information regarding a person who violates this section.

(l)(1) A registered dispensary shall not be subject to the following provided that it is in compliance with this subchapter:

(A) Prosecution for the acquisition, possession, cultivation, manufacture, transfer, transport, supply, sale, or dispensing of marijuana, marijuana-infused products, or marijuana-related supplies for symptom relief in accordance with the provisions of this subchapter and any rule adopted by the department of public safety pursuant to this subchapter.

(B) Inspection and search, except pursuant to this subchapter or upon a search warrant issued by a court or judicial officer.

(C) Seizure of marijuana, marijuana-infused products, and marijuana-related supplies, except upon a valid order issued by a court.

(D) Imposition of any penalty or denied any right or privilege, including imposition of a civil penalty or disciplinary action by an occupational or professional licensing board or entity, solely for acting in accordance with this subchapter to assist registered patients or registered caregivers.

(2) No principal officer, board member, or employee of a dispensary shall be subject to arrest, prosecution, search, seizure, or penalty in any manner or denied any right or privilege, including civil penalty or disciplinary action by a occupational or professional licensing board or entity, solely for working for or with a dispensary to engage in acts permitted by this subchapter.

(m) The governor may suspend the implementation and enforcement of subsection (a) of this section if the governor determines that it is in the interest of justice and public safety.

§ 4474f. DISPENSARY APPLICATION, APPROVAL, AND REGISTRATION

(a)(1) The department of public safety shall adopt rules on the following:

(A) The form and content of dispensary registration and renewal applications.

(B) Minimum oversight requirements for a dispensary.

(C) Minimum record-keeping requirements for a dispensary.

(D) Minimum security requirements for a dispensary, which shall include a fully operational security alarm system. This provision shall apply to each location where marijuana will be grown, cultivated, harvested, or otherwise prepared for distribution by the dispensary or will be distributed by the dispensary.

(E) Procedures for suspending or terminating the registration of a dispensary that violates the provisions of this subchapter or the rules adopted pursuant to this subchapter.

(F) The medium and manner in which a dispensary may notify registered patients of its services.

(G) Procedures to guide reasonable determinations as to whether an applicant would pose a demonstrable threat to public safety if he or she were to be associated with a dispensary.

(H) Procedures for providing notice to applicants regarding federal law with respect to marijuana.

(2) The department of public safety shall adopt such rules with the goal of protecting against diversion and theft without imposing an undue burden on a registered dispensary or compromising the confidentiality of registered patients and their registered caregivers. Any dispensing records that a registered dispensary is required to keep shall track transactions according to registered patients' and registered caregivers' registry identification numbers, rather than their names, to protect confidentiality.

(b) Within 30 days of the adoption of rules, the department shall begin accepting applications for the operation of dispensaries. Within 365 days of the effective date of this section, the department shall grant registration certificates to four dispensaries, provided at least four applicants apply and meet the requirements of this section. No more than four dispensaries shall hold valid registration certificates at one time. The total statewide number of registered patients who have designated a dispensary shall not exceed 1,000 at any one time. Any time a dispensary registration certificate is revoked, is relinquished, or expires, the department shall accept applications for a new dispensary. If at any time after one year after the effective date of this section fewer than four dispensaries hold valid registration certificates in Vermont, the department of public safety shall accept applications for a new dispensary.

(c) Each application for a dispensary registration certificate shall include all of the following:

(1) A nonrefundable application fee in the amount of \$2,500.00 paid to the department of public safety.

(2) The legal name, articles of incorporation, and bylaws of the dispensary.

(3) The proposed physical address of the dispensary, if a precise address has been determined or, if not, the general location where it would be located.

(4) A description of the enclosed, locked facility where marijuana will be grown, cultivated, harvested, or otherwise prepared for distribution by the dispensary.

(5) The name, address, and date of birth of each principal officer and board member of the dispensary and a complete set of fingerprints for each of them.

(6) Proposed security and safety measures, which shall include at least one security alarm system for each location and planned measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft of marijuana.

(7) Proposed procedures to ensure accurate record-keeping.

(d) Any time one or more dispensary registration applications are being considered, the department of public safety shall solicit input from registered patients and registered caregivers.

(e) Each time a dispensary certificate is granted, the decision shall be based on the overall health needs of qualified patients. The following factors shall weigh heavily in the consideration of an application:

(1) Geographic convenience to patients from throughout the state of Vermont to a dispensary if the applicant were approved.

(2) The entity's ability to provide an adequate supply to the registered patients in the state.

(3) The entity's ability to demonstrate its board members' experience running a nonprofit organization or business.

(4) The comments, if any, of registered patients and registered caregivers regarding which applicant should be granted a registration certificate.

(5) The sufficiency of the applicant's plans for record-keeping, which records shall be considered confidential health care information under Vermont law and are intended to be deemed protected health care information for purposes of the federal Health Insurance Portability and Accountability Act of 1996, as amended.

(6) The sufficiency of the applicant's plans for safety and security, including the proposed location and security devices employed.

(f) The department of public safety may deny an application for a dispensary if it determines that an applicant's criminal history record indicates that the person's association with a dispensary would pose a demonstrable threat to public safety.

(g) After a dispensary is approved but before it begins operations, it shall submit the following to the department of public safety:

(1) The legal name and articles of incorporation of the dispensary.

(2) The physical address of the dispensary.

(3) The name, address, and date of birth of each principal officer and board member of the dispensary along with a complete set of fingerprints for each.

(4) A registration fee of \$20,000.00 for the first year of operation, and an annual fee of \$30,000.00 in subsequent years.

(h) The governor may suspend the implementation and enforcement of subsection (a) or subsection (b) of this section, or both, if the governor determines that implementation of the suspended subsection is in the interest of justice and public safety.

§ 4474g. DISPENSARY REGISTRY IDENTIFICATION CARD;  
CRIMINAL BACKGROUND CHECK

(a) Except as provided in subsection (b) of this section, the department of public safety shall issue each principal officer, board member, and employee of a dispensary a registry identification card or renewal card within 30 days of receipt of the person's name, address, and date of birth and a fee of \$50.00. The fee shall be paid by the dispensary and the cost shall not be passed on to a principal officer, board member, or employee. A person shall not serve as principal officer, board member, or employee of a dispensary until that person has received a registry identification card issued under this section. Each card shall specify whether the cardholder is a principal officer, board member, or employee of a dispensary and shall contain the following:

(1) The name, address, and date of birth of the person.

(2) The legal name of the dispensary with which the person is affiliated.

(3) A random identification number that is unique to the person.

(4) The date of issuance and the expiration date of the registry identification card.

(5) A photograph of the person.

(b) Prior to acting on an application for a registry identification card, the department of public safety shall obtain with respect to the applicant a Vermont criminal history record, an out-of-state criminal history record, and a criminal history record from the Federal Bureau of Investigation. Each applicant shall consent to the release of criminal history records to the department on forms substantially similar to the release forms developed in accordance with 20 V.S.A. § 2056c.

(c) When the department of public safety obtains a criminal history record, the department shall promptly provide a copy of the record to the applicant and to the principal officer and board of the dispensary if the applicant is to be an

employee. The department shall inform the applicant of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the department.

(d) The department of public safety shall comply with all laws regulating the release of criminal history records and the protection of individual privacy. No person shall confirm the existence or nonexistence of criminal history record information to any person who would not be eligible to receive the information pursuant to this subchapter.

(e) The department of public safety shall not issue a registry identification card to any applicant who has been convicted of a drug-related offense or a violent felony or who has a pending charge for such an offense. For purposes of this subchapter, "violent felony" means 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.

(f) The department of public safety shall adopt rules for the issuance of a registry identification card and shall set forth standards for determining whether an applicant should be denied a registry identification card because his or her criminal history record indicates that the person's association with a dispensary would pose a demonstrable threat to public safety. The rules shall consider whether a person who has a conviction for an offense not listed in subsection (e) of this section has been rehabilitated. A conviction for an offense not listed in subsection (e) of this section shall not automatically disqualify a person for a registry identification card. A dispensary may deny a person the opportunity to serve as a board member or an employee based on his or her criminal history record. An applicant who is denied a registry identification card may appeal the department of public safety's determination in superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure.

(g) A registration identification card of a principal officer, board member, or employee shall expire one year after its issuance or upon the expiration of the registered organization's registration certificate, whichever occurs first.

#### § 4474h. PATIENT DESIGNATION OF DISPENSARY

(a) A registered patient may obtain marijuana only from the patient's designated dispensary and may designate only one dispensary. A registered patient and his or her caregiver may not grow marijuana for symptom relief if the patient designates a dispensary. A registered patient who wishes to change his or her dispensary shall notify the department of public safety in writing on a form issued by the department and shall submit with the form a fee of \$25.00. The department shall issue a new identification card to the registered patient within 30 days of receiving the notification of change in dispensary.

The registered patient's previous identification card shall expire at the time the new identification card takes effect. A registered patient shall submit his or her expired identification card to the department within 30 days of expiration. A registered patient shall not change his or her designated dispensary more than once in any 90-day period.

(b) The department of public safety shall track the number of registered patients who have designated each dispensary. The department shall issue a monthly written statement to the dispensary identifying the number of registered patients who have designated that dispensary and the registry identification numbers of each patient and each patient's designated caregiver, if any.

(c) In addition to the monthly reports, the department of public safety shall provide written notice to a dispensary whenever any of the following events occurs:

(1) A qualifying patient designates the dispensary to serve his or her needs under this subchapter.

(2) An existing registered patient revokes the designation of the dispensary because he or she has designated a different dispensary.

(3) A registered patient who has designated the dispensary loses his or her status as a registered patient under this subchapter.

#### § 4474i. CONFIDENTIALITY OF INFORMATION REGARDING DISPENSARIES AND REGISTERED PATIENTS

The confidentiality provisions in section 4474d of this title shall apply to records of all registered patients and registered caregivers within dispensary records in the department of public safety.

#### § 4474j. ANNUAL REPORT

(a)(1) There is established a marijuana for symptom relief oversight committee. The committee shall be composed of the following members:

(A) one registered patient appointed by each dispensary;

(B) one registered nurse and one registered patient appointed by the governor;

(C) one physician appointed by the Vermont medical society;

(D) one member of a local zoning board appointed by the Vermont League of Cities and Towns;

(E) one representative appointed jointly by the Vermont sheriffs' association and the Vermont association of chiefs of police; and

(F) the commissioner of public safety or his or her designee.

