(c) A mutual benefit enterprise or foreign enterprise authorized to transact business in this state shall deliver its annual report to the secretary for filing between January 1 and April 1 of each year, beginning in the year following the calendar year in which the mutual benefit enterprise is formed or the foreign enterprise is authorized to transact business in this state.

Fourth: In Sec. 1, in 11C V.S.A. § 207(e), following the words "designated office," by striking out the words "the name of the agent for service of process" and inserting in lieu thereof the following: the name or business address of a director or officer

Fifth: In Sec. 1., by striking out 11C V.S.A. § 1214 in its entirety and redesignating that section as "[Reserved.]"

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

Thereupon, Senator Campbell moved the Senate adjourn, to reconvene on Tuesday, April 3, 2012, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 53.

TUESDAY, APRIL 3, 2012

In the absence of the President (who was Acting Governor in the absence of the Governor) the Senate was called to order by the President *pro tempore.*

Devotional Exercises

Devotional exercises were conducted by the Reverend Taihaku of East Calais.

Pledge of Allegiance

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

Bills Referred to Committee on Finance

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

H. 559. An act relating to health care reform implementation.

H. 758. An act relating to divorce and dissolution proceedings.

Joint Senate Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senators Carris and Mullin,

J.R.S. 55. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Thursday April 5, 2012, or, Friday, April 6, 2012, it be to meet again no later than Tuesday, April 10, 2012.

Third Reading Ordered

H. 39.

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

An act relating to persons authorized to direct disposition of service members' remains.

Reported that the bill ought to pass in concurrence.

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

Bill Passed in Concurrence with Proposal of Amendment

H. 449.

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

An act relating to the designation of brook trout and walleye pike as the state fish of Vermont.

Third Reading Ordered

H. 378.

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

An act relating to town payments of county taxes.

Reported that the bill ought to pass in concurrence.

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

Proposals of Amendment; Third Reading Ordered

H. 503.

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

An act relating to eliminating the ability of the sergeant at arms to employ a traffic control officer and requiring the certification of capitol police officers.

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. 2 V.S.A. § 64 is amended to read:

§ 64. EMPLOYMENT OF ASSISTANTS; ~~TRAFFIC CONTROL;~~ CAPITOL POLICE; TRAINING; UNIFORMS AND EQUIPMENT

* * *

(c) ~~The sergeant at arms may employ a traffic control officer whose duties shall include, but not be limited to, overseeing necessary security measures and the control of traffic about the capitol building. The traffic control officer shall be an exempt state employee. The sergeant at arms with the approval of the joint rules committee shall fix the terms and compensation of the traffic control officer, who shall be entitled to receive the same annual salary adjustments available to classified employees in comparable salary ranges.~~ At state expense and with the approval of the sergeant at arms, ~~the traffic control officer and~~ capitol police officers shall be provided with training, and furnished uniforms and equipment necessary in the performance of their duties, and such items shall remain the property of the state.

Sec. 2. 2 V.S.A. § 70 is amended to read:

§ 70. CAPITOL POLICE DEPARTMENT

(a) Creation. A capitol police department is created within the office of the sergeant at arms. The sergeant at arms shall appoint and may remove, at his or her pleasure, individuals as capitol police officers, one of whom shall be appointed to serve as chief. All such positions shall be exempt state employees. ~~The traffic control officer and any other employee of the sergeant at arms may, in addition to other positions and duties, be appointed as a capitol police officer.~~ The chief shall supervise the officer force under the direction of the sergeant at arms. Such appointments and all oaths or affirmations shall be in writing and filed with the sergeant at arms. An officer shall also serve as a deputy sergeant at arms and as a notary public pursuant to 24 V.S.A. § 442.

(b) Powers; training.

(1) Capitol police officers shall have all the same powers and authority as sheriffs and other law enforcement officers anywhere in the state, which shall include the authority to arrest persons and enforce the civil and criminal laws, keep the peace, provide security, and to serve civil and criminal process.

For this purpose, capitol police officers shall subscribe to the same oaths required for sheriffs.

(2) ~~Capitol police officers who are not certified in either the full-time or part-time certification program of the Vermont criminal justice training council (VCJTC) shall meet qualification and certification standards prescribed by the sergeant at arms in consultation with the executive director of the VCJTC. In setting the standards, the sergeant at arms shall consider the part-time certification program provided to other law enforcement officers by the VCJTC.~~

~~(3) As an alternative, in the sole discretion of the sergeant at arms, capitol police officers shall be certified pursuant to the part-time certification program of the VCJTC~~.

~~(4) The VCJTC shall make training available to capitol police officers at no expense to the sergeant at arms, and the VCJTC shall certify those officers as capitol police officers if they meet the certification standards set by the sergeant at arms, or as a regular law enforcement officer if the requirements of the part-time certification program are met, regardless of the number of hours or weeks worked by the capitol police officer.~~

~~(5)~~ Notwithstanding any other provision of law to the contrary, a capitol police officer shall be a law enforcement officer ~~as if~~ certified by the Vermont criminal justice training council pursuant to the provisions of 20 V.S.A. chapter 151 ~~of Title 20~~.

(c) Coordination of capitol complex security: The capitol police department shall coordinate security within the state house and assist the commissioner of buildings and general services in providing security and law enforcement services within the capitol complex, as delineated in a memorandum of understanding signed by the commissioner and the sergeant at arms no later than June 30, 2000, and as subsequently amended. In all other areas of the capitol complex, except the space occupied by the supreme court, the security, control of traffic, and coordination of law enforcement activity shall be under the direction of the commissioner of buildings and general services, with which the capitol police department may assist.

Sec. 3. 20 V.S.A. § 2351 is amended to read:

§ 2351. PURPOSE; DEFINITION

In order to promote and protect the health, safety, and welfare of the public, it is in the public interest to provide for the creation of "the Vermont criminal justice training council." The council is created to encourage and assist municipalities, counties, and governmental agencies of this state in their efforts to improve the quality of law enforcement and citizen protection by

maintaining a uniform standard of recruit and in-service training for law enforcement officers, including members of the department of public safety, capitol police officers, municipal police officers, constables, ~~corrections~~ correctional officers, prosecuting personnel, motor vehicle inspectors, state investigators employed on a full-time basis by the attorney general, fish and game wardens, sheriffs and their deputies who exercise law enforcement powers pursuant to the provisions of ~~sections 311 and 307(a) of Title~~ 24 V.S.A. §§ 307 and 311, and railroad police commissioned pursuant to ~~30 V.S.A. chapter 45, subchapter 8~~ 5 V.S.A. chapter 68, subchapter 8. The council shall offer continuing programs of instruction in up-to-date methods of law enforcement and the administration of criminal justice. It is the responsibility of the council to encourage the participation of local governmental units in the program and to aid in the establishment of adequate training facilities.

Sec. 4. 20 V.S.A. § 2358 is amended to read:

§ 2358. MINIMUM TRAINING STANDARDS

(a) Unless waived by the council under standards adopted by rule, and notwithstanding any statute or charter to the contrary, no person shall exercise law enforcement authority:

(1) as a part-time law enforcement officer without completing a basic training course within a time prescribed by rule of the council; or

(2) as a full-time law enforcement officer without either:

(A) completing a basic training course in the time and manner prescribed by the council; or

(B) having received, before July 1, 1968, permanent full-time appointment as a law enforcement officer, and completing a basic training course before July 1, 1982.

(3) as a full or part-time law enforcement officer without completing annual in-service training requirements as prescribed by the council.

(b) All programs required by this section shall be approved by the council. Completion of a program shall be established by a certificate to that effect signed by the executive director of the council.

(c) For the purposes of this section:

(1) "Law enforcement officer" means a member of the department of public safety who exercises law enforcement powers, a member of the state police, a capitol police officer, a municipal police officer, a constable who exercises law enforcement powers, a motor vehicle inspector, an employee of

the department of liquor control who exercises law enforcement powers, an investigator employed by the secretary of state, board of medical practice investigators employed by the department of health, attorney general, or a state's attorney, a fish and game warden, a sheriff, or deputy sheriff who exercises law enforcement powers, or a railroad police officer commissioned pursuant to ~~30 V.S.A. chapter 45, subchapter 8~~ 5 V.S.A. chapter 68, subchapter 8.

(2) "Full-time law enforcement officer" means a law enforcement officer with duties of a predictable and continuing nature which require more than 32 hours per week and more than 25 weeks per year.

(3) "Part-time law enforcement officer" means a law enforcement officer who is not employed full time.

(d) The council may determine whether a particular position is full-time or part-time. Any requirements in this section shall be optional for any elected official.

Sec. 5. Sec. 13 of No. 195 of the 2007 Adj. Sess. (2008), as amended by Sec. 11 of No. 108 of the Acts of the 2009 Adj. Sess. (2010), is amended to read:

Sec. 13. EFFECTIVE DATE

Secs. 8 and 9 of this act shall take effect on ~~July 1, 2012~~ July 1, 2013.

Sec. 6. REPORT

On or before December 15, 2012, the law enforcement advisory board, in consultation with the criminal justice training council, shall report to the senate and house committees on judiciary and on government operations recommendations for how constables may be certified as law enforcement officers as required by Sec. 5 of this act. The report shall include recommendations for how constables may complete the program's field training officer program.

Sec. 7. INTERIM STUDY OF LEGISLATIVE PARKING

(a) Creation of committee. There is created an interim study of legislative parking to study the issue of parking space availability as it affects members of the general assembly.

(b) Membership. The study shall be conducted by the sergeant at arms, the commissioner of buildings and general services, and the operations manager of the legislative council in consultation with members of senate and house leadership.

(c) Powers and duties. The study shall:

(1) evaluate the available parking spaces available within and around the capitol complex and, in particular, the parking spaces available for members of the general assembly;

(2) survey members of the 2011–2012 general assembly on whether there should be assigned parking spaces and, if so, the best manner in making those assignments;

(3) consider whether it is feasible to reserve 180 parking spaces for the exclusive use of members of the general assembly, taking into consideration:

(A) how those parking spaces would be allotted, such as by lottery or by seniority;

(B) the preservation of parking spaces for members who are reelected to the 2013–2014 general assembly and who currently have a parking space reserved due to having a special need, holding a leadership position, or for other circumstances; and

(C) the impact the reservations would have upon the remaining spaces currently available for capitol police, legislative staff, and others.

(d) Report. By January 15, 2013, the committee shall report to the general assembly its findings and any recommendations for change from current practice.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 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, and the proposal of amendment was agreed to, and third reading of the bill was ordered.

Joint Resolution Adopted on the Part of the Senate

J.R.S. 54.

Joint Senate resolution entitled:

Joint resolution approving a land exchange in Alburgh and a lease with Camp Downer, Inc.

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

Adjournment

On motion of Senator Mazza, the Senate adjourned until three o'clock and thirty minutes in the afternoon on Wednesday, April 4, 2012.

WEDNESDAY, APRIL 4, 2012

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 43

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. 496. An act relating to preserving Vermont's working landscape.

H. 766. An act relating to the national guard.

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

Committee Relieved of Further Consideration

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of Senate bills entitled:

S. 99. An act relating to agricultural economic development,

S. 142. An act relating to pet merchants.

S. 180. An act relating to the universal service fund and establishment of a high-cost program.

Thereupon, under the rule, the bills were ordered placed on the Calendar for notice the next legislative day.

Bill Referred to Committee on Finance

S. 28.

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

An act relating to consolidating land use and environmental permit administration, rulemaking, and appeals into a department of environmental quality headed by an environmental council.

Bills Referred

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

H. 496.

An act relating to preserving Vermont's working landscape.

To the Committee on Agriculture.

H. 766.

An act relating to the national guard.

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

Consideration Resumed; Proposal of Amendment Adopted; Third Reading Ordered

H. 21.

Consideration was resumed on House bill entitled:

An act relating to the mutual benefit enterprise act.

Thereupon, the pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance? was agreed to and third reading ordered.

Bills Passed in Concurrence

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

H. 39. An act relating to persons authorized to direct disposition of service members' remains.

H. 378. An act relating to town payments of county taxes.

Bill Passed in Concurrence with Proposal of Amendment

H. 503.

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

An act relating to eliminating the ability of the sergeant at arms to employ a traffic control officer and requiring the certification of capitol police officers.

Proposal of Amendment; Third Reading Ordered

H. 413.

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

An act relating to creating a civil action against those who abuse, neglect, or exploit a vulnerable adult.

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

Sec. 1. 13 V.S.A. § 1384 is added to read:

§ 1384. CIVIL ACTION; RECOVERY BY ATTORNEY GENERAL

(a) The attorney general may bring an action for damages on behalf of the state against a person or caregiver who, with reckless disregard or with knowledge, violates section 1376 (abuse of a vulnerable adult), 1377 (abuse by unlawful restraint or confinement), 1378 (neglect of a vulnerable adult), 1380 (financial exploitation), or 1381 (exploitation of services) of this title, in addition to any other remedies provided by law, not to exceed the following:

(1) $5,000.00 if no bodily injury results;

(2) $10,000.00 if bodily injury results;

(3) $20,000.00 if serious bodily injury results; and

(4) $50,000.00 if death results.

(b) In a civil action brought under this section, the defendant shall have a right to a jury trial.

(c) A good faith report of abuse, neglect, exploitation, or suspicion thereof pursuant to 33 V.S.A. § 6902 or federal law shall not alone be sufficient evidence that a person acted in reckless disregard for purposes of subsection (a) of this section.

Sec. 2. 13 V.S.A. § 1385 is added to read:

§ 1385. CIVIL INVESTIGATION

(a)(1) If the attorney general has reason to believe a person or caregiver has violated section 1376, 1377, 1378, 1380, or 1381 of this title or an administrative rule adopted pursuant to those sections, he or she may:

(A) examine or cause to be examined any books, records, papers, memoranda, and physical objects of whatever nature bearing upon each alleged violation.

(B) demand written responses under oath to questions bearing upon each alleged violation.

(C) require the attendance of such person or of any other person having knowledge on the premises in the county where such person resides or has a place of business or in Washington County if such person is a nonresident or has no place of business within the state.

(D) take testimony and require proof material for his or her information and administer oaths or take acknowledgment in respect of any book, record, paper, or memorandum.

(2) The attorney general shall serve notice of the time, place, and cause of such examination or attendance or notice of the cause of the demand for written responses at least ten days prior to the date of such examination, personally or by certified mail, upon such person at his or her principal place of business or, if such place is not known, to his or her last known address. Any book, record, paper, memorandum, or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of this state for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general or another law enforcement officer engaged in legitimate law enforcement activities unless with the consent of the person producing the same. This subsection shall not apply to any criminal investigation or prosecution.

(b) A person upon whom a notice is served pursuant to this section shall comply with the terms thereof unless otherwise provided by the court order. Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this section, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject of any such notice or mistakes or conceals any information shall be subject to a civil fine of not more than $5,000.00.

(c) If a person fails to comply with a notice served pursuant to subsection (b) of this section or if satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the attorney general may file a petition with the superior court for enforcement of this section. Whenever any petition is filed under this section, the court shall have jurisdiction to hear and determine the matter presented and to enter such orders as may be required to effectuate the provisions of this section. Failure to comply with an order issued pursuant to this section shall be punished as contempt.

Sec. 3. 33 V.S.A. § 6911(a)(1) is amended to read:

(1) The investigative report shall be disclosed only to: the commissioner or person designated to receive such records; persons assigned by the commissioner to investigate reports; the person reported to have abused, neglected, or exploited a vulnerable adult; the vulnerable adult or his or her representative; the office of professional regulation when deemed appropriate by the commissioner; a law enforcement agency, the state's attorney, or the office of the attorney general, when the department believes there may be grounds for criminal prosecution or civil enforcement action, or in the course of a criminal or a civil investigation. When disclosing information pursuant to this subdivision, reasonable efforts shall be made to limit the information to the minimum necessary to accomplish the intended purpose of the disclosure, and no other information, including the identity of the reporter, shall be released absent a court order.

Sec. 4. REPORT

On or before December 1, 2012, the attorney general and the department of disability, aging, and independent living shall jointly provide a report on the status of investigations concerning the abuse, neglect, and exploitation of a vulnerable adult and statistics regarding investigation backlog to the senate committee on judiciary.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 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 that the bill be amended as recommended by the Committee on Judiciary?, Senator Snelling on behalf of the Committee on Judiciary moved to amend the proposal of amendment of the Committee on Judiciary, as follows:

In Sec. 4 after "senate" by striking "committee on judiciary" and inserting in lieu thereof "and house committees on judiciary, the senate committee on health and welfare, and the house committee on human services"

Which was agreed to.

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

Message from the House No. 44

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

Mr. President:

I am directed to inform the Senate that:

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

J.R.S. 52. Joint resolution relating to the issuance of a commemorative United States postage stamp in honor of former United States Senator George D. Aiken.

J.R.S. 55. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

The Governor has informed the House that on the April 3, 2012, he approved and signed a bill originating in the House of the following title:

H. 512. An act relating to banking, insurance, securities, and health care administration.

The Governor has informed the House that on the April 4, 2012, he approved and signed a bill originating in the House of the following title:

H. 630. An act relating to reforming Vermont's mental health system.

Adjournment

On motion of Senator Mazza, the Senate adjourned until one o'clock and thirty minutes in the afternoon on Thursday, April 5, 2012.

THURSDAY, APRIL 5, 2012

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Thomas Friedrich of East Barre.

Rules Suspended; Bill Committed

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

H. 454. An act relating to the administration and issuance of vital records.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Government Operations, Senator Campbell moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Judiciary with the report of the Committee on Government Operations *intact*,

Which was agreed to.

Committee Relieved of Further Consideration; Bill Committed

S. 137.

On motion of Senator Campbell, the Committee on Judiciary was relieved of further consideration of Senate bill entitled:

An act relating to workers' compensation and unemployment compensation,

and the bill was committed to the Committee on Economic Development, Housing and General Affairs.

Rules Suspended; Bill Committed

On motion of Senator Cummings, the Committee on Finance was relieved of further consideration of Senate bill entitled:

S. 28. An act relating to consolidating land use and environmental permit administration, rulemaking, and appeals into a department of environmental quality headed by an environmental council.

Thereupon, pending entry on the Calendar for notice, Senator Cummings moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Appropriations with the report of the Committee on Natural Resources and Energy *intact*,

Which was agreed to.

Bill Referred to Committee on Appropriations

H. 753.

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

An act relating to encouraging school districts and supervisory unions to provide services cooperatively or to consolidate governance structures.

Bills Passed in Concurrence with Proposals of Amendment

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

H. 21. An act relating to the mutual benefit enterprise act.

H. 413. An act relating to creating a civil action against those who abuse, neglect, or exploit a vulnerable adult.

Proposal of Amendment; Third Reading Ordered

H. 752.

Senator McCormack, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to permitting stormwater discharges in impaired watersheds.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 2, 27 V.S.A. § 613, by striking out the following: "January 15, 2016" where it appears in subdivision (b)(2) and inserting in lieu thereof the following: June 30, 2016

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.

Adjournment

On motion of Senator Campbell, the Senate adjourned until nine o'clock in the morning on Friday, April 6, 2012.

FRIDAY, APRIL 6, 2012

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

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 adopted in concurrence:

By Representative Copeland-Hanzas and others,

H.C.R. 328.

House concurrent resolution congratulating the Oxbow Union High School Olympians 2012 Division III championship girls' basketball team.

By Representative Fagan and others,

By Senators Carris, Flory and Mullin,

H.C.R. 329.

House concurrent resolution honoring Diana Pfenning for her outstanding leadership of the Tapestry Program of Rutland County.

By Representative Fagan and others,

By Senators Carris, Flory and Mullin,

H.C.R. 330.

House concurrent resolution congratulating the 2012 Mount St. Joseph Academy Mounties Division II championship boys' basketball team.

By Representative Head and others,

H.C.R. 331.

House concurrent resolution congratulating Kevin Wang on winning a 2012 Siemens Award for Advanced Placement excellence in science and mathematics.

By Representative Bohi and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 332.

House concurrent resolution congratulating the Hartford High School Hurricanes 2012 Division II championship girls' basketball team.

By All Members of the House,

By All Members of the Senate,

H.C.R. 333.

House concurrent resolution joyfully extending birthday wishes to the grande dame of Montpelier, Lola Aiken, who turns 100 on June 24, 2012.

By Representative Woodward and others,

By Senator Westman,

H.C.R. 334.

House concurrent resolution recognizing Boseung Halliwell, PMHNP, for her efforts to improve the quality of health care delivery in Lamoille County.

By Representative Potter and others,

H.C.R. 335.

House concurrent resolution congratulating the 2012 Proctor High School Phantoms Division IV championship girls' basketball team.

By Representative Pugh and others,

H.C.R. 336.

House concurrent resolution congratulating the Rice Memorial High School 2012 Division I championship girls' basketball team.

Message from the House No. 45

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

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 506. An act relating to vinous beverages.

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

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

H.C.R. 328. House concurrent resolution congratulating the Oxbow Union High School Olympians 2012 Division III championship girls' basketball team.

H.C.R. 329. House concurrent resolution honoring Diana Pfenning for her outstanding leadership of the Tapestry Program of Rutland County.

H.C.R. 330. House concurrent resolution congratulating the 2012 Mount St. Joseph Academy Mounties Division II championship boys' basketball team.

H.C.R. 331. House concurrent resolution congratulating Kevin Wang on winning a 2012 Siemens Award for Advanced Placement excellence in science and mathematics.

H.C.R. 332. House concurrent resolution congratulating the Hartford High School Hurricanes 2012 Division II championship girls' basketball team.

H.C.R. 333. House concurrent resolution joyfully extending birthday wishes to the grande dame of Montpelier, Lola Aiken, who turns 100 on June 24, 2012.

H.C.R. 334. House concurrent resolution recognizing Boseung Halliwell, PMHNP, for her efforts to improve the quality of health care delivery in Lamoille County.

H.C.R. 335. House concurrent resolution congratulating the 2012 Proctor High School Phantoms Division IV championship girls' basketball team.

H.C.R. 336. House concurrent resolution congratulating the Rice Memorial High School 2012 Division I championship girls' basketball team.

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. 41. Senate concurrent resolution honoring Richard Strong for his more than half-century of municipal public service in the village of Ludlow.

S.C.R. 42. Senate concurrent resolution congratulating Lyndon Rescue, Inc. on its 40th anniversary.

And has adopted the same in concurrence.

Adjournment

On motion of Senator Mazza, the Senate adjourned, to reconvene on Tuesday, April 10, 2012, at 9:30 in the forenoon pursuant to J.R.S. 55.

TUESDAY, APRIL 10, 2012

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Rick Swanson of Stowe.

Pledge of Allegiance

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

Bill Referred to Committee on Appropriations

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

H. 770.

An act relating to the state's transportation program.

Bill Referred

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

H. 506.

An act relating to vinous beverages.

To the Committee on Rules.

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:

Ashcroft, Mary of North Clarendon - Member of the Vermont Natural Gas and Oil Conservation Board, - from April 4, 2012, to February 28, 2014.

To the Committee on Natural Resources and Energy.

Thomas, Brian of Shrewsbury - Member of the Plumbers Examining Board, - from April 4, 2012, to February 29, 2016.

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

Greene, Craig of Alburgh - Member of the Fish and Wildlife Board, - from April 4, 2012, to February 28, 2018.

To the Committee on Natural Resources and Energy.

Besio, Nathan of Colchester - Member of the Human Rights Commission, - from April 4, 2012, to February 28, 2017.

To the Committee on Judiciary.

Troiano, Jo Ann of Montpelier - Member of the Vermont State Housing Authority, - from April 4, 2012, to February 28, 2017.

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

Zahner, Michael of Marshfield - Member of the Valuation Appeals Board, - from April 4, 2012, to January 31, 2015.

To the Committee on Finance.

Powers, James of Montpelier - Member of the Valuation Appeals Board, - from April 4, 2012, to January 31, 2013.

To the Committee on Finance.

Joint Senate Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senators Carris and Mullin,

J.R.S. 56. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Thursday, April 12, 2012, or, Friday, April 13, 2012, it be to meet again no later than Tuesday, April 17, 2012.

Bill Passed in Concurrence with Proposal of Amendment

H. 752.

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

An act relating to permitting stormwater discharges in impaired watersheds.

Bill Amended; Third Reading Ordered

S. 142.

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

An act relating to pet merchants.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 20 V.S.A. § 3681 is amended to read:

§ 3681. PERMIT

(a) ~~The owner or keeper of two or more domestic pets or wolf-hybrids four months of age or older kept for sale or for breeding purposes, except for his or her own use,~~ A person who sells, exchanges, or donates or offers to sell, exchange, or donate for monetary consideration three or more litters of domestic pets or wolf-hybrids in a calendar year shall apply to the municipal clerk of the town or city in which the domestic pets or wolf-hybrids are kept for a kennel permit to be issued on forms prescribed by the commissioner and pay the clerk a fee of ~~$10.00~~ $25.00 for the same. The provisions of subchapters 1, 2, and 4 of this chapter not inconsistent with this subchapter, shall apply to the permit which shall be in addition to other permits required. A kennel permit shall expire on March 31 next after issuance, and shall be displayed prominently on the premises on which the domestic pets or wolf-hybrids are kept. If the permit fee is not paid by April 1, the owner or keeper

may thereafter procure a permit for that license year by paying a fee of ~~fifty~~ 50 percent in excess of that otherwise required. Municipal clerks shall maintain a record of the type of animals being kept by the permit holder.

(b) A person possessing a kennel permit issued under this section must include the permit number in any form of advertising, including Internet advertising, a brochure, or a sign that announces the availability of an animal for sale or exchange. The person's name and kennel permit number must be provided to the person purchasing or otherwise receiving an animal.

(c) The legislative body of a municipality may assess a penalty against any person who violates subsection (b) of this section.

Sec. 2. 20 V.S.A. § 3682 is amended to read:

§ 3682. INSPECTION OF PREMISES

These premises may be inspected at any ~~reasonable~~ time between 9:00 a.m. and 5:00 p.m. in the presence of or with the consent of the owner by a law enforcement officer, a representative of the agency of agriculture, food and markets, or an officer or agent of ~~an~~ a Vermont incorporated humane society and a veterinarian licensed to practice in Vermont, designated by such officer, agent or agency.

And that when so amended the bill ought to pass.

Senator Cummings, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass when so amended.

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

Bill Amended; Third Reading Ordered

S. 180.

Senator Cummings, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to the universal service fund and establishment of a high-cost program.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS AND PURPOSE

(a) The general assembly finds:

(1) Incumbent local exchange carriers (ILECs) are obligated to provide broad-based access to telephone services, even in areas that are high cost, sparsely populated, or filled with subscribers of limited means.

(2) Traditionally, ILECs were rewarded with an exclusive franchise in return for carrying out their regulatory responsibilities in unprofitable areas.

(3) However, with increased competition in the telecommunications field, particularly in profitable areas, ILECs have less of an opportunity to cover the costs of serving unprofitable areas.

(4) Vermont has a state universal service fund which is currently used to support the lifeline and enhanced 911 programs. Funds are generated by an end-user surcharge on all retail telecommunications service provided to a Vermont address.

(b) It is the purpose of this act to establish a new regulatory model under which ILECs can continue their costly responsibilities over wide areas and still have an opportunity to cover their costs, even in the presence of competitors.

* * * Universal Service Fund Studies * * *

Sec. 2. 30 V.S.A. § 7515 is amended to read:

§ 7515. HIGH-COST BASIC TELECOMMUNICATIONS SERVICE

(a) The general assembly intends that the universal service charge be used in the future as a means of keeping basic telecommunications service affordable in all parts of this state, thereby maintaining universal service. ~~In the future, and after this section has been amended by further act of legislation, payments may be made to reduce the cost of basic telecommunications service in areas where that cost would otherwise jeopardize universal service or uniform economic development.~~

(b) The commissioner of public service, in conjunction with the public service board, shall conduct a study of the costs and other factors affecting the delivery of local exchange service by the incumbent local exchange carriers (the providers of last resort). The study shall ~~be conducted either as an independent inquiry or as part of a proceeding or docket affecting other matters~~ include an informal workshop process to be conducted by the board. Such process shall be noticed to the general public and structured to allow written and verbal comments by the general public, service providers, public officials, and others as determined by the board. The study shall:

(1) After considering information on how various factors affect the costs of providing telecommunications service in Vermont and elsewhere, estimate the current costs and estimate, on a forward-looking basis, the differential costs

of providing local exchange service to various customer groups throughout Vermont.

(2) Estimate the relationship between basic telecommunications service charges and universal service, and the threshold level beyond which universal residential service is likely to be harmed.

(3) Estimate the relationship between basic telecommunications service charges and opportunities for uniform economic development throughout the state, and the threshold prices beyond which such opportunities may be adversely affected.

(4) Estimate the potential effects of local exchange competition on uniform and affordable basic telecommunications service charges in all parts of the state.

(5) Examine policy options by which the cost to customers may be managed so as not to jeopardize universal service and the uniform economic development opportunities, including at least the following:

(A) establishing a maximum price for basic telecommunications service, beyond which customers would have access, without regard to income, to credits or vouchers negotiable for local exchange service from a local exchange provider or competitive access provider;

(B) broadening eligibility for the lifeline program; and

(C) establishing a mechanism to adjust the level of support for higher cost customers over time to reflect legal rights, recover historic costs, and reflect the advantages of improved technology and increased efficiency.

(6) Examine the actions, if any, of the Federal Communications Commission (FCC) in revising its universal service fund, and the need, if any, for additional action in Vermont. In particular, the study shall examine the impact on Vermont services caused by the FCC's report and order released November 18, 2011, which, among other things, expands the federal universal service fund to include broadband deployment in unserved areas. Further, the study shall consider the potential impact of various legal challenges to the FCC action on the federal universal service fund.

(7) Propose mechanisms to support universal service and rural economic development while securing the benefits of telecommunications competition for Vermont households and businesses.

(8) Include an audit of the universal service fund to examine, among other things, the contributions made to the fund in terms of the categories of telecommunications service providers covered as well as the specific services

charged. In addition, the audit shall assess the disbursements made from the fund.

(9) Consider any other relevant issues that may arise during the course of the study.

(c) The results of the study, together with any plan for amending and distributing funds under this section, shall be submitted to the ~~general assembly~~ house committee on commerce and economic development and the senate committee on finance on or before ~~January 15, 1996~~ December 1, 2012.

(d) The commissioner of public service may contract with a consultant to conduct the study required by this section. Costs incurred in conducting the study shall be reimbursed from the state universal service fund up to $75,000.00.

(e) To the extent this study may require disclosure of confidential information by a telecommunications service provider, such confidential information shall be disclosed to a third party pursuant to a protective agreement. In no event shall the third party be a person or persons employed by a business competitor or whose primary duties engage them in business competition with a telecommunications service provider submitting the confidential information. The third party may be the consultant retained by the commissioner under subsection (d) of this section or may be another third party agreed upon by the commissioner and the telecommunications service providers. The third party shall be responsible for aggregating the information and, once aggregated, may publicly disclose such information consistent with the purposes of this section. The confidentiality requirements of this subsection shall not affect whether information provided to an agency of the state or a political subdivision of the state pursuant to other laws is or is not subject to disclosure.

Sec. 3. CREATION OF ONE-YEAR HIGH-COST PROGRAM

(a) There is created a high-cost program under which the universal service charge shall be used as a means of keeping basic telecommunications service affordable in all parts of this state, thereby maintaining universal service. Payments shall be made to Vermont's incumbent local exchange carriers (ILECs) for the purpose of reducing the cost of providing basic local telecommunications service in areas where that cost would otherwise jeopardize universal service or uniform economic development.

(b) Funds distributed under the high-cost program are intended to defray the cost an ILEC incurs in building and maintaining its network so that it stands ready to serve any customer in its service area, even those in the most remote areas of Vermont. In order to achieve this goal, funding shall not be

based upon the number of basic telecommunications services ordered, but rather upon the cost to serve any customer in that service area who may request basic local exchange service. This includes the costs of building and maintaining the entire network in each exchange in the applicable service area.

(c) The fiscal agent shall make distributions for the high-cost program to the ILECs, as required by this section. The percentage of funds distributed to each ILEC shall reflect the percentage of total access lines reported by each ILEC in its annual report to the public service board.

(d) Any funds in excess of $1,000,000.00 remaining in the Vermont universal service fund as of September 1, 2012 shall be distributed among all the ILECs in a manner determined by the commissioner of public service.

Sec. 4. STUDY ON THE STATE USF AND PREPAID WIRELESS TELECOMMUNICATIONS SERVICES

(a) The commissioner of public service or designee, in consultation with the commissioner of taxes or designee, shall convene a work group to study issues related to application of the state's universal service charge established under 30 V.S.A. chapter 88 to prepaid wireless telecommunications services. The work group shall include representatives of prepaid wireless telecommunications service providers, Vermont retailers of prepaid wireless telecommunications services, consumers, the enhanced-911 program, and any other stakeholders identified by the commissioner. The study shall consider:

(1) the retail transactions subject to the charge;

(2) the amount of the charge;

(3) application of the charge to bundled telecommunications services;

(4) the effective date of any adjustments to the charge;

(5) billing and collection procedures, including:

(A) notice of charges to consumers; and

(B) various payment and collection methods, including payment and collection procedures similar to those used for the sales and use tax imposed under 32 V.S.A. chapter 233;

(6) the ability of retailers or the department of taxes, if applicable, to retain a percentage of the fees collected to offset collection and administration costs and, if so, the percentage which may be retained; and

(7) any other matter deemed relevant by the commissioner.

(b) The commissioner, on behalf of the work group established under subsection (a) of this section, shall report his or her findings and

recommendations to the house committee on commerce and economic development and the senate committee on finance not later than December 1, 2012. The report shall include draft legislation for consideration during the 2013 legislative session.

(c) It is the intent of the general assembly that the study authorized under this section shall not circumscribe any obligation which may be imposed on a wireless telecommunications service provider in pending or future proceedings before the public service board concerning designation as an eligible telecommunications carrier.

Sec. 5. EFFECTIVE DATE

(a) This act shall take effect on passage.

(b) Sec. 3 of this act (creation of high cost program) shall take effect on passage and shall be repealed on June 30, 2013.

And that when so amended the bill ought to pass.

Senator Illuzzi, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass when so amended.

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

Proposal of Amendment; Third Reading Ordered

H. 765.

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

An act relating to the mental health needs of the corrections population.

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. INDIVIDUALS WITH A SERIOUS FUNCTIONAL IMPAIRMENT INCARCERATED IN A CORRECTIONAL FACILITY

(a) For the purpose of identifying and assessing the needs of individuals with a serious functional impairment as defined in 28 V.S.A. § 906(1) who are incarcerated in a correctional facility, the secretary of human services shall establish on or before July 1, 2012 a work group, including representatives appointed by the secretary of human services from the departments of corrections, of mental health, and of disabilities, aging, and independent living and including stakeholders. The work group shall:

(1) determine whether individuals with serious functional impairments are receiving appropriate programs and services while incarcerated in a correctional facility;

(2) consult with the members of the criminal justice community on ways to prevent initial incarceration and on ways to limit the length of incarceration for an individual with a serious functional impairment, as appropriate;

(3) work toward the successful reintegration into the community of an individual with serious functional impairment who has been incarcerated in a correctional facility;

(4) work toward reducing the recidivism rate among individuals with a serious functional impairment; and

(5) make long-term, systemic policy recommendations to the secretary of human services to create or improve mechanisms, programs, and services that benefit individuals with a serious functional impairment incarcerated in a correctional facility.

(b) On or before January 15, 2013, the secretary of human services shall issue a report to the general assembly recommending how to better address the needs of individuals with a serious functional impairment who are incarcerated in a correctional facility, based on the findings of the work group in the course of its duties as described in subsection (a) of this section. Prior to finalizing the report, the secretary shall obtain public input regarding the report and shall release a draft report to the public for public comment on or before December 15, 2012. At minimum, the report shall address the following:

(1) the prevalence of serious functional impairment among those members of the corrections population incarcerated in a correctional facility at the time the report is issued;

(2) the rate of recidivism among individuals with a serious functional impairment;

(3) the prevalence of psychotropic medication utilization by individuals in the mental health caseloads, including an analysis of the number of individuals with a serious functional impairment who possess a prescription for a psychotropic medication and whether that prescription was prescribed before or after the individual was incarcerated.

(4) the number of individuals incarcerated in a correctional facility with a serious functional impairment who are in need of mental health services that are not currently available to them; and

(5) opportunities to combine the department of mental health's expertise with that of the department of corrections to improve the mental health

services for individuals with a serious functional impairment who are incarcerated in a correctional facility.

Sec. 2. INCARCERATED INDIVIDUALS AND MENTAL HEALTH

As a complement to the assessment conducted pursuant to Sec. 1 of this act, the commissioner of mental health shall ensure that information regarding incarcerated individuals with a mental illness or disorder as defined in 28 V.S.A. § 906(3) is collected and recorded separately, in addition to the other requirements of this act. The information collected shall include recidivism rates among this population. On or before January 15, 2013, the commissioner shall report this information and make recommendations to the house committee on corrections and institutions, the house committee on human services, the senate committee on health and welfare, and the senate committee on judiciary.