(2) The oversight committee shall meet at least two times per year for the purpose of evaluating and making recommendations to the general assembly regarding:

(A) The ability of qualifying patients and registered caregivers in all areas of the state to obtain timely access to marijuana for symptom relief.

(B) The effectiveness of the registered dispensaries individually and together in serving the needs of qualifying patients and registered caregivers, including the provision of educational and support services.

(C) Sufficiency of the regulatory and security safeguards contained in this subchapter and adopted by the department of public safety to ensure that access to and use of cultivated marijuana is provided only to cardholders authorized for such purposes.

(b) On or before January 1 of each year, beginning in 2013, the oversight committee shall provide a report to the department of public safety, the house committee on human services, the senate committee on health and welfare, the house and senate committees on judiciary, and the house and senate committees on government operations on its findings.

#### § 4474k. FEES; DISPOSITION

All fees collected by the department of public safety relating to dispensaries and pursuant to this subchapter shall be deposited in the registration fee fund as referenced in section 4474a of this title.

#### § 4474l. REGULATION BY MUNICIPALITIES

Nothing in this subchapter shall be construed to prevent a municipality from prohibiting the establishment of a dispensary within its boundaries or from regulating the time, place, and manner of dispensary operation through zoning or other local ordinances.

Sec. 1a. 18 V.S.A. § 4474h(a) is amended to read:

(a) A registered patient may obtain marijuana only from the patient's designated dispensary and may designate only one dispensary. ~~A registered patient and his or her caregiver may not grow marijuana for symptom relief if the patient designates a dispensary~~ If a registered patient designates a dispensary, the patient and his or her caregiver may not grow marijuana or obtain marijuana or marijuana-infused products for symptom relief from any source other than the designated dispensary. A registered patient who wishes to change his or her dispensary shall notify the department of public safety in writing on a form issued by the department and shall submit with the form a

fee of \$25.00. The department shall issue a new identification card to the registered patient within 30 days of receiving the notification of change in dispensary. The registered patient's previous identification card shall expire at the time the new identification card takes effect. A registered patient shall submit his or her expired identification card to the department within 30 days of expiration. A registered patient shall not change his or her designated dispensary more than once in any 90-day period.

#### Sec. 2. DEPARTMENT OF PUBLIC SAFETY; IDENTIFICATION CARDS

The department of public safety shall take measures to improve the quality and security of identification cards required pursuant to chapter 86 of Title 18. The department shall consider the feasibility of a "swipe card" that could be used by law enforcement or a dispensary.

#### Sec. 2a. REPORT FROM THE DEPARTMENT OF PUBLIC SAFETY

The department of public safety shall report to the general assembly no later than January 1, 2012 on the following:

(1) The actual and projected income and costs for administering this act.

(2) Recommendations for how dispensaries could deliver marijuana to registered patients and their caregivers in a safe manner. Delivery to patients and caregivers is expressly forbidden until the general assembly takes affirmative action to permit delivery.

(3) Whether prohibiting growing marijuana for symptom relief by patients and their caregivers if the patient designates a dispensary interferes with patient access to marijuana for symptom relief and, if so, recommendations for regulating the ability of a patient and a caregiver to grow marijuana at the same time the patient has designated a dispensary.

#### Sec. 2b. JOINT FISCAL OFFICE REPORT

No later than January 15, 2012, the joint fiscal office shall report to the house committee on ways and means and the senate committee on finance regarding the projected costs of administering this act, the projected fee revenue from this act, the feasibility of a sales tax on marijuana sold through registered dispensaries, and any other information that would assist the committees in adopting policies that will encourage the viability of the dispensaries while remaining, at a minimum, revenue neutral to the state.

#### Sec. 3. SURVEY

(a) By September 1, 2011, the department of public safety shall develop a survey of patients registered to possess and use marijuana for symptom relief

and shall send the survey to such patients. The department shall request that patients return the survey by October 1, 2011.

(b) The survey shall make the following inquiries:

(1) Please describe your medical diagnosis and the “debilitating medical condition” that qualifies you to be a registered patient under Vermont law. Please describe the symptoms that are aided by your use of marijuana for symptom relief.

(2) Please describe how much marijuana you typically use in one month for symptom relief and the strain or strains of marijuana that you use or that are particularly helpful in alleviating symptoms of your medical condition.

(3) Would you purchase marijuana for symptom relief from a state-regulated dispensary if it were available to you at an affordable price? How much do you typically spend in one month on marijuana for symptom relief?

(c) The department of public safety shall clearly state on the survey that the information is being gathered solely for the purpose of assessing the needs of registered medical patients in order to facilitate a safer, more reliable means for patients to obtain marijuana for symptom relief. The completed surveys shall remain confidential and shall not be subject to public inspection; however, summary information shall be available as provided in subsection (d) of this section.

(d) The department of public safety shall summarize the survey responses in a manner that protects the identity of patients, providing information that will assist state decision-makers, the department of public safety, and potential dispensary applicants to better understand the needs of registered patients. This summary shall not be confidential and shall be provided with other information about the medical marijuana registry on the Vermont criminal information website. The department of public safety shall ensure that any patient identifiers are not included in the summary.

#### Sec. 3a. APPROPRIATION

The amount of \$108,500.00 is appropriated from the registry fee fund in fiscal year 2012 to the department of public safety for the performance of the department’s responsibilities under this act.

#### Sec. 3b. DEPARTMENT OF PUBLIC SAFETY; POSITION

The department of public safety is authorized to establish one new classified position for the administration of the marijuana dispensary program in fiscal year 2012. The position shall be transferred and converted from existing vacant positions in the executive branch of state government.

## Sec. 3c. REPEAL

18 V.S.A. § 4474e(m) (governor suspension; dispensaries implementation) and 18 V.S.A. § 4474f(h) (governor suspension; dispensary application) shall be repealed January 31, 2012.

## Sec. 4. EFFECTIVE DATE

Sec. 1a of this act shall take effect July on 1, 2014, and the remainder of the act shall take effect on passage.

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

An act relating to registering four nonprofit organizations to dispense marijuana for symptom relief.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Galbraith moved that the Senate concur in the House proposal of amendment with further proposal of amendment as follows:

In Sec. 1, 18 V.S.A. § 4474f by adding a new subsection to be lettered subsection (i) to read as follows:

(i) The governor shall suspend the implementation, operation and enforcement of dispensaries as provided in this subchapter if the governor determines that a state employee is placed at significant risk of criminal prosecution for carrying out duties in accordance with this subchapter.

Which was disagreed to.

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

**Rules Suspended; House Proposal of Amendment Concurred In****S. 78.**

Appearing on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and House proposal of amendment to bill entitled:

An act relating to the advancement of cellular, broadband, and other technology infrastructure in Vermont.

Was taken up for immediate consideration.

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

First: In Sec. 1 (purpose and findings), in subsection (b), by adding a new subdivision (3) to read as follows:

(3) Of the approximately \$8,900,000.00 in state funds appropriated to the VTA for capital investments since its creation in 2007, approximately \$6,400,000.00 has been awarded to fund various telecommunications projects in the state, and about \$280,000.00 worth of those projects has been completed to date.

And by renumbering the remaining subdivisions to be numerically correct.

Second: In Sec. 1 (purpose and findings), in subsection (b), in subdivision (5), after the words “promises near universal coverage in” by adding the words large areas of

Third: In Sec. 1 (purpose and findings), in subsection (b), by striking out subdivision (11) in its entirety and inserting in lieu thereof a new subdivision (11) to read as follows:

(11) In light of the infusion of federal dollars to build out telecommunications infrastructure in Vermont, the VTA, in coordination with the secretary of administration, needs to reexamine on a continuing basis its role in providing funds and its support for cellular and broadband deployment.

Fourth: In Sec. 1 (purpose and findings), in subsection (b), in subdivision (13), by striking out the second sentence in its entirety.

Fifth: In Sec. 1 (purpose and findings), in subsection (b), by striking out subdivision (14) and inserting in lieu thereof a new subdivision (14) to read as follows:

(14) It is also imperative that Vermont pursue telecommunications infrastructure deployment in a manner consistent with the state’s iconic beauty and long-standing principles of historic and environmental stewardship. Notably, Vermont is ranked sixth in the world for “destination stewardship” by the National Geographic Society’s Center for Sustainable Destination, as published in the November–December 2009 issue of National Geographic Traveler magazine. Provisions should be enacted that are specifically intended to assure that telecommunications facilities along Vermont’s scenic highways are built consistently with this goal.

And by renumbering all subdivisions in subsection (b) to be numerically correct.

Sixth: In Sec. 2, 30 V.S.A. § 248a (certificate of public good for communications facilities), in subsection (c) (findings), by striking out subdivision (1) and inserting in lieu thereof a new subdivision (1) to read as follows:

(1) The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the

public health and safety, and the public's use and enjoyment of the I-89 and I-91 scenic corridors or of any highway that has been designated as a scenic road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C. § 162, with due consideration having been given to the relevant criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K). However, with respect to telecommunications facilities of limited size and scope, the board shall waive all criteria of this subdivision other than 10 V.S.A. § 6086(a)(1)(D) (floodways) and (a)(8) (aesthetics, scenic beauty, historic sites, rare and irreplaceable natural areas; endangered species; necessary wildlife habitat). Such waiver shall be on condition that:

(A) The board may determine, pursuant to the procedures described in subdivision (j)(2)(A) of this section, that a petition raises a significant issue with respect to any criterion of this subdivision; and

(B) A telecommunications facility of limited size and scope shall comply, at a minimum, with the requirements of the Low Risk Site Handbook for Erosion Prevention and Sediment Control issued by the department of environmental conservation, regardless of any provisions in that handbook that limit its applicability.

Seventh: By adding a new section to be numbered Sec. 3b to read as follows:

Sec. 3b. 3 V.S.A. § 2809 is amended to read:

§ 2809. REIMBURSEMENT OF AGENCY COSTS

\* \* \*

(g) Concerning an application for a permit to discharge stormwater runoff from a telecommunications facility as defined in 30 V.S.A. § 248a that is filed before July 1, 2014:

(1) Under subdivision (a)(1) of this section, the agency shall not require an applicant to pay more than \$10,000.00 with respect to a facility.

(2) The provisions of subsection (c) (mandatory meeting) of this section shall not apply.

Eighth: By adding a new section to be numbered Sec. 3c to read as follows:

Sec. 3c. Sec. F33 of No. 146 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

Sec. F33. ANR REPORT ON ANTI-DEGRADATION IMPLEMENTATION RULES

On or after January 15, 2011, and at least 30 days prior to pre-filing the same time that the secretary of natural resources prefiles 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. At the time of such prefiling, if the general assembly is not in session, then the secretary shall comply with this section by submitting the draft rules to the chairs of the senate committee on natural resources and energy and the house committee on fish, wildlife and water resources.

Ninth: In Sec. 10, 30 V.S.A. § 8092 (nonexclusive use of fiber on electric utility poles), in subsection (h) (transmission poles), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

(2) Notwithstanding any law or rule to the contrary, a company may not enter into a contract with a communications service provider that provides exclusive access to its company-attached and company-maintained fiber-optic facilities by including terms that expressly prohibit any other communications service provider from leasing or purchasing unused strands of fiber. The terms and conditions of any contract entered into under this section shall include a provision specifying that, if a communications service provider leases fiber-optic capacity but fails to use that capacity within one year from the date the contract is entered into, the communications service provider shall report such non-use to the department of public service. The commissioner of public service shall determine if such non-use constitutes anti-competitive behavior that unreasonably precludes another communications service provider from leasing fiber-optic capacity. If the commissioner determines that such non-use constitutes anti-competitive behavior, he or she shall commence an investigation with the board of public service. The board is authorized to impose a remedy it deems appropriate under the circumstances. Such remedy may include termination of the lease with respect to the unused portion of the leased fiber-optic capacity.

Tenth: In Sec. 10, 30 V.S.A. § 8092 (nonexclusive use of fiber on electric utility poles), by striking out subsection (j) (distribution poles) in its entirety and inserting in lieu thereof a new subsection (j) to read as follows:

(j) A company having electric transmission or distribution structures carrying voltages of 110 kV or lower may not enter into a contract with a communications service provider that provides exclusive access to its company-attached and company-maintained fiber-optic facilities by including terms that expressly prohibit any other communications service provider from leasing or purchasing unused strands of fiber. The terms and conditions of any

contract entered into under this section shall include a provision specifying that, if a communications service provider leases fiber-optic capacity but fails to use that capacity within one year from the date the contract is entered into, the communications service provider shall report such non-use to the department of public service. The commissioner of public service shall determine if such non-use constitutes anti-competitive behavior that unreasonably precludes another communications service provider from leasing fiber-optic capacity. If the commissioner determines that such non-use constitutes anti-competitive behavior, he or she shall commence an investigation with the board of public service. The board is authorized to impose a remedy it deems appropriate under the circumstances. Such remedy may include termination of the lease with respect to the unused portion of the leased fiber-optic capacity.

Eleventh: In Sec. 11 (study on regulatory exemption), in subsection (a), in the first sentence, after the words “certain telecommunications carriers” by adding the words not currently eligible

Twelfth: In Sec. 12, 30 V.S.A. § 227e (leasing or licensing of state land for telecommunications facilities), in subsection (b), in subdivision (1), after the following: “on the website maintained by the agency of administration” by adding the following: , with appropriate hyperlinks to that website on all relevant, state-maintained websites

Thirteenth: In Sec. 14, 24 V.S.A. § 4413 (limitations on municipal bylaws), in subdivision (h)(1), in the first sentence, before “bylaw” by striking out the following: “A” and inserting in lieu thereof the following: Except as necessary to ensure compliance with the national flood insurance program, a

Fourteenth: In Sec. 14b, 3 V.S.A. § 2222b (telecommunications coordination and planning), in subsection (c) (deployment tracking), in subdivision (1), after the words “Not later than 30 days” by striking out the word “of” and inserting in lieu thereof the word after

Fifteenth: In Sec. 14b, 3 V.S.A. § 2222b (telecommunications coordination and planning), in subsection (c) (deployment tracking), in subdivision (5), at the end of the subdivision, by adding the following: Alternatively, entities that voluntarily provide information requested pursuant to this subdivision may select a third party to be the recipient of such information. That third party may aggregate information provided by the entities, but shall not disclose the information it has received to any person, including the secretary. The third party may only disclose the aggregated information to the secretary.

Sixteenth: By striking out Sec. 14c in its entirety and inserting in lieu thereof a new Sec. 14c to read as follows:

Sec. 14c. Rule 5(d)(2) of the Vermont Rules of Environmental Court Proceedings is amended to read:

(2) *Claims and Challenges of Party Status in an Appeal from a Final Decision.* An appellant who claims party status as a person aggrieved pursuant to 6 V.S.A. § 4855 or 10 V.S.A. § 8504(a) and is not denied that status by 10 V.S.A. § 8504(d)(1), or an appellant who claims party status as an interested person pursuant to 10 V.S.A. § 8504(b)(1), will be automatically accorded that status when the notice of appeal is filed unless the court otherwise determines on motion to dismiss a party. An appellant who claims party status under 10 V.S.A. § 8504(b)(2), (d)(2), or (e)(2) and who has not sought interlocutory relief pursuant to paragraph (1) of this subdivision must assert that claim by motion filed ~~with the notice of appeal~~ not later than the deadline for filing a statement of questions on appeal. Any other person who appears as provided in subdivision (c) of this rule will be accorded party status unless the court otherwise determines on its own motion, on motion to dismiss a party, or on a motion to intervene.

Seventeenth: By adding a new section to be numbered Sec. 14e to read as follows:

Sec. 14e. 24 V.S.A. § 4412 is amended to read:

§ 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

\* \* \*

(8)(A) Communications antennae and facilities. Except to the extent bylaws protect historic landmarks and structures listed on the state or national register of historic places, no permit shall be required for placement of ~~antennae~~ an antenna used to transmit, receive, or transmit and receive communications signals on that property owner's premises if the ~~aggregate~~ area of the largest ~~faces~~ face of the ~~antennae~~ antenna is not more than ~~eight~~ 15 square feet, and if the ~~antennae~~ antenna and any mast support ~~does do~~ not extend more than 12 feet above the roof of that portion of the building to which the mast is attached.

\* \* \*

Eighteenth: In Sec. 15, 30 V.S.A. § 8060 (VTA findings and purpose), in subsection (b), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

(2) the ~~ubiquitous~~ universal availability of mobile telecommunication services, including voice and high-speed data ~~throughout the state~~ along

roadways and near universal availability statewide by the end of the year 2010 2013.

Nineteenth: In Sec. 16, 30 V.S.A. § 8061 (establishment and organization of the VTA), in subsection (c), after the words “The governor” by striking out “, the speaker of the house, and the president pro tempore of the senate shall jointly” and inserting in lieu thereof the word “shall”

Twentieth: In Sec. 16, 30 V.S.A. § 8061 (establishment and organization of the VTA), in subsection (d), by striking out the last sentence in its entirety and inserting in lieu thereof the following: “Upon completion of a term of service for any reason, including the term’s expiration or a member’s resignation, and for one year from the date of such completion, a former board member shall not advocate before the authority on behalf of an enterprise that provides broadband or cellular service.”

Twenty-first: By striking out Sec. 16a (VTA board transitional provision) in its entirety and inserting in lieu thereof a new Sec. 16a to read as follows:

#### Sec. 16a. VTA BOARD; REORGANIZATION

Upon the effective date of this act, the terms of office of the existing members of the board of directors of the Vermont telecommunications authority shall terminate, but members shall continue to serve until new members for the term commencing in 2011 are appointed as provided in this act.

Twenty-second: In Sec. 17, 30 V.S.A. § 8062 (VTA powers and duties), in subsection (a), after the new subdivision (2) (inventory of federal radio frequency licenses), by adding a new subdivision (3) to read as follows:

(3) to the extent not inconsistent with the goals of this chapter, to utilize existing buildings and structures, historic or otherwise, as sites for visually-neutral placement of mobile telecommunications and wireless broadband antenna facilities;

And by renumbering the remaining subdivisions to be numerically correct.

Twenty-third: In Sec. 17, 30 V.S.A. § 8062 (VTA powers and duties), in subsection (b), in subdivision (1), after the word “unserved” in both instances by inserting the words or underserved

Twenty-fourth: In Sec. 18, 30 V.S.A. § 8063 (interagency cooperation), in the new subsection (b), after the words “general assembly” by inserting the following: or, if the general assembly is not in session, without prior notice to the chairs of the house committee on commerce and economic development and the senate committees on finance and on economic development, housing

and general affairs and approval of the joint fiscal committee, in consultation with the legislative chairs already referenced in this subsection

Twenty-fifth: In Sec. 19, 30 V.S.A. § 8071 (VTA quarterly and annual reports), in subsection (c), in subdivision (6), after the words “existing business providers” by striking out the rest of the sentence until the period

Twenty-sixth: By striking out Sec. 23 (Hughesnet recovery act program) in its entirety and inserting in lieu thereof a new Sec. 23 to read as follows:

#### Sec. 23. SATELLITE RECOVERY ACT PROGRAM

(a) Pursuant to the broadband initiatives program of the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, companies such as Hughes Network Systems, LLC (Hughes) were selected by the Rural Utilities Service (RUS) of the United States Department of Agriculture as nationwide providers under RUS’s satellite grant program. Under the program, Hughes was awarded a \$58,700,000.00 grant in 2010. The grant allows Hughes to provide high speed Internet service by satellite to over 105,000 rural residences by eliminating the cost of hardware and installation and by reducing the price of monthly service plans.

(b) The satellite Internet service provided by satellite grant recipients may provide a good opportunity to bring broadband service to areas that otherwise might not be served and for such time until broadband service meeting or exceeding the minimum technical service characteristics under 30 V.S.A. § 8077 is available.

(c) Notwithstanding the minimum technical service characteristics under 30 V.S.A. § 8077, the commissioner of public service and the director of the Vermont telecommunications authority shall make known the availability of satellite recovery act programs and reference them in relevant publications listing broadband providers in Vermont.