Sec. 3. TRAINING

On or before October 15, 2012, the departments of mental health, of disabilities, aging, and independent living, and of corrections, with input and participation from peer and advocacy organizations, shall review the department of corrections' training program for correctional officers as it relates to the Americans with Disabilities Act and to working with and identifying individuals with a serious functional impairment or a mental illness or disorder. The review shall determine if the training is gender-responsive and trauma-informed. No later than January 15, 2013, the commissioners of mental health and of corrections shall submit a report to the general assembly identifying the strengths, weaknesses, and opportunities for improvement in this training.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

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

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

Third Readings Ordered

H. 565.

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

An act relating to regulating licensed lenders and mortgage loan originators.

Reported that the bill ought to pass in concurrence.

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

H. 613.

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

An act relating to governance of the Community High School of Vermont .

Reported that the bill ought to pass in concurrence.

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

Consideration Postponed

S. 28.

Senator Lyons, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

An act relating to consolidating land use and environmental permit administration, rulemaking, and appeals into a department of environmental quality headed by an environmental council.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Environmental Division, Superior Court * * *

Sec. 1. ENVIRONMENTAL DIVISION AMENDMENTS; PURPOSE

The purpose of Secs. 2 (environmental division; magistrate) and 3 (access to information) of this act, which enhance the environmental division of the superior court (the division), is to increase the speed and accessibility to the public of appeals before the division by reducing discovery, requiring parties to exchange relevant information before hearings, and adding a magistrate to help expedite proceedings in a manner that gives due consideration to the needs of pro se litigants and to supply the division with an additional judicial appointee who may decide noncomplex cases and, in complex matters, may make preliminary decisions and assist in early and rigorous case management. Secs. 2 and 3 of this act shall be applied consistently with this purpose.

Sec. 2. 4 V.S.A. § 1001 is amended to read:

§ 1001. ENVIRONMENTAL DIVISION

(a) The environmental division shall consist of two judges, each sitting alone, and one magistrate.

(b)(1) Two environmental judges shall be appointed to hear matters in the environmental division and to hear other matters in the superior court when so assigned by the administrative judge pursuant to subsection 21a(c) of this title.

(2) An environmental magistrate shall be appointed to perform duties that relate solely to matters in the environmental division and that are authorized by rule or an environmental judge. An environmental magistrate may be so authorized to perform one or more of the following:

(A) Case management,

(B) Issuing a decision on a procedural issue that does not dispose of a matter. including issuance of a scheduling order and managing discovery.

(C) Determining whether appeals should be consolidated or coordinated pursuant to 10 V.S.A. § 8504(g).

(D) Determining whether a matter should be referred for alternative dispute resolution.

(E) Conducting alternative dispute resolution.

(F) Issuing a recommended decision on the merits of any matter subject to review and approval by an environmental judge. Prior to such review and approval, the recommended decision shall be served on all parties, and all adversely affected parties shall have an opportunity to file exceptions and present briefs and oral argument to the environmental judge on the recommended decision.

(G) Issuing a final decision on the merits of a matter that an environmental judge determines is not complex and does not involve questions of facts or law the determination of which is likely to have significant precedential effect.

(c) An environmental judge and an environmental magistrate shall be an attorney admitted to practice before the Vermont supreme court.

(1) An environmental judge shall be nominated, appointed, confirmed, paid, and retained, and shall receive all benefits in the manner of a superior judge.

(2) An environmental magistrate:

(A) Shall be nominated, appointed, confirmed, and retained in the manner of a superior judge;

(B) Shall be an exempt employee of the judicial branch, subject to the code of judicial conduct;

(C) Shall devote full time to his or her duties; and

(D) Shall be compensated in the same manner as other magistrates in the judicial branch.

(d) An environmental judge and an environmental magistrate shall be appointed on April 1, for a term of six years or the unexpired portion thereof.

(e) Evidentiary proceedings in the environmental division shall be held in the county in which all or a portion of the land which is the subject of the appeal is located or where the violation is alleged to have occurred, unless the parties agree to another location; provided, however, that the environmental ~~judge~~ division shall offer expeditious evidentiary hearings so that no such proceedings are moved to another county to obtain an earlier hearing. Unless otherwise ordered by the court, all nonevidentiary hearings may be conducted by telephone or video conferencing using an audio or video record. If a party objects to a telephone hearing, the ~~court~~ division may require a personal appearance for good cause.

(f) [Repealed.]

(g) The supreme court may enact rules and develop procedures consistent with this chapter to govern the operation of the environmental division and proceedings in it. In adopting these rules, the supreme court shall ensure that the rules provide for:

(1) expeditious proceedings that give due consideration to the needs of pro se litigants;

(2) the ability of the judge to hold pretrial conferences by telephone;

(3) the use of scheduling orders under the Vermont Rules of Civil Procedure in order to limit discovery to that which is necessary for a full and fair determination of the proceeding; and

(4) the appropriate use of site visits by the presiding judge or magistrate to assist the ~~court~~ division in rendering a decision.

Sec. 3. 4 V.S.A. § 1004 is amended to read:

§ 1004. ACCESS TO INFORMATION

(a) In connection with ~~any~~ evidentiary proceedings under 10 V.S.A. chapter 201 ~~of Title 10~~ (environmental law enforcement) or 220 (consolidated environmental appeals), each party shall provide all other parties with all written statements and information in the possession, custody, or control of the party relative to the violation, including any technical studies, tests and reports, maps, architectural and engineering plans and specifications, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained, the names and addresses of the party's witnesses, and any other

information which the environmental division deems necessary, in its sole discretion, to a fair and full determination of the proceeding.

(b) No other discovery or depositions, written interrogatories or requests to admit shall be permitted except that which ~~is~~ the environmental division deems necessary, in its sole discretion, for a full and fair determination of the proceeding.

* * * Act 250; District Commissioners; Ethical Standards * * *

Sec. 4. 10 V.S.A. § 6026 is amended to read:

§ 6026. DISTRICT COMMISSIONERS

* * *

(c) Members shall be removable for cause only, except the ~~chairman~~ chair who shall serve at the pleasure of the governor.

* * *

(e) The chair and members of a district commission shall comply with the following ethical standards:

(1) The provisions of 12 V.S.A. § 61 (disqualification for interest).

(2) The chair and each member of a district commission shall conduct the affairs of his or her office in such a manner as to instill public trust and confidence and shall take all reasonable steps to avoid any action or circumstance that might result in any one of the following:

(A) Undermining his or her independence or impartiality of action.

(B) Taking official action on the basis of unfair considerations.

(C) Giving preferential treatment to any private interest on the basis of unfair considerations.

(D) Giving preferential treatment to any family member or member of his or her household.

(E) Using his or her office for the advancement of personal interest or to secure special privileges or exemptions.

(F) Adversely affecting the confidence of the public in the integrity of the district commission.

(f) As soon as practicable after grounds become known, a party may move to disqualify a district commissioner from a particular matter before the district commission.

(1) The motion shall contain a clear statement of the specific grounds for disqualification and when such grounds were first known.

(2) On receipt of the motion, the district commissioner who is the subject of the motion shall disqualify himself or herself or shall refer the motion to the chair of the board. The chair of the board may disqualify the district commissioner from the matter before the district commission if, on review of the motion, the chair determines that such disqualification is necessary to ensure compliance with subsection (e) (ethical standards) of this section.

(3) On disqualification of a district commissioner under this subsection, the chair of the board shall assign another district commissioner to take the place of the disqualified commissioner. The chair shall consider making such an assignment from among the members of the same district commission before assigning a member of another district commission.

(g) For one year after leaving office, a former appointee to a district commission shall not, for pecuniary gain:

(1) Be an advocate on any matter before the district commission to which he or she was appointed; or

(2) Be an advocate before any other public body, or the general assembly or its committees, regarding any matter in which, while an appointee, he or she exercised any official responsibility or participated personally and substantively.

* * * Party Status; Standing to Appeal * * *

Sec. 5. PARTY STATUS AMENDMENTS; PURPOSE

The purpose of Secs. 6 (party status) and 7 (person aggrieved) of this act is to correct the overly rigorous application of existing standards for party status and standing to appeal exemplified by the decision of *In re Pion Sand and Gravel*, No. 245-12-09 Vtec (July 2, 2010), and to assure that future decisions properly apply these standards. To determine standing, the Vermont supreme court has applied an analysis used by the federal courts under Article III of the United States Constitution. *Parker v. Milton*, 169 Vt. 74 (1998). In addition, Vermont statutes establish who may be a party. For the purpose of 10 V.S.A. §§ 6085(c)(1)(E) (party status; adjoining property owner; other persons) and 8502(7) (person aggrieved), establishing status as a party or "person aggrieved" is distinct from a merits determination. A person need not prove the merits of a claim in order to participate or appeal, but rather need only demonstrate a reasonable possibility of injury to a particularized interest. The subdivisions amended in Secs. 6 and 7 of this act shall be applied consistently with this purpose.

Sec. 6. 10 V.S.A. § 6085(c) is amended to read:

(c)(1) Party status. In proceedings before the district commissions, the following persons shall be entitled to party status:

* * *

(E) Any adjoining property owner or other person who ~~has~~ alleges an injury to a particularized interest protected by this chapter that may be ~~affected by an act or decision by a district commission~~ attributable to a proposed development or subdivision. If such an allegation is disputed, the person need only demonstrate that there is a reasonable possibility of injury to a particularized interest.

Sec. 7. 10 V.S.A. § 8502(7) is amended to read:

(7) "Person aggrieved" means a person who alleges an injury to a particularized interest protected by the provisions of law listed in section 8503 of this title, attributable to an act or decision by a district coordinator, district commission, the secretary, or the environmental division that can be redressed by the environmental division or the supreme court. If such an allegation is disputed, the person need only demonstrate that there is a reasonable possibility of injury to a particularized interest.

* * * Recorded Hearings; Pilot Project; Act 250 * * *

Sec. 8. ON THE RECORD PILOT; FINDINGS; PURPOSE

(a) The purpose of Secs. 9 (appeals on the record) and 10 (prospective repeal; report) of this act is to establish a pilot project to test the use of recorded hearings by the Act 250 district commissions that, on appeal to the environmental division, will be subject to a review on the record (OTR) rather than a de novo hearing.

(b) There is disagreement on the use of OTR for appeals to the environmental division from decisions of the district commissions. On the one hand, proponents of OTR argue that, in the case of Act 250, OTR will ensure the primacy of the district commissions in making the decisions and, in cases that are likely to be appealed, avoid duplicative expenditure of time and resources resulting from presenting, on appeal, expert and witness testimony and other evidence already presented. Proponents also argue that OTR enhances citizen participation because a record preserves citizen input before the district commissions and the district commissions are more accessible to citizens than a court. On the other hand, skeptics of OTR argue that it will result in an overly formal district commission process that will harm citizen participation and increase the cost and time of all district commission proceedings in order to benefit those that are appealed.

(c) The pilot project authorized by this act is intended to test whether OTR can be implemented in a manner that results in the benefits asserted by proponents without the negative impacts raised by skeptics. To this end, it is important that district commissions participating in the project limit recorded proceedings to matters that are likely to be appealed, assure that recorded proceedings are run in the same informal and citizen-friendly manner as other district commission proceedings, make all efforts to resolve and narrow issues for hearing, and assure adequate time and information for all parties to have a fair opportunity to prepare for the hearing.

Sec. 9. 10 V.S.A. § 6085a is added to read:

§ 6085a. APPEALS ON THE RECORD

(a) The districts no. 1, 4, and 5 environmental commissions may hold on-the-record hearings on the motion of any party or on its own motion. Any motion or decision to hold on-the-record hearings shall be made as early as possible during the course of an application and prior to convening a hearing on the merits. Notwithstanding subdivision 6001(4) of this title, for the purpose of this section, "district commission" shall mean the district no. 1, 4, or 5 environmental commission.

(b) The district commission shall schedule a prehearing conference in each matter in which on-the-record hearings may be held to:

(1) determine whether on-the-record hearings shall be held;

(2) narrow and specify all issues for hearing;

(3) establish a fair and adequate schedule for all parties to prepare submissions of information; and

(4) establish a schedule for and the order of a hearing.

(c) The district commission may hold on-the-record hearings if it determines that:

(1) the application raises issues that are likely to be contested and appealed;

(2) on-the-record hearings are likely to result in significant cost and time savings;

(3) on-the-record hearings would assure complete information and argument for the district commission's consideration;

(4) on-the-record hearings will not unnecessarily burden the parties; and

(5) on-the-record hearings will not significantly deter citizen participation and the ability of parties to participate pro se.

(d) In a case in which a district commission decides to hold on-the-record hearings:

(1) The district commission may request that the parties engage in alternative dispute resolution in an effort to resolve or narrow issues before the district commission.

(2) The district commission shall assure that all parties and the district commission have adequate information in sufficient time to address issues before the district commission.

(A) The district commission shall require each participating party to provide the district commission and all other parties with each of the following:

(i) Written statements and information in the possession, custody, or control of the party.

(ii) Technical studies, tests and reports, maps, architectural and engineering plans and specifications, drawings, site plans, graphs, charts, photographs, and other data or data compilations from which information can be obtained.

(iii) The names and addresses of the party's witnesses.

(iv) Summaries of all proposed testimony.

(B) The district commission may require each participating party to provide the district commission and all other parties with one or more of the following:

(i) Prefiled testimony.

(ii) Memoranda concerning any issue in controversy.

(iii) Particular information that a party may request by written questions.

(iv) Any other information that the commission deems necessary to a fair and full determination of the proceeding.

(C) The provisions of this subdivision (2) shall be in addition to the provisions of 3 V.S.A. §§ 809, 809a, and 809b.

(3) The district commission shall make every reasonable effort to maintain the procedural informality characteristic of district commission proceedings that are not on-the-record. There shall be flexibility in allowing the introduction of evidence. The district commission shall ensure that all hearings, conferences, and requirements for prehearing submissions are in keeping with the citizen-run and citizen-served process under this chapter, and

due consideration and respect shall be given to the needs of all applicants, parties, and pro se parties.

(e) The district commission shall cause on-the-record hearings to be recorded by video. Such recordings shall be at the expense of the board. The board shall provide training and education opportunities, and legal counsel as appropriate, to enable district commissioners to preside successfully at on-the-record hearings.

(f) Notwithstanding sections 6089 and 8504 of this title, there shall be no appeal of a district commission's decision on whether to hold on-the-record hearings.

(g) Notwithstanding subsection 8504(h) of this title, in a matter in which a district commission has elected to hold on the record hearings under this section, the appeal of a decision of the district commission shall be reviewed on the record prepared by the commission. In such an appeal:

(1) The record shall consist of the video recording of the hearing and all documents and materials reviewed or considered by the district commission. The district commission shall forward the record to the environmental division within 20 days of the date the district commission receives the notice of appeal.

(2) The appellant shall bear the burden to demonstrate that the district commission committed reversible error.

(3) No objection that has not been urged before the district commission may be considered by the environmental division, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(4) The findings of the district commission with respect to questions of fact, if supported by substantial evidence on the record as a whole, shall be conclusive.

(5) The environmental division may reverse district commission conclusions or decisions only if they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

Sec. 10. PROSPECTIVE REPEAL; REPORT

(a) 10 V.S.A. § 6085a (appeals on the record) shall be repealed on July 1, 2016, except that the section shall remain in effect for an application for a permit under 10 V.S.A. chapter 151 if prior to that date:

(1) The application was filed with the district no. 1, 4, or 5 environmental commission and determined to be complete; and

(2) With respect to the application, a motion for on-the-record hearings was filed or the district commission determined to hold on-the-record hearings under that section.

(b) With respect to the implementation of 10 V.S.A. § 6085a (appeals on the record), the natural resources board shall submit annual reports by January 15 of each year that 10 V.S.A. § 6085a is in effect. In addition, the natural resources board shall submit an evaluation report by January 15, 2014 and a further evaluation report by January 15, 2016. The evaluation report shall be combined with the annual report for the same year.

(1) Each report shall be submitted to the house committee on fish, wildlife and water resources and the house and senate committees on judiciary and on natural resources and energy.

(2) The evaluation reports shall provide a quantitative and qualitative assessment of the use of on-the-record hearings, including the timeliness and manageability of the overall process, any effects on public participation, party feedback, any additional resource demands or efficiencies, and whether to incorporate or make more use of alternative dispute resolution methods, including intervenor funding, community stakeholder process, and mediation.

(3) The annual reports shall detail the range of projects for which there were on-the-record hearings, the districts in which the hearings were held, the time required and the outcome of completed commission hearings, whether appeals were taken, and if so, by which party, and the time required for the outcome of appellate proceedings before the environmental division.

Sec. 11. AGENCY OF NATURAL RESOURCES; RECORD REVIEW; REPORT

On or before January 15, 2013, the secretary of natural resources shall submit a report to the house committee on fish, wildlife and water resources and the house and senate committees on natural resources and energy on how the secretary might implement on-the-record (OTR) appeals of acts or decisions of the secretary and on affording deference on appeal to those acts or decisions. Such report shall:

(1) Provide data on the number of appeals from those acts or decisions during the preceding three years that went to hearing on the merits and the amount of staff time necessitated by each such appeal.

(2) Detail the changes that the secretary would propose or deem necessary within the agency of natural resources to effect OTR appeals such as revisions to notice requirements or conduct of hearings, preparation of the record, or establishment of internal administrative hearings.

(3) Set out what specific standards of deference, if any, the secretary proposes should apply on appeal of his or her acts or decisions; what internal changes to the agency, if any, should be implemented to support use of those standards; and the extent to which OTR appeals are necessary to effecting one or more of the proposed standards.

(4) Provide the secretary's recommendations and reasons for those recommendations.

Sec. 12. NATURAL RESOURCES BOARD; REPORT; CLIMATE CHANGE; SPRAWL; CUMULATIVE IMPACTS

On or before January 15, 2013, the chair of the natural resources board shall submit a report to the house committee on fish, wildlife and water resources and the house and senate committees on natural resources and energy with recommendations for improving the provisions of and process under 10 V.S.A. chapter 151 (Act 250) with respect to: the issue of climate change due to anthropogenic global warming; preservation of Vermont's settlement pattern of concentrated settlements surrounded by rural countryside and prevention of sprawl and the related loss of agricultural soils and forestland; and enhancement of the ability of Act 250 to address the cumulative effects of development over time. Prior to submitting this report, the chair shall consult with other state permitting officials, including representatives of the agencies of agriculture, food and markets, of commerce and community development, of natural resources, and of transportation; municipal permitting officials; and members of the public through public meetings, use of the Internet, and other forms of outreach.

Sec. 13. JUDICIARY POSITION; APPROPRIATION

For the purpose of Sec. 2 of this act (environmental division; magistrate):

(1) The position of environmental magistrate is created within the judicial branch.

(2) For fiscal year 2013, the sum of $125,000.00 is appropriated to the judiciary from the general fund.

Sec. 14. EFFECTIVE DATES; IMPLEMENTATION

(a) This section and Secs. 1, 3–8, and 10–12 of this act shall take effect on passage.

(b) Sec. 9 (appeals on the record) shall take effect on July 1, 2012. As of the effective date of this Sec. 14, the natural resources board shall commence planning and training of district commissions for implementation of Sec. 9.

(c) Secs. 2 (environmental division; magistrate) and 13 (judiciary position; appropriation) of this act shall take effect on July 1, 2012.

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

An act relating to the permit process for protecting the environment.

And that when so amended the bill ought to pass.

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

First: By striking out Secs. 1 (environmental division amendments; purpose) and 2 (environmental division) in their entirety and inserting in lieu thereof: Secs. 1 and 2. [Deleted.]

Second: In Sec. 9, 10 V.S.A. § 6085a (appeals on the record), in subdivision (d)(2), by striking out subdivision (A) and inserting in lieu thereof a new subdivision (A) to read as follows:

(A) The district commission shall require each participating party to provide the district commission and all other parties with each of the following:

(i) Written statements and information in the possession, custody, or control of the party.

(ii) Technical studies, expert reports including the basis and reasons for each opinion, tests and reports, maps, architectural and engineering plans and specifications, drawings, site plans, graphs, charts, photographs, and other data or data compilations from which information can be obtained.

(iii) The names, addresses, and telephone numbers of the party's witnesses.

(iv) Fair and accurate summaries of all proposed testimony.

(v) The curriculum vitae of each expert witness, including a list of all other cases in which, during the previous four years, the witness testified as an expert.

Third: In Sec. 9, 10 V.S.A. § 6085a (appeals on the record), in subsection (d), after subdivision (3), by inserting a new subdivision to be numbered subdivision (4) to read as follows:

(4) The district coordinator for the district commission shall provide pro se parties with reasonable assistance on procedure before the district commission.

Fourth: By striking out Secs. 13 (judiciary position; appropriation) and 14 (effective dates; implementation) in their entirety and inserting in lieu thereof:

Sec. 13. JUDICIARY POSITION; APPROPRIATION

The establishment of one new exempt position in the judicial branch of state government—environmental division staff attorney—is authorized in fiscal year 2013. This position shall be converted from an existing law clerk position within the judicial branch. The job duties of the environmental division staff attorney shall be within the environmental division of the superior court and shall include: researching legal issues; drafting legal memoranda; screening and management of division caseload with special attention to complex cases and division backlogs; and supervising law clerks and interns. For the purpose of this section, the sum of $60,000.00 is appropriated to the judiciary from the general fund for fiscal year 2013.

Sec. 14. EFFECTIVE DATES; IMPLEMENTATION

(a) This section and Secs. 3–8 and 10–12 of this act shall take effect on passage.

(b) Sec. 9 (appeals on the record) shall take effect on July 1, 2012. As of the effective date of this Sec. 14, the natural resources board shall commence planning and training of district commissions for implementation of Sec. 9.

(c) Sec. 13 (judiciary position; appropriation) of this act shall take effect on July 1, 2012.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the recommendation of the Committee on Natural Resources and Energy be amended as recommended by the Committee on Appropriations?, on motion of Senator MacDonald consideration of the bill was postponed until the next legislative day.

Proposal of Amendment; Third Reading Ordered

H. 403.

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

An act relating to foreclosure of mortgages.

Reported recommending that the Senate propose to the House to amend the bill by striking out Sec. 3 in its entirety and inserting in lieu thereof four new sections to be numbered Secs. 3, 4, 5, and 6 to read as follows:

Sec. 3. 12 V.S.A. § 506 is amended to read:

§ 506. JUDGMENTS

Actions on judgments and actions for the renewal or revival of judgments shall be brought by filing a new and independent action on the judgment and recording a copy of the complaint in the land records where the property lies within eight years after the rendition of the judgment, and not after.

Sec. 4. 12 V.S.A. § 2903(b) is amended to read:

(b) A judgment which is renewed or revived pursuant to section 506 of this title shall constitute a lien on real property for eight years from the issuance of the renewed or revived judgment if recorded in accordance with this chapter and shall relate back to the date on which the original lien was first recorded if a copy of the complaint to renew the judgment was recorded in the land records where the property lies within eight years after the rendition of the judgment.

Sec. 5. 27 V.S.A. § 612(b) is amended to read:

(b) A purchaser shall have the right to terminate a binding contract for the sale of real estate if, prior to closing, the purchaser determines and gives written notice to the seller that land development has occurred on the real estate without a required municipal land use permit or in violation of an existing municipal land use permit. Following the receipt of written notice, the seller shall have 30 days, unless the parties agree to a shorter or longer period, either to obtain the required municipal land use permits or to comply with existing municipal land use permits. If the seller does not obtain the required municipal land use permits or comply with existing municipal land use permits, the purchaser may terminate the contract if, as an owner or occupant of the real estate, the purchaser may be subject to an enforcement action under ~~24 V.S.A. § 4496~~ 24 V.S.A. § 4454.

Sec. 6. EFFECTIVE DATES; APPLICABILITY

(a) Secs. 1 and 2 of this act shall take effect on July 1, 2012 and shall apply to any mortgage foreclosure proceeding instituted after that date.

(b) This section and Secs. 3, 4, and 5 of this act shall take effect on passage.

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

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

Proposals of Amendment; Third Readings Ordered

H. 459.

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

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

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

First: In Sec. 2, in § 2.4 (representative town meeting), in subdivision (a)(2), by striking out the fifth sentence which reads, "The town clerk and town treasurer shall be nonvoting ex officio members if appointed by the town manager."

Second: In Sec. 2, in § 3.2 (initiative), in subdivision (1)(B), at the end of the final sentence before the period, by striking out ", unless it is deemed illegal or unconstitutional by the body, in consultation with the town attorney"

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

Adjournment

On motion of Senator Campbell, the Senate adjourned until three o'clock and thirty minutes in the afternoon on Wednesday, April 11, 2012.

WEDNESDAY, APRIL 11, 2012

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 46

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

Mr. President:

I am directed to inform the Senate that:

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

S. 122. An act relating to human trafficking and prostitution.

And has passed the same in concurrence.

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

S. 181. An act relating to school resource officers.

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

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

H. 634. An act relating to remedies for failure to pay municipal tickets.

And has severally concurred therein.

Message from the House No. 47

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

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 789. An act relating to reapportioning the final representative districts of the House of Representatives.

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

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

J.R.S. 56. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

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

S. 179. An act relating to amending perpetual conservation easements.

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

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

H. 449. An act relating to the designation of brook trout and walleye pike as the state fish of Vermont.

And has severally concurred therein.

Rules Suspended; Bill Committed

On motion of Senator Campbell, Senate Rule 49 was suspended and Senate bill entitled:

S. 137. An act relating to workers' compensation and unemployment compensation.

Was committed to the Committee on Rules with the report of the Committee on Economic Development, Housing and General Affairs *intact*,

Bill Referred to Committee on Appropriations

H. 496.

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

An act relating to preserving Vermont's working landscape.

Bill Referred to Committee on Finance

H. 773.

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

An act relating to veterans' tax exemption.

Bill Referred

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

H. 789.

An act relating to reapportioning the final representative districts of the House of Representatives.

To the Committee on Rules.

Consideration Resumed; Bill Amended; Third Reading Ordered

S. 28.

Consideration was resumed on Senate bill entitled:

An act relating to consolidating land use and environmental permit administration, rulemaking, and appeals into a department of environmental quality headed by an environmental council.

Thereupon, the recommendation of amendment of the Committee on Natural Resources and Energy was amended as recommended by the Committee on Appropriations.

Thereupon, the question, Shall the bill be amended as recommended by the Committee on Natural Resources and Energy, as amended?, was decided in the affirmative.

Thereupon, the question, Shall the bill be read the third time?, was agreed to on a roll call, Yeas 20, Nays 9.

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, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Giard, Kitchel, Kittell, Lyons, Mazza, Miller, Mullin, Sears, Snelling, Starr, Westman.

Those Senators who voted in the negative were: Baruth, Galbraith, Hartwell, Illuzzi, MacDonald, McCormack, Nitka, Pollina, White.

The Senator absent and not voting was: Fox.

Joint Resolution Amended; Third Reading Ordered

J.R.S. 11.

Senator Pollina, for the Committee on Government Operations, to which was referred joint Senate resolution entitled:

Joint resolution urging the United States Congress to propose an amendment to the United States Constitution for the states' consideration which provides that corporations are not persons under the laws of the United States or any of its jurisdictional subdivisions.

Reported recommending that the joint resolution be amended by striking out all after the title and inserting in lieu thereof the following:

Whereas, the U.S. Bill of Rights provides certain inalienable rights to natural persons, and

Whereas, corporations are not mentioned in the U.S. Constitution, and

Whereas, corporations are legal entities that governments create, and the rights they enjoy under the U.S. Constitution should be more narrowly defined than the rights that are afforded to natural persons, and

Whereas, the decision to regulate corporate financial campaign contributions is one that historically Congress and the states have been constitutionally allowed to address, and

Whereas, in 1907, Congress enacted the Tillman Act prohibiting corporate financial contributions to federal election campaigns for public office, and

Whereas, in 2010, the U.S. Supreme Court in *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (U.S. 2010), ruled that Congress and the states lacked the constitutional right to ban independent corporate expenditures to political campaigns for public office, and

Whereas, the U.S. Supreme Court in the *Citizens* decision relied on its previously issued opinion in the 1976 case *Buckley v. Valeo*, 424 U.S. 1 (U.S. 1976), in which it equated the spending of money for electing candidates to public office as speech, and

Whereas, the *Citizens* decision has allowed for the creation of super political action committees in election campaigns for public office that allow for unregulated campaign expenditures in unprecedented amounts, and

Whereas, as a result of the *Citizens* decision, Congress and the state legislatures were denied any legal authority to regulate independent corporate political expenditures, and

Whereas, a restoration of the guidelines established in the Bipartisan Campaign Reform Act of 2002 is imperative so that Congress and the state legislatures may exercise their historic authority to make their own decisions about whether to regulate corporate political expenditures, and

Whereas, this policy change will require that the U.S. Constitution be amended to authorize congressional or state regulation of individual and corporate financial participation in political campaigns, and

Whereas, on Vermont town meeting day, March 6, 2012, 64 Vermont towns and cities passed resolutions urging the Vermont congressional delegation and the U.S. Congress to propose legislative or congressional action to address the issues raised by *Citizens* including that money is not speech and corporations are not persons under the U.S. Constitution, and

Whereas, these resolutions, passed by towns on town meeting day, also urged the general assembly to pass a similar resolution directed at the Vermont congressional delegation, and

Whereas, U.S. Senator Tom Udall of New Mexico with 22 cosponsors has introduced Senate Joint Resolution 29, "proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections," that would give the Congress and the states the authority to regulate the raising and spending of moneys with respect to elections, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly expresses its disagreement with the holdings of the U.S. Supreme Court in *Buckley* and in *Citizens* that money is speech and urges Congress to adopt Senate Joint Resolution 29, *and be it further*

Resolved: That the General Assembly urges Congress to consider the request of many Vermont cities and towns to propose a U.S. constitutional amendment for the state's consideration that provides that money is not speech and corporations are not persons under the U.S. Constitution and that also affirms the constitutional rights of natural persons, *and be it further*

Resolved: That the General Assembly does not support an amendment to the U.S. Constitution that would abridge the constitutional rights of any person or organization including freedom of religion or freedom of the press, *and be it further*

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

After adoption, the title of the joint resolution be amended to read:

Joint resolution urging the United States Congress to propose amendments to the United States Constitution for the states' consideration relating to contributions and expenditures intended to affect elections and relating to the rights of corporations.

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

Thereupon, the joint resolution was read the second time by title only pursuant to Rule 43, and the recommendation of amendment was agreed to

Thereupon, the question, Shall the resolution be read the third time?, was agreed to on a roll call, Yeas 26, Nays 3.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Campbell, Carris, Cummings, Doyle, 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: *Benning, *Brock, Flory.

The Senator absent and not voting was: Fox.

*Senator Benning explained his vote as follows:

"Mr. President, I voted against this resolution for two reasons. First, it seeks to restrict only speech by corporations, ignoring the fact that Citizens United also addressed spending by nonprofits and unions. By calling upon Congress to allow continued spending by "organizations," this resolution targets only those entities traditionally associated with one political party. This is party politics at its worst.

"Secondly, and far more importantly, this resolution chips away at freedom of speech, a fundamental constitutional right Vermonters have long cherished. Witness the efforts of Vermont Congressman Matthew Lyon, whose portrait hangs in the hallway below this chamber. Challenging the federal government's attempt to restrict speech deemed offensive by the Alien & Sedition Acts, Congressman Lyon went to jail for criticizing then President John Adams. Vermonters re-elected him while he was still in jail, because even then they understood that freedom could be lost to tyranny if the people were not constantly vigilant in the protection of their rights.

"Mr. President, our senate oaths require us to maintain that vigilance, even when a tide of public emotion tempts us to do otherwise. We're charged with guarding the sanctity of a Constitution which protects our right to pool resources when expressing speech. Proponents of this amendment ask us to restrict that speech by claiming it has become too expensive. But curtailing even one of our freedoms is a direct attack on the document which protects all of our freedoms. For these reasons, Mr. President, I cannot support this resolution."

*Senator Brock explained his vote as follows:

"Mr. President, This resolution is overly broad and linguistically imprecise. Were the Congress to enact a constitutional amendment based upon this resolution as drafted, it could lead to unintentional consequences that would throw into question two hundred years of law and precedent."

*Senator McCormack explained his vote as follow:

"Mr. President, I cast my vote in honor of Mathew Lyon who, in defense of free speech, defied those who used their wealth and power to abuse that right."

Bill Passed

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

S. 180. An act relating to the universal service fund and establishment of a high-cost program.

Bills Passed in Concurrence with Proposals of Amendment

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

H. 403. An act relating to foreclosure of mortgages.

H. 459. An act relating to approval of amendments to the charter of the town of Brattleboro.

H. 765. An act relating to the mental health needs of the corrections population.

Bills Passed in Concurrence

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

H. 565. An act relating to regulating licensed lenders and mortgage loan originators.

H. 613. An act relating to governance of the Community High School of Vermont .

Bill Amended; Bill Passed

S. 142.

Senate bill entitled:

An act relating to pet merchants.

Was taken up.

Thereupon, pending third reading of the bill, Senator Flory moved that the bill be amended: in Sec. 2, 20 V.S.A. § 3683, after the words, "between 9:00 a.m. and 5:00 p.m." by striking out the words "in the presence of or"

And that when so amended the bill ought to pass.

Which was agreed to.

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

Third Reading Ordered

H. 760.

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

An act relating to lowering to 16 the age of consent for blood donation.

Reported that the bill ought to pass in concurrence.

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

Proposal of Amendment; Third Reading Ordered

H. 761.

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

An act relating to executive branch fees, including motor vehicle and fish and wildlife fees.

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

First: By adding an internal caption and Sec. 2a to read:

* * * Motor vehicle racing * * *

Sec. 2a. 26 V.S.A. § 4806 is amended to read:

§ 4806. FEES; DISPOSITIONS

(a) Notwithstanding the fee provisions of 3 V.S.A. § 125, applicants and persons regulated under this chapter shall pay the following fees:

(1) Annual event permit applications:

(A) Auto racing	$ 800.00;
(B) Go-cart, snowmobile, or motorcycle racing	$ 500.00;

(2) Unlimited event permit applications:

(A) Auto racing	$ 1,250.00;
(B) Go-cart, snowmobile, or motorcycle racing	$ 1,250.00;

(3) Single event permit applications:

(A) Auto racing	$ 500.00;
(B) Go-cart, snowmobile, or motorcycle racing	$ 500.00;

(4) Annual event permit biennial ~~renewal~~ renewals:

(A) Auto racing $ 500.00;

(B) Go-cart, snowmobile, or motorcycle racing $ 500.00;

(5) Unlimited event permit biennial ~~renewal~~ renewals:

(A) Auto racing $ 2,500.00;

(B) Go-cart, snowmobile, or motorcycle racing $ 2,500.00.

(b) A municipality where a race is to be held may charge an additional fee, not to exceed the municipality's costs associated with the race.

(c) A single event permit shall authorize any number of events within a 10-day period in the same location and on the same racing track. An annual-event permit shall authorize any number of events within two 10-day periods in consecutive years and may be renewed every two years.

(d) Notwithstanding the provisions of subsection (a) of this section, a person in good standing incorporated or authorized to transact business as a nonprofit corporation under Title 11B shall pay a fee of $100.00 for an annual event permit application under subdivisions (a)(1)(A) and (B) of this section; an annual event permit biennial renewal under subdivisions (a)(4)(A) and (B); or for any five events within a one-year period.

Second: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read:

Sec. 7. REPEAL

18 V.S.A. § 4463 (regarding salvage food facility license) is repealed.

Third: By adding a new Sec. 35a to read:

Sec. 35a. 10 V.S.A. § 4255 is amended to read:

§ 4255. LICENSE FEES

(a) Vermont residents may apply for licenses on forms provided by the commissioner. Fees for each license shall be:

* * *

(4) Big game licenses (all require a hunting license)

* * *

(G) ~~second~~ additional bear tag $5.00

* * *

(l) If the board determines that it is in the interest of bear management, it may authorize the department to issue ~~a second bear tag for the taking of bear~~ bear tags in addition to ~~that~~ those allowed by a hunting license issued under this chapter.

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

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

Proposal of Amendment; Bill Ordered to Lie

H. 412.

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

An act relating to harassment and bullying in educational settings.

Reported recommending that the Senate propose to the House to amend the title to read:

An act relating to harassment in educational settings.

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 proposed to the House to amend the bill as recommended by the Committee on Education, on motion of Senator Mazza, the bill was ordered to lie.

Rules Suspended; Bills Messaged

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

S. 142, S. 180, H. 403, H. 459, H. 565, H. 613, H. 765

Rules Suspended; Bill Committed

S. 233.

On motion of Senator Campbell, Senate Rule 49 was suspended and Senate bill entitled:

An act relating to gradually increasing the mandatory age of school attendance.