(d) Notwithstanding the provisions of this section, an area shall not be considered “served” for purposes of state broadband policy and planning if it is only served by a satellite provider.

Twenty-seventh: In Sec. 24a, 3 V.S.A. § 2222c (report on broadband and wireless deployment), in subsection (a), by striking out the word “chapter” and inserting in lieu thereof the word section

Twenty-eighth: In Sec. 24a, 3 V.S.A. § 2222c (report on broadband and wireless deployment), in subsection (b), in subdivision (1)(B), by striking out the following: “mpbs” and inserting in lieu thereof the following: Mbps

Twenty-ninth: In Sec. 24a, 3V.S.A. § 2222c (report on broadband and wireless deployment), in subsection (b), in subdivision (1)(A) and in

subdivisions (2)(A) and (B), by striking out each instance of the following: “mbps” and inserting in lieu thereof the following: Mbps

Thirtieth: In Sec. 24b, 30 V.S.A. § 202c (state telecommunications policy and planning), in subsection (b), in subdivision (9), after the following: “deployment of broadband infrastructure” by striking out the following: “pursuant to the objectives set forth in S.78 of the Acts of 2011”

Thirty-first: In Sec. 24c (report on the VTA’s sustainability), in subsection (a), by striking out the word “ubiquitous” and inserting in lieu thereof the word universal

Thirty-second: By adding a new section to be numbered Sec. 24d to read as follows:

Sec. 24d. VTA FUNDING; FIBER-OPTIC FACILITIES; NORTH LINK

(a) Notwithstanding Sec. 14 of No. 2 of the Acts of 2009 (Special Session), which appropriated the sum of \$500,000.00 from the general fund to the Vermont telecommunications authority (VTA) for the purpose of financing a transaction with Northern Enterprises, Inc. (“North Link”), such funds shall be used to complete the construction and installation of an open access fiber-optic network from Hardwick, Vermont to Newport, Vermont.

(b) The funds appropriated under this section may be used for direct investment in fiber-optic facilities, to be owned by the VTA, or for grants to telecommunications service providers.

(c) Fiber-optic facilities owned by the VTA pursuant to this section shall include fiber strands for use by a telecommunications service provider to deliver broadband Internet access directly to homes, businesses, and institutional users (last-mile connectivity), in addition to strands which may be used to interconnect with other broadband and cellular facilities (middle mile) or to support system control and data acquisition for an electric distribution utility for smart metering technology solutions.

(d) Fiber-optic facilities funded in whole or in part with funds appropriated under this section shall be available for use by as many telecommunications service providers as the technology will permit on a nondiscriminatory basis and according to published terms and conditions.

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

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**House Proposal of Amendment Concurred In with Amendment****S. 92.**

House proposal of amendment to Senate bill entitled:

An act relating to the protection of students' health by requiring the use of safe cleaning products in schools.

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. STATEMENT OF POLICY**

The general assembly has long been committed to improving the indoor air quality of schools and the environmental health of students. To that end, the envision program, adopted by this body in No. 125 of the Acts of the 1999 Adj. Sess. (2000), shall be instructional in carrying out the requirements set forth in 18 V.S.A. chapter 39.

Sec. 1a. 18 V.S.A. chapter 39 is added to read:

**CHAPTER 39. CLEANING PRODUCTS IN SCHOOLS****§ 1781. DEFINITIONS**

As used in this chapter:

(1) "Air freshener" means an aerosol spray, liquid deodorizer, plug-in product, para-di-chlorbenzene block, scented urinal screen, or other product used to mask odors or freshen the air in a room.

(2) "Antimicrobial pesticide" means a product regulated by the federal Insecticide, Fungicide and Rodenticide Act that is intended to:

(A) disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or

(B) protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.

(3) "Cleaning product" means an institutional compound intended for routine cleaning, including general purpose cleaners, bathroom cleaners, glass cleaners, carpet cleaners, floor care products, and hand soaps. Cleaning product shall not mean an antimicrobial pesticide.

(4) "Conventional cleaning product" means a cleaning product that is not an environmentally preferable cleaning product.

(5) “Distributor” means any person or entity that distributes cleaning products commercially, but excludes retail stores.

(6) “Environmentally preferable cleaning product” means a cleaning product that has a lesser or reduced effect on human health and the environment when compared to competing products serving the same purpose.

(7) “Green cleaning” means a practice that includes the use of a cleaning product certified as environmentally preferable by an independent third party, best practices that follow accepted management standards and improve indoor air quality, and equipment that facilitates effective cleaning.

(8)(A) “Independent third party” means a nationally recognized organization that has developed a program for the purpose of certifying environmentally preferable cleaning products. The independent third party’s certification program shall:

(i) define a manufacturer’s certification fees;

(ii) identify any potential conflicts of interest;

(iii) base certification on consideration of human health and safety, ecological toxicity, other environmental impacts, and resource conservation as appropriate for the product and its packaging on a life-cycle basis;

(iv) develop certification standards in an open, public, and transparent manner that involves the public and key stakeholders;

(v) periodically revise and update the standards to remain consistent with current research about the impacts of chemicals on human health;

(vi) monitor and enforce the standards for the purpose of certification, and have the authority to inspect the manufacturing facility and periodically do so, and have a registered or legally protected certification mark; and

(vii) make the standards easily accessible to purchasers and manufacturers; or

(B) In the alternative, “independent third party” means any organization otherwise deemed by the department of health to satisfactorily assess and certify environmentally preferable cleaning products.

(9) “Manufacturer” means any person or entity engaged in the process of manufacturing cleaning products for commercial distribution.

(10) "School" means:

(A) A public school in Vermont, including a regional technical center and a comprehensive high school; and

(B) An approved independent school.

#### § 1782. ENVIRONMENTALLY PREFERABLE CLEANING PRODUCTS

(a) A distributor or manufacturer of cleaning products shall sell, offer for sale, or distribute to a school, school district, supervisory union, or procurement consortium only:

(1) environmentally preferable cleaning products utilized by the department of buildings and general services under state contracts; or

(2) cleaning products certified as environmentally preferable by an independent third party.

(b) A person who contracts with a school, school district, or supervisory union to provide cleaning services for a school only shall use a cleaning product that meets the requirements of subdivisions (a)(1) and (2) of this section.

(c) Nothing in this chapter shall be construed to regulate the sale, use, or distribution of antimicrobial pesticides.

#### § 1783. ENVIRONMENTALLY PREFERABLE AIR FRESHENERS

(a) A distributor or manufacturer shall sell, offer for sale, or distribute air fresheners to a school, school district, supervisory union, or procurement consortium only if the air fresheners are certified as environmentally preferable by an independent third party.

(b) A person who contracts with a school, school district, or supervisory union to provide cleaning services for a school shall only use air fresheners that meet the requirements of subsection (a) of this section.

#### Sec. 2. TRANSITION

Notwithstanding the provisions of 18 V.S.A. § 1782:

(1) A manufacturer or distributor of cleaning products may continue to sell, offer for sale, or distribute conventional cleaning products to a school, school district, supervisory union, or procurement consortium until July 1, 2011. A school may continue to use conventional cleaning products purchased prior to July 1, 2011 until supplies are depleted.

(2) A manufacturer or distributor of cleaning products may continue to sell, offer for sale, or distribute conventional cleaning products to an approved independent school with fewer than 50 students until July 1, 2012.

An approved independent school with fewer than 50 students may continue to use conventional cleaning products purchased prior to July 1, 2012 until supplies are depleted.

Sec. 3. Sec. 2 of No. 125 of the Acts of the 1999 Adj. Sess. (2000) is amended to read:

Sec. 2. COMMISSIONERS OF HEALTH AND OF BUILDINGS AND GENERAL SERVICES; SCHOOL ENVIRONMENTAL HEALTH WEBSITE

(a) The commissioners of health and of buildings and general services shall jointly create and jointly update as necessary an electronic school environmental health clearinghouse site on the health department's website, including diagnostic checklists and searchable databases. This website shall include:

(1) Information on materials and practices in common use in school operations and construction that may compromise indoor air quality or negatively impact human health;

(2) Information on potential health problems associated with these materials, with specific reference to children's vulnerability;

(3) Information on integrated pest management and alternatives to chemical pest control;

(4) Information on methods to reduce or eliminate exposure to potentially hazardous substances in schools, including the following:

(A) a list of preventive management options, such as ventilation, equipment upkeep, design strategies, and performance standards;

(B) a list of nontoxic or least-toxic office and classroom supplies, ~~maintenance and cleaning chemicals~~, building equipment, and materials and furnishings; and

(C) a list of environmental health criteria that schools may use as a decision-making tool when determining what materials to purchase or use in school construction or operations;

(5) Information on environmentally preferable cleaning products, including:

(A) a list of environmentally preferable cleaning products used by the department of buildings and general services under state contracts or a list of environmentally preferable cleaning products certified by an independent third party pursuant to 18 V.S.A. chapter 39; and

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(B) procedures for using environmentally preferable cleaning products;

~~(5)~~(6) The model school environmental health policy and management plan developed pursuant to Sec. 3 of this act.

(b) The commissioners of health, of buildings and general services, and of education, with help from the secretary of the agency of natural resources when appropriate, shall:

(1) Review the information on the school environmental health information clearinghouse at least twice yearly, and update it whenever significant developments occur.

(2) At the request of school officials, assist school environmental health coordinators to identify potential sources of environmental pollution in the school, and make recommendations on how to alleviate any problems.

(3) Annually, organize a school environmental health training workshop for school environmental health coordinators and school administrators, and an annual training for school maintenance and custodial staff. Each workshop and training shall include instruction on green cleaning practices, including products and procedures as defined pursuant to 18 V.S.A. § 1781. The department shall issue certificates of training to participants who successfully complete the workshops.

(4) Publicize the availability of information through the school environmental health clearinghouse.

(5) Provide information and referrals to members of school communities who contact the school environmental health clearinghouse with hazardous exposure and indoor air concerns.

(6) Assist elementary and secondary schools in Vermont to establish comprehensive school environmental health programs, which have all or most of the elements of the model policy developed pursuant to Sec. 3 of this act, to address indoor air and hazardous exposure issues.

(7) Report annually to the house and senate committees on education on the extent of indoor air and hazardous exposure problems in Vermont schools and on the percentage of Vermont schools that have established a school environmental health program or qualified for environmental health certification.