Was committed to the Committee on Rules with the reports of the Committee on Education and the Committee on Appropriation *intact*,

Adjournment

On motion of Senator Campbell, the Senate adjourned until one o'clock and thirty minutes in the afternoon on Thursday, April 12, 2012.

THURSDAY, APRIL 12, 2012

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Brad Keller of South Royalton.

Committee Relieved of Further Consideration

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of Senate bills entitled:

S. 137, S. 169, S. 204, S. 233.

Thereupon, under the rule, the bills were severally ordered placed on the Calendar for notice the next legislative day.

Committee Relieved of Further Consideration; Bill Committed

H. 789.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to reapportioning the final representative districts of the House of Representatives.

Thereupon, pending entry of the bill on the Calendar for notice the next legislative day, on motion on Senator Campbell, the bill was committed to the Committee on Reapportionment.

Bill Referred to Committee on Finance

H. 774.

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

An act relating to meat inspection, delivery of liquid fuels, dairy operations, and animal foot baths.

Bill Passed

Senate bill of the following title:

S. 28. An act relating to consolidating land use and environmental permit administration, rulemaking, and appeals into a department of environmental quality headed by an environmental council.

Was read the third time and passed on a division of the Senate Yeas 21, Nays 7.

Bills Passed in Concurrence with Proposals of Amendment

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

H. 760. An act relating to lowering to 16 the age of consent for blood donation.

H. 761. An act relating to executive branch fees, including motor vehicle and fish and wildlife fees.

Joint Resolution Adopted on the Part of the Senate

J.R.S. 11.

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

Joint resolution urging the United States Congress to propose an amendment to the United States Constitution for the states' consideration which provides that corporations are not persons under the laws of the United States or any of its jurisdictional subdivisions.

Consideration Postponed

H. 157.

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

An act relating to restrictions on tanning beds.

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

First: By adding a new section to be numbered Sec. 3 to read as follows:

Sec. 3. FINDINGS

The general assembly finds:

(1) The state of Oregon has been implementing its Death with Dignity Act since 1998. In 14 years, Oregon has seen a total of 935 terminal patients

formally request medication to hasten death and, of those, 596 patients took the medication and died pursuant to the act. Oregon's most recent annual report on the act shows that in 2011, 114 prescriptions were written by 62 different physicians. A total of 71 patients died in 2011 from ingesting medication prescribed under the law. Cancer continues to be the most common terminal condition for patients qualifying under Oregon's law, as 82.4% of the 71 patient deaths in 2011 were associated with a cancer diagnosis. Over the 14 years of implementation, 80.8% of the individuals ingesting medication had a terminal cancer diagnosis.

(2) Vermont has about one-sixth the population of Oregon. According to the 2010 census, Oregon has a population of 3,831,074 and Vermont a population of 625,741.

(3) In the past 17 years, Oregon has seen its hospice enrollment increase significantly. In 1993, only 20 percent of all dying patients were enrolled in hospice. By 2005, enrollment had increased to 54 percent. In 2009, 91.5 percent of the patients who used medication under the Death with Dignity Act were in hospice care.

(4) According to a 2000 article in the New England Journal of Medicine, Oregon health care professionals report that Oregon physicians grant approximately one in six requests for lethal medication, and one in 10 requests actually results in hastened death.

(5) Despite continuing improvements in techniques for palliative care, most medical experts agree that not all pain can be relieved. Some terminal diseases, such as bone cancer, inflict untreatable agony at the end of life. Many cancer patients report that they would have greater comfort and courage in facing their future if they were assured they could use a Death with Dignity law if their suffering became unbearable.

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

Sec. 4. 18 V.S.A. chapter 113 is added to read:

CHAPTER 113. RIGHTS OF QUALIFIED PATIENTS SUFFERING A TERMINAL CONDITION

§ 5280. DEFINITIONS

For purposes of this chapter:

(1) "Attending physician" means the physician whom the patient has designated to have primary responsibility for the care of the patient and who is willing to participate in the provision to a qualified patient of medication to hasten his or her death in accordance with this chapter.

(2) "Capacity" shall have the same meaning as in subdivision 9701(4)(B) of this title.

(3) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's illness and who is willing to participate in the provision of medication to a qualified patient to hasten his or her death in accordance with this chapter.

(4) "Counseling" means a consultation between a psychiatrist, psychologist, or clinical social worker licensed in Vermont and a patient for the purpose of confirming that the patient:

(A) has capacity; and

(B) is not suffering from a mental disorder or disease, including depression that causes the patient to have impaired judgment.

(5) "Good faith" shall mean objective good faith.

(6) "Health care provider" shall have the same meaning as in subdivision 9432(8) of this title.

(7) "Informed decision" means a decision by a patient to request and obtain a prescription to hasten his or her death based on the patient's understanding and appreciation of the relevant facts and that was made after the patient was fully informed by the attending physician of all the following:

(A) The patient's medical diagnosis.

(B) The patient's prognosis.

(C) The range of possible results, including potential risks associated with taking the medication to be prescribed.

(D) The probable result of taking the medication to be prescribed.

(E) All feasible end-of-life services, including comfort care, hospice care, and pain control.

(8) "Palliative care" shall have the same meaning as in subdivision 2(6) of this title.

(9) "Patient" means a person who is 18 years of age or older, a resident of Vermont, and under the care of a physician.

(10) "Physician" means a physician licensed pursuant to chapters 23 and 33 of Title 26.

(11) "Qualified patient" means a patient with capacity who has satisfied the requirements of this chapter in order to obtain a prescription for medication

to hasten his or her death. No individual shall qualify under the provisions of this chapter solely because of age or disability.

(12) "Terminal condition" means an incurable and irreversible disease which would, within reasonable medical judgment, result in death within six months.

§ 5281. REQUESTS FOR MEDICATION

(a) In order to qualify under this chapter:

(1) A patient with capacity who has been determined by the attending physician and consulting physician to be suffering from a terminal condition and who has voluntarily expressed a wish to hasten the dying process may request medication to be self-administered for the purpose of hastening his or her death in accordance with this chapter.

(2) A patient shall have made an oral request and a written request and shall have reaffirmed the oral request to his or her attending physician not less than 15 days after the initial oral request. At the time the patient makes the second oral request, the attending physician shall offer the patient an opportunity to rescind the request.

(b) Oral requests for medication by the patient under this chapter shall be made in the presence of the attending physician.

(c) A written request for medication shall be signed and dated by the patient and witnessed by at least two persons, at least 18 years of age, who, in the presence of the patient, sign and affirm that the principal appeared to understand the nature of the document and to be free from duress or undue influence at the time the request was signed. Neither witness shall be any of the following persons:

(1) The patient's attending physician, consulting physician, or any person who has provided counseling for the patient pursuant to section 5284 of this title.

(2) A person who knows that he or she is a relative of the patient by blood, marriage, civil union, or adoption.

(3) A person who at the time the request is signed knows that he or she would be entitled upon the patient's death to any portion of the estate or assets of the patient under any will or trust, by operation of law, or by contract.

(4) An owner, operator, or employee of a health care facility, nursing home, or residential care facility where the patient is receiving medical treatment or is a resident.

(d) A person who knowingly fails to comply with the requirements in subsection (c) of this section is subject to prosecution under 13 V.S.A. § 2004.

(e) The written request shall be completed after the patient has been examined by a consulting physician as required under section 5283 of this title.

(f)(1) Under no circumstances shall a guardian or conservator be permitted to act on behalf of a ward for purposes of this chapter.

(2) Under no circumstances shall an agent under an advance directive be permitted to act on behalf of a principal for purposes of this chapter.

§ 5282. ATTENDING PHYSICIAN; DUTIES

The attending physician shall perform all the following:

(1) Make the initial determination of whether a patient:

(A) is suffering a terminal condition;

(B) has capacity; and

(C) has made a voluntary request for medication to hasten his or her death.

(2) Request proof of Vermont residency, which may be shown by:

(A) a Vermont driver's license or photo identification card;

(B) proof of Vermont voter's registration;

(C) evidence of property ownership or a lease of residential premises in Vermont; or

(D) a Vermont personal income tax return for the most recent tax year.

(3) Inform the patient in person and in writing of all the following:

(A) The patient's medical diagnosis.

(B) The patient's prognosis.

(C) The range of possible results, including potential risks associated with taking the medication to be prescribed.

(D) The probable result of taking the medication to be prescribed.

(E) All feasible end-of-life services, including comfort care, hospice care, and pain control.

(4) Refer the patient to a consulting physician for medical confirmation of the diagnosis, prognosis, and a determination that the patient has capacity and is acting voluntarily.

(5) Refer the patient for counseling under section 5284 of this chapter.

(6) Refer the patient for a palliative care consultation under section 5285 of this chapter.

(7) Recommend that the patient notify the next of kin or someone with whom the patient has a significant relationship.

(8) Counsel the patient about the importance of ensuring that another individual is present when the patient takes the medication prescribed pursuant to this chapter and the importance of not taking the medication in a public place.

(9) Inform the patient that the patient has an opportunity to rescind the request at any time and in any manner and offer the patient an opportunity to rescind at the end of the 15-day waiting period.

(10) Verify, immediately prior to writing the prescription for medication under this chapter, that the patient is making an informed decision.

(11) Fulfill the medical record documentation requirements of section 5290 of this title.

(12) Ensure that all required steps are carried out in accordance with this chapter prior to writing a prescription for medication to hasten death.

(13)(A) Dispense medication directly, including ancillary medication intended to facilitate the desired effect to minimize the patient's discomfort, provided the attending physician is licensed to dispense medication in Vermont, has a current Drug Enforcement Administration certificate, and complies with any applicable administrative rules; or

(B) With the patient's written consent:

(i) contact a pharmacist and inform the pharmacist of the prescription; and

(ii) deliver the written prescription to the pharmacist, who will dispense the medication to the patient, the attending physician, or an expressly identified agent of the patient.

(14) Notwithstanding any other provision of law, the attending physician may sign the patient's death certificate.

§ 5283. MEDICAL CONSULTATION REQUIRED

Before a patient is qualified in accordance with this chapter, a consulting physician shall physically examine the patient, review the patient's relevant medical records, and confirm in writing the attending physician's diagnosis

that the patient is suffering from a terminal condition and verification that the patient has capacity, is acting voluntarily, and has made an informed decision.

§ 5284. COUNSELING REFERRAL

If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a mental disorder or disease, including depression, causing impaired judgment, either physician shall refer the patient for counseling. No medication to end the patient's life shall be prescribed until the person performing the counseling determines that the patient is not suffering from a mental disorder or disease, including depression, that causes the patient to have impaired judgment.

§ 5285. PALLIATIVE CARE CONSULTATION

If a patient is not receiving hospice services at the time the written request for medication is made pursuant to this chapter, his or her attending physician shall refer the patient for a palliative care consultation and shall attest to its completion pursuant to subdivision 5290(a)(5) of this title.

§ 5286. INFORMED DECISION

No person shall receive a prescription for medication to hasten his or her death unless the patient has made an informed decision. Immediately prior to writing a prescription for medication in accordance with this chapter, the attending physician shall verify that the patient is making an informed decision.

§ 5287. RECOMMENDED NOTIFICATION

The attending physician shall recommend that the patient notify the patient's next of kin or someone with whom the patient has a significant relationship of the patient's request for medication in accordance with this chapter. A patient who declines or is unable to notify the next of kin or the person with whom the patient has a significant relationship shall not be refused medication in accordance with this chapter.

§ 5288. RIGHT TO RESCIND

A patient may rescind the request for medication in accordance with this chapter at any time and in any manner regardless of the patient's mental state. No prescription for medication under this chapter may be written without the attending physician's offering the patient an opportunity to rescind the request.

§ 5289. WAITING PERIOD

The attending physician shall write a prescription no less than 48 hours after the last to occur of the following events:

(1) the patient's written request for medication to hasten his or her death;

(2) the patient's second oral request; and

(3) the attending physician's offering the patient an opportunity to rescind the request.

§ 5290. MEDICAL RECORD DOCUMENTATION

(a) The following shall be documented and filed in the patient's medical record:

(1) The date, time, and wording of all oral requests of the patient for medication to hasten his or her death.

(2) All written requests by a patient for medication to hasten his or her death.

(3) The attending physician's diagnosis, prognosis, and basis for the determination that the patient has capacity, is acting voluntarily, and has made an informed decision.

(4) The consulting physician's diagnosis, prognosis, and verification, pursuant to section 5283 of this title, that the patient has capacity, is acting voluntarily, and has made an informed decision.

(5) If the patient was not receiving hospice services at the time of the written request for medication, the attending physician's attestation that the patient received a palliative care consultation.

(6) A report of the outcome and determinations made during any counseling which the patient may have received.

(7) The date, time, and wording of the attending physician's offer to the patient to rescind the request for medication at the time of the patient's second oral request.

(8) A note by the attending physician indicating that all requirements under this chapter have been satisfied and describing all of the steps taken to carry out the request, including a notation of the medication prescribed.

(b) Medical records compiled pursuant to this chapter shall be subject to discovery only if the court finds that the records are necessary to resolve issues of compliance with or immunity under this chapter.

§ 5291. REPORTING REQUIREMENT

(a) The department of health shall require that any physician who writes a prescription pursuant to this chapter file a report with the department covering all the prerequisites for writing a prescription under this chapter. In addition,

physicians shall report the number of written requests for medication that were received, regardless of whether a prescription was actually written in each instance.

(b) The department of health shall review annually the medical records of qualified patients who have hastened their deaths in accordance with this chapter.

(c) The department of health shall adopt rules pursuant to chapter 25 of Title 3 to facilitate the collection of information regarding compliance with this chapter. Individual medical information collected and reports filed pursuant to subsection (a) of this section shall not be public record and shall not be made available for inspection by the public.

(d) The department of health shall generate and make available to the public an annual statistical report of information collected under subsections (a) and (b) of this section. The report shall include the number of instances in which medication was taken by a qualified patient to hasten death but failed to have the intended effect.

§ 5292. SAFE DISPOSAL OF UNUSED MEDICATIONS

(a) The department of health shall adopt rules providing for the safe disposal of unused medications prescribed under this chapter.

(b) Expedited rulemaking. Notwithstanding the provisions of chapter 25 of Title 3, the department of health may adopt rules under this section pursuant to the following expedited rulemaking process:

(1) Within 90 days after the date this act is passed, the department shall file 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 department shall file final proposed rules with the legislative committee on administrative rules 14 days after the public comment period.

(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 department 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 department:

(A) has not received a notice of objection from the legislative committee on administrative rules; or

(B) after having received a notice of objection from the committee, has responded pursuant to 3 V.S.A. § 842.

(5) Rules adopted under this section shall be effective upon being filed with the secretary of state and shall have the full force and effect of rules adopted pursuant to chapter 25 of Title 3. Rules filed with the secretary of state pursuant to this section shall be deemed to be in full compliance with 3 V.S.A. § 843 and shall be accepted by the secretary of state if filed with a certification by the secretary of human services that a rule is required to meet the purposes of this section.

§ 5293. PROHIBITIONS; CONTRACT CONSTRUCTION

(a) No provision in a contract, will, trust, or other agreement, whether written or oral, shall be valid to the extent the provision would affect whether a person may make or rescind a request for medication to hasten his or her death in accordance with this chapter.

(b) The sale, procurement, or issue of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request by a person for medication to hasten his or her death in accordance with this chapter or the act by a qualified patient to hasten his or her death pursuant to this chapter. Neither shall a qualified patient's act of ingesting medication to hasten his or her death have an effect on a life, health, or accident insurance or annuity policy.

§ 5294. IMMUNITIES

(a) No person shall be subject to civil or criminal liability or professional disciplinary action for actions taken in good faith reliance on the provisions of this chapter. This includes being present when a qualified patient takes the prescribed medication to hasten his or her death in accordance with this chapter.

(b) No professional organization or association or health care provider shall subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for actions taken in good faith reliance on the provisions of this chapter or refusals to act under this chapter.

(c) No provision by an attending physician of medication in good faith reliance on the provisions of this chapter shall constitute patient neglect for any purpose of law.

(d) No request by a patient for medication under this chapter shall provide the sole basis for the appointment of a guardian or conservator.

(e) No health care provider shall be under any duty, whether by contract, by statute, or by any other legal requirement, to participate in the provision to a qualified patient of medication to hasten his or her death in accordance with this chapter. If a health care provider is unable or unwilling to carry out a patient's request in accordance with this chapter and the patient transfers his or her care to a new health care provider, the previous health care provider, upon request, shall transfer a copy of the patient's relevant medical records to the new health care provider. A decision by a health care provider not to participate in the provision of medication to a qualified patient shall not constitute the abandonment of the patient or unprofessional conduct under 26 V.S.A. § 1354.

§ 5295. HEALTH CARE FACILITY EXCEPTION

Notwithstanding any other provision of law, a health care facility may prohibit an attending physician from writing a prescription for medication under this chapter for a patient who is a resident in its facility and intends to use the medication on the facility's premises, provided the facility has notified the attending physician in writing of its policy with regard to such prescriptions. Notwithstanding subsection 5294(b) of this title, any health care provider who violates a policy established by a health care facility under this section may be subject to sanctions otherwise allowable under law or contract.

§ 5296. LIABILITIES AND PENALTIES

(a) With the exception of the immunities established by section 5294 of this title and with the exception of the provisions of section 5298 of this title, nothing in this chapter shall be construed to limit liability for civil damages resulting from negligent conduct or intentional misconduct by any person.

(b) With the exception of the immunities established by section 5294 of this title and with the exception of the provisions of section 5298 of this title, nothing in this chapter or in 13 V.S.A. § 2312 shall be construed to limit criminal prosecution under any other provision of law.

(c) A health care provider is subject to review and disciplinary action by the appropriate licensing entity for failing to act in accordance with this chapter, provided such failure is not in good faith.

§ 5297. FORM OF THE WRITTEN REQUEST

A written request for medication as authorized by this chapter shall be substantially in the following form:

REQUEST FOR MEDICATION TO HASTEN MY DEATH

I, _____ , am an adult of sound mind.

I am suffering from _____, which my attending physician has determined is a terminal disease and which has been confirmed by a consulting physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, and the feasible end-of-life services, including comfort care, hospice care, and pain control.

I request that my attending physician prescribe medication that will hasten my death.

INITIAL ONE:

_____ I have informed my family or others with whom I have a significant relationship of my decision and taken their opinions into consideration.

_____ I have decided not to inform my family or others with whom I have a significant relationship of my decision.

_____ I have no family or others with whom I have a significant relationship to inform of my decision.

I understand that I have the right to change my mind at any time.

I understand the full import of this request, and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer, and my physician has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed: _____ Dated: _____

AFFIRMATION OF WITNESSES

We affirm that, to the best of our knowledge and belief:

(1) the person signing this request:

(A) is personally known to us or has provided proof of identity;

(B) signed this request in our presence;

(C) appears to understand the nature of the document and to be free from duress or undue influence at the time the request was signed; and

(2) that neither of us:

(A) is under 18 years of age;

(B) is a relative (by blood, marriage, civil union, or adoption) of the person signing this request;

(C) is the patient's attending physician, consulting physician, or a person who has provided counseling for the patient pursuant to section 5284 of this title;

(D) is entitled to any portion of the person's assets or estate upon death; or

(E) owns, operates, or is employed at a health care facility where the person is a patient or resident.

Witness 1/Date _____

Witness 2/Date _____

NOTE: A knowingly false affirmation by a witness may result in criminal penalties.

§ 5298. STATUTORY CONSTRUCTION

Nothing in this chapter shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Action taken in accordance with this chapter shall not be considered tortious under law and shall not be construed for any purpose to constitute suicide, assisted suicide, mercy killing, or homicide under the law.

Third: By adding a new section to be numbered Sec. 5. to read as follows:

Sec. 5. 13 V.S.A. § 2312 is added to read:

§ 2312. VIOLATION OF PATIENT CHOICE AND CONTROL AT END OF LIFE ACT

A person who violates chapter 113 of Title 18 with the intent to cause the death of a patient as defined in subdivision 5280(8) of that title shall be prosecuted under chapter 53 of this title (homicide).

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

Sec. 6. 13 V.S.A. § 2004 is added to read:

§ 2004. FALSE WITNESSING

A person who knowingly violates the requirements of 18 V.S.A. § 5281(c) shall be imprisoned for not more than 10 years or fined not more than $2,000.00 or both.

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

Sec. 7. EFFECTIVE DATES

(a) Secs. 1 and 2 of this act and this section shall take effect on July 1, 2012.

(b) The remaining sections of this act shall take effect on September 1, 2012.

After passage, the title of the bill is to be amended to read:

An act relating to death with dignity and to restrictions on tanning beds.

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

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Health and Welfare? Senator Mullin 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 the Committee on Health and Welfare 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 offered by the Committee on Health and Welfare was *not germane* for the following reasons:

In order for an amendment to be considered, it must be germane. Mason's Manual of Legislative Procedure, Sec. 402.

Whether a proposed amendment is germane is not always an easy question. Generally speaking, the following factors are considered:

1. Is the proposed amendment relevant, appropriate, and in a natural or logical sequence to the subject matter of the original proposal?

2. Does the proposed amendment introduce an independent question?

3. Does the proposed amendment unreasonably or unduly expand the subject matter of the bill?

4. Does the proposed amendment deal with a different topic or subject?

5. Does the proposed amendment change the purpose, scope or object of the original bill?

In deciding a question of germaneness, the threshold determination must be that of the subject matter of the bill or amendment under consideration and its scope.

In the case of H.157, the bill proposes to prohibit the use of tanning facilities by minors. The subject matter is very narrow: it creates a civil penalty for a tanning facility which permits a minor to use a tanning bed.

The proposal of amendment relates to a completely different matter. It seeks to provide rights to qualified patients suffering from a terminal condition. It would introduce an independent question. It is not one that is relevant and naturally follows from the original proposal. It expands the original subject matter of the bill Indeed it changes the purpose, scope or object of the original bill. As such, the proposed amendment is ***not germane*** to H. 157 and may not be considered by the Senate.

The President thereupon declared that the proposal of amendment offered by the Committee on Health and Welfare could *not* be considered by the Senate.

Thereupon, Senator Ayer moved the rules be suspended in order to permit consideration of the proposal of amendment of the Committee on Health and Welfare which was disagreed to on a roll call, Yeas 11, Nays 18, (three-fourths majority not being attained).

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, Galbraith, Kittell, Lyons, MacDonald, McCormack, Miller, Snelling, White.

Those Senators who voted in the negative were: Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Giard, Hartwell, Illuzzi, Kitchel, Mazza, Mullin, Nitka, Pollina, Sears, Starr, Westman.

The Senator absent and not voting was: Fox.

The three-fourths majority not being attained.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Sears moved that consideration be postponed until, Wednesday, April 18, 2012.

Adjournment

On motion of Senator Campbell, the Senate adjourned until eleven o'clock and thirty minutes in the morning on Friday, April 13, 2012.

FRIDAY, APRIL 13, 2012

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 48

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

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 679. An act relating to creating a uniform generation tax for renewable energy plants.

H. 784. An act relating to approval of the adoption and codification of the charter of the town of Williamstown.

H. 786. An act relating to approval of amendments to the charter of the town of Windsor.

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

H. 791. An act relating to tax expenditures for nonprofits, charitable organizations, and miscellaneous tax expenditures, as presented in the tax expenditure budget for 2012.

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. 238. An act relating to expanding access to driving privileges in Vermont.

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

Bills Referred

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

H. 679.

An act relating to creating a uniform generation tax for renewable energy plants.

To the Committee on Finance.

H. 784.

An act relating to approval of the adoption and codification of the charter of the town of Williamstown.

To the Committee on Rules.

H. 786.

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

To the Committee on Rules.

H. 788.

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

To the Committee on Rules.

H. 791.

An act relating to tax expenditures for nonprofits, charitable organizations, and miscellaneous tax expenditures, as presented in the tax expenditure budget for 2012.

To the Committee on Finance.

Bills Referred to Committee on Appropriations

House bills of the following titles, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule were severally referred to the Committee on Appropriations:

H. 771. An act relating to making technical corrections and other miscellaneous changes to education law.

H. 785. An act relating to capital construction and state bonding budget adjustment.

Bill Called Up

H. 412.

Senate bill of the following title was called up by Senator Baruth, and, under the rule, placed on the Calendar for action the next legislative day:

An act relating to harassment and bullying in educational settings.

Message from the House No. 49

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

Mr. President:

I am directed to inform the Senate that:

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

S. 116. An act relating to probate proceedings.

S. 199. An act relating to immunization exemptions and the immunization pilot program.

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

The Governor has informed the House that on the April 13, 2012, he approved and signed bills originating in the House of the following titles:

H. 39. An act relating to persons authorized to direct disposition of service members' remains.

H. 378. An act relating to town payments of county taxes.

H. 449. An act relating to the designation of brook trout and walleye pike as the state fish of Vermont.

Message from the House No. 50

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

Mr. President:

I am directed to inform the Senate that:

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

H.C.R. 337. House concurrent resolution designating Wednesday, April 25, 2012, as National Walk@Lunch Day in Vermont.

H.C.R. 338. House concurrent resolution congratulating the Twinfield Union School 2012 Division IV championship boys' basketball team.

H.C.R. 339. House concurrent resolution congratulating the 2011 Randolph Union High School Division III girls' cross country championship team.

H.C.R. 340. House concurrent resolution thanking the staff of the agency of natural resources, academic and scientific institutions, and community members who contributed to the development of the new Bedrock Geologic Map of Vermont.

H.C.R. 341. House concurrent resolution congratulating the St. Johnsbury Academy Hilltoppers on winning the 2012 boys' indoor state track and field championship.

H.C.R. 342. House concurrent resolution congratulating Xiangru Chen on winning a 2012 Siemens Award for excellence in science and mathematics.

H.C.R. 343. House concurrent resolution commemorating the 75th anniversary of the U.S. Fish and Wildlife Service's Wildlife & Sport Fish Restoration Program.

H.C.R. 344. House concurrent resolution congratulating Oxbow Union High School athletes A. J. Gillis and William Heathman on their victories at the 2012 state indoor track and field championship.

H.C.R. 345. House concurrent resolution celebrating the 20th anniversary of the enactment of Act 135, Vermont's sexual orientation antidiscrimination law, and the vital role played in its passage by Representative Ron Squires, Vermont's first openly gay state legislator.

H.C.R. 346. House concurrent resolution welcoming the visiting military delegation from Macedonia and commemorating the continuing partnership between the state of Vermont and Macedonia.

H.C.R. 347. House concurrent resolution congratulating the BFA-St. Albans Bobwhites 2012 Division I championship boys' ice hockey team.

H.C.R. 348. House concurrent resolution congratulating the winning teams at the fifth annual Jr. Iron Chef VT cooking competition.

H.C.R. 349. House concurrent resolution congratulating Christopher Gish on winning the 2012 Vermont Geographic Bee.

H.C.R. 350. House concurrent resolution congratulating Patricia Howrigan Reynolds on being named the 2012 Vermont Mother of the Year.

H.C.R. 351. House concurrent resolution in memory of Vermont archivist, historian, and librarian Esther Munroe Swift.

H.C.R. 352. House concurrent resolution honoring Louis D. Lertola of South Burlington for his outstanding work in securing increased local property tax exemptions for disabled veterans.

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

Consideration Interrupted by Adjournment

S. 137.

Appearing on the Calendar for notice, on motion of Senator Illuzzi, the rules were suspended and Senate bill entitled:

An act relating to workers' compensation and unemployment compensation.

Was taken up for immediate consideration without Sec. 26 of the Committee Report.

Senator Illuzzi, for the Committee on Economic Development, Housing and General Affairs, to which the bill was referred reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Vermont internship program * * *

Sec. 1. 3 V.S.A. § 330 is amended to read:

§ 330. VERMONT INTERNSHIP PROGRAM

(a) A Vermont internship program is created for permanent or limited employees in state government:

(1) to attract persons to train for and then serve state government in occupations where the state anticipates difficulty attracting or retaining qualified employees;

(2) to provide an enriched experience designed to bring trainees to full class performance levels in a logical and systematic manner;

(3) to support equal employment opportunity; and

(4) to provide upward mobility, lateral movement or other opportunities for current employees who have demonstrated high potential.

(b) Position authorization.

* * *

(3) Each position authorized by the commissioner shall be established for a specific period of time not to exceed ~~five years~~ two years without the specific authorization of the commissioner of human resources. In accordance with the approved plan, or where the commissioner deems it appropriate, Vermont internship program positions shall revert to the commissioner for reallocation.

* * *

(5) Requests for positions under the Vermont internship program shall be in a form and following procedures prescribed by the commissioner. ~~All requests shall certify that all reasonable efforts shall be made to insure a vacant position will be available to each Vermont internship program participant upon completion of the program.~~

* * *

(e)(1) Development of candidates. All Vermont internship program members shall have individual development plans approved by the commissioner of human resources.

* * *

(3) The department or agency making use of a Vermont internship program for state government shall conduct regular reviews of performance and progression of capabilities and shall submit written documentation of this on a form and using procedures provided for by the commissioner of human resources.

(f)(1) Rights of Vermont internship program members. Vermont internship program participants ~~shall be deemed to be classified state employees in their initial probationary period~~ who are otherwise classified state employees shall continue their status for the entire period of their participation, and continuation of one's training in Vermont internship programs shall be in the discretion of the appointing authority. They shall be paid the minimum rate for comparable positions in the classified service, unless otherwise authorized by the commissioner of human resources.

(2) Vermont internship program participants shall agree, if a condition of the submitted training plan of the department, to work in a state position consistent with the approved plan after completion of the planned Vermont internship for a period of time equal to the length of Vermont internship program participation. Any Vermont internship program member who does not satisfy this requirement shall reimburse the state for all tuition, fees and/or expenses paid by the state in connection with Vermont internship program participation, including salary paid during periods of paid educational leave, unless waived by the commissioner of human resources.

* * *

Sec. 1a. 3 V.S.A. § 330a is added to read:

§ 330a. STUDENT INTERN PROGRAM

The commissioner of human resources shall coordinate requests from agency secretaries and department commissioners for the hiring of student interns for short-term assignments and training that will inform and enhance their educational choices and career opportunities. In order to receive approval, the secretary or commissioner shall submit a written request to the department of human resources and to the applicable collective bargaining representative identifying the work to be performed, length of service, and the candidate's information, and shall identify the available funding and proposed rate of pay. The commissioner of human resources shall ensure that the intern is not performing work normally assigned to any employee who has been

displaced or laid off from classified service. Interns may be in high schools if they have completed at least their junior year, may be college students, or have graduated from college or graduate school within two years of this placement.

* * * Commissioner of labor * * *

Sec. 2. 21 V.S.A. § 7 is added to read:

§ 7. POWERS OF COMMISSIONER

In addition to all other powers granted the commissioner by this title, the commissioner or his or her designee may, upon presenting appropriate credentials, at reasonable times, enter and inspect any place of business or employment, question any employees, and investigate any facts, conditions, or matters necessary and material to the administration of chapters 9 and 17 of this title. If entry is refused the commissioner may apply, without notice to the employer, to the civil division of the superior court of Washington County for an order to enforce the rights given the commissioner under this section.

* * * Wage claims * * *

Sec. 3. 14 V.S.A. § 1205 is amended to read:

§ 1205. CLASSIFICATION OF CLAIMS

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the executor or administrator shall make payment in the following order:

(1) costs and expenses of administration;

(2) reasonable funeral, burial, and headstone expenses, and perpetual care, not to exceed $3,800.00 exclusive of governmental payments, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him or her;

(3) all outstanding wages due employees of the decedent ~~which have been earned within three months prior to the death of the decedent, not to exceed $300.00 to each claimant~~;

(4) all other claims~~; including the balance of wages due but unpaid under subdivision (3) of this subsection~~.

* * *

* * * Employment practices * * *

Sec. 4. 21 V.S.A. § 342 is amended to read:

§ 342. WEEKLY BIWEEKLY AND SEMIMONTHLY PAYMENT OF WAGES; SCHOOL EMPLOYEES; CALENDAR YEAR

(a)(1) Any person having employees doing and transacting business within the state shall pay each week, in lawful money or checks, the wages earned by each employee to a day not more than six days prior to the date of such payment.

(2) After giving written notice to the employees, any person having employees doing and transacting business within the state may, notwithstanding subdivision (1) of this subsection, pay ~~bi-weekly~~ biweekly or ~~semi-monthly~~ semimonthly in lawful money or checks, each employee the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.

(3) Notwithstanding subsection 384(a) of this title, an employee of a school district may in his or her sole discretion elect to have his or her wages paid over the course of a calendar year, beginning on the first day of the school year and ending not later than 12 months after the wage payment period begins.

(4) Any person having employees within the state who fails to make timely payment upon separation from employment in accordance with this section may be assessed an administrative penalty of up to $100.00 for each day that wages remain unpaid, not to exceed $500.00 per employee.

* * *

Sec. 5. 21 V.S.A. § 348 is added to read:

§ 348. RETALIATION PROHIBITED

(a) An employer shall not discharge or in any other manner retaliate against an employee because:

(1) The employee lodged a complaint of a violation of this subchapter.

(2) The employee has cooperated with the commissioner or commissioner's designee in an investigation of a violation of this subchapter.

(3) The employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of this subchapter.

(b) Any person aggrieved by a violation of this section may bring an action in the civil division of the superior court seeking compensatory and punitive

damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

Sec. 6. 21 V.S.A. § 397 is added to read:

§ 397. RETALIATION PROHIBITED

(a) An employer shall not discharge or in any other manner retaliate against an employee because:

(1) The employee lodged a complaint of a violation of this subchapter.

(2) The employee has cooperated with the commissioner or commissioner's designee in an investigation of a violation of this subchapter.

(3) The employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of this subchapter.

(b) Any person aggrieved by a violation of this section may bring an action in the civil division of the superior court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

Sec. 7. 21 V.S.A. § 385a is added to read:

§ 385a. REQUIRED APPAREL

(a) An employer that is a common carrier engaged in interstate commerce that requires an employee to wear uniform apparel which displays the employer's trademark, logo, or other clearly identifying characteristic shall furnish to employees based in this state the uniform apparel to the employee. The amount provided shall be reasonable for the needs of the position.

(b) An employer that requires an employee to wear clothing sold or produced by the employer shall furnish the clothing free of charge to the employee.

(c) An employer may require an employee to return any uniform or clothing upon separation from employment.

* * * Workers' compensation * * *

Sec. 8. 21 V.S.A. § 624 is amended to read:

§ 624. DUAL LIABILITY; CLAIMS, SETTLEMENT PROCEDURE

* * *

(e)(1) In an action to enforce the liability of a third party, the injured employee may recover any amount which the employee or the employee's

personal representative would be entitled to recover in a civil action. Any recovery against the third party for damages resulting from personal injuries or death only, after deducting ~~expenses of recovery~~ attorney's fees, and litigation expenses and costs, shall first reimburse the employer or its workers' compensation insurance carrier for any amounts paid or payable under this chapter to date of recovery, and the balance shall forthwith be paid to the employee or the employee's dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payment of compensation benefits. Reimbursement required under this subsection, except to prevent double recovery, shall not reduce the employee's recovery of any benefit or payment provided by a plan or policy that was privately purchased by the injured employee, including uninsured-under insured motorist coverage, or any other first party insurance payments or benefits.

(2) In addition to the limitations on recovery set forth in subdivision (1) of this subsection, if a lien or subrogation claim that arose out of the payment of medical expenses or benefits under this chapter exists in respect to a claim of personal injury or death and the injured employee's recovery is diminished by comparative fault or the inability to collect the full value of the claim due to limited liability insurance or other cause, the lien or subrogation claim shall be diminished in the same proportion as the injured employee's recovery is diminished. The settlement agreement may include reference to the amount by which the employee's recovery is diminished by comparative fault or the inability to collect the full value of the claim due to limited liability insurance or other cause. In the event the agreement or release does not contain such information, the amount by which the recovery is compromised or diminished shall be established by affidavit of the employee.

* * *

Sec. 8a. 12 V.S.A. § 5653 is amended to read:

§ 5653. LIMITATIONS

(a) This chapter applies to all arbitration agreements to the extent not inconsistent with the laws of the United States. However, this chapter does not apply to labor interest arbitration, ~~nor to arbitration agreements contained in a contract of insurance,~~ nor to grievance arbitration under 3 V.S.A. chapter 28 ~~of Title 3~~. "Labor interest arbitration" means the method of concluding labor negotiations by having a disinterested person determine what will be the terms of an agreement.

* * *

Sec. 9. 21 V.S.A. § 643a is amended to read:

§ 643a. DISCONTINUANCE OF BENEFITS

Unless an injured worker has successfully returned to work, an employer shall notify both the commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to discontinue payments shall be filed on forms prescribed by the commissioner and shall include the date of the proposed discontinuance, the reasons for it, and, if the employee has been out of work for 90 days, a verification that the employer offered vocational rehabilitation screening and services as required under this chapter. All relevant evidence, including evidence that does not support discontinuance in the possession of the employer not already filed, shall be filed with the notice. The liability for the payments shall continue for ~~seven days after the notice is received by the commissioner and the employee~~ at least 14 days after the notice is received by the commissioner and the employee, during which time the claimant may file with the commissioner an objection to discontinuance. The notice shall include a provision that the injured worker may object to the discontinuance with the commissioner with supporting evidence or arguments. If the employee files an objection with an explanation, the liability for the payments shall continue until a decision is issued by the commissioner. ~~Those payments~~ Payments made after the notice of discontinuance is received by the commissioner shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the commissioner determines that the discontinuance is warranted or if otherwise ordered by the commissioner. Every notice shall be reviewed by the commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, after review of all the evidence in the file, the commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the commissioner shall order that payments continue until a formal hearing is held and a decision is rendered. Prior to a formal hearing, an injured worker may request reinstatement of benefits by providing additional new evidence to the department that establishes that a preponderance of all evidence now supports the claim. If the commissioner's decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce a repayment order in any court of law having jurisdiction.

Sec. 10. 21 V.S.A. § 692 is amended to read:

§ 692. PENALTIES; FAILURE TO INSURE; STOP WORK ORDERS

* * *

(b) Stop-work orders. If an employer fails to comply with the provisions of section 687 of this title after investigation by the commissioner, the commissioner shall issue an emergency order to that employer to stop work until the employer has secured workers' compensation insurance. If the commissioner determines that issuing a stop-work order would immediately threaten the safety or health of the public, the commissioner may permit work to continue until the immediate threat to public safety or health is removed. The commissioner shall document the reasons for permitting work to continue, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than $250.00 for every day that the employer fails to secure workers' compensation coverage after the commissioner issues an order to obtain insurance and may also be assessed an administrative penalty of not more than $250.00 for each employee for every day that the employer fails to secure workers' compensation coverage as required in section 687 of this title. When a stop-work order is issued, the commissioner shall post a notice at a conspicuous place on the work site of the employer informing the employees that their employer failed to comply with the provisions of section 687 of this title and that work at the work site has been ordered to cease until workers' compensation insurance is secured. If an employer fails to comply with a stop-work order, the commissioner may seek injunctive relief in the civil division of the superior court by filing a complaint and supporting affidavit. The court shall issue without notice and hearing an ex parte order temporarily or permanently enjoining the employer from employing workers. The ex parte order shall be provided to the employer. Thereafter, the court may modify or vacate the order at the request of the commissioner or employer. The stop-work order shall be rescinded as soon as the commissioner determines that the employer is in compliance with section 687 of this title. An employer against whom a stop-work order has been issued, or who has not been in compliance with section 687 of this title, unless the failure to comply was inadvertent or excusable, is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for a period of up to three years following the date of the issuance of the stop-work order, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any contest of the prohibition of the employer from contracting with the state or its subdivisions.

* * *

* * * Unemployment compensation * * *

Sec. 11. 21 V.S.A. § 1101 is amended to read:

§ 1101. APPRENTICESHIP DIVISION AND COUNCIL

The apprenticeship division and state apprenticeship council, hereinafter referred to as the "council," shall be located within the department of labor. The commissioner of labor shall supervise the work of the division, and shall be the chair of the council. The council shall consist of ~~10~~ 12 members, four ex officio members and ~~six~~ eight members who shall be appointed by the governor. Of the ex officio members, one shall be the commissioner of labor, one shall be the commissioner of public safety, or designee, one shall be the commissioner of education or designee, and one shall be the director of the apprenticeship division who shall act as secretary of the council without vote. The council shall be composed of persons familiar with apprenticeable occupations. Of the ~~appointive~~ appointed members, three shall be individuals who ~~on account of previous vocation, employment, occupation, or affiliation can be classed as~~ represent employers ~~and~~, three shall be individuals who ~~on account of previous vocation, employment, occupation, or affiliation can be classed as employees~~ represent employees or employee organizations, and two shall be members of the public. Appointment of the employer and the employee members shall be made for the term of three years except the employer and employee members first appointed shall be appointed for the term of one, two, and three years respectively. The governor shall annually designate one member of the council as chair. Each member of the council who is not a salaried official or employee of the state shall be entitled to compensation and expenses as provided in 32 V.S.A. § 1010.

Sec. 12. 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:

* * *

(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 newspapers or shopping news that are delivered on a weekly or less frequent basis, 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.

Sec. 13. 21 V.S.A. § 1301a is amended to read:

§ 1301a. DEPARTMENT OF LABOR; COMPOSITION

The department of labor, created by ~~section~~ 3 V.S.A. § 212 ~~of Title 3~~, shall consist of a commissioner of labor, the Vermont employment security board, the Vermont workforce development division, the unemployment insurance and wages division, the economic and labor market information division, the

workforce development council which serves as the statewide workforce investment board, and the workers' compensation and safety division. The chair of the employment security board shall be the commissioner of labor ex officio. The deputy commissioner of labor or a designee chosen by the commissioner may serve as chair in the absence of the commissioner as the commissioner's designee.

Sec. 14. FINDINGS

The general assembly finds that:

(1) Federal law allows employees who do not work in an instructional, research, or principal administrative capacity in an educational institution to receive unemployment benefits between academic terms. This law permits only bus drivers, custodians, and food service school employees to receive benefits between academic terms to the extent that they are not employed. These employees are the lowest paid in the school system and the inability to receive unemployment benefits can impose a significant hardship on those who cannot find other summer work.

(2) At one time, Vermont allowed these employees to receive unemployment benefits between academic terms but no longer does, despite being authorized to do so by federal law.

Sec. 15. 21 V.S.A. § 1343 is amended to read:

§ 1343. CONDITIONS

* * *

(c) After March 31, 1984 benefits are payable on the basis of service in employment as defined in subdivision 1301(6)(A)(ix) and (x) of this title, in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to this chapter, except that:

(1) With respect to services performed in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be payable on the basis of such services for any week of unemployment commencing during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

~~(2) With respect to services performed in any other capacity for an educational institution benefits shall not be payable on the basis of such services to any individual for any week of unemployment which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services for any educational institution in the second of such academic years or terms, except that if benefits are denied to any individual under this subdivision and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subdivision;~~

~~(3)~~(2) ~~With respect to any services described in subdivision (1) or (2) of this subsection,~~ With respect to services performed in any capacity for an educational institution benefits shall not be payable on the basis of services in any such capacities to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess;

~~(4)~~(3) With respect to any services described in subdivision (1) ~~or (2)~~ of this subsection, benefits shall not be payable on the basis of services in any such capacities as specified in subdivisions ~~(1), (2), and (3)~~ (1) and (2) to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this subdivision, the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

* * *

Sec. 16. 21 V.S.A. § 1347 is amended to read:

§ 1347. NONDISCLOSURE OR MISREPRESENTATION

* * *

(c) The person liable under this section shall repay such amount to the commissioner for the fund. In addition to the repayment, if the commissioner finds that a person intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits, the person shall pay an additional penalty of 15 percent of the amount of the overpaid benefits. Such

amount may be collectible by civil action in a Vermont district or superior court, in the name of the commissioner. ~~No action shall be commenced for the collection of such amount more than five years after the date of such determination under this section or the final decision confirming the liability of such person on an appeal from such determination.~~

(d) In any case in which under this section a person is liable to repay any amount to the commissioner for the fund, the commissioner may withhold, in whole or in part, any future benefits payable to such person, and credit such withheld benefits against the amount due from such person until it is repaid in full, less any penalties assessed under subsection (c) of this section. ~~No benefits shall be withheld after five years from the date of such determination or the date of the final decision confirming the liability of such person on an appeal from such determination.~~

(e) In addition to the foregoing, when it is found by the commissioner that a person intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits and in the event the person is not prosecuted under section 1368 of this title and penalty provided in section 1373 of this title is not imposed, the person shall be disqualified and shall not be entitled to receive benefits to which he or she would otherwise be entitled after the determination for such number of weeks not exceeding 26 as the commissioner shall deem just~~, provided, however, that no benefits shall be denied to a claimant because of such determination after three years from the date thereof or the date of final decision on an appeal from such determination~~. The notice of determination shall also specify the period of disqualification imposed hereunder.

* * *

* * * Short-time compensation * * *

Sec. 17. 21 V.S.A. § 1451 is amended to read:

§ 1451. DEFINITIONS

For the purpose of this subchapter:

(1) "Affected unit" means a specific plan, department, shift, or other definable unit consisting of not less than five employees to which an approved short-time compensation plan applies.

(2) "Short-time compensation" or "STC" means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan as distinguished from the unemployment benefits otherwise payable under the conventional unemployment compensation provisions of this chapter.

(3) "Short-time compensation plan" means a plan of an employer under which there is a reduction in the number of hours worked by employees of an affected unit rather than temporary layoffs. The term "temporary layoffs" for this purpose means the total separation of one or more workers in the affected unit for an indefinite period expected to last for more than two months but not more than six months.

(4) "Short-time compensation employer" means an employer who has one or more employees covered by an approved "Short-Time Compensation Plan." ~~Both employers with experience-rating records and employers who make payments in lieu of tax contributions to the UI Trust Fund may become short-time compensation employers.~~ "Short-time compensation employer" includes employers with experience-rating records and employers who make payments in lieu of tax contributions to the unemployment compensation trust fund and that meet the following:

(A) Has five or more employees covered by an approved short-time compensation plan.

(B) Is not delinquent in the payment of contributions or reimbursement, or in the reporting of wages.

(C) Is not a negative balance employer. For the purposes of this section, a negative balance employer is an employer who has for three or more consecutive calendar years paid more in unemployment benefits to its employees than it has contributed to its unemployment insurance account.

(5) "Usual weekly hours of work" means the normal hours of work for full-time and regular part-time employees in the affected unit when that unit is operating on its normally full-time basis but not less than 30 hours and not to exceed 40 hours and not including overtime.

(6) "Unemployment compensation" means the unemployment benefits payable under this chapter other than short-time compensation and includes any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(7) "Fringe benefits" means benefits including health insurance, retirement benefits, paid vacations and holidays, sick leave, and similar benefits that are incidents of employment.

(8) "Intermittent employment" means employment that is not continuous but may consist of intervals of weekly work and intervals of no weekly work.

(9) "Seasonal employment" means employment with an employer who experiences at least a 20-percent difference between its highest level of employment during a particular season and its lowest level of employment during the off-season in each of the previous three years as reported to the department, or employment with an employer on a temporary basis during a particular season.

Sec. 18. 21 V.S.A. § 1452 is amended to read:

§ 1452. CRITERIA FOR APPROVAL

An employer wishing to participate in an STC program shall submit a department of labor electronic application or a signed written short-time compensation plan to the commissioner for approval. The commissioner may approve an STC plan only if the following criteria are met:

(1) the plan identifies the specified affected units to which it applies;

(2) the employees in the affected unit or units are identified by name, Social Security number, and by any other information required by the commissioner;

(3) the plan ~~specifies any impact on~~ certifies that fringe benefits, including health insurance, of employees participating in the plan will not be reduced;

(4) the usual total weekly hours of work for employees in the affected unit or units are reduced by not less than 20 percent and not more than 50 percent;

(5) the plan certifies that the aggregate reduction in work hours is in lieu of temporary total layoffs of one or more workers which would have resulted in an equivalent reduction in work hours and which the commissioner finds would have caused an equivalent dollar amount to be payable in unemployment compensation;

(6) the plan certifies that the STC employer will submit a request for a STC plan termination to the department within 24 hours of a layoff that occurs during an active STC plan;

(7) the identified work week reduction is applied consistently throughout the duration of the plan;

(8) the plan applies to at least 10 percent of the employees in the affected unit, and when applicable applies to all affected employees of the unit equally;

~~(7)~~(9) the plan will not subsidize seasonal employers during the off-season, nor subsidize employers who have traditionally used part-time employees or intermittent employment;

~~(8)~~(10) the employer agrees to maintain records relative to the plan for a period of three years and furnish reports relating to the proper conduct of the plan and agrees to allow the commissioner or his or her authorized representatives access to all records necessary to verify the plan prior to approval and, after approval, to monitor and evaluate application of the plan;

~~(9)~~(11) the plan certifies that the collective bargaining agent or agents for the employees, if any, have agreed to participate in the program. If there is no bargaining unit, the employer specifies how he or she will notify the employees in the affected group and work with them to implement the program once the plan is approved; and

~~(10)~~(12) in addition to subdivisions (1) through ~~(9)~~(11) of this section, the commissioner shall take into account any other factors which may be pertinent to proper implementation of the plan.

Sec. 19. 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 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, that addresses the reasons that led to the rejection of the original plan.

Sec. 20. 21 V.S.A. § 1454 is amended to read:

§ 1454. EFFECTIVE DATE; DURATION

A plan shall be effective on the date specified in the plan or on a date mutually agreed upon by the employer and the commissioner. It shall expire at the end of the sixth full calendar month after its effective date or on the date specified in the plan if such date is earlier; provided, that the plan is not previously revoked by the commissioner; or on the effective date of any transfer of ownership of the legal business entity. If a plan is revoked by the commissioner, it shall terminate on the date specified in the commissioner's written order of revocation. No employer shall be eligible for a short-time compensation plan for more than 26 weeks in any 12-month period.

Sec. 21. 21 V.S.A. § 1458 is amended to read:

§ 1458. SHORT-TIME COMPENSATION BENEFITS

* * *

(f)(1) If an individual works in the same week for both the short-time employer and another employer and his or her combined hours of work for both employers are equal to or greater than 81 percent of the usual hours of work with the short-time employer, he or she shall not be entitled to benefits under these short-time provisions or the unemployment compensation provisions.

(2) If an individual works in the same week for both the short-time employer and another employer and his or her combined hours of work for both employers are equal to or less than 80 percent of the usual hours of work for the short-time employer, the benefit amount payable for that week shall be the weekly unemployment compensation amount reduced by the same percentage that the combined hours are of the usual hours of work. A week for which benefits are paid under this provision shall count as a week of short-time compensation.

(3) An individual who does not work during a week for the short-time employer, and is otherwise eligible, shall be paid his or her full weekly unemployment compensation benefit amount under the provisions of the regular unemployment compensation program. Such a week shall not be counted as a week for which short-time compensation benefits were received.

(4) An individual that does not work the short-time employer's identified workweek reduction hours as certified by the application due to the use of paid vacation or personal time shall be paid benefits for the week under the partial unemployment compensation provisions of the regular unemployment compensation program.

~~(4)~~(5) An individual who does not work for the short-time employer during a week but works for another employer and is otherwise eligible, shall be paid benefits for that week under the partial unemployment compensation provisions of the regular UI program. Such a week shall not be counted as a week with respect to which STC benefits were received.

* * * Directory of new hires * * *

Sec. 22. 33 V.S.A. § 4110 is amended to read:

§ 4110. EMPLOYER OBLIGATIONS

* * *

(c) As used in this section:

(1) "Employee" means

(A) an individual who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986; and

(B) does not include an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to this section with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(2) "Employer" has the meaning given such term in Section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization.

(3) "First date of employment" is the first day services are performed for compensation as a new hire.

(4) "New hire" ~~means an employee for whom a W-4 filing is required and whose wages have not been reported by the filing employer to the department of labor during the last reporting quarter~~ means an employee who:

(A) has not previously been employed by the employer; or

(B) was previously employed by the employer but has been separated from that employment for at least 60 consecutive days.

* * * Independent contractors * * *

Sec. 23. 21 V.S.A. § 398 is added to read:

§ 398. NOTICE TO PERSONS RECEIVING REMUNERATION AS AN INDEPENDENT CONTRACTOR

(a) Every employer shall post in a prominent and accessible place on the site where work is performed a legible statement, provided by the commissioner, that describes the responsibility of independent contractors to pay taxes required by state and federal law, the rights of employees to workers' compensation, unemployment benefits, minimum wage, overtime, and other federal and state workplace protections, and the protections against retaliation and the penalties in this title if the independent contractor fails to classify properly an individual as an employee. This notice shall also contain contact information for individuals to file complaints or inquire with the commissioner about employment classification status. This information shall be provided in English or other languages required by the commissioner. The posted statement shall be constructed of materials capable of withstanding adverse weather conditions.

(b) Within 30 days of the effective date of this section, the commissioner shall create the notice described in subsection (a) of this section and post the notice on the department's website for downloading by hiring entities.

(c) Employers who violate this section shall be subject to an administrative penalty of up to $100.00 per violation.

Sec. 24. 21 V.S.A. § 8 is added to read:

§ 8. INDEPENDENT CONTRACTOR DEFINITION

The commissioner is directed to formulate a single definition of independent contractor for the purposes of chapters 9 (workers' compensation) and 17 (unemployment compensation) of this title. The definition shall be simple to understand and provide clarity to employers and employees as to an individual's status as an employee or an independent contractor. The commissioner shall also formulate a test based upon the definition of independent contractor that will allow employers and employees to quickly and easily determine independent contractor status. It is not the intent of this section to substantively change the benefits and protections of employment under this title.

* * * Fair-share representation fees * * *

Sec. 25. POLICY

It is the policy of the state of Vermont that employees in bargaining units organized under state law who exercise their rights not to join a labor organization required to provide them certain services shall pay to that labor organization a fair-share agency fee, representing that portion of the labor organization's membership fees which are attributable to those services.

Sec. 26. [Deleted]

* * * State employees * * *

Sec. 27. 3 V.S.A. § 903 is amended to read:

§ 903. EMPLOYEES' RIGHTS AND DUTIES; PROHIBITED ACTS

(a) Employees shall have the right to self-organization; to form, join, or assist employee organizations; to bargain collectively through representatives of their own choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities, except as provided in ~~subsection~~ subsections (b) and (c) of this section, and to appeal grievances as provided in this chapter.

(b) No state employee may strike or recognize a picket line of an employee or labor organization while in the performance of his or her official duties.

(c) An employee who exercises the right not to join the employee organization representing the employee's certified unit pursuant to section 941 of this title shall pay a collective bargaining fee to the representative of the

bargaining unit in the same manner as employees who pay membership fees to the representative.

(d) All employers, their officers, agents, and employees or representatives shall exert every reasonable effort to make and maintain agreements concerning matters allowable under section 904 of this title and to settle all disputes, whether arising out of the application of those agreements, or growing out of any dispute between the employer and the employees thereof.

Sec. 28. 3 V.S.A. § 904 is amended to read:

§ 904. SUBJECTS FOR BARGAINING

(a) All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining except those matters which are prescribed or controlled by statute. Such matters appropriate for collective bargaining to the extent they are not prescribed or controlled by statute include ~~but are not limited to~~:

* * *

(9) Rules and regulations for personnel administration, except the following: rules and regulations relating to persons exempt from the classified service under section 311 of this title and rules and regulations relating to applicants for employment in state service and employees in an initial probationary status including any extension or extensions thereof provided such rules and regulations are not discriminatory by reason of an applicant's race, color, creed, sex, or national origin~~; and~~

~~(10) A collective bargaining service fee~~.

* * *

Sec. 29. 3 V.S.A. § 941 is amended to read:

§ 941. UNIT DETERMINATION, CERTIFICATION, AND REPRESENTATION

* * *

(k) Nothing in this chapter requires an individual to seek the assistance of his or her collective bargaining unit or its representative(s) in any grievance proceeding. He or she may represent himself or herself or be represented by counsel of his or her own choice. Employees who are eligible for membership in a collective bargaining unit who exercise their right not to join such unit may upon agreement with the unit representative avail themselves of the services of the unit representative(s) in grievance proceedings upon payment to the unit of a fee established by the unit representative, provided that in the event a collective bargaining service fee is negotiated or imposed, the unit

representative shall represent nonmember employees in grievance proceedings without charge.

Sec. 30. 3 V.S.A. § 962 is amended to read:

§ 962. EMPLOYEES

It shall be an unfair labor practice for an employee organization or its agents:

* * *

(10) To charge a collective bargaining fee ~~negotiated pursuant to section 904 of this title~~ unless such employee organization has established and maintained a procedure to provide nonmembers with:

(A) an audited financial statement that identifies the major categories of expenses, and divides them into chargeable and nonchargeable expenses;

(B) an opportunity to object to the amount of the agency fee sought, any amount reasonably in dispute to be placed in escrow;

(C) prompt arbitration by the board to resolve any objection over the amount of the collective bargaining fee.

* * * Judiciary employees * * *

Sec. 31. 3 V.S.A. § 1012 is amended to read:

§ 1012. EMPLOYEES' RIGHTS AND DUTIES; PROHIBITED ACTS

(a) Employees shall have the right to self-organization; to form, join, or assist employee organizations; to bargain collectively through their chosen representatives; to engage in concerted activities of collective bargaining or other mutual aid or protection; to refrain from any or all those activities, except as provided in ~~subsection (b)~~ subsections (b) and (c) of this section; and to appeal grievances as provided in this chapter.

(b) No employee may strike or recognize a picket line of an employee organization while performing the employee's official duties.

(c) An employee who exercises the right not to join the employee organization representing the employee's certified unit pursuant to section 1021 of this title shall pay a collective bargaining fee to the representative of the bargaining unit in the same manner as employees who pay membership fees to the representative.

~~(c)~~(d) The employer and employees and the employee's representative shall exert every reasonable effort to make and maintain agreements concerning matters allowable under section 1013 of this title and to settle all disputes,

whether arising out of the application of those agreements or growing out of any dispute between the employer and the employees.

Sec. 32. 3 V.S.A. § 1013 is amended to read:

§ 1013. SUBJECTS FOR BARGAINING

All matters relating to the relationship between the employer and employees are subject to collective bargaining, to the extent those matters are not prescribed or controlled by law, including:

* * *

~~(10) A collective bargaining service fee.~~

Sec. 33. 3 V.S.A. § 1027 is amended to read:

§ 1027. EMPLOYEES

It shall be an unfair labor practice for an employee organization or its agents:

* * *

(10) To charge a ~~negotiated~~ collective bargaining fee unless the employee organization has established and maintained a procedure to provide nonmembers with all the following:

(A) An audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses.

(B) An opportunity to object to the amount of the fee requested and to place in escrow any amount reasonably in dispute.

(C) Prompt arbitration by the board to resolve any objection over the amount of the collective bargaining fee.

* * * Teachers * * *

Sec. 34. 16 V.S.A. § 1982 is amended to read:

§ 1982. RIGHTS

(a) Teachers shall have the right to or not to join, assist, or participate in any teachers' organization of their choosing. However, teachers ~~may be required to pay an agency fee~~ who choose not to join the teachers' organization, recognized pursuant to ~~an agreement negotiated under~~ section 1992 of this chapter as the exclusive representative, shall pay an agency fee in the same manner as teachers who choose to join the teachers' organization pay membership fees.

(b) Principals, assistant principals, and administrators other than superintendent and assistant superintendent shall have the right to or not to join, assist, or participate in any administrators' organization or as a separate unit of any teachers' organization of their choosing. However, administrators other than the superintendent and assistant superintendent ~~may be required to pay an agency fee~~ who choose not to join the administrators' organization, recognized pursuant to ~~an agreement negotiated under~~ section 1992 of this chapter as the exclusive representative, shall pay an agency fee in the same manner as administrators who choose to join the administrators' organization pay membership fees.

(c) Neither the school board nor any employee of the school board serving in any capacity, nor any other person or organization shall interfere with, restrain, coerce, or discriminate in any way against or for any teacher or administrator engaged in activities protected by this legislation.

* * * Certain private sector employees * * *

Sec. 35. 21 V.S.A. § 1502 is amended to read:

§ 1502. DEFINITIONS

In this chapter, the following words shall have the following meaning:

* * *

(14) "Agency service fee" means a fee for representation in collective bargaining not exceeding labor organization dues, payable to a labor organization which is the exclusive representative for employees in a bargaining unit from individuals who are not members of the labor organization.

Sec. 36. 21 V.S.A. § 1621 is amended to read:

§ 1621. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer:

* * *

(6) Nothing in this chapter or any other statute of this state shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this subsection (a) as an unfair labor practice) to require as a condition of employment membership in such labor organization on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is the later (i) if such labor organization is the representative of the employees as provided in section 1583 of this chapter, in the appropriate collective bargaining unit covered by such agreement when made and (ii)

unless following an election held as provided in section 1584 of this chapter within one year preceding the effective date of such agreement, the board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement. Absent such an agreement, an employee who does not become a member of the labor organization shall, in the same manner as employees who choose to join the labor organization pay membership fees, pay an agency service fee to that organization. No employer shall justify any discrimination against an employee for nonmembership in a labor organization:

(A) If the employer has reasonable grounds for believing that membership was not available to the employee on the same terms and conditions generally applicable to other members; or

(B) If the employer has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

* * *

(b) It shall be an unfair labor practice for a labor organization or its agents:

* * *

(9) To charge an agency service fee unless the employee organization has established and maintained a procedure to provide nonmembers with all the following:

(A) An audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses.

(B) An opportunity to object to the amount of the fee requested and to place in escrow any amount reasonably in dispute.

(C) Prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the labor organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency service fee.

* * *

* * * Municipal employees * * *

Sec. 37. 21 V.S.A. § 1726 is amended to read:

§ 1726. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer:

* * *

(8) Nothing in this chapter or any other statute of this state shall preclude a municipal employer from making an agreement with the exclusive bargaining agent ~~to require an agency service fee to be paid as a condition of employment, or~~ to require as a condition of employment membership in such employee organization on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is the later. Absent such an agreement, an employee who does not become a member of the employee organization shall, in the same manner as employees who choose to join the employee organization pay membership fees, pay an agency service fee to that organization. No municipal employer shall discharge or discriminate against any employee for nonpayment of an agency service fee or for nonmembership in an employee organization:

(A) If the employer has reasonable grounds for believing that membership was not available to the employee on the same terms and conditions generally applicable to other members; or

(B) If the employer has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

(b) It shall be an unfair labor practice for an employee organization or its agents:

* * *

(6) To require employees covered by an agency service fee ~~agreement~~ requirement or other union security agreement authorized under subsection (a) of this section to pay an initiation fee which the board finds excessive or discriminatory under all the circumstances, including the practices and customs of employee organizations representing municipal employees, and the wages paid to the employees affected.

* * *

(12) To charge an agency service fee unless the employee organization has established and maintained a procedure to provide nonmembers with all the following:

(A) An audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses.

(B) An opportunity to object to the amount of the fee requested and to place in escrow any amount reasonably in dispute.

(C) Prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the labor organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency service fee.

* * * Miscellaneous provisions * * *

Sec. 38. WORKERS' COMPENSATION RATING ADVISORY ORGANIZATIONS

(a) The department of financial regulation is directed to reconsider its reliance on the data provided by the National Council on Compensation Insurance, Inc. (NCCI) and whether it needs a workers' compensation insurance rating advisory organization in order to assist in the calculation of insurance rates. If the department determines that it needs a workers' compensation advisory organization to assist in calculating insurance rates, it is to consider using alternatives to NCCI. The department is further directed to evaluate whether proposed insurance rates made by NCCI were in line with the actual resulting insurance rates.

(b) The department shall report its findings to the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development by January 15, 2013.

Sec. 39. STUDY OF UNEMPLOYMENT COMPENSATION TRAINING PROGRAMS

The commissioner of labor shall study the benefits and feasibility of developing and implementing a job training program for persons collecting unemployment benefits in Vermont, allowing the department to place persons collecting unemployment into job sites for job training and skill development to enhance the individual's job prospects and career development. The study shall examine conformity issues with federal and state unemployment and wage and hour laws. The commissioner shall solicit public input and engage interested parties from the business and labor communities in determining the benefits of any such program. The commissioner shall report his or her findings to the chairs of the senate committees on appropriations and on economic development, housing and general affairs, and the house committees on appropriations and on commerce and economic development.

Sec. 40. FINDINGS

The general assembly finds that:

(1) Some studies have concluded that over one-third of American workers have been the targets of malicious or abusive treatment by supervisors

or coworkers which is wholly unrelated to legitimate workplace goals or acceptable business practices.

(2) Those studies have concluded that 45 percent of bullied employees suffer stress-related health problems, including debilitating anxiety, panic attacks, clinical depression, and post-traumatic stress.

(3) Abusive behavior occurs even in the absence of any motive to discriminate on the basis of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age or against a qualified disabled individual. Such nondiscriminatory abuse is often referred to as "workplace bullying."

(4) The Vermont office of attorney general's civil rights unit reports that of the 1,200 to 1,300 requests for assistance it receives each year, a substantial number involve allegations of severe workplace bullying that cannot be addressed by current state or federal law or common law tort claims. Similarly, the Vermont human rights commission, which has jurisdiction in employment discrimination claims against the state, reports that it must refuse complaints of workplace bullying because the inappropriate behaviors are not motivated by the targeted employee's membership in a category protected by antidiscrimination laws. The Vermont department of labor reports that the wage and hour division receives up to 100 telephone calls each day, many of which involve complaints relating to workplace incivility, bullying, and retaliatory actions against employees who bring complaints.

(5) Sweden enacted the first workplace bullying law in 1993, and since then several countries have taken a variety of approaches to the problem, including the creation of private legal remedies and the prohibition of workplace bullying through occupational safety and health laws.

(6) The general assembly recognizes that there is a need to strike a balance between affording Vermont workers relief from bullying and unduly interfering with the operation of workplaces.

(7) However, given the limited duration of the legislative session, the potential impact on existing labor contracts and personnel policies, and the various options available to address this issue, a considered approach should be presented for consideration by the 2012 session of the general assembly.

Sec. 41. STUDY OF WORKPLACE BULLYING

(a) A committee is established to study the issue of workplace bullying in Vermont and to make recommendations to address the manner in which workplace bullying should be addressed by the state, by employers, and by affected employees. The committee shall examine and report on the following:

(1) Existing programs and best practice models for workplace civility, anti-bullying, prevention of workplace violence, reporting and nonretaliation provisions that have been adopted by employers and, if available, survey results and data from those employers.

(2) A definition of "workplace bullying" or "abusive conduct" in the workplace not addressed by existing law.

(3) Whether there is a need for additional laws regarding workplace bullying.

(4) Different models for remedying workplace bullying, including:

(A) Creating a private right of action that would include the recovery of damages.

(B) Creating a mechanism for injunctive relief similar to those relating to stalking, hate crimes, or relief-from-abuse orders.

(C) State enforcement similar to the employment discrimination law.

(D) State enforcement by the Vermont occupational safety and health administration.

(E) Any other issues relevant to workplace bullying.

(b) The committee established by subsection (a) of this section shall also recommend any measures, including proposed legislation, to address bullying in the workplace.

(c) The committee established by subsection (a) of this section shall consist of the following members:

(1) The attorney general or designee.

(2) The executive director of the human rights commission or designee.

(3) The commissioner of labor or designee.

(4) The commissioner of human resources or designee.

(5) The state coordinator of the Vermont healthy workplace advocates.

(6) Two representatives from the business community, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(7) Two representatives from labor organizations, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(8) The executive director of the American Civil Liberties Union of Vermont or designee.

(9) The executive director of the Vermont Bar Association or designee.

(d) The committee shall convene its first meeting no later than July 15, 2012. The commissioner of labor shall be designated as the chair of the commission, and shall convene the first and subsequent meetings.

(e) The committee shall report its findings and any recommendations to the senate committee on economic development, housing and general affairs, and the house committee on commerce and economic development on or before January 15, 2013. The report shall include any recommended legislation to address the issue of workplace bullying.

(f) The committee shall cease to function upon transmitting its report.

Sec. 41a. 23 V.S.A. § 944 is added to read:

§ 944. DISPUTE RESOLUTION

All motor vehicle liability insurance policies issued in the state shall contain a requirement that claims for damages involving underinsured motor vehicles be submitted to arbitration pursuant to 12 V.S.A. chapter 192.

Sec. 42. EFFECTIVE DATES

(a) Sec. 16 (relating to nondisclosure or misrepresentation in order to receive unemployment benefits) of this act shall take effect on July 1, 2013.

(b) Secs. 27, 28, 29, 30, 31, 32, and 33 (relating to state employees) of this act shall take effect on July 2, 2012 and apply to new successor collective bargaining agreements subject to the provisions of 3 V.S.A. chapters 27 and 28.

(c) Secs. 34, 35, 36, and 37 (relating to teachers, municipal employees, and certain private employers) of this act shall take effect on June 30, 2012 and apply to employees subject to 16 V.S.A. chapter 57 and 21 V.S.A. chapters 19 and 22 on the date following the expiration date stated in the collective bargaining agreement, if any, then in effect, but in no event shall an employee be required to pay an agency fee, agency service fee, or collective bargaining service fee under this act for any period prior to July 1, 2012. In the event that no collective bargaining agreement is in effect on June 30, 2012, Secs. 34, 35, 36, and 37 of this act shall take effect on June 30, 2012 and apply to employees subject to 16 V.S.A. chapter 57 and 21 V.S.A. chapters 19 and 22 on July 1, 2012.

(d) This section shall take effect on passage.

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

An act relating to workforce development, workers' compensation, unemployment compensation, and workplace rights and responsibilities.

And that when so amended the bill ought to pass.

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

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs?, Senator Sears raised a *point of order* under Sec. 402 of Mason's Manual of Legislative Procedure that Sec. 41a of the Report of the Committee on Economic Development, Housing and General Affairs 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 Sec. 41a was *not germane* to the bill. The underlying bill proposes to make changes to the workers' compensation and unemployment compensation statutes. Section 41a proposes to require motor vehicle insurance policies to contain mandatory underinsurance arbitration provisions. The proposed amendment introduces an independent question, deals with a different topic and changes the scope of the original bill. As such, the proposed section is *not germane* to S. 137.

The President thereupon declared Sec. 41a could *not* be considered by the Senate and was ordered stricken.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Illuzzi?, Senator Miller, requested to divide the question and that Secs. 14 and 15 be voted on separately.

Thereupon, on motion of Senator Campbell the Senate adjourned until Monday, April 17, 2012, at two o'clock in the afternoon pursuant to J.R.S. 56.

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 severally adopted on the part of the Senate:

By Senator Mullin,

By Representatives Mook and Lewis,

S.C.R. 43.

Senate concurrent resolution designating May 2012 as Lupus Awareness Month in Vermont.

By Senators Kitchel and Benning,

By Representative Crawford and others,

S.C.R. 44.

Senate concurrent resolution congratulating Robert Swartz on being named the 2012 Northeast Kingdom Chamber Citizen of the Year.

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 severally adopted in concurrence:

By Representative Frank and others,

H.C.R. 337.

House concurrent resolution designating Wednesday, April 25, 2012, as National Walk@Lunch Day in Vermont.

By Representative Ancel,

H.C.R. 338.

House concurrent resolution congratulating the Twinfield Union School 2012 Division IV championship boys' basketball team.

By Representatives French and Townsend,

H.C.R. 339.

House concurrent resolution congratulating the 2011 Randolph Union High School Division III girls' cross country championship team.

By Representatives Deen and Klein,

By Senator Lyons,

H.C.R. 340.

House concurrent resolution thanking the staff of the agency of natural resources, academic and scientific institutions, and community members who contributed to the development of the new Bedrock Geologic Map of Vermont.

By Representative Crawford and others,

By Senators Benning and Kitchel,

H.C.R. 341.

House concurrent resolution congratulating the St. Johnsbury Academy Hilltoppers on winning the 2012 boys' indoor state track and field championship.

By Representative Crawford and others,

By Senators Benning and Kitchel,

H.C.R. 342.

House concurrent resolution congratulating Xiangru Chen on winning a 2012 Siemens Award for excellence in science and mathematics.

By Representative Brennan and others,

By Senator Westman,

H.C.R. 343.

House concurrent resolution commemorating the 75th anniversary of the U.S. Fish and Wildlife Service's Wildlife & Sport Fish Restoration Program.

By Representative Copeland-Hanzas and others,

H.C.R. 344.

House concurrent resolution congratulating Oxbow Union High School athletes A. J. Gillis and William Heathman on their victories at the 2012 state indoor track and field championship.

By Representative Campion and others,

H.C.R. 345.

House concurrent resolution celebrating the 20th anniversary of the enactment of Act 135, Vermont's sexual orientation antidiscrimination law, and the vital role played in its passage by Representative Ron Squires, Vermont's first openly gay state legislator.

By Representative Head and others,

H.C.R. 346.

House concurrent resolution welcoming the visiting military delegation from Macedonia and commemorating the continuing partnership between the state of Vermont and Macedonia.

By Representative Keenan and others,

H.C.R. 347.

House concurrent resolution congratulating the BFA-St. Albans Bobwhites 2012 Division I championship boys' ice hockey team.

By Representative Stevens and others,

By Senators Illuzzi, Kittell and Snelling,

H.C.R. 348.

House concurrent resolution congratulating the winning teams at the fifth annual Jr. Iron Chef VT cooking competition.

By Representatives Cheney and Masland,

H.C.R. 349.

House concurrent resolution congratulating Christopher Gish on winning the 2012 Vermont Geographic Bee.