(c) Any information provided under this section shall be based on peer-reviewed published scientific material.

## Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Lyons moved that the Senate concur in the House proposal of amendment with a further amendment as follows:

First: In Sec. 1a, 18 V.S.A. § 1781, by striking out subdivision (7) in its entirety and inserting in lieu thereof a new subdivision (7) to read as follows:

(7) "Green cleaning" means a practice that includes:

(A) the use of a cleaning product certified as environmentally preferable by an independent third party or an environmentally preferable cleaning product used by the department of buildings and general services;

(B) best practices that follow accepted management standards and improve indoor air quality; and

(C) equipment that facilitates effective cleaning.

Second: In Sec. 1a, 18 V.S.A. § 1782, by adding a new subsection (d) to read as follows:

(d) A distributor or manufacturer of cleaning products shall provide a green cleaning training to each school district it provides with environmentally preferable cleaning products pursuant to 18 V.S.A. § 1782, provided the training is incurred at no cost to the school district.

Third: In Sec. 1a, 18 V.S.A. chapter 39, by adding a new section to be § 1784 to read as follows:

§ 1784. PENALTY EXEMPTION

Nothing in this chapter shall cause a person to be subject to the fine established in section 7 of this title.

Which was agreed to.

**Senate Resolution Adopted**

**S.R. 9.**

Senate resolution entitled:

Senate resolution urging Congress to adopt comprehensive immigration reform legislation at the earliest possible date.

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

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**Rules Suspended; House Proposal of Amendment to Senate Proposal of  
Amendment to House Proposal of Amendment Concurred In**

**S. 108.**

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

An act relating to effective strategies to reduce criminal recidivism.

Was taken up for immediate consideration.

The House concurs in the Senate proposal of amendment in the *first*, and *fourth* through *ninth* instances of amendment and proposes that the bill be further amended by adding a new section to be numbered Sec. 3c to read as follows:

Sec. 3c. 28 V.S.A. §§ 808a–808c are amended to read:

§ 808a. TREATMENT FURLOUGH

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on treatment 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.

(b) Provided the approval of the sentencing judge is first obtained, the department may place on treatment furlough an offender who has not yet served the minimum term of the sentence, who, in the department's determination, needs residential treatment services not available in a correctional facility. The services may include treatment for substance abuse or personal violence or any other condition that the department has determined should be addressed in order to reduce the offender's risk to reoffend or cause harm to himself or herself or to others in the facility. The offender shall be released only to a hospital or residential treatment facility that provides services to the general population. The state's share of the cost of placement in such a facility, net of any private or federal participation, shall be paid pursuant to memoranda of agreement between and within state agencies reflective of their shared responsibilities to maximize the efficient and effective use of state resources. In the event that a memorandum of agreement cannot be reached, the secretary of administration shall make a final determination as to the manner in which costs will be allocated.

(c)(1) Except as provided in subdivision (2) of this subsection, the department, in its own discretion, may place on treatment furlough an offender who has not yet served the minimum term of his or her sentence for an eligible misdemeanor as defined in section 808d of this title if the department has made

a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism. ~~An offender shall not be eligible for treatment furlough under this subdivision, if, at the time of sentencing, the court makes written findings that treatment furlough is not likely to ensure public safety or victim safety, or is not likely to reduce the risk of recidivism for the offender.~~

(2) Driving under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. §§ 1201 and 1210(c) and boating under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323 shall be considered eligible misdemeanors for the sole purpose of subdivision (1) of this subsection.

#### § 808b. HOME CONFINEMENT FURLOUGH

(a) An offender 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. Home confinement furlough shall be 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, the department, or both.

(b) The department, in its own discretion, may place on home confinement furlough an offender who has not yet served the minimum term of the sentence for an eligible misdemeanor as defined in section 808d of this title if the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism. ~~An offender shall not be eligible for home confinement furlough under this subsection, if, at the time of sentencing, the court makes written findings that home confinement furlough is not likely to ensure public safety or victim safety, or is not likely to reduce the risk of recidivism for the offender, or the criteria for a home confinement furlough set forth in this section have not been met. Such a finding shall be set forth as a condition on the mittimus.~~

(c) A home confinement furlough shall not exceed a total of 180 days and shall require the defendant:

(1) 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

(2) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.

(d) In determining whether a home confinement furlough sentence is appropriate and whether a place of residence is suitable for such a sentence, all of the following shall be considered:

(1) The nature of the offense with which the defendant was charged and the nature of the offense of which the defendant was convicted.

(2) The defendant's criminal history record, history of violence, medical and mental health needs, history of supervision, and risk of flight.

(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.

~~(e) At the request of the department, the court may vacate a condition of a mittimus prohibiting home confinement issued under subsection (b) of this section, based upon a showing of changed circumstances by the department.~~

#### § 808c. REINTEGRATION FURLOUGH

(a)(1) To prepare for reentry into the community, an offender sentenced to incarceration may be furloughed to the community up to 180 days prior to completion of the minimum sentence, at the commissioner's discretion and in accordance with rules adopted pursuant to subsection (c) of this section. Except as provided in subdivision (2) of this subsection, an offender sentenced to a minimum term of fewer than 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.

(2) An offender sentenced to a minimum term of fewer than 365 days for an eligible misdemeanor as defined in section 808d of this title shall be eligible for furlough under this subdivision, provided the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism. ~~An offender shall not be eligible for a reintegration furlough under this subdivision if, at the time of sentencing, the court makes written findings that it is not likely to ensure public safety or victim safety, or is not likely to reduce the risk of recidivism for the offender.~~

(b) Except as provided in subsection (d) of this section, an offender sentenced to incarceration is eligible to earn five days toward reintegration furlough, to be applied prior to the expiration of the offender's minimum term, for each month served in the correctional facility during which the offender has

complied with the case plan prepared pursuant to subsection 1(b) of this title and has obeyed all rules and regulations of the facility. Days shall be awarded only if the commissioner determines, in his or her sole discretion, that they have been earned in accordance with rules adopted by the department pursuant to subsection (c) of this section and shall in no event be awarded automatically. The commissioner's determination shall be final. Days earned under this subsection may be awarded in addition to the reintegration furlough authorized in subsection (a) of this section. The commissioner shall have the discretion to determine the frequency with which calculations under this subsection shall be made provided they are made at least as frequently as every six months.

(c) The commissioner may authorize reintegration furlough under subsections (a) and (b) of this section only if the days are awarded in accordance with rules adopted pursuant to chapter 25 of Title 3 designed to do the following:

(1) Evaluate factors such as risk of reoffense, history of violent behavior, history of compliance with community supervision, compliance with the case plan, progress in treatment programs designed to reduce criminal risk, and obedience to rules and regulations of the facility.

(2) Ensure adequate departmental supervision of the offender when furloughed into the community.

(d) The commissioner may not award days toward reintegration furlough under subsection (b) of this section if the offender is sentenced to a minimum term of incarceration in excess of five years or is incarcerated for a conviction of one or more of the following crimes:

(1) Arson causing death as defined in 13 V.S.A. § 501;

(2) Assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);

(3) Assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);

(4) Aggravated assault as defined in 13 V.S.A. § 1024;

(5) Murder as defined in 13 V.S.A. § 2301;

(6) Manslaughter as defined in 13 V.S.A. § 2304;

(7) Kidnapping as defined in 13 V.S.A. § 2405;

(8) Unlawful restraint as defined in 13 V.S.A. §§ 2406 and 2407;

(9) Maiming as defined in 13 V.S.A. § 2701;

(10) Sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (2);

- 
- (11) Aggravated sexual assault as defined in 13 V.S.A. § 3253;
- (12) Burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c); or
- (13) Lewd or lascivious conduct with a child as defined in 13 V.S.A. § 2602.

(e) An offender incarcerated for driving while under the influence of alcohol under 23 V.S.A. § 1210(d) or (e) may be furloughed to the community up to 180 days prior to completion of the minimum sentence at the commissioner's discretion and in accordance with rules adopted pursuant to subsection (d) of this section, provided that an offender sentenced to a minimum term of fewer than 270 days shall not be eligible for furlough under this subsection until the offender has served at least 90 days of his or her minimum term of incarceration and provided that the commissioner uses electronic equipment to monitor the offender's location and blood alcohol level continually, or other equipment such as an alcohol ignition interlock system, or both.

(f) Prior to release under this section, the department shall screen and, if appropriate, assess each felony drug and property offender for substance abuse treatment needs using an assessment tool designed to assess the suitability of a broad range of treatment services, and it shall use the results of this assessment in preparing a reentry plan. The department shall attempt to identify all necessary services in the reentry plan and work with the offender to make connections to necessary services prior to release so that the offender can begin receiving services immediately upon release.

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

### **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. 74.** An act relating to the transferring of the animal spaying and neutering program to the department of health.

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

**Joint Senate Resolution Adopted on the Part of the Senate; Rules Suspended; Joint Resolution Messaged**

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Campbell,

**J.R.S. 32.** Joint resolution relating to final adjournment of the General Assembly in 2011.

***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 sixth day of May, 2011 they shall do so to reconvene on the seventh day of June, 2011, 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, or to reconvene on the eighteenth day of October, 2011, at ten o'clock in the forenoon on the joint call of the President *pro tempore* of the Senate and the Speaker of the House, or if not so jointly called, on the third day of January, 2012, at ten o'clock in the forenoon, if the Governor should *not* so return any bill to either house.

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

**Rules Suspended; Bill Messaged**

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

**S. 92.**

**Rules Suspended; House Proposal of Amendment Concurred In**

**S. 74.**

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

An act relating to the transferring of the animal spaying and neutering program to the department of health.

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. 20 V.S.A. § 3815 is amended to read:

§ 3815. DOG, CAT, AND WOLF-HYBRID SPAYING AND NEUTERING PROGRAM

(a) ~~The agency of agriculture, food and markets shall establish by rule a process by which a qualified organization~~ agency of human services shall administer a dog, cat, and wolf-hybrid spaying and neutering program providing reduced-cost spaying and neutering services and presurgical immunization for dogs, cats, and wolf-hybrids owned or cared for by low income individuals. The agency shall implement the program through an agreement with a qualified organization consistent with the applicable administrative rules.