By Representative Howrigan and others,

H.C.R. 350.

House concurrent resolution congratulating Patricia Howrigan Reynolds on being named the 2012 Vermont Mother of the Year.

By Representative Taylor and others,

By Senators Campbell, Cummings, Doyle, McCormack, Nitka and Pollina,

H.C.R. 351.

House concurrent resolution in memory of Vermont archivist, historian, and librarian Esther Munroe Swift.

By Representative Townsend and others,

H.C.R. 352.

House concurrent resolution honoring Louis D. Lertola of South Burlington for his outstanding work in securing increased local property tax exemptions for disabled veterans.

MONDAY, APRIL 16, 2012

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Adjournment

On motion of Senator Starr, the Senate adjourned until nine o'clock and thirty minutes in the morning on Tuesday, April 17, 2012.

TUESDAY, APRIL 17, 2012

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Kevin Rooney of Northfield.

Pledge of Allegiance

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

Rules Suspended; Bills Committed

Senator Campbell moved that the rules be suspended and that House bill entitled:

H. 556. An act relating to creating a private activity bond advisory committee.

be committed to the Committee on Appropriations with the report of the Committee on Economic Development, Housing and General Affairs *intact*,

Which was agreed to.

Senator Campbell moved that the rules be suspended and that House bill entitled:

H. 577. An act relating to public water systems.

be committed to the Committee on Appropriations with the report of the Committee on Natural Resources and Energy *intact*,

Which was agreed to.

Senator Campbell moved that the rules be suspended and that House bill entitled:

H. 745. An act relating to the Vermont prescription monitoring system.

be committed to the Committee on Appropriations with the report of the Committee on Health and Welfare *intact*,

Which was agreed to.

Senator Campbell moved that the rules be suspended and that House bill entitled:

H. 747. An act relating to cigarette manufacturers.

be committed to the Committee on Finance with the report of the Committee on Economic Development, Housing and General Affairs *intact*,

Which was agreed to.

Senator Campbell moved that the rules be suspended and that House bill entitled:

H. 766. An act relating to the national guard.

be committed to the Committee on Appropriations with the report of the Committee on Economic Development, Housing and General Affairs *intact*,

Which was agreed to.

Joint Senate Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senators Carris and Mullin,

J.R.S. 57. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Thursday, April 19, 2012, or, Friday, April 20, 2012, it be to meet again no later than Tuesday, April 24, 2012.

House Proposals of Amendment Concurred In

S. 238.

House proposals of amendment to Senate bill entitled:

An act relating to expanding access to driving privileges in Vermont.

Were taken up.

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

First: In Sec. 1, subsection (b), by striking out the word "seven"

Second: In Sec. 1, subsection (b), by adding two new subdivisions to be subdivisions (8) and (9) to read as follows:

(8) One member appointed by the Addison County Economic Development Corporation.

(9) One member appointed by the Vermont Farm Bureau.

Third: In Sec. 1, subdivision (c)(1), by striking the words "to recommend legislation that will" and inserting in lieu thereof the words and may recommend legislation that would

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

An act relating to a study on access to driving privileges in Vermont.

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

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

S. 116.

House proposal of amendment to Senate bill entitled:

An act relating to probate proceedings.

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. Rule 4(e) of the Vermont Rules of Probate Procedure is amended to read:

(e) Service by publication. When service by publication is required by this rule or by order of the court, the person directed by the court shall cause the substance of the notice prescribed by subdivision (a) of this rule, and a brief statement of the object of the petition, to be published ~~once a week for two successive weeks and at least seven days apart~~ in a ~~designated~~ newspaper of general circulation in the probate district where the petition was filed, or such other location as the court may direct. The ~~first~~ publication of the notice shall be made within 20 days after the petition is filed or the order is granted. Service by publication is complete on the day of ~~the last~~ publication.

Sec. 2. Rule 17 of the Vermont Rules of Probate Procedure is amended to read:

Rule 17. PARTIES GENERALLY

(a) Parties at commencement. At the commencement of a probate proceeding all interested persons shall be considered parties and shall be served with notice pursuant to Rule 4.

(1)(A) Decedent's estates. At commencement of a probate proceeding involving a decedent's estate, the term "interested person" includes heirs, devisees, legatees, children, spouses, and such other persons as the court directs. The term "interested person" also includes the trustees of any trusts to which assets of the decedent's estate may be distributed. Notice to a trustee shall be sufficient to notify the trust's beneficiaries. It also includes persons

having priority for appointment as executor or administrator, and other fiduciaries representing interested persons.

(B) The court, on motion, may order that an interested party need not be served with notice pursuant to Rule 4:

(i) if after due diligence the interested party cannot be located; or

(ii) for other good cause shown if the court finds that not providing such notice serves the interests of justice and the efficient administration of the estate.

* * *

Sec. 3. 14 V.S.A. § 3504 is amended to read:

§ 3504. SCOPE OF AUTHORITY

(a)(1) The agent shall have the authority to act on the principal's behalf as to all lawful subjects and purposes, but only to the extent such authority is given under the terms of the power of attorney, subject to section 3506 of this title and subsections (b) through (g) of this section.

(2) A general power of attorney created under this subchapter shall be construed to grant powers that are not expressly delineated in the terms of the power of attorney if it appears from the relevant facts and circumstances that the principal intended the agent to have general authority to act on the principal's behalf with respect to all lawful subjects and purposes. The specific inclusion or exclusion of one or more powers shall not, by itself, prevent a determination that the principal intended to grant general authority to the agent.

* * *

Sec. 4. 14 V.S.A. § 3516 is amended to read:

§ 3516. EFFECTIVE DATE; EFFECT ON EXISTING POWERS OF ATTORNEY

(a) A power of attorney shall be valid if it:

(1) complies with the terms of this subchapter; or

(2) is executed before July 1, 2002 and valid under common law or statute existing at the time of execution.

(b) If a power of attorney executed before July 1, 2002 was valid under common law or statute existing at the time of execution, any exercise of authority under the power of attorney, whether before or after July 1, 2002, shall be deemed valid if the exercise complies with common law or statute existing at the time of execution.

Sec. 5. MINOR GUARDIANSHIP STUDY COMMITTEE

The minor guardianship study committee created by Sec. 23 of No. 56 of the Acts of 2011 shall continue to meet during 2012 and shall report any additional findings and recommendations to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare on or before December 15, 2012, whereupon it shall cease to exist.

Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Sears, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

Thereupon, pursuant to the request of the Senate, the President announced the appointment of

Senator Sears
Senator Flory
Senator Nitka

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

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

S. 199.

House proposal of amendment to Senate bill entitled:

An act relating to immunization exemptions and the immunization pilot program.

Was taken up.

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

Sec. 1. 18 V.S.A. § 1121(c) is added to read:

(c) Annually, on or before September 15th, schools and child care facilities shall make publicly available the aggregated immunization rates of the student body for each required vaccine to the extent permitted under the federal Health Insurance Portability and Accountability Act, Pub. L. 104-191. Notwithstanding section 1120 of this title, for the purposes of this subsection

only, the term "child care facility" shall exclude a family day care home licensed or registered under 33 V.S.A. chapter 35.

Sec. 2. 18 V.S.A. § 1122 is amended to read:

§ 1122. EXEMPTIONS

(a) ~~A~~ Notwithstanding subsections 1121(a) and (b) of this title, a person may remain in school or in the child care facility without a required immunization:

(1) If the person~~,~~ or, in the case of a minor, the person's parent or guardian presents ~~a written statement,~~ an immunization exemption form from a licensed health care practitioner authorized to prescribe vaccines or a health clinic~~, or nurse~~ that the person is in the process of being immunized. The person may continue to attend school or the child care facility as long as the immunization process is being accomplished;

(2) If a health care practitioner, licensed to practice in Vermont and authorized to prescribe vaccines, certifies in writing that a specific immunization is or may be detrimental to the person's health or is not appropriate~~;~~, provided that when a particular vaccine is no longer contraindicated, the person shall be required to receive the vaccine; or

(3) If the person~~,~~ or, in the case of a minor, the person's parent or guardian ~~states in writing~~ annually provides a signed statement to the school or child care facility on a form created by the Vermont department of health that the person, parent, or guardian:

(A) ~~has~~ holds religious beliefs or philosophical convictions opposed to immunization;

(B) has reviewed and understands evidence-based educational material provided by the department of health regarding immunizations, including information about the risks of adverse reactions to vaccination; and

(C) understands that failure to complete the required vaccination schedule increases risk to the person and others of contracting or carrying a vaccine-preventable infectious disease.

(b) The health department may provide by rule for further exemptions to immunization based upon sound medical practice.

(c) A form signed pursuant to subdivision (a)(3) of this section and the fact that such a form was signed shall not be:

(1) construed to create or deny civil liability for any person; or

(2) admissible as evidence in any civil proceeding.

Sec. 3. 18 V.S.A. § 1124 is amended as follows:

§ 1124. ACCESS TO AND REPORTING OF IMMUNIZATION RECORDS

(a) In addition to any data collected in accordance with the requirements of the Centers for Disease Control and Prevention, the Vermont department of health shall annually collect from schools the immunization rates for at least those students in the first and eighth grades for each required vaccine. The data collected by the department shall include the number of medical, philosophical, and religious exemptions filed for each required vaccine and the number of students with a provisional admittance.

(b) Appropriate health personnel, including school nurses, shall have access to immunization records of anyone enrolled in Vermont schools or child care facilities, when access is required in the performance of official duties related to the immunizations required by this subchapter. Access to student immunization records shall only be provided with the prior written consent of parents and students as required by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and any regulations adopted thereunder.

Sec. 4. 18 V.S.A. § 1130(b)(1) is amended to read:

(b)(1) The department of health shall establish an immunization pilot program with the ultimate goal of ensuring universal access to vaccines for all Vermonters at no charge to the individual and to reduce the cost at which the state may purchase vaccines. The pilot program shall be in effect from January 1, 2010, through December 31, ~~2012~~ 2014. During the term of the pilot program, the department shall purchase, provide for the distribution of, and monitor the use of vaccines as provided for in this subsection and subsection (c) of this section. The cost of the vaccines and an administrative surcharge shall be reimbursed by health insurers as provided for in subsections (e) and (f) of this section.

Sec. 5. REPORT

The Vermont department of health shall submit a report to the general assembly on or before January 15, 2014 containing data collected pursuant to 18 V.S.A. § 1124(a) for the purpose of informing future policy discussions regarding immunization exemptions.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Ayer, 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 Ayer
Senator Campbell

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

Proposal of Amendment; Third Reading Ordered

H. 770.

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

An act relating to the state's transportation program.

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

Sec. 1. TRANSPORTATION PROGRAM

(a) The state's proposed fiscal year 2013 transportation program appended to the agency of transportation's proposed fiscal year 2013 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 funds" or "TIB" refers to monies deposited in the transportation infrastructure bond fund in accordance with 19 V.S.A. § 11f.

* * * Program Development Funding Sources * * *

Sec. 2. PROGRAM DEVELOPMENT – FUNDING

Spending authority in program development is modified as follows:

(1) Among eligible projects selected in the secretary's discretion, the secretary shall reduce project spending authority in the total amount of $502,437.00 in transportation funds and $25,000.00 in federal funds, and increase project spending authority in the total amount of $484,745.00 in TIB funds.

* * * Program Development – Paving * * *

Sec. 3. PORTABLE HOT MIX PLANT

(a) A new project is added to the development and evaluation list of the program development – paving program within the fiscal year 2013 transportation program for the acquisition of a portable hot mix plant.

(b) As soon as practicable, the secretary shall study the feasibility and evaluate the costs and benefits of acquiring a portable hot mix plant, and necessary associated equipment, for use on paving projects throughout the state.

(c) If the secretary determines that use of a portable hot mix plant for paving projects is feasible and that the cost savings expected to result from its acquisition are projected to exceed the capital and operating costs of the plant, the secretary may spend transportation funds and, if eligible for federal funding, federal funds, totaling up to $4,000,000.00 from within the fiscal year 2013 program development appropriation (8100001100) for acquisition of the portable hot mix plant and necessary associated equipment, provided that such expenditure does not delay other programmed expenditures.

(d) Prior to any acquisition under the authority of subsection (c) of this section, the secretary shall notify the house and senate committees on transportation if the general assembly is in session, and if not in session, the joint transportation oversight committee, of his or her intention to take such action.

* * * Program Development – Roadway * * *

Sec. 4. PROGRAM DEVELOPMENT – ROADWAY

The following project is added to the development and evaluation list of the program development – roadway program within the fiscal year 2012 transportation program:

CIRC Alternatives – Phase 1 Alternative Projects.

* * * Program Development – State Highway Bridge * * *

Sec. 5. PROGRAM DEVELOPMENT – STATE HIGHWAY BRIDGE

(a) The STP SCTT(1) – Townshend – State-owned Historic Sites – Scott Covered Bridge project is added to the fiscal year 2013 transportation

program – program development – state highway bridge development and evaluation (D&E) list.

(b) Funds may be expended on the project as necessary from authorized statewide – state highway bridges D&E spending, provided the expenditure does not delay other programmed D&E expenditures.

* * * Vermont Local Roads * * *

Sec. 6. TOWN HIGHWAY VERMONT LOCAL ROADS

Authorized spending on the Vermont local roads program is amended to read:

FY13	As Proposed	As Amended	Change
Grants	375,000	400,000	25,000
Total	375,000	400,000	25,000
Sources of funds			
State	235,000	235,000	0
Federal	140,000	165,000	25,000
Total	375,000	400,000	25,000

* * * State Aid for Federal and Nonfederal Disasters * * *

Sec. 7. STATE AID FOR NONFEDERAL DISASTERS

FY13	As Proposed	As Amended	Change
Grants	4,750,000	1,150,000	-3,600,000
Total	4,750,000	1,150,000	-3,600,000
Sources of funds			
State	1,550,000	1,150,000	-400,000
Federal	3,200,000	0	-3,200,000
Total	4,750,000	1,150,000	-3,600,000

Sec. 8. STATE AID FOR FEDERAL DISASTERS

FY13	As Proposed	As Amended	Change
Grants	0	3,600,000	3,600,000
Total	0	3,600,000	3,600,000
Sources of funds			
State	0	400,000	400,000
Federal	0	3,200,000	3,200,000
Total	0	3,600,000	3,600,000

Sec. 9. TOWN HIGHWAY STRUCTURES

Authorized spending on the town highway structures program is amended to read:

FY13	As Proposed	As Amended	Change
Grants	5,833,500	6,333,500	500,000
Total	5,833,500	6,333,500	500,000
Sources of funds			
State	5,833,500	6,333,500	500,000
Federal	0	0	0
Total	5,833,500	6,333,500	500,000

Sec. 10. TOWN HIGHWAY AID

Authorized spending on the town highway aid program is amended to read:

FY13	As Proposed	As Amended	Change
Grants	26,482,744	25,982,744	-500,000
Total	26,482,744	25,982,744	-500,000
Sources of funds			
State	26,482,744	25,982,744	-500,000
Federal	0	0	0
Total	26,482,744	25,982,744	-500,000

* * * Rail * * *

Sec. 11. RAIL

The following modifications are made to the rail program:

(1) The "Rutland–Burlington crossings project" is renamed the "Rutland–Burlington rail and crossings project," and the scope of the project is amended to include the installation of continuously welded rail.

(2) Spending authority for the Pittsford Bridge 219 project (HPP ABRB(9)) is amended to read:

FY13	As Proposed	As Amended	Change
PE	0	0	0
Construction	6,600,000	1,500,000	-5,100,000
Total	6,600,000	1,500,000	-5,100,000
Sources of funds			
State	0	0	0
TIB	1,320,000	300,000	-1,020,000
Federal	5,280,000	1,200,000	-4,080,000
Local	0	0	0
Total	6,600,000	1,500,000	-5,100,000

(3) Spending authority for the Rutland–Burlington rail and crossings project is amended to read:

FY13	As Proposed	As Amended	Change
PE	600,000	600,000	0
Construction	900,000	6,000,000	5,100,000
Total	1,500,000	6,600,000	5,100,000
Sources of funds			
State	300,000	300,000	0
TIB	0	1,020,000	1,020,000
Federal	1,200,000	5,280,000	4,080,000
Local	0	0	0
Total	1,500,000	6,600,000	5,100,000

Sec. 12. RUTLAND–BURLINGTON RAIL AND CROSSINGS PROJECT

The "Rutland–Burlington rail and crossings project" is added to the fiscal year 2012 transportation program – rail program. The project includes the installation of continuously welded rail and the reconstruction of several rail-highway grade crossings along the Vermont Railway line between Rutland and Burlington.

Sec. 13. PURCHASE OF RAIL BRIDGE INSPECTION VEHICLE

(a) A new project is added to the fiscal year 2012 and 2013 transportation program – rail programs for the purchase of a servi-lift rail bridge inspection vehicle ("inspection vehicle").

(b) Notwithstanding the authorized program spending within the fiscal year 2012 and 2013 transportation program – rail programs, the secretary is authorized to purchase an inspection vehicle using any federal grant funds received for its purchase.

(c) If a federal grant for the purchase of the inspection vehicle is not received or is not pending, notwithstanding the authorized project or activity spending within the fiscal year 2012 and 2013 transportation program – rail programs, the secretary is authorized to use up to a total of $500,000.00 in transportation funds appropriated to the rail program for the purchase of the inspection vehicle, provided that the purchase does not delay the work schedule of a project or activity programmed in the fiscal year 2012 or 2013 rail programs.

(d) The agency shall promptly report any action taken under the authority granted in subsection (b) or (c) of this section 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. ANTICIPATION OF FEDERAL RECEIPTS – RAIL PROGRAM

As authorized by 32 V.S.A. § 510, the secretary, with the prior approval of the commissioner of finance and management, may anticipate federal receipts into the transportation – rail program.

* * * Transportation Buildings * * *

Sec. 15. TRANSPORTATION BUILDINGS

The following modifications are made to the transportation buildings program:

(1) Spending authority for the Mendon District 3/Southwest Regional Construction Office Building project is amended to read:

FY13	As Proposed	As Amended	Change
PE	50,000	0	-50,000
Construction	150,000	0	-150,000
Total	200,000	0	-200,000
Sources of funds			
State	200,000	0	-200,000
TIB	0	0	0
Federal	0	0	0
Local	0	0	0
Total	200,000	0	-200,000

(2) Spending authority for the Statewide – Brine-Making Facilities project is amended to read:

FY13	As Proposed	As Amended	Change
PE	3,000	3,000	0
Construction	0	80,000	80,000
Total	3,000	83,000	80,000
Sources of funds			
State	3,000	83,000	80,000
TIB	0	0	0
Federal	0	0	0
Local	0	0	0
Total	3,000	83,000	80,000

(3) Spending authority for the Middlebury – Design, Permit, and Construct 1–Bay Addition project is amended to read:

FY13	As Proposed	As Amended	Change
PE	5,000	0	-5,000
Construction	175,000	0	-175,000

Total	180,000	0	-180,000
Sources of funds			
State	180,000	0	-180,000
TIB	0	0	0
Federal	0	0	0
Local	0	0	0
Total	180,000	0	-180,000

Sec. 16. VTRANS TRAINING CENTER FACILITY; PROGRAM NAME

(1) The "VTrans Learning Campus" project within the fiscal year 2013 transportation buildings program is renamed the "VTrans Training Center" project, and the scope of the project is amended to read, "Renovation of existing materials & research building for use by the VTrans Training Center and the traffic research section."

(2) The agency shall rename the VTrans Learning Campus program to be the VTrans Training Center program.

* * * Public Transit * * *

Sec. 17. PUBLIC TRANSIT

The scope of the Public Transit – Statewide Capital project is amended to include the construction of transit facilities.

Sec. 18. 24 V.S.A. § 5094 is added to read:

§ 5094. POWERS OF SECRETARY OF TRANSPORTATION

On behalf of the state and to carry out the purposes of this chapter and 19 V.S.A. § 10f, the secretary of transportation may:

(1) Execute and file an application with the Federal Transit Administration for federal assistance authorized by Titles 23 and 49 of the United States Code or other federal law.

(2) Execute and file certifications, assurances, or other documents the Federal Transit Administration may require before awarding a federal assistance grant or cooperative agreement.

(3) Execute grant and cooperative agreements with the Federal Transit Administration.

* * * Fiscal Year 2013 Transportation Infrastructure Bonds * * *

Sec. 19. AUTHORITY TO ISSUE TRANSPORTATION INFRASTRUCTURE BONDS

Pursuant to 32 V.S.A. § 972, the state treasurer is authorized to issue transportation infrastructure bonds up to a total amount of $11,500,000.00 for the purpose of funding:

(1) the spending authorized in Sec. 20 of this act;

(2) a debt service reserve to support the successful issuance of transportation infrastructure bonds; and

(3) the cost of preparing, issuing, and marketing the bonds as authorized under 32 V.S.A. § 975.

Sec. 20. TRANSPORTATION INFRASTRUCTURE BONDS; SPENDING AUTHORITY

The amount of $10,000,000.00 from the issuance of transportation infrastructure bonds is authorized for expenditure in fiscal year 2013 on eligible projects as defined in 32 V.S.A. § 972(d) in the state's fiscal year 2013 transportation program as follows:

(1) $9,000,000.00 on projects in program development.

(2) $1,000,000.00 on projects in the town highway bridge program.

* * * Agency of Transportation Positions * * *

Sec. 21. AGENCY OF TRANSPORTATION POSITIONS

(a) The agency may establish 17 new limited service positions related to the response to Tropical Storm Irene and the spring 2011 flooding. This authority shall expire on June 30, 2014, and the positions shall terminate by June 30, 2014.

(b) The establishment of three new permanent classified positions is authorized in the agency of transportation – rail program.

(c) The establishment of three new permanent classified positions is authorized in the agency of transportation – program development program.

(d) The positions authorized in this section are not subject to the restriction in Sec. A.108 of No. 63 of the Acts of 2011, and are in addition to the positions authorized in Sec. 87(e) of No. 75 of the Acts of the 2011 Adj. Sess. (2012).

* * * Central Garage * * *

Sec. 22. TRANSFER TO CENTRAL GARAGE FUND

Notwithstanding 19 V.S.A. § 13(c), in fiscal year 2013, 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.

* * * Relinquishment of State Highway Segment to Municipal Control * * *

Sec. 23. RELINQUISHMENT OF VERMONT ROUTE 207 EXTENSION IN THE TOWN OF ST. ALBANS

(a) Pursuant to 19 V.S.A. § 15(2), the general assembly approves the secretary of transportation to enter into an agreement with the town of St. Albans to relinquish to the town's jurisdiction a segment of state highway right-of-way in the town of St. Albans which has not been constructed to be a traveled road, and which was to be known as the Vermont Route 207 Extension. This authority shall expire on June 30, 2022. The segment authorized to be relinquished measures approximately 1.7 acres, is approximately 160 feet in width, and starts at a point 200 feet west of the intersection of the U.S. Route 7/Vermont Route 207 centerline of highway project S0297(2), and continues westerly for 463 feet.

(b) Following relinquishment, the former state highway segment shall become a town highway and shall retain its limited access designation under 19 V.S.A. chapter 17 (limited access facilities).

(c) Following relinquishment, the state of Vermont shall retain ownership of the underlying fee interest in the former state highway segment. The town of St. Albans shall not sell or abandon any portion of the relinquishment area or allow any encroachments within the relinquishment area without the written permission of the agency of transportation.

* * * Enhancement Grant Program Priorities * * *

Sec. 24. ENHANCEMENT GRANT PROGRAM PRIORITIES

In addition to the priorities for salt and sand shed projects and bicycle or pedestrian facility projects specified in 19 V.S.A. § 38(g), in evaluating applications for enhancement grants in fiscal years 2013, 2014, and 2015, the transportation enhancement grant committee shall give preferential weighting to projects involving a municipality implementing eligible environmental mitigation projects under a river corridor plan that has been adopted by the agency of natural resources as part of a basin plan, under a municipal plan adopted pursuant to 24 V.S.A. § 4385, or under a mitigation plan adopted by the municipality and approved by the Federal Emergency Management

Agency. The degree of preferential weighting afforded shall be in the complete discretion of the transportation enhancement grant committee.

* * * State Aid for Town Highways * * *

Sec. 25. 19 V.S.A. § 306(e) and (f) are amended to read:

(e) State aid for town highway structures.

(1) There shall be an annual appropriation for grants to municipalities for maintenance~~,~~ (including actions to extend life expectancy~~,~~) and for construction of bridges~~,~~ and culverts~~, and~~; for maintenance and construction of other structures, including causeways and retaining walls, intended to preserve the integrity of the traveled portion of class 1, 2, and 3 town highways; and for alternatives that eliminate the need for a bridge, culvert, or other structure, such as the construction or reconstruction of a highway, the purchase of parcels of land that would be landlocked by closure of a bridge, the payment of damages for loss of highway access, and the substitution of other means of access.

(2) Each fiscal year, the agency shall approve qualifying projects with a total estimated state share cost of $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.

(3) 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) ~~[Deleted.]~~ State aid for federal disasters.

(1) Towns receiving assistance under the Federal Highway Administration's emergency relief program for federal-aid highways shall be eligible for state aid when a nonfederal match is required. Eligibility for aid under this subsection shall be subject to the following criteria:

(A) Towns shall be responsible for up to 10 percent of the total eligible project costs.

(B) For towns that have adopted road and bridge standards, eligibility for reimbursement for repair or replacement of infrastructure shall be to those

standards. For towns that have not adopted these standards, eligibility for reimbursement for repair or replacement of infrastructure shall be limited to the specifications of the infrastructure that preexisted the emergency event; however, the repair or replacement shall be to standards approved by the agency.

(C) Such additional criteria as may be adopted by the agency through rulemaking under 3 V.S.A. chapter 25.

(2) Notwithstanding 32 V.S.A. § 706 and the limits on authorized program spending in an approved transportation program, the secretary may transfer appropriations between the program created in this subsection and the state aid for nonfederal disasters program created in subsection (d) of this section.

* * * Town Highway Bridges; Local Match * * *

Sec. 26. 19 V.S.A. § 309a is amended to read:

§ 309a. LOCAL HIGHWAY WORK; UNIFORM LOCAL SHARE; EXCEPTIONS

(a) Except as provided in subsection (b) or (c) of this section or in sections 309b and 309c of this title, in any case of highway or bridge construction in which a federal/state/local or state/local funding match is authorized, the municipality's share shall be ten percent of the project costs.

(b) This section shall not apply to:

(1) ~~any project phase, preliminary engineering, right-of-way acquisition or construction, which was included in the transportation construction program submitted by the agency in February 1987 and approved by the general assembly in Act No. 91 of the Acts of 1987~~ any bridge replacement project in the town highway bridge program during the construction of which the municipality closes the bridge and does not construct a temporary bridge for the duration of the project, in which event the local match shall cover five percent of the project costs; ~~or~~

(2) any project phase for which a municipality already has provided for payment of its share by issuing bonds or funding a reserve established under a capital improvement plan; ~~or~~

(3) any project on a town highway for which the general assembly has authorized a different federal/state/local funding match; and any project which serves an "economic growth center" as defined in 23 U.S.C. § 143, and for which the general assembly has authorized a different federal/state/local funding match;

(4) any project involving a bridge, including the approaches to a bridge, that extends between this state and an adjacent state;

(5) any bridge or roadway project involving a local financial share in which the municipality, after its review of the conceptual project plans, chooses not to proceed with the proposed project; in such circumstances, the agency shall pay 100 percent of the project costs incurred through the date it receives such notification from the municipality;

(6) any project where, by the mutual agreement of the municipality and agency, rehabilitation of an existing bridge is the preferred alternative, in which case the agency shall use the appropriate combination of state and federal funding to pay either 95 percent of the cost of rehabilitation, or 97.5 percent if the municipality closes the bridge and does not construct a temporary bridge for the duration of the project; or

(7) any project or portion of a project involving a structure that is part of the historic bridge program, where the agency shall use the appropriate combination of state and federal funding to pay 100 percent of the cost of rehabilitation.

* * *

* * * Tendering Payment in Condemnation Matters * * *

Sec. 27. 19 V.S.A. § 512 is amended to read:

§ 512. ORDER FIXING COMPENSATION; INVERSE CONDEMNATION; RELOCATION ASSISTANCE

(a) Within 30 days after the compensation hearing, the board shall by its order fix the compensation to be paid to each person from whom land or rights are taken. Within 30 days of the board's order, the agency shall file and record the order in the office of the clerk of the town where the land is situated, deliver to each person a copy of that portion of the order directly affecting the person, and pay or tender the award to each person entitled. If an interested person has not provided the agency identification information necessary to process payment of the award, or if an interested person refuses an offer of payment, payment shall be deemed to be tendered for the purposes of this subsection when the agency pays the award into an escrow account that is accessible by the interested person upon his or her providing any necessary identification information. A person to whom a compensation award is paid or tendered under this subsection may accept, retain, and dispose of the award to his or her own use without prejudice to the person's right of appeal, as provided in section 513 of this title. Upon the payment or tender of the award as above provided, the agency may proceed with the work for which the land is taken.

* * *

* * * Van Pool Program within State Infrastructure Bank * * *

Sec. 28. REPEAL

10 V.S.A. § 280g(a)(10) and (d) (state infrastructure bank van pool loan program) are repealed.

* * * Elimination, Modification, and Retention of Reports * * *

Sec. 29. ELIMINATION OF REPORTS

10 V.S.A. § 445(b) (report regarding expenditures and income relating to Vermont trails system); 19 V.S.A. § 10e(c) (rail report); 19 V.S.A. § 10g(d)(1) (analysis of state's commitment to transportation projects); 19 V.S.A. § 10g(d)(2) (agency's plan to bring resources and cost into balance); 19 V.S.A. § 317(f) (report regarding the classification, number, and location of historic bridges); 32 V.S.A. § 706(4) (report of transfers of appropriations to cover federally reimbursable construction projects); and Sec. 50 of No. 175 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 61 of No. 164 of the Acts of the 2007 Adj. Sess. (2008) (report on general condition of town assets in the bridge and culvert database), are repealed.

Sec. 30. 19 V.S.A. § 12b(d) is amended to read:

(d)~~(1) In coordination with the regular meetings of the joint fiscal committee in mid-July, mid-September, and mid-November, the secretary shall prepare a report on the status of the state's transportation finances and transportation programs. If a meeting of the committee is not convened on the scheduled dates of the joint fiscal committee meetings, the secretary in advance shall transmit the report electronically to the joint fiscal office for distribution to committee members. The report shall include a report on contract bid awards versus project estimates and a detailed report on all known or projected cost overruns, project savings, and funding availability from delayed projects; and the agency's actions taken or planned to cover the cost overruns and to reallocate the project savings and delayed project funds with respect to:~~

~~(A) all paving projects other than statewide maintenance programs; and~~

~~(B) all projects in the roadway, state bridge, interstate bridge, or town bridge programs with authorized spending in the fiscal year of $500,000.00 or more with a cost overrun equal to 20 percent or more of the authorized spending or generating project savings or delayed project available funding equal to 20 percent or more of the authorized spending.~~

~~(2) In addition, with respect to the July meeting of the joint fiscal committee, the secretary's report shall discuss the agency's plans to adjust spending to any changes in the consensus forecast for transportation fund revenues.~~ If and when applicable, the secretary shall submit electronically to the joint fiscal office for distribution to members of the joint transportation oversight committee a report summarizing any plans or actions taken to delay project schedules as a result of:

(1) a generalized increase in bids relative to project estimates;

(2) changes in the consensus revenue forecast of the transportation fund or transportation infrastructure bond fund; or

(3) changes in the availability of federal funds.

Sec. 31. 23 V.S.A. § 304b(a) is amended to read:

(a) The commissioner shall, upon application, issue conservation registration plates for use only on vehicles registered at the pleasure car rate ~~and,~~ on trucks registered for less than 26,001 pounds, and on vehicles registered to state agencies under section 376 of this title ~~and~~, but excluding vehicles registered under the International Registration Plan. Plates so acquired shall be mounted on the front and rear of the vehicle. The commissioner of motor vehicles and the commissioner of fish and wildlife shall determine the graphic design of the special plates in a manner which serves to enhance the public awareness of the state's interest in restoring and protecting its wildlife and major watershed areas. The commissioner of motor vehicles and the commissioner of fish and wildlife may alter the graphic design of these special plates provided that plates in use at the time of a design alteration shall remain valid subject to the operator's payment of the annual registration fee. Applicants shall apply on forms prescribed by the commissioner and shall pay an initial fee of $23.00 in addition to the annual fee for registration. In following years, in addition to the annual registration fee, the holder of a conservation plate shall pay a renewal fee of $23.00. The commissioner ~~shall~~ may adopt rules under 3 V.S.A. chapter 25 to implement the provisions of this subsection. ~~The commissioner of motor vehicles and the commissioner of fish and wildlife shall annually submit to the members of the house committees on transportation and fish, wildlife and water resources, and the members of the senate committees on transportation and natural resources and energy a report detailing, over a three-year period, the revenue generated, the number of new conservation plates sold and the number of renewals, and recommendations for program enhancements.~~

Sec. 32. 24 V.S.A. § 5083(b) is amended to read:

(b) The ~~public transit advisory council~~ agency of transportation shall ~~annually~~ evaluate ~~existing services based on the goals established in subsection (a) of this section. Proposals~~ proposals for new public transit service ~~shall be evaluated~~ submitted by providers in response to a notice of funding availability, by examining feasibility studies submitted by providers. ~~These~~ The feasibility studies shall address criteria set forth in the most recent public transit policy plan ~~of January 15, 2000~~.

Sec. 33. 19 V.S.A. § 42 is added to read:

§ 42. REPORTS PRESERVED

Notwithstanding 2 V.S.A. § 20(d), the reports or reporting requirements of sections 7(k), 10b(d), 10c(k), 10c(l), 10g, 11f(i), 12a, 12b(d), and 38(e)(2) of this title shall be preserved absent specific action by the general assembly repealing the reports or reporting requirements.

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 and guidance found in 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~~ agency shall ~~be available~~ deliver the report to the general assembly by January 15 of each year. Notwithstanding 2 V.S.A. § 20(d), this annual report shall be produced indefinitely absent specific action by the general assembly repealing the report.

* * * Technical Corrections * * *

Sec. 35. 5 V.S.A. § 3403 is amended to read:

§ 3403. ACQUISITION AND MODERNIZATION

(a) The agency of transportation, as agent for the state, and with the specific prior approval of the general assembly, is authorized to acquire by

purchase or condemnation, after the approval of the ~~Interstate Commerce Commission~~ Surface Transportation Board, if necessary, any portion or portions of the line of any railroad directly affecting the state, including rails and ties, rights-of-way, land, buildings, appurtenances, and other facilities required for the operation of the line or to facilitate its sale or lease for continued operation. This action may be taken in concert with another state or states as necessary to insure continued railroad service in this state.

* * *

Sec. 36. 5 V.S.A. § 3404 is amended to read:

§ 3404. RIGHT OF FIRST REFUSAL

(a) All railroad operating properties within the state offered for sale by a railroad, other than to another railroad for continued operation, shall also be offered to the state of Vermont. The offer shall be made in writing and shall be sent by certified mail to the agency. The offer shall include a map and a description of the property, the price, if available, a description of the present and past railroad use of the property, and any terms, reservations, or conditions the railroad proposes to include as part of the sale. Within 365 days, less any period of time that has elapsed because of the pendency of abandonment proceedings before the ~~Interstate Commerce Commission~~ Surface Transportation Board or the imposition of public use conditions under 49 U.S.C. § 10905, the agency shall accept or reject the offer. If the agency either rejects or fails to accept the offer in a timely manner, the state's preferential right under this section shall terminate, but in no event shall the railroad offer to sell the property, or any portion of it, to any other person on terms more favorable than the final terms offered to the agency.

* * *

* * * Copies of Municipal Reports* * *

Sec. 37. 24 V.S.A. § 1173 is amended to read:

§ 1173. TOWN OR VILLAGE REPORTS

The clerk of a municipality shall supply annually each library in such municipality with two copies of the municipal report, upon its publication. The clerk shall also mail to the state library two copies thereof, and one copy each to the secretary of state, commissioner of taxes, ~~highway board,~~ state board of health, commissioner for children and families, commissioner of Vermont health access, auditor of accounts, and board of education. Officers making these reports shall supply the clerk of the municipality with the printed copies necessary for him or her to comply with the provisions of this section and section 1174 of this title.

* * * Transportation Funding and Expenditures * * *

Sec. 38. TRAFFIC SAFETY ENFORCEMENT COSTS

The joint fiscal office, in consultation with the commissioner of public safety or designee, shall analyze and estimate the costs incurred by the state in enforcing the state's traffic safety laws, and study how these state police costs 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 and the joint fiscal committee prior to the joint fiscal committee's November 2012 meeting.

Sec. 39. ALTERNATIVE FUEL VEHICLES; USER PAY PRINCIPLE

The secretary of transportation or designee, in consultation with the commissioner of motor vehicles, commissioner of taxes, and commissioner of public service or their designees, shall analyze options for user fees and fee collection mechanisms for motor vehicles that use energy sources not currently taxed so as to contribute to the transportation fund. The secretary shall submit a report of his or her findings, and of options for user fees and fee collection mechanisms, to the joint transportation oversight committee and the joint fiscal committee prior to the joint fiscal committee's November 2012 meeting.

Sec. 40. COMMISSION ON TRANSPORTATION FUNDING

(a) Findings.

(1) Annual gasoline and diesel tax revenues are currently at the same level generated in 1999–2000, while vehicle miles traveled and consequent wear and tear on the state's highway system has increased by 13.2 percent.

(2) As fuel efficiency continues to improve and vehicles using fuel sources not taxed so as to contribute to the transportation fund become more common, the gap between the payments collected from system users and the wear and tear users impose on the system will continue to grow.

(3) New revenue sources and consistent revenue streams will be needed to sustain Vermont's transportation infrastructure and support economic prosperity.

(b) Composition of commission. A commission composed of three members is established. The speaker of the house, the senate committee on committees, and the governor shall each appoint one member as soon as possible after the effective date of this act. The commission members shall promptly elect a chair.

(c) Purpose and charge. The commission shall:

(1) estimate transportation and TIB fund revenues over a five-year time horizon starting in fiscal year 2014, taking into account motor vehicle fuel efficiency mandates and trends, and identify and analyze factors likely to impact transportation and TIB fund revenues and transportation infrastructure spending in the future;

(2) estimate the gap between costs and projected revenues over the five-year time horizon (the "five-year funding gap") based on the cost of maintaining the state's existing infrastructure, and under any other cost scenario the commission deems appropriate;

(3) evaluate potential new state revenue sources and how existing state revenue sources could optimally be modified to address the five-year and longer term expected transportation funding gaps. The commission shall estimate the amount of funds that would be generated from each new and modified revenue source, and identify implementation structures, requirements, and challenges.

(d) The commission shall deliver a written report of its findings, and of any legislative options for consideration, to the house and senate committees on transportation by January 15, 2013. The commission shall terminate on January 15, 2013.

(e) Assistance. Upon the request of the commission, the agency may contract with consultants to provide expert assistance to the commission. Any consultant fees shall be paid out of the transportation – policy and planning appropriation. Upon request, the commission shall receive administrative support from the agency of transportation and assistance from the joint fiscal office and any unit of the executive branch the commission deems appropriate.

(f) Any commission member who is not a full-time state employee shall be entitled to compensation and reimbursement of expenses as provided in 32 V.S.A. § 1010. Funds disbursed under this subsection shall be paid out of the transportation – policy and planning appropriation.

* * * Vermont Strong Motor Vehicle Plates * * *

Sec. 41. VERMONT STRONG MOTOR VEHICLE PLATES

The agency is authorized to expend up to $12,000.00 from the central garage appropriation for the purchase of Vermont Strong motor vehicle plates for installation on agency vehicles in conformance with No. 71 of the Acts of the 2011 Adj. Sess. (2012).

* * * Natural Gas-Powered Motor Vehicles; Tax Proceeds * * *

Sec. 42. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

* * *

(7) Sales of motor fuels taxed or exempted under 23 V.S.A. chapter 28 ~~of Title 23,~~; provided, however, that aviation jet fuel and natural gas used to propel a motor vehicle shall be taxed under this chapter with the proceeds to be allocated to the transportation fund in accordance with 19 V.S.A. § 11.

* * *

Sec. 43. 19 V.S.A. § 11 is amended to read:

§ 11. TRANSPORTATION FUND

The transportation fund shall be comprised of the following:

* * *

(4) moneys received from the sales and use tax on aviation jet fuel and on natural gas used to propel a motor vehicle under 32 V.S.A. chapter 233;

* * *

Sec. 44. 23 V.S.A. § 3101 is amended to read:

§ 3101. DEFINITIONS

(a) The term "distributor" as used in this subchapter shall mean a person, firm, or corporation who imports or causes to be imported gasoline or other motor fuel for use, distribution, or sale within the state, or any person, firm, or corporation who produces, refines, manufactures, or compounds gasoline or other motor fuel within the state for use, distribution, or sale. ~~Kerosene, diesel oil, and aircraft jet fuel shall not be considered to be motor fuel under this subchapter.~~

~~(b)~~ When a person receives motor fuel in circumstances which preclude the collection of the tax from the distributor by reason of the provisions of the constitution and laws of the United States, and ~~shall~~ thereafter ~~sell~~ sells or ~~use~~ uses the motor fuel in the state in a manner and under circumstances as may subject the sale to the taxing power of the state, the person shall be considered a distributor and shall make the same reports, pay the same taxes, and be

subject to all provisions of this subchapter relating to distributors of motor fuel.

~~(c)~~(b) "Dealer" means any person who sells or delivers motor fuel into the fuel supply tanks of motor vehicles owned or operated by others.

(c) As used in this subchapter, "gasoline or other motor fuel" or "motor fuel" shall not include kerosene, diesel oil, aircraft jet fuel, or natural gas in any form.

(d) "Motor vehicle" means any self-propelled vehicle using motor fuel on the public highways and registered or required to be registered for operation on these highways.

* * * Effective Dates * * *

Sec. 45. EFFECTIVE DATES

(a) This section and Secs. 3 (portable hot mix plant), 4 (program development – roadway – CIRC alternatives), 11 (Rutland–Burlington rail and crossings project), 13 (purchase of rail bridge inspection vehicle), 14 (anticipation of federal receipts – rail program), 16 (VTrans learning campus facility), 18 (powers of secretary of transportation), 19 (authority to issue transportation infrastructure bonds), 21 (agency of transportation positions), 25 (state aid for town highways), 37 (copies of municipal reports), 38 (traffic safety enforcement cost study), 39 (alternative fuel vehicles; user pay study), 40 (commission on transportation funding), and 41 (Vermont Strong plates) of this act shall take effect on passage. The authority granted by Sec. 25(f) of this act (state aid for federal disasters) shall be retroactive to March 1, 2011.

(b) Secs. 42–44 shall take effect on July 1, 2013.

(c) All other sections of this act shall take effect on July 1, 2012.

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 Transportation.

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 Transportation?, Senator Mazza, on behalf of the Committee on Transportation, moved to amend the proposal of amendment of the Committee on Transportation as follows:

In Sec. 4, by inserting and (a) before the existing sentence and by inserting a subsection (b) to read as follows:

(b) In light of the destruction caused by Tropical Storm Irene to the village of Waterbury, and the plans to reconstruct portions of the Waterbury Complex in the village, the agency of transportation shall review existing plans for the Waterbury – Reconstruct Main Street project (FEGC F 013-4(13)) as soon as is practicable:

(1) to ensure that project infrastructure will be resilient in the event of future flooding;

(2) to ensure, if feasible, that construction of the project is coordinated with Waterbury Complex reconstruction activities so as to minimize disruption to and impacts on residents and road users, and to maximize potential cost savings; and

(3) to determine whether the project plans need to be updated in light of the damage caused by Tropical Storm Irene and the planned configuration of the Waterbury Complex.

Which was agreed to.

Thereupon, the proposal of amendment recommended by the Committee on Transportation, as amended, was agreed to and third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 785.

Senator Hartwell, for the Committee on Institutions, to which was referred House bill entitled:

An act relating to capital construction and state bonding budget adjustment.

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

(a) Damage to state-owned assets and infrastructure caused by Tropical Storm Irene on August 28, 2012 made necessary some of the reallocations and appropriations contained in this act.

(b) During the next biennium, much of the state's capital budget will be dedicated to the renovation and replacement of state-owned assets and infrastructure damaged by Tropical Storm Irene.

Sec. 2. Sec. 1 of No. 40 of the Acts of 2011 is amended to read:

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.~~ [Repealed.]

(2) ~~any decision to move permanently to a biennial capital budgeting cycle shall receive study and consideration at a later date prior to implementation.~~ [Repealed.]

(3) of the ~~$154,739,399~~ $158,027,602 million authorized by this act, no more than ~~$92,249,757~~ $87,952,312 shall be appropriated in the first year of the biennium, and the remainder shall be appropriated in the second year.

* * *

Sec. 3. Sec. 2 of No. 40 of the Acts of 2011 is amended to read:

Sec. 2. STATE BUILDINGS

* * *

(b) The following sums are appropriated in FY 2012:

* * *

(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 and up to $270,000 may be used for Vergennes (the former Weeks School) Stormwater Runoff. 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

* * *

(12) ~~Montpelier, 120 State St., planning and design for building renovations:~~ ~~250,000~~ [Repealed]

* * *

(20) ~~Waterbury, wood-chip-fired boiler facility planning:~~ ~~500,000~~

[Repealed.]

* * *

(c) The following sums are appropriated in FY 2013:

* * *

(3) Statewide, major maintenance, as that term is defined in subdivision (b)(4) of this section: ~~7,900,000~~ 6,700,000

* * *

(4) Statewide, BGS engineering, project management, and architectural project costs: ~~2,428,802~~ 2,433,490

* * *

(7) Vermont Veterans' Memorial Cemetery Master Plan: 250,000

(8) Montpelier, state house, renovate and refurnish house committee rooms, for completion of the third floor rooms, to continue to make better use of existing space and for upgrading the state house sound system. The speaker of the house shall be the ultimate point of contact and decision-maker for ensuring timely completion of this project. By January 1, 2013, the Ethan Allen room shall be restored to public use: 380,960

(9)(A) For planning, design, demolition, flood mitigation, permitting, and architectural and engineering costs for design development for a version of the partial reuse of the Waterbury Complex and new construction as described in the consultants' feasibility study dated March 9, 2012 and subsection (f) of this section: 11,975,000

(B)(i) For planning, design, site acquisition, leasing, including land leasing and lease purchasing, and architectural and engineering costs for design development or renovation related to the relocation or replacement of services previously provided at Vermont State Hospital, including the establishment of a 14-bed unit and a six-bed unit, respectively, at a hospital in southeastern Vermont and a hospital in southwestern Vermont; a new 25-bed hospital owned and operated by the state in central Vermont and proximate to an existing hospital; a secure seven-bed residential facility owned and operated by the state; or the provision of acute inpatient services at temporary locations: 4,975,000

(ii) Notwithstanding 29 V.S.A. § 820, the commissioner of buildings and general services shall present three potential names for the new 25-bed hospital to the general assembly on or before January 15, 2013. The

commissioner shall give preference to Vermonters integral to the advancement of mental health care in the state.

(C) To renovate and equip the National Life building in Montpelier to accommodate state offices as described in Sec. 20 of the 2012 capital budget adjustment act: 1,000,000

(D) Notwithstanding subsection (a) of this section, allocations in this subdivision shall be used only to fund the projects described in this subdivision (9). However, if costs associated with these projects exceed the amount allocated in this subdivision, the commissioner may transfer funds from other projects in this section.

(E) For the purpose of allowing the department of buildings and general services to enter into contractual agreements and complete work on the Waterbury Complex and the mental health system of care as soon as possible, it is the intent that more funds will be appropriated for these projects in future acts relating to capital construction and state bonding.

* * *

(f)(1) Option B of the of the Freeman, French, Freeman report published on March 9, 2012 aligns closely with the general assembly's vision for the Waterbury Complex. However, the general assembly believes that Option B could be modified to achieve a cost savings to Vermonters. On or before June 1, 2012, the department of buildings and general services shall present a modified design proposal, including proposals under subdivision (4) of this subsection (f) to the house committee on corrections and institutions, the senate committee on institutions, and the special committee described in this subsection.

(A) The general assembly envisions that the modified design proposal would meet the dual goals of achieving a cost savings for the state and delivering state services in the most efficient manner possible while still utilizing quality Vermont materials for the new building.

(B) Because the quality and efficiency of state services are as important as achieving a cost savings, the size of the new building and the size of the future complex in general should be determined only after the following assessments, which shall also consider outcomes such as reduced operating expenses; judicious consumption of energy; increased use of telecommuting or hoteling; an awareness of modern workplace space standards; and minimized use of leased space:

(i) a program assessment to determine the amount of space necessary to house the agency of human services with room for projected

future growth or any other state agency deemed appropriate by the commissioner of buildings and general services.

(ii) an assessment of the feasibility of moving the department of education to the complex, including a 20-year cost comparison to other options in central Vermont.

(2) A special committee consisting of the joint fiscal committee, the chairs of the house committee on corrections and institutions, and the senate committee on institutions ("special committee") is hereby established.

(A) The special committee shall meet to review, approve, or recommend alterations to the design described in this subsection at the next regularly scheduled meeting of the joint fiscal committee or at an emergency meeting called by the chairs of the house committee on corrections and institutions, the senate committee on institutions, and the joint fiscal committee.

(B) In making its decision, the special committee shall consider how the design impacts the ability of the state to provide services to citizens, programming, the financial consequences to the state of approval or disapproval of the proposal, and potential alternatives available. The special committee shall be entitled to per diem and expenses as provided in 2 V.S.A. § 406.

(3) The commissioner of buildings and general services shall notify the house committee on corrections and institutions and the senate committee on institutions at least monthly of updates to the planning process for the projects described in subdivision (c)(9) of this section. With approval of the speaker of the house and the president pro tempore, as appropriate, the house committee on corrections and institutions and the senate committee on institutions may meet up to six times when the general assembly is not in session to discuss any significant updates to the planning process for the Waterbury Complex and make recommendations to the special committee described in this subsection. The committees shall notify the commissioner of buildings and general services prior to holding a meeting pursuant to this subdivision. Committee members shall be entitled to receive a per diem and expenses as provided in 2 V.S.A. § 406.

(4) The commissioner of buildings and general services is authorized to take certain actions before formal approval of the design. Therefore, notwithstanding 29 V.S.A. § 152(a)(6), 165, or 166 or any other provision of law, in addition to producing a design, permitting, and applying for federal aid, upon passage of this act, the commissioner of buildings and general services may:

(A) lease, sell, lease purchase, subdivide, or donate the following buildings within the Waterbury Complex in their current condition: Wasson, 121 South Main Street, 123 South Main Street, 5 Park Row, 43 Randall Street, and their improvements.

(B) consider retaining the Ladd building or the Weeks building for state use. If the commissioner determines that retaining Ladd or Weeks is not in the best interest of the state, the commissioner may divest the state of these properties by any manner described in subdivision (4)(A) of this subsection (f) subject to the requirements of subdivision (2)(A) of this subsection (f).

(C) consider whether the Hanks building should be demolished to facilitate flood mitigation efforts and, if the commissioner so determines, demolish the building in accordance with the requirements of subdivision (4)(E) of this subsection (f). Otherwise, the commissioner may divest the state of Hanks by any manner described in subdivision (4)(A) of this subsection (f) subject to the requirements of subdivision (2)(A) of this subsection (f).

(D) consider whether the Stanley building should be retained for state use, or in the alternative, demolished in accordance with the requirements of subdivision (4)(E) of this subsection (f) and the site transferred to the town of Waterbury following negotiations between the town and the department of buildings and general services as to who shall be responsible for any demolition costs, subject to the requirements of subdivision (2)(A) of this subsection (f).

(E) assuming any required permits are attained, demolish any building in the Waterbury Complex except those named in subdivisions (f)(4)(A), (B), (C), or (D) of this section; the 1889–1896 early construction buildings, sometimes referred to as the historic bone or spine; the smokestack; and the public safety headquarters and forensics laboratory and their improvements.

(F) before selecting a heating system for the Waterbury Complex, investigate further and consider options to assure the personnel operating costs as well as other life cycle costs have been analyzed. The department or designee shall also conduct a comparative cost effectiveness analysis of producing heat and electricity.

(5) To the extent that amounts of potential funding from various sources are not clear upon passage of this act, the legislative intent for funding the capital costs of subdivisions (c)(9) and (f) of this section to the extent practicable is first through insurance funds that may be available for these purposes; second through the Federal Emergency Management Agency (FEMA) funds that may be available for these purposes and any required state

match; third, in the case of the 14-bed unit and the six-bed unit described in H.630 of the 2011 Adj. Sess. (2012), through a rate payment with clearly defined terms of services; and last with state capital or general funds. Notwithstanding 32 V.S.A. §§ 134 and 135, any capital funds expended for projects described in this act that are reimbursed at a later date by insurance or FEMA shall be reallocated to fund capital projects in a future act relating to capital construction and state bonding.

Appropriation – FY 2012	~~$26,928,802~~ $26,178,802
Appropriation – FY2013	~~$11,878,802~~ $29,264,450
Total Appropriation – Section 2	~~$38,807,604~~ $55,443,252

Sec. 4. Sec. 4 of No. 40 of the Acts of 2011 is amended to read:

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:

* * *

(2) Vermont state hospital, ongoing safety renovations: ~~100,000~~ 2,555

* * *

(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~~ [Repealed]

* * *

(e)(1) The sum of ~~$14,000,000~~ $9,000,000 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 (co-location of department of health laboratory with the UVM Colchester research facility). For ~~the purpose~~ the purposes of completing a project approved for FY 2012 but delayed following Tropical Storm Irene and 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~~ the balance needed to complete this project will be funded in FY 2014.

(2) Notwithstanding 29 V.S.A. § 820 and 10 V.S.A. chapter nine, the commissioner of buildings and general services shall present three potential

names for the new health laboratory to the general assembly on or before January 15, 2013. The commissioner shall give preference to Vermonters who have made significant advancements in the field of public health.

(f) The commissioners of buildings and general services and of corrections shall study the feasibility of creating an industry at the Southern State Correctional Facility and any construction that would be required. The study shall include information regarding recidivism rates for participants in Vermont offender works programs and shall be presented to the house committee on corrections and institutions and the senate committees on judiciary and on institutions on or before January 15, 2013.

Appropriation – FY 2012	~~$17,800,000~~ $17,702,555
Appropriation – FY 2013	~~$15,843,920~~ $10,700,000
Total Appropriation – Section 4	~~$33,643,920~~ $28,402,555

Sec. 5. Sec. 5 of No. 40 of the Acts of 2011 is amended to read:

Sec. 5. JUDICIARY

* * *

(c) Hyde Park, Lamoille County Courthouse, planning and design for building renovations and addition:	250,000
Total Appropriation – Section 5	~~$400,000~~ $650,000

Sec. 6. Sec. 7 of No. 40 of the Acts of 2011 is amended to read:

Sec. 7. BUILDING COMMUNITIES GRANTS

(a) The following sums are appropriated in FY 2012 for building communities grants established in 24 V.S.A. chapter 137 ~~of Title 24~~:

(6) ~~For~~ To the agency of agriculture, food and markets 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 24 V.S.A. chapter 137 ~~of Title 24~~:

* * *

(3) To the Vermont council on the arts for the cultural facilities grant program, the sum of which may be used to match funds which may be made available from the National Endowment of the Arts, provided all capital funds are made available to the cultural facilities grant program: 225,000

* * *

(6) ~~For~~ To the agency of agriculture, food and markets for the agricultural fairs capital projects competitive grant program: 225,000

(7) To the department of buildings and general services, for the regional economic development grant program: 225,000

Appropriation – FY 2012 $1,350,000

Appropriation – FY 2013 ~~$1,350,000~~ $1,575,000

Total Appropriation – Section 7 ~~$2,700,000~~ $2,925,000

Sec. 6a. Sec. 8 of No. 40 of the Acts of 2011 is amended to read:

Sec. 8. EDUCATION

* * *

(b) ~~$7,425,000~~ $7,375,000 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~~ $7,375,000

Sec. 7. Sec. 10 of No. 40 of the Acts of 2011 is amended to read:

Sec. 10. UNIVERSITY OF VERMONT

* * *

(b) ~~$1,800,000 is appropriated in FY 2013 for the project described in subsection (a) of this section~~ The University of Vermont requested that any capital funding it was to receive in FY 13 be appropriated for Tropical Storm Irene recovery efforts.

* * *

Total Appropriation – Section 10 ~~$3,600,000~~ $1,800,000

Sec. 7a. Sec. 10 of No. 40 of the Acts of 2011 is amended by adding a new subsection (c) to read:

(c) To the extent the $153,160,000 of general obligation bonds authorized by Sec. 25 of this act can be reduced by the use of bond premiums, up to $2,000,000 of the authorized amount that is no longer required to fund appropriations of this act as amended by capital budget adjustment shall be appropriated to the Vermont State Colleges to offset part of the construction costs of a community college facility in Brattleboro.

Sec. 8. Sec. 12 of No. 40 of the Acts of 2011 is amended to read:

Sec. 12. NATURAL RESOURCES

(a) The following sums are appropriated to the agency of natural resources in FY 2012 for:

* * *

(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~~ 2,000,000

* * *

(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~~ 1,480,720

* * *

(E) Administrative support – engineering, oversight, and program management: 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~~ 1,733,140

(B) Engineering oversight and project management: 300,000

(C) the Vermont drinking water revolving loan fund: 200,000

* * *

(5) the following department of fish and wildlife projects:

* * *

(D) purchase of a training trailer, safety ramps, metal detectors, and game cameras: 58,600

(E) for the Vermont Youth Conservation Corps to perform stabilization, restoration, and cleanup of environmental damage to waterways, forests, and public access lands caused by Tropical Storm Irene, including projects such as controlling the spread of invasive species, stabilizing flood-

eroded river and stream banks; restoring vital aquatic and wildlife habitats, removing toxic materials from fragile natural areas, and remediating recognized viewsheds:	200,000
Appropriation – FY 2012	~~$14,221,713~~ $13,521,713
Appropriation – FY 2013	~~$11,683,540~~ $10,922,460
Total Appropriation – Section 12	~~$25,905,253~~ $24,444,173

Sec. 9. Sec. 14 of No. 40 of the Acts of 2011 is amended to read:

Sec. 14. PUBLIC SAFETY

* * *

(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.~~ [Repealed.]

(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~~ For the purpose of completing a project approved for FY 2012 but canceled following Tropical Storm Irene, it is the intent of the general assembly ~~that these are committed funds not subject to budget adjustment~~ to appropriate $5,000,000 over FY 2014–2015 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.

* * *

(f) ~~The~~ $50,000 is appropriated for the commissioners of the departments of public safety and of buildings and general services ~~shall study the feasibility of consolidating~~ to conduct a comprehensive review of the Vermont State Police facilities ~~currently located in Bradford and St. Johnsbury into one location~~ needs. At a minimum, the review shall engage communities and prioritize needs for the following projects: consolidating the existing St. Johnsbury and Bradford offices and determining whether the Middlesex, Rutland, or Williston facility should be expanded, renovated, replaced, consolidated, or moved to a new location better situated within the service area. The ultimate goal of the review shall be determining how best to support the capacity of the Vermont State Police to provide services to Vermonters.

Appropriation – FY 2012	~~$2,560,000~~	$60,000
Appropriation – FY 2013	~~$2,550,000~~	$100,000
Total Appropriation – Section 14	~~$5,110,000~~	$160,000

Sec. 10. Sec. 15 of No. 40 of the Acts of 2011 is amended to read:

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~~ department of public safety 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. 11. Sec. 16 of No. 40 of the Acts of 2011 is amended to read:

Sec. 16. AGRICULTURE, FOOD AND MARKETS

(a) ~~$1,300,000~~ $1,050,000 is appropriated in FY 2012 to the agency of agriculture, food and markets for the best management practice implementation and Capital Equipment Assistance cost share ~~program~~ programs, to continue to reduce nonpoint source pollution in Vermont. Cost share funds shall not exceed 90 percent of the total cost of a best management practices project or 50 percent for a Capital Equipment Assistance 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.

Total Appropriation – Section 16	~~$2,500,000~~	$2,250,000

Sec. 12. [Repealed.]

Sec. 12a. Sec. 21 of No. 40 of the Acts of 2011 is amended to read:

Sec. 21. INFORMATION AND INNOVATION

~~$5,334,139~~ $5,284,139 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. 63 of 2011 ~~(H.441; the appropriations bill)~~ have been used for this project.

Total Appropriation – Section 21	~~$5,334,139~~	$5,284,139

Sec. 12b. Sec. 23 of No. 40 of the Acts of 2011 is amended to read:

Sec. 23. VERMONT INTERACTIVE TELEVISION

* * *

(b) ~~$299,241~~ $279,241 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~~ $578,483

* * * Financing This Act * * *

Sec. 13. Sec. 24 of No. 40 of the Acts of 2011 is amended to read:

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:

* * *

(3) of the amount appropriated by Sec. 6 of No. 200 of the Acts of the 2007 Adj. Sess. (2008)(human r~~esources~~ services and educational facilities grants): 3,969.35

* * *

(10) of the amount appropriated by Sec. 3 of No. 52 of the Acts of 2007 (public safety, forensic lab): 4,561.50

(11) of the amount appropriated by Sec. 1 of No. 200 of the Acts of the 2007 Adj. Sess. (2008) (major maintenance): 18,163.00

(12) of the amount appropriated by Sec. 15 of No. 200 of the Acts of the 2007 Adj. Sess. (2008) (fire service training council): 2,894.85

(13) of the amount appropriated by Sec. 18 of No. 43 of the Acts of 2009 (Vermont Veterans' Home North Wing Roof): 20,307.00

(14) of the amount appropriated by Sec. 1 of No. 43 of the Acts of 2009 (ADA compliance Newport): 100,000.00

(15) of the amount appropriated by Sec. 1 of No. 43 of the Acts of 2009 (Springfield Office Building): 150,000.00

(16) of the amount appropriated by Sec. 1 of No. 43 of the Acts of 2009 (Middlesex, State Archives): 24,963.23

(17) of the amount appropriated by Sec. 1 of No. 161 of the Acts of the 2009 Adj. Sess. (2010) (BGS engineering and architectural costs): 73,538.60

(18) of the amount appropriated by Sec. 1 of No. 161 of the Acts of the 2009 Adj. Sess. (2010) (Springfield SOB HVAC Upgrade): 133,747.70

(19) of the amount appropriated by Sec. 1 of No. 161 of the Acts of the 2009 Adj. Sess. (2010) (Bennington State Office Building): 750,000.00

(20) of the amount appropriated by Sec. 3 of No. 161 of the Acts of the 2009 Adj. Sess. (2010) (CRCF grease trap): 171,675.62

(21) of the amount appropriated by Sec. 15 of No. 161 of the Acts of the 2009 Adj. Sess. (2010) (Pittsford firing range): 416,904.16

(22) of the amount appropriated by Sec. 19 of No. 161 of the Acts of the 2009 Adj. Sess. (2010) (Vermont Veterans' Home, gas line replacement): 9,912.95

(23) of the amount realized from the sale of property authorized by Sec. 32 of No. 200 of the Acts of the 2007 Adj. Sess. (2008) (Hartford property): 5,300.00

(24) of the amount realized from the sale of property authorized by Sec. 25 of No. 43 of the Acts of 2009 (Vergennes, relinquishment of right-of-way): 2.00

(25) of the amount realized from the sale of property authorized by Sec. 26 of No. 52 of the Acts of 2007 (Brandon Training School): 202,157.45

(26) of the amount realized from the sale of property authorized by Sec. 25 of No. 43 of the Acts of 2009 (Dummerston Library): 44,000.00

(27) of the amount appropriated by Sec. 10 of No. 276 of the Acts of the 1989 Adj. Sess. (1990) (water pollution control): 1,734.88

(28) of the amount appropriated by Sec. 10 of No. 276 of the Acts of the 1989 Adj. Sess. (1990) (potable water supply construction): 43,608.59

(29) of the amount appropriated by Sec. 10 of No. 276 of the Acts of the 1989 Adj. Sess. (1990) (water pollution control construction): 34,806.04

(30) of the amount appropriated by Sec. 11 of No. 93 of the Acts of 1991 (water pollution): 25,674.00

(31) of the amount appropriated by Sec. 11 of No. 93 of the Acts of 1991 (water pollution planning): 316.45

(32) of the amount appropriated by Sec. 11 of No. 93 of the Acts of 1991 (water supply planning): 3,187.30

(33) of the amount appropriated by Sec. 11 of No. 93 of the Acts of 1991 (water supply wastewater): 6,896.28

(34) of the amount appropriated by Sec. 11 of No. 256 of the Acts of the 1991 Adj. Sess. (1992) (water pollution): 207,433.00

(35) of the amount appropriated by Sec. 11 of No. 256 of the Acts of the 1991 Adj. Sess. (1992) (water pollution planning): 18,374.13

(36) of the amount appropriated by Sec. 11 of No. 256 of the Acts of the 1991 Adj. Sess. (1992) (water supply): 909.76

(37) of the amount appropriated by Sec. 11 of No. 256 of the Acts of the 1991 Adj. Sess. (1992) (water supply planning): 7,709.44

(38) of the amount appropriated by Sec. 11 of No. 59 of the Acts of 1993 (pollution control): 19,637.00

(39) of the amount appropriated by Sec. 11 of No. 59 of the Acts of 1993 (pollution control planning): 7,919.79

(40) of the amount appropriated by Sec. 11 of No. 59 of the Acts of 1993 (water supply): 27,840.43

(41) of the amount appropriated by Sec. 19 of No. 233 of the Acts of the 1993 Adj. Sess. (1994) (zebra mussel control): 61,613.96

(42) of the amount appropriated by Sec. 19 of No. 233 of the Acts of the 1993 Adj. Sess. (1994) (water supply): 17,697.03

(43) of the amount appropriated by Sec. 19 of No. 233 of the Acts of the 1993 Adj. Sess. (1994) (municipal grants): 8,508.92

(44) of the amount appropriated by Sec. 19 of No. 233 of the Acts of the 1993 Adj. Sess. (1994) (water pollution): 4,920.00

(45) of the amount appropriated by Sec. 10 of No. 185 of the Acts of the 1995 Adj. Sess. (1996) (Hinesburg project): 35,420.36

(46) of the amount appropriated by Sec. 18 of No. 62 of the Acts of 1997 (pollution control): 12,329.93

(47) of the amount appropriated by Sec. 18 of No. 62 of the Acts of 1997 (pollution control planning): 4,745.48

(48) of the amount appropriated by Sec. 13 of No. 29 of the Acts of 1999 (pollution control): 18,208.13

(49) of the amount appropriated by Sec. 13 of No. 29 of the Acts of 1999 (Shoreham project): 7,435.25

(50) of the amount appropriated by Sec. 15 of No 148 of the Acts of the 1999 Adj. Sess. (2000) (Bennington sewer project): 5,000.00

(51) of the amount appropriated by Sec. 10 of No. 121 of the Acts of the 2003 Adj. Sess. (2004)(state-owned dams): 7.70

(52) of the amount appropriated by Sec. 11 of No. 52 of the Acts of 2007 (phase II Bennington fish station): 95.93

(53) of the amount appropriated by Sec. 6 of No. 52 of the Acts of 2007 (Historic Preservation Grant Program): 9,959.00

(54) of the amount appropriated by Sec. 6 of No. 52 of the Acts of 2007 (Historic Barns Preservation Grant Program): 9,750.00

(55) of the amount appropriated by Sec. 20 of No. 43 of the Acts of 2009 (Vermont council on the arts cultural facility grant): 3,516.00

(56) of the amount appropriated by Sec. 6 of No. 161 of the Acts of the 2009 Adj. Sess. (2010) (Vermont council on the arts cultural facility grant): 2,033.00

(57) of the amount appropriated by Sec. 7 of No. 40 of the Acts of 2011 (Vermont council on the arts cultural facility grant): 10,662.00

(58) of the amount appropriated by Sec. 11 of No. 161 of the Acts of the 2009 Adj. Session (2010) (Vermont Interactive TV Equipment): 0.32

(59) of the amount appropriated by Sec. 10 of No. 161 of the Acts of the 2009 Adj. Sess. (2010) (VSC - major maintenance): 0.28

(60) of the amount appropriated by Sec. 6 of No. 52 of the Acts of 2007 (broadband development grant program): 50,000.00

(61) of the amount realized from the sale authorized by Sec. 25 of No. 43 of the Acts of 2009 (Former Tree Farm Property): 184,200.00

(62) of the amount appropriated by Sec. 1 of No. 200 of the Acts of the 2007 Adj. Sess. (2008) (ADA improvements): 47,020.92

(63) of the amount appropriated by Sec. 20 of the Acts of 2009 (human services and educational facilities competitive grant program): 10,904.00

(64) of the amount appropriated by Sec. 9 of No. 61 of the Acts of 2001 (pollution control and drinking water): 9,286.25

(65) of the amount appropriated by Sec. 10 of No. 147 of the Acts of the 2005 Adj. Sess. (2006) (pollution control and drinking water): 31,070.58

(66) of the amount appropriated by Sec. 12 of No. 200 of the Acts of the 2007 Adj. Sess. (2008) (pollution control): 46,502.29

(67) of the amount appropriated by Sec. 9 of No. 43 of the Acts of 2009 (pollution control): 129,544.42

(68) of the amount appropriated by Sec. 12 of No. 161 of the Acts of the 2009 Adj. Sess. (2010) (pollution control): 33,596.46

Reallocations and Transfers – FY 2012	$1,579,398.51
Reallocations and Transfers – FY 2013	$3,288,203.36
Total Reallocations and Transfers	$4,867,601.87

Sec. 14. Sec. 26 of No. 40 of the Acts of 2011 is amended to read:

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~~ The commissioner of buildings and general services may sell the Asa Bloomer State Office Building and the Rutland Multi-Modal Transit Center in accordance with the requirements of 29 V.S.A. § 166(d) and following negotiations with the City of Rutland. If negotiations with the city result in the city's management of the Transit Center, the commissioner may use $81,0000 in unexpended capital funds previously appropriated to the department to purchase a flexible parking machine for the Transit Center. It is the intent of the general assembly that state offices remain downtown.

* * *

(f) The commissioner of buildings and general services may evaluate plans to sell, lease, subdivide, enter into long-term lease, or any combination thereof the St. Albans State Office Building located at 20 Houghton Street to support expanding the Vermont Service Center or other employers. It is the intent of the general assembly that state offices remain downtown.

(g) The secretary of agriculture, food and markets, the secretary of natural resources, the secretary of transportation, or the commissioner of buildings and general services, in consultation with the agency of commerce and community development, may sell, enter into a long-term lease of, and utilize surplus properties. The emergency board, the chair of the house committee on

corrections and institutions, and the chair of the senate committee on institutions shall determine what land or facilities are surplus for the purpose of this subsection when the general assembly is not in session. When the general assembly is in session, requests shall be made to the house committee on corrections and institutions and the senate committee on institutions.

Sec. 15. Sec. 25(f) of No. 161 of the Acts of the 2009 Adj. Sess. (2010), as amended by Sec. 29 of No. 40 of the Acts of 2011, is further 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~~ 29 V.S.A. § 155.

Sec. 15a. Sec 34a of No. 40 of the Acts of 2011 is amended to read:

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:

* * *

(36) enter into agreements with local information service providers allowing those providers to offer local and regional tourism information under guidelines established by the commissioner.

(37) enter into agreements with, and grant funds to, local or regional chambers of commerce to provide staffing and operations of state-owned welcome centers, rest areas, and information centers under guidelines established and enforced by the commissioner.

Sec. 16. Sec. 47(c) of No. 40 of the Acts of 2011 is amended to read:

(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.~~

* * * Miscellaneous Reallocations and Property Transfers New to Capital Budget Adjustment * * *

Sec. 17. Sec. 32 of No. 200 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

Sec. 32. PROPERTY TRANSACTIONS; MISCELLANEOUS

* * *

(d) Pursuant to 29 V.S.A. § 166, the commissioner of buildings and general services, with the approval of the secretary of administration, and following a report to the joint fiscal committee on the implications for operating and fee-for-space costs to the department of motor vehicles, shall sell, lease, subdivide, convert into condominiums, or any combination thereof, the Thayer School building located at 1193 North Avenue in Burlington. After payment of any costs and fees associated with the transaction, proceeds from a sale or lease shall be ~~deposited into a capital fund pursuant to 29 V.S.A. § 166(d), and proceeds from a lease shall be deposited into a property management fund pursuant to 29 V.S.A. § 160~~ reallocated in a future act relating to capital construction and state bonding.

(e) Notwithstanding 29 V.S.A. § 166(b), the commissioner of buildings and general services may sell or lease land, mineral rights, or both, as follows:

* * *

(5) after payment of any costs and fees associated with the transaction, proceeds from a sale or lease shall be ~~deposited into a capital fund pursuant to 29 V.S.A. § 166(d), and proceeds from a lease shall be deposited into a property management fund pursuant to 29 V.S.A. § 160~~ reallocated in a future act relating to capital construction and state bonding.

* * *

* * * Transcription Errors * * *

Sec. 18. CORRECTION OF TRANSCRIPTION ERRORS

(a) Where it appears in Sec. 23(18) of No. 161 of the Acts of the 2009 Adj. Sess. (2010), as amended by Sec. 78 of No. 3 of the Acts of 2011, the number ~~1,922.00~~ shall be ~~11,922.00~~.