(b) The program shall reimburse veterinarians who voluntarily consent to spay or neuter dogs, cats, and wolf-hybrids under the auspices of the program. The reimbursement shall be less any co-payment by the owner of a dog, cat, or wolf-hybrid for the cost of each spaying or neutering procedure.

(c) ~~The agency of agriculture, food and markets is authorized to promulgate an emergency administrative rule by August 1, 2009, the purpose of which shall be that only a dog, cat, or wolf hybrid acquired for no compensation shall be eligible for funding from the animal spaying and neutering program established under this section. The rule shall provide consideration for the financial ability of the funding applicant to pay for the requested service. For the purposes of this subsection, a nominal fee or donation required for adoption of a dog, cat, or wolf hybrid shall not constitute compensation paid for the animal.~~ The secretary of human services, in consultation with the chair of the Vermont Board of Veterinary Medicine, may adopt and amend rules pursuant to chapter 25 of Title 3 to enable the agency to carry out the purposes of this act.

Sec. 2. 20 V.S.A. § 3816 is amended to read:

§ 3816. ANIMAL SPAYING AND NEUTERING FUND; CREATION

(a) There is created, pursuant to subchapter 5 of chapter 7 of Title 32, in the ~~agency of agriculture, food and markets~~ agency of human services the dog, cat, and wolf-hybrid spaying and neutering special fund to finance the costs of the dog, cat, and wolf-hybrid spaying and neutering program established in section 3815 of this title.

(b) Revenue for the fund shall be derived from:

(1) The ~~\$2.00~~ surcharge payment paid to a municipality pursuant to subdivision 3581(c)(1) of this title.

(2) Gifts from private donors.

(3) Any appropriation which the general assembly makes to the fund.

(c) Interest earned on the fund shall be retained in the fund.

(d) ~~The agency may offset the cost of administering the dog, cat, and wolf hybrid spaying and neutering program from the fund created in subsection (a) of this section in accordance with the provisions of section 10 of Title 6~~ agency of human services shall use the revenue in the fund created in subsection (a) of this section for administering the dog, cat, and wolf-hybrid spaying and neutering program.

### Sec. 3. ADMINISTRATIVE RULE APPLICABILITY

The agency of human services shall administer the dog, cat, and wolf-hybrid spaying and neutering program established in 20 V.S.A. § 3815 pursuant to the applicable administrative rule which became effective on July 1, 2010 until the rule is amended to reflect the transfer of the jurisdiction of the program to the agency of human services.

### Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

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

An act relating to the transferring of the animal spaying and neutering program to the agency of human services.

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

### **Rules Suspended; Concurrent Resolutions on Notice Calendar for Immediate Consideration**

On motion of Senator Campbell, the rules were suspended, and the following concurrent resolutions, appearing on the Calendar for notice, were ordered to be brought up for immediate consideration:

**S.C.R. 18 - 19, H.C.R. 194 – 203.**

#### **Senate Concurrent Resolutions Adopted**

Senate concurrent resolutions of the following titles were offered, read and adopted in concurrence:

By All Members of the Senate,

#### **S.C.R. 18.**

Senate concurrent resolution designating December 1–7, 2011 as Civil Air Patrol Week and commemorating the organization’s 70th anniversary.

By Senators Sears and Hartwell,

By Representative Botzow and others,

#### **S.C.R. 19.**

Senate concurrent resolution congratulating the Oldcastle Theatre Company of Bennington on its 40th anniversary.

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**House Concurrent Resolutions Adopted**

House concurrent resolutions of the following titles were severally offered, read and adopted in concurrence:

By Representatives Lippert and Grad,

**H.C.R. 194.**

House concurrent resolution honoring Big Truck Day @ Hinesburg Nursery School.

By Senators Campbell, McCormack and Nitka,

By Representative Sweaney and others,

**H.C.R. 195.**

House concurrent resolution extending best wishes for success to the New England Living Show House in Windsor .

By Senator Westman,

By Representative Howard,

**H.C.R. 196.**

House concurrent resolution congratulating the Cambridge municipal emergency and highway officials on their superb response during the 2011 spring floods.

By Senators Ashe, Ayer, Benning, Brock, Campbell, Carris, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Sears, Snelling, Starr, Westman and White,

By Representative Olsen and others,

**H.C.R. 197.**

House concurrent resolution in memory of Mr. Vermont, Elbert (Al) Moulton.

By Senators Campbell, McCormack and Nitka,

By Representative Clarkson,

**H.C.R. 198.**

House concurrent resolution congratulating the town of Reading on its 250th anniversary.

By Representative McNeil and others,

**H.C.R. 199.**

House concurrent resolution honoring Commander Frank L. Gabaree of the Vermont Detachment of the Sons of the American Legion for his outstanding leadership.

By Senator White,

By Representative Mrowicki and others,

**H.C.R. 200.**

House concurrent resolution congratulating the award-winning *The Commons* newspaper on the publication of its 100th issue.

By Senator Mazza,

By Representatives Keenan and Miller,

**H.C.R. 201.**

House concurrent resolution congratulating Vermont Interactive Television on winning two international awards.

By Representatives Young and Hooper,

**H.C.R. 202.**

House concurrent resolution honoring the Langdon Street Café for its artistic contribution to life in Vermont's capital city.

By Representative Jewett and others,

**H.C.R. 203.**

House concurrent resolution in memory of Alfred G. Hare of Middlebury.

**Rules Suspended; Bills Delivered**

On motion of Senator Campbell, the rules were suspended, and the following bills were severally ordered delivered to the Governor forthwith:

**S. 17, S. 74, S. 78, S. 108.**

**Senate Concurrent Resolutions**

The following joint concurrent resolutions, having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, were by rule adopted on the part of the Senate:

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By All Members of the Senate,  
By Representative Andrews and others,

**S.C.R. 20.**

Senate concurrent resolution congratulating the South Burlington Land Trust on winning the Green Mountain Environmental Leadership Awards' 2011 Courage in Leadership Award.

By All Members of the Senate,  
By Representative Atkins and others,

**S.C.R. 21.**

Senate concurrent resolution congratulating the Lake Champlain Committee on winning the Green Mountain Environmental Leadership Awards' 2011 Citizen Science Award.

By All Members of the Senate,  
By Representative Andrews and others,

**S.C.R. 22.**

Senate concurrent resolution congratulating Freeaire Refrigeration of Waitsfield and its president, Richard Travers, on winning the Green Mountain Environmental Leadership Awards' 2011 What a Great Idea! Award.

By Senators Illuzzi, Ashe, Campbell, Carris, Doyle, Galbraith, McCormack, Nitka and Starr,

**S.C.R. 23.**

Senate concurrent resolution congratulating Judge Franklin Swift Billings, Jr., and Mrs. Pauline Richardson Gillingham Billings on their 60th wedding anniversary.

By Senators Campbell and Doyle,

**S.C.R. 24.**

Senate concurrent resolution honoring Paolo Rovetto for his amazing disc jockeying achievements.

**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, were by rule adopted in concurrence:

By Committee on General, Housing and Military Affairs,

**H.C.R. 171.**

House concurrent resolution honoring Robert Howe for his 41 years of dedicated public service on behalf of the state of Vermont.

By Representative Lorber and others,

**H.C.R. 172.**

House concurrent resolution congratulating Claude Mumbere on winning the 2011 Vermont Poetry Out Loud: National Recitation Contest.

By Senators Sears and Hartwell,

By Representative Botzow,

**H.C.R. 173.**

House concurrent resolution honoring former Representative Neal Hoag for his dedicated public service on behalf of the citizens of Woodford .

By Senators Ayer and Giard,

By Representatives Clark and Lanpher,

**H.C.R. 174.**

House concurrent resolution congratulating Vergennes Union Elementary School on being named a 2011 Fit & Healthy Kids School Wellness Award recognition-level winner.

By Senators Benning, Illuzzi and Kitchel,

By Representative Larocque and others,

**H.C.R. 175.**

House concurrent resolution honoring Taylor Coppenrath on his continuing success in European professional basketball.

By Senators Ayer and Giard,

By Representative Smith,

**H.C.R. 176.**

House concurrent resolution congratulating the town of Bridport on the 250th anniversary of its municipal incorporation.

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By Senators Ayer and Giard,

By Representative Smith,

**H.C.R. 177.**

House concurrent resolution congratulating the town of Weybridge on its 250th birthday.

By Senators Ayer and Giard,

By Representative Smith,

**H.C.R. 178.**

House concurrent resolution commemorating the 250th anniversary of the incorporation of the town of New Haven.

By Senators Ashe, Baruth, Fox, Lyons, Mazza, Miller and Snelling,

By Representative Waite-Simpson and others,

**H.C.R. 179.**

House concurrent resolution congratulating IBM on its centennial anniversary.

By Representative Howard and others,

**H.C.R. 180.**

House concurrent resolution recognizing the Vermont Mountain Bike Association's important role in outdoor nonmotorized recreation.

By Senators Campbell, McCormack and Nitka,

By Representative Clarkson,

**H.C.R. 181.**

House concurrent resolution congratulating the town of Woodstock on its 250th anniversary.

By Representative Komline and others,

**H.C.R. 182.**

House concurrent resolution congratulating the Long Trail School on its 35th anniversary.

By Senators Ayer and Giard,  
By Representatives Clark and Lanpher,

**H.C.R. 183.**

House concurrent resolution congratulating Kaitlin Leroux-Eastman on being named the 2011 Vermont Boys & Girls Clubs Youth of the Year.

By Senators Campbell, McCormack, Nitka, Sears, Snelling and White,  
By Representative Olsen,

**H.C.R. 184.**

House concurrent resolution honoring the inspiring family of Felipe and Elena Ixcot and the Benedictine Brothers of the Weston Priory who offered them refuge and love for a quarter of a century.

By Representatives Donahue and Grad,

**H.C.R. 185.**

House concurrent resolution congratulating the Northfield Elementary School Destination ImagiNation Vermont state championship team.

By Senators Benning, Brock, Campbell, Carris, Doyle, Flory, Fox, Galbraith, Hartwell, Kitchel, Kittell, Mazza, McCormack, Nitka, Pollina, Sears and Snelling,

By Representative Bartholomew and others,

**H.C.R. 186.**

House concurrent resolution commemorating World Veterinary Year and the 250th anniversary of the veterinary medical profession.

By Senators Hartwell and Sears,  
By Representative Campion and others,

**H.C.R. 187.**

House concurrent resolution celebrating the historic Park-McCullough House as a cultural treasure in the town of Bennington.

By Representative Lippert and others,

**H.C.R. 188.**

House concurrent resolution honoring Elise A. Guyette on the publication of *Discovering Black Vermont: African American Farmers in Hinesburgh, Vermont, 1790–1890*.

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By Representative Buxton,

**H.C.R. 189.**

House concurrent resolution commemorating the 250th anniversary of the town of Tunbridge.

By Senators Hartwell and Sears,

By Representative Morrissey and others,

**H.C.R. 190.**

House concurrent resolution designating June 18, 2011 as Founders Day in Bennington.

By Representative Trieber and others,

**H.C.R. 191.**

House concurrent resolution congratulating Matt Martin on his being named Boys & Girls Clubs of Brattleboro Youth of the Year.

By Representative Pugh and others,

**H.C.R. 192.**

House concurrent resolution congratulating the 2011 Rice Memorial High School Green Knights Division I championship boys' basketball team.

By Representative Font-Russell and others,

**H.C.R. 193.**

House concurrent resolution commemorating National Train Day 2011 and the 40th anniversary of Amtrak.

**Message from the House No. 74**

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

Mr. President:

I am directed to inform the Senate that:

The House has considered the report of the Committee of Conference upon the disagreeing votes of the two Houses on House bill of the following title:

**H. 264.** An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles .

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. 275.** An act relating to the recently deployed veteran tax credit.

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. 287.** An act relating to job creation and economic development.

And has adopted the same on its part.

The House has considered the report of the Committee of Conference upon the disagreeing votes of the two Houses on House bill of the following title:

**H. 436.** An act relating to tax changes, including income taxes, property taxes, economic development credits, health care-related tax provisions, and 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. 441.** An act relating to making appropriations for the support of government.

And has adopted the same on its part.

The Governor has informed the House that on the May 6, 2011, he approved and signed bills originating in the House of the following titles:

**H. 66.** An act relating to the illegal taking of trophy big game animals.

**H. 294.** An act relating to approving amendments to the charter of the city of Montpelier.

**H. 452.** An act relating to establishing the boundary line between the towns of Shelburne and St. George.

#### **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 Senate proposal of amendment to House proposal of amendment to Senate bills of the following titles:

**S. 77.** An act relating to water testing of private wells.

**S. 96.** An act relating to technical corrections to the workers' compensation statutes.

And has severally concurred therein.

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

**S. 108.** An act relating to effective strategies to reduce criminal recidivism.

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

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

**H.C.R. 171.** House concurrent resolution honoring Robert Howe for his 41 years of dedicated public service on behalf of the state of Vermont.

**H.C.R. 172.** House concurrent resolution congratulating Claude Mumbere on winning the 2011 Vermont Poetry Out Loud: National Recitation Contest.

**H.C.R. 173.** House concurrent resolution honoring former Representative Neal Hoag for his dedicated public service on behalf of the citizens of Woodford .

**H.C.R. 174.** House concurrent resolution congratulating Vergennes Union Elementary School on being named a 2011 Fit & Healthy Kids School Wellness Award recognition-level winner.

**H.C.R. 175.** House concurrent resolution honoring Taylor Coppenrath on his continuing success in European professional basketball.

**H.C.R. 176.** House concurrent resolution congratulating the town of Bridport on the 250th anniversary of its municipal incorporation.

**H.C.R. 177.** House concurrent resolution congratulating the town of Weybridge on its 250th birthday.

**H.C.R. 178.** House concurrent resolution commemorating the 250th anniversary of the incorporation of the town of New Haven.

**H.C.R. 179.** House concurrent resolution congratulating IBM on its centennial anniversary.

**H.C.R. 180.** House concurrent resolution recognizing the Vermont Mountain Bike Association's important role in outdoor nonmotorized recreation.

**H.C.R. 181.** House concurrent resolution congratulating the town of Woodstock on its 250th anniversary.

**H.C.R. 182.** House concurrent resolution congratulating the Long Trail School on its 35th anniversary.

**H.C.R. 183.** House concurrent resolution congratulating Kaitlin Leroux-Eastman on being named the 2011 Vermont Boys & Girls Clubs Youth of the Year.

**H.C.R. 184.** House concurrent resolution honoring the inspiring family of Felipe and Elena Ixcot and the Benedictine Brothers of the Weston Priory who offered them refuge and love for a quarter of a century.

**H.C.R. 185.** House concurrent resolution congratulating the Northfield Elementary School Destination ImagiNation Vermont state championship team.

**H.C.R. 186.** House concurrent resolution commemorating World Veterinary Year and the 250th anniversary of the veterinary medical profession.

**H.C.R. 187.** House concurrent resolution celebrating the historic Park-McCullough House as a cultural treasure in the town of Bennington.

**H.C.R. 188.** House concurrent resolution honoring Elise A. Guyette on the publication of *Discovering Black Vermont: African American Farmers in Hinesburgh, Vermont, 1790–1890*.

**H.C.R. 189.** House concurrent resolution commemorating the 250th anniversary of the town of Tunbridge.

**H.C.R. 190.** House concurrent resolution designating June 18, 2011 as Founders Day in Bennington.

**H.C.R. 191.** House concurrent resolution congratulating Matt Martin on his being named Boys & Girls Clubs of Brattleboro Youth of the Year.

**H.C.R. 192.** House concurrent resolution congratulating the 2011 Rice Memorial High School Green Knights Division I championship boys' basketball team.

**H.C.R. 193.** House concurrent resolution commemorating National Train Day 2011 and the 40th anniversary of Amtrak.

**H.C.R. 194.** House concurrent resolution honoring Big Truck Day @ Hinesburg Nursery School.

**H.C.R. 195.** House concurrent resolution extending best wishes for success to the New England Living Show House in Windsor .

**H.C.R. 196.** House concurrent resolution congratulating the Cambridge municipal emergency and highway officials on their superb response during the 2011 spring floods.

**H.C.R. 197.** House concurrent resolution in memory of Mr. Vermont, Elbert (Al) Moulton.

**H.C.R. 198.** House concurrent resolution congratulating the town of Reading on its 250th anniversary.

**H.C.R. 199.** House concurrent resolution honoring Commander Frank L. Gabaree of the Vermont Detachment of the Sons of the American Legion for his outstanding leadership.

**H.C.R. 200.** House concurrent resolution congratulating the award-winning *The Commons* newspaper on the publication of its 100th issue.

**H.C.R. 201.** House concurrent resolution congratulating Vermont Interactive Television on winning two international awards.

**H.C.R. 202.** House concurrent resolution honoring the Langdon Street Café for its artistic contribution to life in Vermont's capital city.

**H.C.R. 203.** House concurrent resolution in memory of Alfred G. Hare of Middlebury.

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. 18.** Senate concurrent resolution designating December 1–7, 2011 as Civil Air Patrol Week and commemorating the organization's 70th anniversary.

**S.C.R. 19.** Senate concurrent resolution congratulating the Oldcastle Theatre Company of Bennington on its 40th anniversary.

**S.C.R. 20.** Senate concurrent resolution congratulating the South Burlington Land Trust on winning the Green Mountain Environmental Leadership Awards' 2011 Courage in Leadership Award.

**S.C.R. 21.** Senate concurrent resolution congratulating the Lake Champlain Committee on winning the Green Mountain Environmental Leadership Awards' 2011 Citizen Science Award.

**S.C.R. 22.** Senate concurrent resolution congratulating Freeaire Refrigeration of Waitsfield and its president, Richard Travers, on winning the Green Mountain Environmental Leadership Awards' 2011 What a Great Idea! Award.

**S.C.R. 23.** Senate concurrent resolution congratulating Judge Franklin Swift Billings, Jr., and Mrs. Pauline Richardson Gillingham Billings on their 60th wedding anniversary.

**S.C.R. 24.** Senate concurrent resolution honoring Paolo Rovetto for his amazing disc jockeying achievements.

And has adopted the same in concurrence.

#### **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 adopted joint resolution of the following title:

**J.R.H. 20.** Joint resolution relating to final adjournment of the General Assembly in 2011.

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

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

**J.R.S. 32.** Joint resolution related to final adjournment of the General Assembly in 2011.

And has adopted the same in concurrence.

The Governor has informed the House that on the May 6, 2011, he approved and signed bills originating in the House of the following titles:

**H. 66.** An act relating to the illegal taking of trophy big game animals.

**H. 294.** An act relating to approving amendments to the charter of the city of Montpelier.

**H. 452.** An act relating to establishing the boundary line between the towns of Shelburne and St. George.

#### **Secretary Directed to Inform the House of Completion of Business**

On motion of Senator Campbell, the Secretary was directed to inform the House that the Senate has completed the business of the session and is ready to adjourn to a day certain, June 7, 2011, if necessary, or, if not necessary, to reconvene on the October 18, 2011, at ten o'clock in the forenoon on the joint call of the President *pro tempore* of the Senate and the Speaker of the House, or if not so jointly called, then to January 3, 2011, at ten o'clock in the forenoon, pursuant to the provisions of J.R.S. 32.

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**Committee Appointed to Inform Governor of Completion of Business**

On motion of Senator Campbell, the President appointed the following six (6) Senators as members of a committee to wait upon His Excellency, Peter E. Shumlin, the Governor, and inform him that the Senate has completed the business of the session and is ready to adjourn to a day certain, June 7, 2011, if necessary, or, if not necessary, to reconvene on the October 18, 2011, at ten o'clock in the forenoon on the joint call of the President *pro tempore* of the Senate and the Speaker of the House, or if not so jointly called, then to January 3, 2011, at ten o'clock in the forenoon, pursuant to the provisions of J.R.S. 32:

Senator Campbell  
Senator Mazza  
Senator Flory  
Senator Ayer  
Senator Kitchel  
Senator Cummings

**Report of Committee**

The Committee appointed to wait upon His Excellency, the Governor, to inform him that the Senate had, on its part, completed the business of the session and was ready to adjourn to a day certain, June 7, 2011, if necessary, or, if not necessary, to reconvene on the October 18, 2011, at ten o'clock in the forenoon on the joint call of the President *pro tempore* of the Senate and the Speaker of the House, or if not so jointly called, then to January 3, 2011, at ten o'clock in the forenoon, pursuant to the provisions of **J.R.S. 32**, 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 Peter E. Shumlin, assumed the rostrum and briefly addressed the Senate.