(b) Where it appears in Sec. 48 of No. 40 of the Acts of 2011, amending 29 V.S.A. § 168(b)(2)(B), the word "~~Moneys~~" shall be "~~Money~~".

Sec. 19. Sec. 1(b) of No. 28 of the Acts of 2011 (Maidstone Lake Road) is amended to read:

(b) Of the funds appropriated to the agency of natural resources in Sec. 20(b)(9) of No. 43 of the Acts of ~~the~~ 2009 ~~Adj. Sess. (2010)~~, for the purpose of upgrading and maintaining the road, the balance remaining as of January 1, 2011 shall be transferred to the town of Maidstone and shall be used by the town for that purpose.

* * * Policy New to Capital Budget Adjustment * * *

* * * Buildings and General Services * * *

Sec. 20. LOCATION OF STATE EMPLOYEES

The general assembly believes that it is in the best interest of the state and its employees for state offices displaced by Tropical Storm Irene to be relocated to permanent locations as soon as possible. It is the intent of the general assembly therefore that the agency of natural resources be relocated to the National Life building in Montpelier. The integration of the agencies of transportation, of natural resources, and of commerce and community development at the National Life building is designed to provide increased efficiencies and quality of services. Notwithstanding this particular relocation, it remains the intent of the general assembly to continue to make prudent investments in building space to meet the facility needs of the state and to shift away from state reliance on leased space in accordance with 29 V.S.A. § 165(b).

Sec. 20a. LEASING PROPERTY

The commissioner of buildings and general services shall evaluate and report on or before January 15, 2013 whether and under what circumstances leasing property not owned by the state to accommodate space needs of an agency may be preferable to using state-owned property for the same purpose.

Sec. 21. 29 V.S.A. § 165 is amended to read:

§ 165. SPACE ALLOCATION, INVENTORY, AND USE; LEASING PROPERTY; COMMISSIONER'S PREAPPROVAL REQUIRED

* * *

(c)(1) Notwithstanding any provision of law to the contrary, the commissioner of buildings and general services shall have sole jurisdiction, sole authority and sole responsibility for making space allocations and designating uses in any portions of any building or structure for which the department of buildings and general services leases or pays for operation and

maintenance expenses, or for which construction or fit-up was financed through an appropriation to the department of buildings and general services.

(2) On or before each January 15 and in accordance with this section, the commissioner shall present to the general assembly a report indicating which divisions have been moved over the past year and their former and present locations.

Sec. 22. [Repealed.]

Sec. 23. RESTROOMS IN STATE BUILDINGS

By September 15, 2012, all single-occupancy restrooms with an outer door that can be locked by the occupant that are located in any building owned by the state shall be available for use regardless of the gender of the user.

Sec. 24. 29 V.S.A. § 157 is added to read:

§ 157. FACILITIES CONDITION ANALYSIS

(a) The commissioner of buildings and general services shall:

(1) maintain the condition of buildings and infrastructure under the commissioner's jurisdiction to provide a safe and healthy environment through sustainable practices and judicious capital renewal;

(2) conduct a facilities condition analysis each year of 20 percent of the building area and infrastructure under the commissioner's jurisdiction so that within five years all property is assessed. At the end of the five years, the process shall begin again.

(3) The analysis conducted pursuant to this subsection shall include the thermal envelope of buildings and a report on the annual energy consumption and energy costs and recommendations for reducing energy consumption.

(b) The commissioner may use up to two percent of the funds appropriated to the department of buildings and general services for major maintenance and planning for the purpose described in subsection (a) of this section.

Sec. 25. EMPLOYEE SERVICE MEMORIAL

(a) The commissioner of buildings and general services, in consultation with the commissioner of human resources and an association representing Vermont state employees, shall develop a plan to honor the services of past, present, and future Vermont state employees with an appropriate memorial. On or before January 15, 2013, the commissioner of buildings and general services shall recommend a future location for an employee service memorial and provide estimated costs to the general assembly.

(b) The commissioner of buildings and general services may accept donations for the administration, materials, creation, and maintenance of the service memorial.

Sec. 26. PARKING IN THE CAPITOL COMPLEX

(a) To reduce parking pressures for state employees in Montpelier and to meet Vermont's energy plan goals of reducing energy use in the transportation sector, the commissioner of buildings and general services shall review existing plans and reports including the Governor's Comprehensive Energy Plan and, in consultation with the agency of transportation and the department of human resources, create a parking management program. Any capital improvements shall be presented to the general assembly for approval.

(b) The program shall include an assessment of legislative parking with proposals to terminate use of legislative parking by nonlegislative personnel and to assure availability of up to 240 parking spaces for legislators and staff assigned to a work station in the state house or at 1 Baldwin Street, including preferred parking for legislative leaders and those with special needs without specific assignments of parking spaces with minimal use of signage and in close proximity to the state house. The program shall include a report on the creation of preferred legislative parking areas for compact cars.

(c) The commissioner shall present the plan, including any associated capital requests or changes in operating costs, to the general assembly and the sergeant at arms on or before November 15, 2012.

Sec. 26a. CIVIL WAR MONUMENTS STUDY

The commissioner of buildings and general services, in collaboration with the Vermont Historical Society, shall study the feasibility of placing a Civil War monument at the Cedar Creek Battlefield in Middletown, Virginia in memory of the Vermont Brigade and of moving an existing Civil War monument in Winchester, Virginia to its original location in the Third Winchester Battlefield. The commissioner shall report its findings, including a request for any necessary appropriations, to the house committee on corrections and institutions and the senate committee on institutions.

Sec. 26b. RENAMING THE STATE ARCHIVES BUILDING

The Vermont state archives and record administration building in Middlesex shall be renamed the "D. Gregory Sanford, Jr. State Archives and Records Building."

* * * Commerce and Community Development * * *

Sec. 27. 29 V.S.A. § 155 is amended 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 or lease 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 not subject to encumbrances 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~~ rehabilitation or stabilization of state-owned historic properties that are authorized by the general assembly to be in the fund program, for payment of costs of historic resource evaluations and archeological investigations, for building assessments related to a potential sale or lease, for one-time fees for easement stewardship and monitoring, and for related one-time expenses.

(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~~ leased, stabilized, or rehabilitated during that period, and the department's plans for future stabilization or rehabilitation of state-owned historic properties.

* * *

Sec. 27a. 24 V.S.A. § 5607 is added to read:

§ 5607. REGIONAL ECONOMIC DEVELOPMENT GRANT PROGRAM

(a) Creation of program. There is created a regional economic development grant program to provide competitive grants to regional economic development corporations for capital costs associated with the major maintenance, renovation, or planning related to the development of facilities reasonably expected to create job opportunities in Vermont communities. The program is authorized to award matching grants of up to $25,000.00 per project. The required match shall be met through dollars raised and not

through in-kind services. State investments made under this program shall be consistent with the goals found in section 4302 of this title and local and regional plans adopted pursuant to this title.

(b) Creation of committee. There is established a regional economic development grant advisory committee to administer and coordinate the regional economic development grant program. The committee shall include the secretary of administration or designee; the commissioner of buildings and general services or designee; and two members of the Vermont general assembly, one appointed by the speaker of the house of representatives and one appointed by the senate committee on committees. The members of the committee shall select a chair.

Sec. 28. 24 V.S.A. § 5601 is amended to read:

§ 5601. BUILDING COMMUNITIES GRANTS

(a) The purpose of this chapter is to establish one-for-one matching grants to help communities, nonprofit organizations, or, as applicable under section 5603 of this chapter, barn owners preserve important historic buildings and enhance community facilities. Therefore, in order to make it easy for communities, nonprofit organizations, or barn owners to apply, the ~~board or department~~ entity which administers a grant program under this chapter shall work with other administrators of building communities grants to develop a standard application form which:

(1) describes the application process and includes clear instructions and examples to help applicants complete the form;

(2) includes an opportunity for a community, nonprofit organization, or barn owner to demonstrate its ability to generate one-for-one matching funds from local fundraising or other efforts;

(3) includes a summary of each of the other grants, their deadlines, and a statement that no community, nonprofit organization, or barn owner shall apply for more than one grant under this chapter for the same project in the same calendar year; and

(4) may include supplements specific to an individual grant.

(b) Each ~~board or department~~ entity which administers a grants program under this chapter shall establish a selection process which ensures equitable selection of grant recipients; and ensures accountability by grant recipients.

(c) Before it notifies an applicant of an award under this chapter, the ~~board or department~~ entity which administers the grant shall provide notice of the award and time and location of any award presentation to the chairs of the senate committee on institutions and the house committee on corrections and

institutions, and those members of the general assembly who represent the area in which a successful applicant resides.

(d) Notwithstanding 32 V.S.A. § 701a, if, after an entity awards grant funds under this chapter, the funds remain unexpended and not subject to a grant agreement, the entity may reallocate the unexpended funds within its grant program within three years of the original award date. Any unexpended funds remaining after this three-year period that are not subject to a grant agreement shall be reallocated in future acts relating to capital construction and state bonding.

* * * Agriculture * * *

Sec. 28a. 10 V.S.A. § 54 is amended to read:

§ 54. RENTAL OF BUILDING; DISPOSITION OF FUNDS

The secretary may rent the building or parts thereof for exhibition purposes to available exhibitors with reasonable preference being given to exhibitors from this state and, with the approval of the governor, may rent or lease any part or all of the building to such parties and upon such terms and conditions and for such purposes as they shall determine to be in the best interests of the state, and the income therefrom shall be paid to the state treasurer and held by him or her in a separate fund for the purposes of this ~~section and sections 51 and 53 of this title~~ chapter. The commissioner of finance and management shall issue his or her warrant for the payment from such fund of all sums expended or due for the purposes herein authorized.

Sec. 28b. 6 V.S.A. § 4824(a) is amended to read:

(a) State grant. State financial assistance awarded under this subchapter shall be in the form of a grant. When a state grant is intended to match federal financial assistance for the same on-farm improvement project, the state grant shall be awarded only when the federal financial assistance has also been approved or awarded. An applicant for a state grant shall pay at least ~~15~~ 10 percent of the total eligible project cost. The dollar amount of a state grant shall be equal to the total eligible project cost, less ~~15~~ 10 percent of the total as paid by the applicant, and less the amount of any federal assistance awarded, except that a state grant shall not exceed ~~80~~ 90 percent of the total eligible project cost.

Sec. 28c. 6 V.S.A. § 4826(a) is amended to read:

(a) The owner or operator of a farm required under section 4815 of this title to design, construct, or modify a waste storage facility may apply in writing to the secretary of agriculture, food and markets for cost assistance. Using state or federal funds or both, a state assistance grant shall be awarded, subject to

the availability of funds, to applicants. Such grants shall not exceed ~~85~~ 90 percent of the cost of an adequately sized and designed waste storage facility and the equipment eligible for Natural Resources Conservation Service cost share assistance. Application for a state assistance grant shall be made in the manner prescribed by the secretary. For purposes of this section, "waste storage facility" means an impoundment made for the purpose of storing agricultural waste by constructing an embankment, excavating a pit or dugout, fabricating an in-ground or above-ground structure, or any combination thereof. This section ~~does not~~ shall apply to concrete slabs used for agricultural waste management.

Sec. 28d. 6 V.S.A. § 4828 is amended to read:

§ 4828. CAPITAL EQUIPMENT ASSISTANCE PROGRAM

(a) It is the purpose of this section to provide assistance to contract applicators, nonprofit organizations, and farms to purchase or use innovative ~~manure injection~~ equipment that will aid in the reduction of surface runoff of agricultural wastes to state waters, improve water quality of state waters, reduce odors from manure application, decrease greenhouse gas emissions, and reduce costs to farmers.

(b) The capital equipment assistance program is created in the agency of agriculture, food and markets to provide farms, nonprofit organizations, and custom applicators in Vermont with state financial assistance for the purchase of new or innovative ~~manure injection~~ equipment to improve manure application or nutrient management plan implementation.

(c) Assistance under this section shall in each fiscal year be allocated according to the following priorities and as further defined by rule by the secretary:

(1) First priority shall be given to capital equipment to be used on farm sites that are serviced by custom applicators and nonprofit organizations and that are located in descending order within the boundaries of:

* * *

(d) ~~On or before January 15, 2009, and annually thereafter, the~~ The secretary of agriculture, food and markets shall report annually to the house and senate committees on agriculture and the house committee on fish, wildlife and water resources regarding the performance of and results achieved by providing capital assistance to custom applicators, nonprofit organizations, and farms for new or innovative ~~manure injection~~ equipment.

* * * Natural Resources * * *

Sec. 28e. 24 V.S.A. § 4753 is amended to read:

§ 4753. REVOLVING LOAN FUNDS; AUTHORITY TO SPEND; REPORT

(a) There is hereby established a series of special funds to be known as:

* * *

(9) The Vermont drinking water revolving loan fund which shall be used to provide loans to a municipality for the design, land acquisition, if necessary, and construction of a potable water supply when a household in the municipality has been disconnected involuntarily from a public water supply system for reasons other than nonpayment of fees.

* * *

Sec. 28f. 24 V.S.A. § 4763a is added to read:

§ 4763a. LOANS FOR POTABLE WATER SUPPLIES

When a household has been involuntarily disconnected from a public water supply system and that disconnection did not occur as a result of nonpayment of fees, a loan may be made to a municipality from the Vermont drinking water revolving loan fund, established in section 4753 of this title, for the design, land acquisition if necessary, and construction of a potable water supply, as that term is defined in 10 V.S.A. chapter 64. In such cases, the following conditions shall apply:

(1) Guaranteed repayment of the loan will be based on a municipal bond, but actual repayment may be made with funds from the owner of the potable water supply, as set forth in an agreement between the owner and the municipality.

(2) All conditions and limitations of section 4755 of this title shall apply to loans made under this section.

(3) No loan shall be made to a municipality under this section nor shall any part of any revolving loan made under this section be expended until both of the following take place:

(A) The secretary certifies to the bond bank that the wastewater system and potable water supply permit necessary for the design and construction of the proposed potable water supply to be financed by the loan have been issued to the owner of the supply.

(B) The applicant municipality certifies to the bond bank that the owner of the proposed potable water supply has secured all state and federal

permits, licenses, and approvals necessary to construct and operate the improvements to be financed by the loan.

* * * Capital Planning and Finance * * *

Sec. 29. 29 V.S.A. § 168 is amended to read:

§ 168. STATE RESOURCE MANAGEMENT; REVOLVING FUND

* * *

(b) Revolving fund.

* * *

(2) The fund shall consist of:

* * *

~~(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).~~

* * *

Sec. 30. 24 V.S.A. § 4345 is amended to read:

§ 4345. OPTIONAL POWERS AND DUTIES OF REGIONAL PLANNING COMMISSIONS

Any regional planning commission created under this chapter may:

* * *

(6) Undertake studies and make recommendations on land development, urban renewal, transportation, economic, industrial, commercial, and social development, urban beautification and design improvements, historic and scenic preservation, the conservation of energy and the development of renewable energy resources, state capital investment plans, and wetland protection.

* * *

(11) Undertake comprehensive planning, including related preliminary planning, state capital investment plans, and engineering studies.

* * *

Sec. 31. 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 third Tuesday of every annual session, a consolidated capital budget request ~~for the following fiscal year, which encompasses~~. In the first year of the biennium the budget shall relate to the next two fiscal years. In the second year of the biennium the budget shall relate primarily to the next fiscal year but may request amendments to the current or to previous fiscal years or refer to requests for future fiscal years. The request shall encompass all undertakings that may require state general obligation debt financing, including transportation projects as follows:

(1) Activities proposed for funding by general obligation debt financing shall be restricted to tangible capital investments, but may include the planning~~,~~ and design ~~and engineering~~ directly associated with a tangible capital investment.

(2) Proposed activities shall be further restricted to those capital expenses allowed under federal laws governing the use of state bond proceeds.

(3) The capital budget request shall be segmented by the expected functional life of proposed activities, and thus by a corresponding prudent use of either long-term bond issues with a customary 20-year payback period, or shorter-term bond issues with a lesser payback period.

(4) The capital budget shall not include requests for debt financing of state agency operating expenses not directly related to a capital investment as required hereinabove. The latter operating expenses shall be accounted for in the governor's annual general operating budget request.

(b) Affordable bond authorization proposal. ~~The~~ In the first year of the biennium, the annual capital budget request of the governor shall include a statement of the total amount of new state tax supported general obligation debt the governor considers advisable for the general assembly to authorize for the ~~following~~ next two fiscal ~~year~~ years, after having considered the maximum amount recommended for the following fiscal year by the capital debt affordability advisory committee as provided by subchapter 8 of chapter 13 of this title.

* * *

Sec. 32. 32 V.S.A. § 310 is amended to read:

§ 310. FORM OF ANNUAL CAPITAL BUDGET AND ~~LONG-RANGE~~ SIX-YEAR CAPITAL PROGRAM PLAN

(a) Each ~~annual~~ biennial capital budget request submitted to the general assembly shall be accompanied by, and placed in the context of, a ~~long-range~~ six-year state capital program plan to be prepared, and revised annually, by the

governor and approved by the general assembly. The six-year plan shall include a list of all projects which will be recommended for funding in the current and ensuing five fiscal years. The list shall be prioritized based on need.

(b) The ~~annual~~ capital budget request for the following fiscal year shall be presented as the next ~~one-year~~ increment of the ~~long-range~~ six-year plan. Elements of the plan shall include:

(1) Assessment and projection of need.

(A) Capital needs and projections shall be based upon current and projected statistics on capital inventories and upon state demographic and economic conditions.

(B) Capital ~~inventories~~ funding shall ~~encompass all state-financed capital programs, including~~ be categorized as follows:

(i) state buildings, facilities, and land acquisitions;

(ii) higher education;

(iii) aid to municipalities for education, environmental conservation, including water, sewer, and solid waste projects, and other purposes; and

(iv) transportation facilities.

(C) The capital needs and projections shall be for ~~each of the next~~ the current and the next five fiscal years, with longer-term projections presented for programs with reasonably predictable longer-term needs.

(D) Capital needs and projections shall be presented independently of financing requirements or opportunities.

(2) Comprehensive cost and financing assessment.

(A) Amounts appropriated and expended for the current fiscal year and for the preceding fiscal year shall be indicated for capital programs and for individual projects. The assessment shall indicate further the source of funds for any project which required additional funding and a description of any authorized projects which were delayed.

(B) Amounts proposed to be appropriated for the following fiscal year and each of the ~~four~~ five years thereafter shall be indicated for capital programs and for individual projects and shall be revised annually to reflect revised cost estimates and changes made in allocations due to project delays.

(C) The capital costs of programs and of individual projects, including funds for the development and evaluation of each project, shall be presented in full, for the entire period of their development.

(D) The operating costs, both actual and prospective, of capital programs and of individual projects shall be presented in full, for the entire period of their development and expected useful life.

(E) The financial burden and funding opportunities of programs and of individual projects shall be presented in full, including federal, state, and local government shares, and any private participation.

(F) Alternative methods of financing capital programs and projects should be described and assessed, including debt financing and use of current revenues.

Sec. 33. 32 V.S.A. § 701a is amended to read:

§ 701a. CAPITAL CONSTRUCTION BILL

(a) When the capital budget has been submitted by the governor to the general assembly, it shall immediately be referred to the committee on corrections and institutions which shall proceed to consider the budget request in the context of the ~~long-range~~ six-year capital program plan also submitted by the governor pursuant to sections 309 and 310 of this title. The committee shall also propose to the general assembly a prudent amount of total general obligation bonding for the following fiscal year, for support of the capital budget, in consideration of the recommendation of the capital debt affordability advisory committee pursuant to subchapter 8 of chapter 13 of this title.

(b) As soon as possible the committee shall prepare a bill to be known as the "capital construction bill," which shall be introduced for action by the general assembly.

(c) The ~~sums appropriated and~~ spending authority authorized by a capital construction act shall ~~be continuing and shall not revert at the end of the fiscal year~~ carry forward until expended, unless otherwise provided. Any unencumbered funds remaining after a two-year period shall be reported to the general assembly and may be reallocated in future capital construction acts.

(d) On or before October 15, each entity to which spending authority is authorized by a capital construction act shall submit to the department of buildings and general services a report on the status of each project authorized. The report shall follow the form provided by the department of buildings and general services and shall include details regarding how much of the appropriation has been spent, how much of the appropriation is unencumbered,

actual progress in meeting the goals of the project, and any impediments to completing the project on time and on budget. The department may request additional or clarifying information regarding each project. On or before January 15, the department shall present the information collected to the house committee on corrections and institutions and the senate committee on institutions.

Sec. 34. 32 V.S.A. § 954 is amended to read:

§ 954. PROCEEDS

(a) The proceeds arising from the sale of such bonds, ~~except~~ inclusive of any 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 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 fulfillment thereof have been made shall be fulfilled from the applicable debt service fund.

* * *

Sec. 35. 32 V.S.A. § 962 is added to read:

§ 962. PRIVATE USE COMPLIANCE, NOTICE AND APPROVAL

Any entity receiving an appropriation financed with proceeds of tax-exempt bonds of the state shall notify and receive approval from the state treasurer and the secretary of administration at least 90 days prior to finalizing an agreement with a nonpublic or for-profit entity to rent, lease, sell, or otherwise dispose of property financed with those proceeds and also shall pay any cost related to compliance with the Internal Revenue Code of 1986, as amended, resulting from disposal of the property. This notification requirement shall not apply if

the proceeds were provided, or the property was disposed of, as a grant, or otherwise with no payment or repayment made or required to be made to the state or to the entity.

Sec. 36. 32 V.S.A. § 993 is added to read:

§ 993. PUBLIC APPROVAL, OUT-OF-STATE ISSUERS

Notwithstanding any provision to the contrary in Title 9, the governor, in consultation with the state treasurer, shall have exclusive authority to grant any public approval required under Section 147(f)(2) of the Internal Revenue Code of 1986, as amended, pertaining to the proposed issuance of qualified private activity bonds when the purpose of the bonds is to finance or refinance purposes to be located within the state and the bonds are proposed by any issuers of qualified private activity bonds organized under the laws of a jurisdiction other than the state of Vermont. Approval shall not be withheld unless the governor, in consultation with the state treasurer, determines in good faith that the issuance is not financially sound.

* * * Judiciary and Corrections * * *

Sec. 37. JOINT COMMITTEE ON CORRECTIONS OVERSIGHT

During the 2012 interim, the joint committee on corrections oversight shall:

(1) explore how criminal justice services are being delivered currently in the Northwest quadrant of the state. The committee's work shall include a review of the current facilities in the Northwest quadrant of the state, a determination of whether those facilities have sufficient space for their current populations and provide sufficient supports related to housing, parenting, mental health, substance abuse, trauma, education, and job training, and a recommendation for further action regarding current and future facilities in the Northwest quadrant of the state. In addition to facilities, the committee shall also consider how criminal justice services generally are being delivered in the Northwest quadrant and whether there are any opportunities for improvement or collaboration to reduce the total number of individuals incarcerated. On or before January 15, 2013, the committee shall present its analysis together with any related proposals for legislation to the house and senate committees on judiciary and the house committee on corrections and institutions.

(2) monitor the progress of construction and improvements to existing programming at the Chittenden Regional Correctional Facility and determine whether the changes that have been made or any proposed changes to the facility or to programming are sufficient to ensure inmate health, safety, and human dignity.

Sec. 37a. SUSTAINABLE PRISONS

The commissioner of corrections, in collaboration with the department of buildings and general services, shall train corrections staff and inmates in sustainable practices for the reduction of energy usage, water consumption, and waste disposal at correctional facilities and to provide educational and green job training to inmates. The commissioners of buildings and general services and of corrections shall report to the general assembly on the progress of this training on or before January 15, 2013.

Sec. 37b. OUT-OF-STATE CORRECTIONAL FACILITIES

On or before January 15, 2013, the commissioner of corrections shall present to the general assembly a plan for eliminating the utilization of out-of-state correctional facilities. The plan shall include a time line for action and any requests for appropriations or statutory language.

Sec. 38. Sec. 22(a) of No. 179 of the Acts of the 2007 Adj. Sess. (2008), as amended by Sec. 14 of No. 157 of the Acts of the 2009 Adj. Sess. (2010), is amended further to read:

(a) Secs. 11 and 12 of this act shall take effect on July 1, ~~2012~~ 2013.

* * * Information Technology * * *

Sec. 39. INFORMATION TECHNOLOGY INFRASTRUCTURE NEEDS

In order for state government operations to be effective and efficient, timely and reasonable replacement and upgrading of information technology systems are appropriate and necessary. Over the last decade, capital funds have been used increasingly to pay for these important projects. However, there is not enough capital funding available to meet the existing uses of this fund. Therefore, the secretary of administration, working in collaboration with the state treasurer, shall review the options for funding these projects described in the administration's report titled "Information Technology Infrastructure Needs: A Study of Financing Options" published on January 13, 2011, including a base line appropriation or revolving loan fund. The secretary and treasurer shall present a recommendation of any required statutory changes to the house committee on corrections and institutions and the senate committee on institutions on or before January 15, 2013.

* * * Capital Bill Definitions * * *

Sec. 40. DEFINITIONS

For purposes of this act:

(1) "Allocation" means the portion of an appropriation that is designated to fund a particular project.

(2) "Appropriation" means the spending authority granted to an entity to fund a group of projects.

(3) "Encumbrance" means a portion of an allocation reserved for the subsequent payment of existing purchase orders or contracts made in furtherance of completing a project, the total of which may not exceed the amount of the original allocation. The commissioner of finance and management shall make final decisions on the appropriateness of encumbrances.

Sec. 41. ENGINEERING COSTS

The joint fiscal office shall study during the 2012 interim how best to allocate engineering costs between the capital and general funds.

* * * Effective Dates and Statutory Revision * * *

Sec. 42. Sec. 57(a) of No. 40 of the Acts of 2011 is amended to read:

(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(d) and (e) (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~~.

Sec. 43. EFFECTIVE DATE AND STATUTORY REVISION

(a) This act shall take effect on passage.

(b) Pursuant to the statutory revision authority provided in 2 V.S.A. chapter 13, after enactment of this act and of H.630 of this session (mental health system of care), the office of legislative council shall revise Sec. 3 of this act to refer to H.630 as enacted.

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

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

Senator Hartwell moved to amend the proposal of amendment of the Committee on Institutions, as follows:

First: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, by adding subdivision (b)(5) to read as follows:

(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

Second: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (c)(4), BGS engineering costs, before the colon, by inserting the following:

". ~~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~~"

Third: In Sec. 3, amending Sec. 2 of No. 40 of 2011, in subdivision (f)(5), potential funding, by striking out the phrase "subdivisions (c)(9) and (f)" where it appears and inserting in lieu thereof the phrase "subdivision (c)(9) and subsection (f)"

Fourth: In Sec. 3, amending Sec. 2 of No. 40 of 2011, in subdivision (f)(5), potential funding, by striking out "H.630" where it appears and inserting in lieu thereof "No. 79 of the Acts"

Fifth: In Sec. 7a, amending Sec. 10 of No. 40 of 2011, by striking "Sec. 10" in the lead-in language and inserting in lieu thereof "Sec. 11" and by striking out the subsection (c) designation and inserting in lieu thereof the designation (d)

Sixth: In Sec. 8, amending Sec. 12 of No. 40 of the Acts of 2011, in subdivision (b)(1)(E), ANR water pollution control administrative costs, before the colon, by inserting the following:

". ~~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~~"

Seventh: In Sec. 8, amending Sec. 12 of No. 40 of the Acts of 2011, in subdivision (b)(2)(B), ANR engineering and project management, before the colon, by inserting the following:

". ~~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~~"

Eighth: In Sec. 12, by striking out "[Repealed.]" and inserting in lieu thereof "[Deleted.]"

Ninth: In Sec. 15a, Duties of the Commissioner, by striking out the lead in language and inserting in lieu thereof "29 V.S.A. § 129 is amended to read:"

Tenth: In Sec. 22, by striking out "[Repealed.]" and inserting in lieu thereof "[Deleted.]"

Eleventh: In Sec. 28d, Capital Equipment Assistance Program, by underlining ", nonprofit organizations" where it appears in subsections (a) and (b)

Twelfth: In Sec. 35, 32 V.S.A. § 962, private use compliance; notice and approval, by striking out the last sentence and inserting in lieu thereof a new last sentence to read:

"This notification requirement shall not apply if the proceeds were included in the five percent allowance for private use prior to the issuance of bonds, or if the proceeds were provided, or the property was disposed of, as a grant or otherwise with no payment or repayment made or required to be made to the state or to the entity."

Thirteenth: In Sec. 43, Effective Date, by striking "AND STATUTORY REVISION" from the heading and by striking out the designation "(a)" and striking subsection (b) in its entirety

Which was agreed to.

Thereupon, Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Institutions, as amended, with the following amendments thereto:

First: By striking out Sec. 37b (out-of-state correctional facilities) in its entirety.

Second: By adding a new section to be numbered Sec. 39a to read as follows:

* * * Education * * *

Sec. 39a. BRATTLEBORO AREA HIGHER EDUCATION COLLABORATIVE

The chancellor of the Vermont State Colleges, in conjunction with the prekindergarten–16 council created in 16 V.S.A. § 2905 shall review and, if feasible, facilitate the development of a higher education collaborative or public–private partnerships in the Brattleboro area to develop a student curriculum and initiative to maximize resources for students and benefits to the region, including the development of a high-tech workforce, and to include the Community College of Vermont, Landmark College, Marlboro College, the

Union Institute, the School of International Training, Vermont State Colleges, Vermont Technical College, and other interested institutions. In conducting its review, the council shall consider the five-college initiative in Northampton, Massachusetts.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of proposal of amendment of the Committee on Institutions, as amended, was amended as recommended by the Committee on Appropriations.

Thereupon, the proposal of amendment recommended by the Committee on Institutions, as amended, was agreed to and third reading of the bill was ordered.

Bill Amended; Third Reading Ordered

S. 99.

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

An act relating to agricultural economic development.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS AND PURPOSE

The general assembly finds:

(1) The damage resulting throughout Vermont from both the 2011 spring flooding and from Tropical Storm Irene had a devastating impact in many areas on mobile homes and mobile home parks.

(2) Given that mobile homes represent one of few available affordable housing options in the state, these storms caused significant hardship for many lower and middle income Vermonters whose homes were damaged or destroyed.

(3) Although the local, state, and federal housing and disaster relief officials have worked cooperatively throughout the recovery, questions on authority to issue condemnation letters to homeowners who could then apply for FEMA assistance may have cost some homeowners the opportunity for significant federal reimbursement for their destroyed homes.

(4) Given the economic costs endured by mobile home owners, it is appropriate at this time to exempt the purchase of mobile homes from sales and

use tax, local option sales tax, and property transfer tax when such homes are purchased to replace homes destroyed by recent flooding and natural disasters.

(5) During the course of exploring the issues surrounding the impacts of these disasters, it is apparent that mobile home owners and mobile home park owners face unique economic pressures, and more assistance should be focused to facilitate the availability and ownership of modern, safe, mobile homes and the availability of suitable lots, and to facilitate the sale of parks to residents or nonprofit entities in order to preserve affordability and availability of housing.

(6) It is the purpose of this act to focus state, municipal, and private resources on assisting mobile home owners recovering from the storms, and on ensuring that in the long term, Vermonters have an adequate supply of safe, affordable housing.

Sec. 2. 10 V.S.A. chapter 153 is amended to read:

CHAPTER 153. MOBILE HOME PARKS

§ 6201. DEFINITIONS

As used in this chapter, unless the context requires otherwise:

(1) "Mobile home" means:

(A) a structure or type of manufactured home, including the plumbing, heating, air-conditioning, and electrical systems contained in the structure, that is:

(i) built on a permanent chassis ~~and is~~;

(ii) designed to be used as a dwelling with or without a permanent foundation~~, includes plumbing, heating, cooling, and electrical systems, and is:~~ when connected to the required utilities;

~~(A)~~(iii) transportable in one or more sections; and

~~(B)~~(iv)(I) at least eight feet wide ~~or~~, 40 feet long, or when erected has at least 320 square feet; or

(II) if the structure was constructed prior to June 15, 1976, at least eight feet wide or 32 feet long; or

~~(C)~~(B) any structure that meets all the requirements of this subdivision (1) except ~~for~~ the size requirements, and for which the manufacturer voluntarily files a certification required by the U.S. Department of Housing and Urban Development and complies with the construction and safety standards established under Title 42 of the U.S. Code.

* * *

(4) ~~"Commission" means the advisory commission on manufactured homes, established under section 6202 of this title.~~ [Repealed.]

* * *

(8) "Department" means the ~~department of housing and community affairs~~ department of economic, housing and community development.

(9) "Good faith" means honesty in fact and the observance of reasonable standards and fair dealing, such that each party shall respond promptly and fairly to offers from the other party.

(10) ~~[Expired.]~~ "Lot rent" means a charge assessed on a mobile home park resident for the occupancy of a mobile home lot, but does not include charges permitted under section 6238 of this title.

(11) "Commissioner" means the commissioner of ~~housing and community affairs~~ economic, housing and community development.

* * *

§ 6231. RULES

(a) [Deleted.]

(b) The department may adopt rules to carry out the provisions ~~of sections 6236-6243~~ of this ~~title~~ chapter.

(c) A mobile home park that has been closed pursuant to section 6237a of this title and reduced to no more than two occupied leased lots, shall be required, if the number of occupied leased lots subsequently is increased to more than two, to obtain all state land use and environmental permits required for a mobile home park that has been established or expanded after May 31, 1970.

§ 6236. LEASE TERMS; MOBILE HOME PARKS

* * *

(e) All mobile home lot leases shall contain the following:

* * *

(3) Notice that the park owner shall not discriminate for reasons of race, religious creed, color, sex, sexual orientation, gender identity, marital status, ~~handicap~~ disability, ~~or~~ national origin, or because a person is a recipient of public assistance.

(4) Notice that the park owner shall not discriminate based on age or the presence of one or more minor children in the household, except as permitted under 9 V.S.A. § 4503(b) and (c). If age restrictions exist in all or part of a

park, the specific restrictions and geographic sections in which restrictions apply shall be documented in the lease.

* * *

§ 6237. EVICTIONS

(a) A leaseholder may be evicted only for nonpayment of rent or for a substantial violation of the lease terms of the mobile home park, or if there is a change in use of the park land or parts thereof or a termination of the mobile home park, and only in accordance with the following procedure:

* * *

(4) A substantial violation of the lease terms, other than an uncured nonpayment of rent, will be insufficient to support a judgment of eviction unless the proceeding is commenced within 60 days of the last alleged violation. A substantial violation of the lease terms based upon criminal activity will be insufficient to support a judgment of eviction unless the proceeding is commenced no later than 60 days after arraignment.

* * *

§ 6237a. MOBILE HOME PARK CLOSURES

* * *

(b) Prior to issuing a closure notice pursuant to subsection (a) of this section, a park owner shall first ~~notify all mobile home owners of the park owner's~~ issue a notice of intent to sell in accordance with section 6242 of this title that discloses the potential closure of the park. However, if the park owner sends a notice of closure to the residents and leaseholders without first providing the mobile home owners with a notice of ~~sale~~ intent to sell under section 6242 that discloses the potential closure of the park, then the park owner must retain ownership of the land for five years after the date the closure notice was provided. If required, the park owner shall record the notice of the five-year restriction in the land records of the municipality in which the park is located. The park owner may apply to the commissioner for relief from the notice and holding requirements of this subsection if the commissioner determines that strict compliance is likely to cause undue hardship to the park owner or the leaseholders, or both. This relief shall not be unreasonably withheld.

* * *

(d) A park owner who gives notice of intent to sell pursuant to section 6242 of this title shall not give notice of closure until after:

(1) At least 45 days after giving notice of intent to sell.

(2) If applicable, the commissioner receives notice from the mobile home owners and the park owner that negotiations have ended following the ~~90-day~~ 120-day negotiation period provided in subdivision 6242(c)(1) of this title.

* * *

§ 6242. MOBILE HOME OWNERS' RIGHT TO NOTIFICATION PRIOR TO PARK SALE

(a) Content of notice. A park owner shall give to each mobile home owner and to the commissioner of the department of economic, housing and community ~~affairs~~ development notice by certified mail of his or her intention to sell the mobile home park. Nothing herein shall be construed to restrict the price at which the park owner offers the park for sale. The notice shall state all the following:

(1) That the park owner intends to sell the park.

(2) The price, terms, and conditions under which the park owner offers the park for sale.

(3) A list of the affected mobile home owners and the number of leaseholds held by each.

(4) The status of compliance with applicable statutes, regulations and permits, to the park owner's best knowledge, and the reasons for any noncompliance.

(5) That for 45 days following the notice the park owner shall not make a final unconditional acceptance of an offer to purchase the park and that if within the 45 days the park owner receives notice pursuant to subsection (c) of this section that a majority of the mobile home owners intend to consider purchase of the park, the park owner shall not make a final unconditional acceptance of an offer to purchase the park for an additional ~~90~~ 120 days, starting from the 46th day following notice, except one from a group representing a majority of the mobile home owners or from a nonprofit corporation approved by a majority of the mobile home owners.