**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 Campbell, at six o'clock and thirty minutes in the afternoon, (6:30 P.M.), the Senate adjourned to reconvene on the seventh day of June, 2011, 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, or to reconvene on the eighteenth day of October, 2011, at ten o'clock in the forenoon on the joint call of the

President *pro tempore* of the Senate and the Speaker of the House, or if not so jointly called, on the third day of January, 2012, at ten o'clock in the forenoon, if the Governor should *not* so return any bill to either house, pursuant to the provisions of **J.R.S. 32**.

#### **Messages Received After Final Adjournment**

After final adjournment, the following messages were received by the Secretary:

##### **Message from the Governor**

A message was received from His Excellency, the Governor, by Alexandra McLean, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the ninth day of May, 2011, he approved and signed a bill originating in the Senate of the following title:

**S. 58.** An act relating to jurisdiction of a crime committed when the defendant was under the age of 16.

##### **Message from the Governor**

A message was received from His Excellency, the Governor, by Alexandra McLean, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the eleventh day of May, 2011, he approved and signed bills originating in the Senate of the following titles:

**S. 49.** An act relating to commercial motor vehicle operation on the interstate system.

**S. 90.** An act relating to respectful language in state statutes in referring to people with disabilities.

**S. 91.** An act relating to motor vehicle operation and entertainment pictures.

##### **Message from the Governor**

A message was received from His Excellency, the Governor, by Alexandra McLean, 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, 2011, he approved and signed a bill originating in the Senate of the following title:

**S. 30.** An act relating to assault of a health care worker.

**Message from the Governor**

A message was received from His Excellency, the Governor, by Alexandra McLean, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the seventeenth day of May, 2011, he approved and signed bills originating in the Senate of the following titles:

**S. 2.** An act relating to sexual exploitation of a minor and the sex offender registry.

**S. 101.** An act relating to child support enforcement.

**Message from the Governor**

A message was received from His Excellency, the Governor, by Alexandra McLean, 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, 2011, he approved and signed a bill originating in the Senate of the following title:

**S. 15.** An act relating to insurance coverage for midwifery services and home births.

**Message from the Governor**

A message was received from His Excellency, the Governor, by Alexandra McLean, 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, 2011, he approved and signed bills originating in the Senate of the following titles:

**S. 34.** An act relating to the collection and disposal of mercury-containing lamps.

**S. 53.** An act relating to the number of prekindergarten children included within a school district's average daily membership.

**S. 105.** An act relating to miscellaneous agricultural subjects.

**Message from the Governor**

A message was received from His Excellency, the Governor, by Alexandra McLean, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the twentieth day of May, 2011, he approved and signed a bill originating in the Senate of the following title:

**S. 108.** An act relating to effective strategies to reduce criminal recidivism.

**Message from the Governor**

A message was received from His Excellency, the Governor, by Alexandra McLean, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the twenty-third day of May, 2011, he approved and signed a bill originating in the Senate of the following title:

**S. 73.** An act relating to raising the penalties for eluding a police officer.

**Message from the Governor**

A message was received from His Excellency, the Governor, by Alexandra McLean, 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, 2011, he approved and signed a bill originating in the Senate of the following title:

**S. 94.** An act relating to miscellaneous amendments to the motor vehicle laws.

**Message from the Governor**

A message was received from His Excellency, the Governor, by Alexandra McLean, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the twenty-sixth day of May, 2011, he returned without signature and *vetoed* a bill originating in the Senate of the following title:

**S. 77.** An act relating to water testing of private wells.

The Governor provided the following explanation:

“We have a responsibility with every bill that we pass to ensure that we are not imposing costs on hardworking Vermonters in rural areas. Every mandate from Montpelier must be balanced with this reality. Vermonters, on average, are earning what they made ten years ago. The vast majority of Vermont’s well water is clean and safe. The General Assembly’s desire to promote safe drinking water is one we all share, but I don’t believe the government should mandate the testing of every single new well, with the cost and burden on individual private property owners that this bill would impose.”

#### **Message from the Governor**

A message was received from His Excellency, the Governor, by Alexandra McLean, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the twenty-sixth day of May, 2011, he approved and signed bills originating in the Senate of the following titles:

**S. 36.** An act relating to the surplus lines insurance multi-state compliance compact.

**S. 96.** An act relating to technical corrections to the workers’ compensation statutes.

**S. 104.** An act relating to modifications to the ban on gifts by manufacturers of prescribed products.

#### **Message from the Governor**

A message was received from His Excellency, the Governor, by Alexandra McLean, 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, 2011, he approved and signed a bill originating in the Senate of the following title:

**S. 78.** An act relating to the advancement of cellular, broadband and other technology infrastructure in Vermont.

**Message from the Governor**

A message was received from His Excellency, the Governor, by Alexandra McLean, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the thirty-first day of May, 2011, he approved and signed bills originating in the Senate of the following titles:

**S. 74.** An act relating to the transferring of the animal spaying and neutering program to the agency of human services.

**S. 100.** An act relating to making miscellaneous amendments to education laws.

**Message from the Governor**

A message was received from His Excellency, the Governor, by Alexandra McLean, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the second day of June, 2011, he approved and signed a bill originating in the Senate of the following title:

**S. 17.** An act relating to registering four nonprofit organizations to dispense marijuana for symptom relief.

**Message from the House No. 77**

A message was received from the House of Representatives by Mr. William M. MaGill, its First Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The Governor has informed the House that on May 11, 2011, he approved and signed bills originating in the House of the following titles:

**H. 6.** An act relating to powers and immunities of the liquor control investigators.

**H. 411.** An act relating to the application of Act 250 to agricultural fairs.

**H. 426.** An act relating to extending the state's reporting concerning transportation of children in state custody and transportation of individuals in the custody of the commissioner of mental health.

**H. 430.** An act relating to providing mentoring support for teachers, new principals, and new technical center directors.

**H. 438.** An act relating to the department of banking, insurance, securities, and health care administration.

**H. 448.** An act relating to contributions to the state and municipal employees' retirement systems.

The Governor has informed the House that on May 17, 2011, he approved and signed bills originating in the House of the following titles:

**H. 11.** An act relating to the discharge of pharmaceutical waste to state waters.

**H. 24.** An act relating to the maintenance and conveyance of Maidstone Lake Road.

**H. 88.** An act relating to uniform child custody jurisdiction and enforcement.

**H. 428.** An act relating to requiring supervisory unions to perform common duties.

**H. 451.** An act relating to amending the charter of the town of Shelburne.

The Governor has informed the House that on May 18, 2011, he approved and signed bills originating in the House of the following titles:

**H. 198.** An act relating to a transportation policy that considers all users.

**H. 138.** An act relating to executive branch fees.

The Governor has informed the House that on May 20, 2011, he approved and signed a bill originating in the House of the following title:

**H. 26.** An act relating to the application of phosphorus fertilizer to nonagricultural turf.

The Governor has informed the House that on May 20, 2011, he approved and signed a bill originating in the House of the following title:

**H. 446.** An act relating to capital construction and state bonding.

The Governor has informed the House that on May 24, 2011, he approved and signed bills originating in the House of the following titles:

**H. 38.** An act relating to adopting the interstate compact on educational opportunity for military children.

**H. 275.** An act relating to the recently deployed veteran tax credit.

**H. 436.** An act relating to tax changes, including income taxes, property taxes, economic development credits, health care-related tax provisions, and miscellaneous tax provisions.

The Governor has informed the House that on May 25, 2011, he approved and signed a bill originating in the House of the following title:

**H. 56.** An act relating to the Vermont Energy Act of 2011.

The Governor has informed the House that on May 26, 2011, he approved and signed a bill originating in the House of the following title:

**H. 202.** An act relating to a universal and unified health system.

The Governor has informed the House that on May 27, 2011, he approved and signed a bill originating in the House of the following title:

**H. 287.** An act relating to job creation, economic development, and buy local agriculture.

The Governor has informed the House that on May 31, 2011, he approved and signed bills originating in the House of the following titles:

**H. 91.** An act relating to the management of fish and wildlife.

**H. 153.** An act relating to human trafficking.

**H. 264.** An act relating to driving while intoxicated, forfeiture and registration of motor vehicles, the blood and breath alcohol testing and alcohol screening program, the minor guardianship study committee, confidentiality of cases accepted by the court diversion project, and the uniform adult guardianship and protective proceedings jurisdiction act.

The Governor has informed the House that on June 1, 2011, he approved and signed bills originating in the House of the following titles:

**H. 73.** An act relating to establishing a government transparency office to enforce the public records act.

**H. 201.** An act relating to hospice and palliative care.

**H. 420.** An act relating to the office of professional regulation.

**H. 443.** An act relating to the state's transportation program.

**H. 460.** An act relating to amending the charter of the city of Barre.

The Governor has informed the House that on June 2, 2011, he approved and signed bills originating in the House of the following titles:

**H. 369.** An act relating to health professionals regulated by the board of medical practice.

**H. 441.** An act relating to making appropriations for the support of government.

**H. 455.** An act relating to the enhanced 911 emergency response system.

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**TUESDAY, JUNE 7, 2011**

The time for convening the Senate having been set at ten o'clock in the morning pursuant to J.R.S. 32, the Senate was called to order by the President.

**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 Campbell, the Senate adjourned pursuant to J.R.S. 32.

**CERTIFICATION**

"STATE OF VERMONT

Office of the Secretary of the Senate  
Senate Chamber  
State House  
Montpelier, Vermont 05633

I hereby certify that the foregoing Journal is a true and correct record of the proceedings of the Senate of the State of Vermont for the first year of the biennial session of 2011.

This was the first year of the seventy-first biennial session of the General Assembly, beginning Constitutionally on the first Wednesday after the first Monday of January (being the fifth day of January, 2011), and ending on the seventh day of June, 2011.

Attest:

/s/John H. Bloomer, Jr.

JOHN H. BLOOMER, JR.  
Secretary of the Senate"