(b) Resident intent to negotiate; timetable. The mobile home owners shall have 45 days following notice under subsection (a) of this section in which to determine whether they intend to consider purchase of the park through a group representing a majority of the mobile home owners or a nonprofit corporation approved by a majority of the mobile home owners. A majority of the mobile home owners shall be determined by one vote per leasehold and no mobile home owner shall have more than three votes or 30 percent of the

aggregate park vote, whichever is less. During this 45-day period, the park owner shall not accept a final unconditional offer to purchase the park.

(c) Response to notice; required action. If the park owner receives no notice from the mobile home owners during the 45-day period or if the mobile home owners notify the park owner that they do not intend to consider purchase of the park, the park owner has no further restrictions regarding sale of the park pursuant to this section. If during the 45-day period, the park owner receives notice in writing that a majority of the mobile home owners intend to consider purchase of the park then the park owner shall do all the following:

(1) Not accept a final unconditional offer to purchase from a party other than leaseholders for ~~90~~ 120 days following the 45-day period, a total of ~~135~~ 165 days following the notice from the leaseholders.

(2) Negotiate in good faith with the group representing a majority of the mobile home owners or a nonprofit corporation approved by a majority of the mobile home owners concerning purchase of the park.

(3) Consider any offer to purchase from a group representing a majority of the mobile home owners or from a nonprofit corporation approved by a majority of the mobile home owners.

* * *

(f) Relief from additional notice requirement. ~~No additional notice pursuant to subsection (a) of this section shall be required if the sale is in compliance with either of the following~~ A notice of intent to sell issued pursuant to subsection (a) of this section shall be valid for a period of one year from the expiration of the 45-day period following the date of the notice, and a new notice shall not be required under subsection (a) if:

(1) The park owner completes a sale of the park within one year from the expiration of the 45-day period following the date of the notice and the sale price is either of the following:

(A) No ~~less than~~ more than five percent below the price for which the park was offered for sale pursuant to subsection (a) of this section.

(B) ~~Substantially higher than~~ More than five percent above the final written offer from a group representing a majority of the mobile home owners or a nonprofit corporation approved by a majority of the mobile home owners.

(2) The park owner has not completed a sale of the park but has entered into a binding purchase and sale agreement with a group representing a majority of the mobile home owners or a nonprofit corporation approved by a majority of the mobile home owners ~~with a closing date later than one year~~

~~from~~ within one year from the expiration of the 45-day period following the date of the notice.

* * *

§ 6245. ILLEGAL EVICTIONS

(a) No park owner may ~~wilfuly~~ willfully cause, directly or indirectly, the interruption or termination of any utility service to a mobile home except for temporary interruptions for necessary repairs.

(b) No park owner may directly or indirectly deny a leaseholder access to and possession of ~~a mobile home~~ the leaseholder's leased premises, except through proper judicial process.

(c) No park owner may directly or indirectly deny a leaseholder access to and possession of the leaseholder's ~~rented or leased~~ mobile home and personal property, except through proper judicial process.

* * *

§ 6251. MOBILE HOME LOT RENT INCREASE; NOTICE; MEETING

(a) A mobile home park owner shall provide written notification on a form provided by the department to the commissioner and all the affected mobile home park leaseholders of any lot rent increase no later than 60 days before the effective date of the proposed increase. The notice shall include all the following:

(1) The amount of the proposed lot rent increase, including any amount of the increase that is attributable to a surcharge for any capital improvements of the mobile home park pursuant to subsection (b) of this section, the estimated cost~~, which includes interest,~~ of the capital improvements, and the proposed duration of the surcharge prorated in 12-month increments sufficient to recover the estimated cost of the capital improvements.

(2) The effective date of the increase.

(3) A copy of the mobile home park leaseholder's rights pursuant to this section and sections 6252 and 6253 of this title.

(4) ~~[Deleted.]~~ The percentage of increase from the current base lot rent.

* * *

§ 6254. REGISTRATION OF MOBILE HOME PARKS; REPORT

(a) No later than September 1 each year, each park owner shall register with the department on a form provided by the department. The form shall include the following information:

* * *

(8) The lot rent to be charged for each lot as ~~of the preceding~~ scheduled for October 1 of that year, and the effective date of that lot rent charge.

* * *

* * * Affordable Housing Tax Credit * * *

Sec. 3. 32 V.S.A. § 5930u(g) is amended to read:

(g) In any fiscal year, the allocating agency may award up to $400,000.00 in total first-year credit allocations to all applicants for rental housing projects; and may award up to ~~$100,000.00~~ $300,000.00 per year for owner-occupied unit applicants. In any fiscal year, total first-year allocations plus succeeding-year deemed allocations shall not exceed ~~$2,500.000.00~~ $3,500.000.00.

* * * DEHCD Study and Planning * * *

Sec. 4. DEHCD STUDIES; LONG-RANGE PLANNING FOR THE VIABILITY AND DISASTER RESILIENCY OF MOBILE HOME OWNERSHIP AND PARKS

(a) The department of economic, housing and community development shall, in collaboration with other organizations and interested stakeholders, develop a plan for the future viability and disaster resiliency of mobile home ownership and parks.

(b) The plan shall:

(1) With input from the agency of natural resources, identify parks vulnerable to natural hazards such as flooding and develop a strategy for improving their safety and resiliency through education, emergency planning, mitigation measures, reconfiguration, and relocation.

(2) Identify barriers to mobile home ownership including the availability of financing and mortgage insurance and recommend methods for the state to assist, including coordinating with USDA Rural Development to extend its pilot program under the section 502 direct loan and guarantee loan programs and working with public, private, and nonprofit entities to develop solutions.

(3) Address the potential loss of mobile home parks and affordability due to sale, closure, or natural disaster by recommending actions to encourage resident or nonprofit purchase and ownership and the creation of new mobile home parks or lots through technical assistance and planning guidance to municipalities and developers.

(4) Assess other housing designs as alternatives to mobile homes that are affordable when all related costs, such as siting, water and sewer, and energy use are taken into consideration.

Sec. 5. 20 V.S.A. § 2731(k) is added to read:

(k) Building codes. Pursuant to his or her authority under this section, the commissioner of public safety shall:

(1) Develop and maintain on the department website a graphic chart or grid depicting categories of construction, including new construction, major rehabilitation, change of use, and additions, and the respective building codes that apply to each category.

(2) Whenever practicable and appropriate, offer the opportunity to construction and design professionals to participate in division of fire safety staff training.

(3) Update building codes on three-year cycles, consistent with codes developed by code-writing authorities, to keep pace with technology, products, and design.

(4) Create a publicly accessible database of decisions that are decided on appeal to the commissioner.

(5) Apply the International Building Code (IBC) to new construction.

Sec. 6. 9 V.S.A. § 2461b(h) is added to read:

(h)(1) The owner of a propane storage tank shall anchor the tank or affix the tank to a structure or other fixture to ensure the safety of persons and property in the event of a flood or other natural disaster.

(2) In the event a propane storage tank becomes unsecured due to flood or other natural disaster, the owner of the tank shall be responsible for the recovery and, if applicable, appropriate disposal of the tank and its contents.

Sec. 7. 9 V.S.A. § 4503 is amended to read:

§ 4503. UNFAIR HOUSING PRACTICES

(a) It shall be unlawful for any person:

* * *

(12) To discriminate in land use decisions or in the permitting of housing because of race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, disability, the presence of one or more minor children, income, or except as otherwise provided by law.

* * *

Sec. 8. 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:

(1) Equal treatment of housing and required provisions for affordable housing.

(A) No bylaw nor its application by an appropriate municipal panel under this chapter shall have the effect of excluding housing that meets the needs of the population as determined in the housing element of its municipal plan as required under subdivision 4382(a)(10) of this title or the effect of discriminating in the permitting of housing as specified in 9 V.S.A. § 4503.

* * *

* * * Allocation of Rental Housing Subsidies by State Entities (VSHA) * * *

Sec. 9. ADMINISTRATION OF RENTAL HOUSING SUBSIDIES; FINDINGS AND PURPOSE

The general assembly finds:

(1) Administration of rental housing subsidies in Vermont, including federal housing funds, is a public and essential governmental function to be focused primarily on assuring safe and decent housing for low and moderate income persons without undue regard for the generation of profit or surplus.

(2) In recent years, private entities, including nominally private entities controlled by public jurisdictions from other states, have sought contracts to administer allocations of federal rental subsidies throughout the United States.

(3) To the maximum extent permitted by applicable law, it is the purpose of Sec. 10 of this act to limit the administrative control of federal rental subsidies to state of Vermont public bodies.

Sec. 10. 24 V.S.A. § 4005(e) is added to read:

(e) Notwithstanding any provision of law, no person, domestic or foreign, shall be authorized to administer allocations of money under 42 U.S.C.A. § 1437a or 1437f or other federal statute authorizing rental subsidies for the benefit of persons of low or moderate income, except:

(1) a subcontractor of the state authority; or

(2) a state public body authorized by law to administer such allocations.

* * * Expedited Removal of Mobile Home by Municipality * * *

Sec. 11. 9 V.S.A. § 2608 is added to read:

§ 2608. MUNICIPAL ACTION FOR SALE OF ABANDONED MOBILE HOME

(a) In the alternative to the process for foreclosure of a tax lien on a mobile home pursuant to 32 V.S.A. chapter 133, a municipality shall have the authority to commence an action to sell at public auction an abandoned mobile home located within the municipality pursuant to this section.

(b) A municipality shall file a verified complaint in the civil division of the superior court for the county in which the municipality is located, which shall be entitled "In re: Abandoned Mobile Home of [name of owner]," and shall include the following information:

(1) The physical location and address of the mobile home.

(2) The name and last known mailing address of the owner of the mobile home.

(3) A description of the mobile home, including make, model, and serial number, if available.

(4) The names and addresses of creditors, holders of housing subsidy covenants, or others having an interest in the mobile home based on liens or notices of record in the municipality offices or the office of the secretary of state.

(5) The facts supporting the claim that the mobile home has been abandoned.

(6) The name of a person disinterested in the mobile home or of a municipality employee who will be responsible for the sale of the mobile home at a public auction.

(7) A statement of the amount of taxes, fees, and other charges due or which will become due to the municipality.

(8) If the mobile home is located on leased land, the name and address of the landowner.

(c) A municipality may request an order approving transfer of a mobile home which is unfit for human habitation to the municipality without a public sale by filing a verified complaint containing the information required in subsection (a) of this section and the facts supporting the claim that the mobile home is unfit for human habitation.

(d) When a verified complaint is filed under this section, the clerk of the civil division of the superior court shall set a hearing to be held at least 15 days but no later than 30 days after the filing of the complaint.

(e) Within five days after filing the verified complaint, the municipality shall post a copy of the verified complaint and order for hearing on the mobile home and send a copy of the verified complaint and order for hearing by certified mail, return receipt requested, to the mobile home owner's last known mailing address, to the landowner if the mobile home is located on leased land, and to all lien-holders of record.

(f) The municipality shall publish the verified complaint and order for hearing in a newspaper of general circulation in the municipality where the mobile home is located. The notice shall be published no later than five calendar days before the date of hearing.

(g) If prior to or at the hearing any lien-holder certifies to the court that the lien-holder has paid to the municipality all taxes, charges, and fees due the municipality and will commence or has commenced proceedings to enforce the lien and will continue to pay municipal taxes, charges, and fees during the proceedings under this section, the court shall, upon confirmation of the representations of the lien-holder, stay the action under this section pending completion of the lien-holder's action.

(h) At the hearing, the municipality shall prove ownership of the mobile home; abandonment of the mobile home; the amount of taxes, fees, and other charges due the municipality; and the amount of attorney fees claimed. The municipality shall also prove compliance with the notice requirements of subsections (e) and (f) of this section. Whether a mobile home is abandoned shall be a question of fact determined by the court.

(i) If the court finds that the municipality has complied with subsection (h) of this section, the court shall enter an order approving the sale of the mobile home at a public auction to be held within 15 days of the date of the order. The municipality shall send the order by first-class mail to the mobile home owner, to the landowner if the mobile home is located on leased land, and to all lien-holders of record. The order shall require all the following:

(1) That the sale shall be conducted by the person identified in the verified complaint or some other person approved by the court.

(2) That notice of the sale shall be published in a newspaper of general circulation in the municipality where the mobile home is located and sent by first-class mail to the mobile home owner, to the landowner if the mobile home is located on leased land, and to all lien-holders of record. The notice of sale

shall be published two times, at least five days apart with the second publication being no later than three calendar days before the date of sale.

(3) That the terms of sale provide for conveyance of the mobile home by real estate deed or by uniform mobile home bill of sale, as appropriate under this chapter, executed on behalf of the mobile home owner pursuant to the order of the court by the person authorized by the court, in "as is" condition, and free and clear of all liens and other encumbrances of record.

(4) A minimum bid established by the court sufficient to cover the total costs listed in subdivisions (7)(A)–(D) of this subsection. The mobile home shall be sold to the highest bidder over the minimum bid set by the court; provided, however, that if no bid meets or exceeds the minimum bid set by the court, the court shall order transfer of the mobile home to the municipality upon payment of costs due to the person who conducted the sale.

(5) The successful bidder, if other than the municipality:

(A) shall make full payment at the auction if the bid does not exceed $2,000.00; or

(B) if the bid exceeds $2,000.00, shall provide a nonrefundable deposit at the time of the auction of at least $2,000.00 or 25 percent of the bid, whichever is greater, and shall make full payment within three working days after the auction.

(6) A successful bidder, if other than the municipality, shall remove the mobile home from its current location within five working days after the auction unless the municipality permits the mobile home to remain on the site or permits removal of the mobile home at a later date. If the mobile home is located on leased land, the mobile home shall be removed within five days unless the landowner grants permission to the successful bidder, including the municipality, for the mobile home to remain on the leased land.

(7) The person who conducted the public sale shall report to the court the results of the sale, the proposed distribution of the proceeds of the sale, and the bank in which any excess proceeds are deposited and shall send a copy of the report to the mobile home owner, the municipality, the landowner if the mobile home is located on leased land, and all lien-holders of record by certified mail, return receipt requested, within three working days after the sale. Anyone claiming impropriety in the conduct of the sale may file an objection with the court within seven days after the sale. The filing of an objection shall not invalidate the sale or delay transfer of ownership of the abandoned mobile home. If an objection is filed and if the court finds impropriety in the conduct of the sale, the court may order distribution of the proceeds of the sale as is fair, taking into account the impropriety. If no

objection is filed with the court, on the eighth day after the sale, the proceeds shall be distributed as follows:

(A) To the person conducting the sale for costs of the sale.

(B) To the municipality for court costs, publication and mailing costs, and attorney fees incurred in connection with the action in an amount approved by the court.

(C) To the municipality for taxes, penalties, and interest owed in an amount approved by the court.

(D) To the landowner for unpaid lot rent if the mobile home is located on leased land.

(E) The balance to a bank account in the name of the mobile home municipality as trustee, for the benefit of the mobile home owner and lien-holders of record, to be distributed pursuant to further order of the court.

(j) Notwithstanding provisions of this section and 10 V.S.A. § 6249 (sale of abandoned mobile home by park owner) to the contrary, if an action is commenced by a municipality pursuant to this section and by a mobile home park owner pursuant to 10 V.S.A. § 6249 for the sale of the same abandoned mobile home within 30 days of one another, the court shall consolidate the cases and shall distribute the proceeds of a sale as follows:

(1) To the person conducting the sale for costs of the sale.

(2) To the municipality and the park owner equitably in the discretion of the court:

(A) for court costs, publication and mailing costs, and attorney fees incurred in connection with the action in an amount approved by the court;

(B) for taxes, penalties, and interest owed the municipality in an amount approved by the court; and

(C) for rent and other charges owed to the park owner in an amount approved by the court.

(3) The balance to a bank account in the name of the mobile home municipality as trustee for the benefit of the mobile home owner and lien-holders of record, to be distributed pursuant to further order of the court.

(k) If a municipality requests an order approving transfer of a mobile home to the municipality without a public sale, the court shall approve that order if it finds that the municipality has complied with subsection (h) of this section and has proved that the mobile home is unfit for human habitation. In determining whether a mobile home is unfit for human habitation, the court shall consider whether the mobile home:

(1) contains functioning appliances and plumbing fixtures;

(2) contains safe and functioning electrical fixtures and wiring;

(3) contains a safe and functioning heating system;

(4) contains a weather-tight exterior closure;

(5) is structurally sound;

(6) is reasonably free of trash, debris, filth, and pests.

Sec. 12. 9 V.S.A. § 4462 is amended to read:

§ 4462. ABANDONMENT; UNCLAIMED PROPERTY

* * *

(d) Any personal property remaining in the dwelling unit or leased premises after the tenant has vacated may be disposed of by the landlord without notice or liability to the tenant or owner of the personal property, provided that one of the following has occurred:

(1) The tenant provided actual notice to the landlord that the tenant has vacated the dwelling unit ~~or,~~ leased premises, or mobile home lot.

(2) The tenant has vacated the dwelling unit ~~or,~~ leased premises, or mobile home lot at the end of the rental agreement.

(3) Fifteen days have expired following service of a writ of possession pursuant to 10 V.S.A. chapter 153, 11 V.S.A. chapter 13, or 12 V.S.A. chapter 169.

Sec. 13. SALES AND USE TAX HOLIDAYS FOR MOBILE HOMES

(a) Notwithstanding the provisions of 32 V.S.A. § 233 and 24 V.S.A. § 138, no sales and use tax, local option sales tax, or property transfer tax shall be imposed or collected on sales to individuals for mobile homes purchased after April 1, 2011 to replace a mobile home that was damaged or destroyed as a result of flooding and storm damage that occurred after that date.

(b) Any resident of Vermont who purchased a mobile home after August 28, 2011 and prior to the effective date of this act, and the mobile home was purchased to replace a mobile home that was damaged or destroyed as a result of Tropical Storm Irene, shall be entitled to a reimbursement in the amount of any sales and use tax, local option sales tax, or property transfer tax paid.

(c) The department of taxes may establish standards and procedures necessary to implement this section. The department of taxes shall reimburse taxpayers that qualify under subsection (b) of this section.

Sec. 14. APPROPRIATIONS

(a) The amount of $100,000.00 is appropriated from the general fund to the department of economic, housing and community development as follows:

(1) $50,000.00 for a grant to the Champlain Valley Office of Economic Opportunity to increase its ability to provide start-up and ongoing technical assistance to mobile home park residents interested in cooperative ownership of their parks.

(2) $50,000.00 to increase department staff for long-range planning for the preservation and replacement of mobile home parks noticed for sale or closure or damaged by flooding.

(b) The amount of $50,000.00 is appropriated from the general fund to the Vermont housing and conservation board's project feasibility fund to conduct financial feasibility and infrastructure needs analyses of mobile home parks noticed for sale or closure or damaged by flooding.

(c) The amount of $500,000.00 is appropriated from the settlement funds due the state under the joint state–federal settlement of claims with the five largest mortgage servicers arising from mortgage foreclosure practices to the department of economic, housing and community development to develop and implement with the Champlain Housing Trust, the Central Vermont Community Land Trust, Gilman Housing Trust, NeighborWorks of Western Vermont, and Windham & Windsor Housing Trust, and other stakeholders a program to help finance the purchase, repair, refinance, and replacement of up to 100 individual mobile homes. The department shall coordinate with the Champlain Housing Trust and other stakeholders to secure at minimum an additional $1,800,000.00 in grant capital to help fund the program from a variety of public and private sources, including equity from the sale of Vermont affordable housing tax credits, the Vermont community development block grant program, the Vermont Community Foundation, and the Vermont disaster relief fund.

(d)(1) The amount of $2,500,000.00 is appropriated to the department of economic, housing and community development to fund the following activities related to mobile home parks that will be maintained as affordable housing for low income Vermonters on a perpetual basis:

(A) the purchase of mobile home parks, including purchase by resident-owned cooperatives;

(B) infrastructure improvements; and

(C) disaster recovery, including relocation or replacement of mobile home parks damaged by flooding.

(2) The amount appropriated pursuant to this subsection shall come from the following sources:

(A) $500,000.00 from the settlement funds due the state under the joint state–federal settlement of claims with the five largest mortgage servicers arising from mortgage foreclosure practices; and

(B) $2,000,000.00 in state capital appropriations.

Sec. 15. AUTHORITY TO ISSUE LETTER OF CONDEMNATION

(a) Because repairs to homes damaged in natural disasters must be done in accordance with local codes and ordinances, the Federal Emergency Management Agency (FEMA) recognizes that there may be reasons for a local authority to deem a home condemned.

(b) According to FEMA policy, the letter must come from the jurisdictional authority and the condemnation notice of demolition must be disaster-related. FEMA then reviews each notice on a case-by-case basis for approval of replacement assistance up to the maximum award.

(c) Accordingly, for purposes of complying with FEMA policies and procedures, any state or local person or entity empowered to condemn property by statute, rule, regulation, ordinance, or similar legal authority shall qualify as a jurisdictional authority with all the necessary rights and powers to declare property to be condemned, provide notice of condemnation and demolition to FEMA or any other entity, and take such other steps as are necessary to ensure Vermonters are eligible for receiving the maximum amount of state and federal recovery assistance otherwise available.

Sec. 16. EFFECTIVE DATE

This act shall take effect on passage, except that Sec. 15 (authority to issue letter of condemnation) of this act shall apply retroactively to January 1, 2011.

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

An act relating to supporting mobile home ownership, strengthening mobile home parks, and preserving affordable housing.

And that when so amended the bill ought to pass.

Senator Ashe, for the Committee on Finance, to which the bill was referred, reported recommending that the bill be amended by striking out Secs. 3, 6 and 13 in their entirety and by renumbering the remaining sections to be numerically correct.

And that when so amended the bill ought to pass.

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill be amended by striking out Sec. 14 in its entirety and inserting in lieu thereof a new Sec. 14 to read as follows:

Sec. 14. PRIORITIES FOR MOBILE HOME INVESTMENTS

In the event that sources of funding are available for investments in securing mobile home infrastructure, expanding affordable ownership opportunities, and other activities consistent with the goals and purposes of this act, it is the intent of the general assembly to invest in the following priorities:

(1) Investment in the department of economic, housing and community development:

(A) for one or more grants to the Champlain Valley Office of Economic Opportunity to increase its ability to provide start-up and ongoing technical assistance to mobile home park residents interested in cooperative ownership of their parks.

(B) to increase department staff for long-range planning for the preservation and replacement of mobile home parks noticed for sale or closure or damaged by flooding.

(2) Investment in the Vermont housing and conservation board's project feasibility fund to conduct financial feasibility and infrastructure needs analyses of mobile home parks noticed for sale or closure or damaged by flooding.

(3) Investment in the department of economic, housing and community development to develop and implement with the Champlain Housing Trust, the Central Vermont Community Land Trust, Gilman Housing Trust, NeighborWorks of Western Vermont, Windham & Windsor Housing Trust, and other stakeholders a program to help finance the purchase, repair, refinance, and replacement of up to 100 individual mobile homes. The general assembly further recommends that the department coordinate with the Champlain Housing Trust and other stakeholders to secure additional grant capital to help fund the program from a variety of public and private sources.

(4) Investment in the department of economic, housing and community development to fund the following activities related to mobile home parks that will be maintained as affordable housing for low-income Vermonters on a perpetual basis:

(A) the purchase of mobile home parks, including purchase by resident-owned cooperatives;

(B) infrastructure improvements; and

(C) disaster recovery, including relocation or replacement of mobile home parks damaged by flooding.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment of the Committee on Economic Development, Housing and General Affairs was amended as recommended by the Committee on Finance.

Thereupon, the recommendation of amendment of the Committee on Economic Development, Housing and General Affairs, as amended, was amended as recommended by the Committee on Appropriations.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 758.

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

An act relating to divorce and dissolution proceedings.

Reported recommending that the Senate propose to the House to amend the bill by adding a new section to be numbered Sec. 5a to read as follows:

Sec. 5a. 32 V.S.A. § 1431 is amended to read:

§ 1431. FEES IN SUPREME AND SUPERIOR COURTS

* * *

(b)(2) Prior to the entry of any divorce or annulment proceeding in the superior court, there shall be paid to the clerk of the court for the benefit of the state a fee of $250.00 in lieu of all other fees not otherwise set forth in this section~~; however, if~~. If the divorce or annulment complaint is filed with a stipulation for a final order acceptable to the court, the fee shall be $75.00 if one or both of the parties are residents, and $150.00 if neither party is a resident.

* * *

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

Senator McCormack, for the Committee on Finance, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Judiciary.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Judiciary?, Senator Snelling moved to amend the proposal of amendment of the Committee on Judiciary as follows:

First: In Sec. 4, 15 V.S.A. § 1206, in subdivision (d)(1), after the words "parties to a civil union" by adding the words certified in Vermont

Second: In Sec. 5, 18 V.S.A. § 5131, in subdivision (a)(4)(A), in the first sentence, by striking the word "solemnized" and inserting in lieu thereof the word certified

Which was agreed to.

Thereupon, the proposal of amendment recommended by the Committee on Judiciary, as amended, was agreed to and third reading of the bill was ordered.

Proposals of Amendment; Third Reading Ordered

H. 759.

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

An act relating to permitting the use of secure residential recovery facilities for continued involuntary treatment.

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

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

Sec. 1. 18 V.S.A. chapter 175 is amended to read:

CHAPTER 175. THE BOARD OF MENTAL HEALTH

* * *

§ 7304. PERSONS NOT HOSPITALIZED OR RESIDING IN A SECURE RESIDENTIAL RECOVERY FACILITY

The board shall have general jurisdiction of the mentally retarded and the mentally ill who have been discharged from a hospital, secure residential recovery facility, or training school by authority of the board. It shall also have jurisdiction of the mentally ill and mentally retarded of the state ~~not,~~ who are neither hospitalized nor residing in a secure residential recovery facility so

far as concerns their physical and mental condition and their care, management, and medical treatment and shall make such orders therein as each case duly brought to its attention requires.

§ 7305. POWERS OF BOARD

The board may administer oaths, summon witnesses before it in a case under investigation, and discharge by its order, in writing, any person confined as a patient in a hospital or in a secure residential recovery facility whom it finds on investigation to be wrongfully hospitalized or residing in a secure residential recovery facility or in a condition to warrant discharge. The board shall discharge patients, not criminals, who have eloped from a hospital or secure residential recovery facility and have not been apprehended at the expiration of six months from the time of their elopement. The board shall not order the discharge of a patient without giving the superintendent of the hospital or secure residential recovery facility an opportunity to be heard.

* * *

§ 7309. REFERRALS FROM GOVERNOR

The governor may refer the case of a patient in a hospital or secure residential recovery facility to the board for its investigation. The board shall investigate the case and by its order grant such relief as each case requires. If the board is without power to grant the necessary relief it shall cause proceedings to be commenced in a court of competent jurisdiction at the expense of the state, in order to obtain the necessary relief and promote the ends of justice and humanity.

§ 7310. PETITION FOR INQUIRY

The attorney or guardian of a patient or any other interested party may apply to the board to inquire into the treatment and hospitalization or placement at a secure residential recovery facility of a patient, and the board shall take appropriate action upon the application.

§ 7311. INVESTIGATION

If, in the judgment of the board, an investigation is necessary, it shall appoint a time and place for hearing and give the patient's attorney, guardian and spouse, parent or adult child or interested party, if any, in that order, and the head of the hospital or secure residential recovery facility reasonable notice thereof. At the time appointed it shall conduct a hearing and make any lawful order the case requires.

* * *

§ 7313. BOARD SHALL VISIT INSTITUTION

The board shall ascertain by examination and inquiry whether the laws relating to individuals in custody or control are properly observed and may use all necessary means to collect all desired information. It shall carefully inspect every part of the hospital, secure residential recovery facility, or training school visited with reference to its cleanliness and sanitary condition, determine the number of patients or students in seclusion or restraint, the diet of the patients or students and any other matters which it considers material. It shall offer to every patient or student an opportunity for an interview with its visiting members or agents, and shall investigate those cases which in its judgment require special investigation, and particularly shall ascertain whether any individuals are retained at any hospital, secure residential recovery facility, or training school who ought to be discharged.

* * *

§ 7315. DEFINITION

As used is this chapter, the term "secure residential recovery facility" shall be defined as in subsection 7620(e) of this title.

Second: In Sec. 3, 18 V.S.A. § 7620, subsection (e), by striking out the following: "§ 7102(11)" and inserting in lieu thereof the following: § 7102

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

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

Third Reading Ordered

H. 768.

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

An act relating to ignition interlock restricted driver's licenses and civil suspensions.

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.

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. 116, 199.

Adjournment

On motion of Senator Campbell, the Senate adjourned until one o'clock in the afternoon on Wednesday, April 18, 2012.

WEDNESDAY, APRIL 18, 2012

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Bill Referred to Committee on Appropriations

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

H. 780. An act relating to compensation for certain state employees.

Bill Amended; Bill Passed

S. 99.

Senate bill entitled:

An act relating to agricultural economic development.

Was taken up.

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

First: By adding a new Sec. 3 to read as follows:

Sec. 3. LEGISLATIVE INTENT; AFFORDABLE HOUSING TAX CREDIT

It is the intent of the general assembly to increase the amount per year that may be awarded under 32 V.S.A. § 5930u(g) for the purposes of the mobile home financing program for owner-occupied mobile homes or alternative affordable structures. Accordingly, it is the intent of the general assembly that in House Bill 782 (2012) entitled "An act relating to miscellaneous tax changes for 2012," the award amount available for owner-occupied mobile homes or alternative affordable structures shall be increased from $100,000.00 to

$300,000.00, and the total amount in any fiscal year of total first-year allocations plus succeeding-year deemed allocations shall be increased from $2,500,000.00 to $3,500,000.00.

Second: In Sec. 4, in subsection (a) following "stakeholders" by inserting the following: and as funding from FEMA and other sources allows and in subsection (b) by striking out subdivision (4) in its entirety and inserting in lieu thereof a new subdivision (4) to read as follows:

(4) Working in collaboration with the Vermont housing and conservation board and any additional public or private funding entities, assess other housing designs as alternatives to mobile homes that are affordable when all related costs such as siting, water and sewer, and energy use are taken into consideration.

Third: In Sec. 5, 20 V.S.A. § 2731(k), by striking out subdivision (5) in its entirety.

Fourth: In Sec. 11, in 9 V.S.A. § 4462(d)(3), by striking out the following: "11 V.S.A. chapter 13" and inserting in lieu thereof the following: 11 V.S.A. chapter 14

Fifth: By adding a new Sec. 14 to read as follows:

Sec. 14. LEGISLATIVE INTENT; SALES AND USE TAX HOLIDAYS FOR MOBILE HOMES

It is the intent of the general assembly to provide tax relief from the sales and use tax, the local option sales tax, and the property transfer tax for a mobile home purchased to replace a mobile home that was damaged or destroyed as a result of damage incurred during the spring flooding or during Tropical Storm Irene in 2011. Accordingly, it is the intent of the general assembly that in House Bill 782 (2012) entitled "An act relating to miscellaneous tax changes for 2012," there shall be included a provision authorizing relief from the sales and use tax, the local option sales tax, and the property transfer tax for eligible mobile homes purchased during a qualifying period to replace homes that suffered flood and storm damage, authorizing reimbursement for eligible taxes paid for mobile homes purchased during the qualifying period, and authorizing the department of taxes to adopt standards and procedures necessary to achieve the goals of this section.

Sixth: By adding a new section to be numbered Sec. 15 to read as follows:

Sec. 15. DELAY OF LOAN REPAYMENTS DUE TO TROPICAL STORM IRENE

Due to the damage caused by Tropical Storm Irene at the Tri-Parks mobile home parks, the substantial amount of monies necessary for repairs, and the

unavailability of additional monies to both make the repairs and make loan payments, the repayment start dates for State Revolving Loans RF1-104 and RF3-163 are hereby delayed by two years until June 1, 2014, without any penalty or additional costs or fees. Subject to any applicable limitations of federal law, the secretary of natural resources shall have the authority to offer similar repayment modifications to other mobile home parks that suffered damage from Tropical Storm Irene.

Which were collectively agreed to.

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

Bill Passed in Concurrence with Proposal of Amendment

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

H. 758. An act relating to divorce and dissolution proceedings.

H. 759. An act relating to permitting the use of secure residential recovery facilities for continued involuntary treatment.

Bill Passed in Concurrence

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

H. 768. An act relating to ignition interlock restricted driver's licenses and civil suspensions.

Bill Passed in Concurrence with Proposal of Amendment

H. 770.

House bill of the following title:

An act relating to the state's transportation program.

Was taken up.

Thereupon the bill was read the third time and passed in concurrence with proposal of amendment on a roll call, Yeas 27, Nays 0.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Galbraith, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

Those Senators who voted in the negative were: None.

Those Senators absent and not voting were: Fox, Illuzzi, Miller.

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

H. 785.

House bill entitled:

An act relating to capital construction and state bonding budget adjustment.

Was taken up.

Thereupon, pending third reading of the bill, Senators Galbraith and Benning moved that the Senate propose to the House to amend the bill as follows:

Sec. 28g. FINDINGS

The general assembly finds:

(1) Vermont's parks, forests, wilderness, and conserved lands exist for the benefit of present and future generations and should be kept in a natural state.

(2) Vermont's beautiful landscape, including its mountains, is a major factor in the quality of life for Vermonters and makes an important contribution to the state's economy.

(3) Industrial wind turbines can degrade mountain tops and affect the view of the landscape for many miles.

Sec. 28h. 10 V.S.A. chapter 87 is added to read:

CHAPTER 87. PROHIBITION; COMMERCIAL CONSTRUCTION; CERTAIN PUBLIC AND CONSERVED LANDS

§ 2801. PROHIBITION

(a) No construction for any commercial purpose, including the generation of electric power, shall be permitted within any state park or forest, wilderness area designated by law, natural area designated under section 2607 of this title, or any area conserved to protect its wilderness, scenic, natural, or wildlife habitat characteristics or on any land managed by the agency of natural resources created under 3 V.S.A. chapter 51.

(b) This section shall not prohibit the construction of:

(1) A concession or other structure for the use of visitors to state parks or forests.

(2) A modification or improvement to a dam in existence as of the effective date of this section if the modification or improvement is to allow the dam's use for the generation of electricity and to construct any power lines and facilities necessary for such use.

(3) Telecommunications facilities, as defined under 30 V.S.A. § 248a(b) (certificate of public good; communications facilities), in accordance with all other applicable state law.

(4) A temporary structure or road for forestry purposes as may be permitted on a state land or pursuant to the terms governing a conserved land.

(5) Tapping of maple trees and associated activities on state forestland authorized under a license pursuant to section 2606b of this title.

(6) Construction on state land that is permitted under a lease or license that was in effect on the date of enactment.

Thereupon, pending the question, Shall the bill be amended as recommended by Senators Galbraith and Benning?, Senator Galbraith requested and was granted leave to withdraw the proposal of amendment.

Thereupon, pending third reading of the bill, Senator Hartwell moved that the Senate propose to the House to amend the bill as follows:

First: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (c)(9)(A), after "permitting," by inserting construction,

Second: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (c)(9)(B)(i), after "purchasing," by inserting construction,

Third: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (f)(2), by adding a subdivision (C) to read:

"(C) The special committee may also meet to make decisions made necessary by unanticipated or unforeseen circumstances."

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment on a roll call, Yeas 28, Nays 0.

Senator 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, Galbraith, 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: None.

Those Senators absent and not voting were: Fox, Illuzzi.

House Proposals of Amendment Concurred In

S. 179.

House proposals of amendment to Senate bill entitled:

An act relating to amending perpetual conservation easements.

Were taken up.

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

First: In Sec. 3, 10 V.S.A. § 6307 (enforcement), by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) Conservation rights. The holder of conservation rights and interests may seek injunctive relief and damages against any person who damages the holder's rights and interests, irrespective of whether the owner of the land is a party to the proceeding. This subsection shall not affect any right of the owner of the land to join or intervene in any proceeding.

Second: By striking out Sec. 8 (property transfer return) in its entirety and inserting in lieu thereof the following: Sec. 8. [Deleted.]

Third: By striking out Sec. 9 (working group) in its entirety and inserting in lieu thereof a new Sec. 9 to read as follows:

Sec. 9. WORKING GROUP ON CONSERVATION EASEMENTS

(a) Creation of working group. There is created a working group on perpetual conservation easements to study the issues relating to the creation of a formal and transparent public process for the amendment of perpetual conservation easements, the criteria for approving such amendments, and the entity most appropriate to review and approve such amendments.

(b) Membership. The conservation easements working group (the working group) shall be composed of the following members:

(1) The secretary of agriculture, food and markets or designee.

(2) A representative of the Vermont housing and conservation board, designated by the board.

(3) The commissioner of forests, parks and recreation or designee.

(4) One member of the legal staff in the Vermont office of the attorney general, designated by the attorney general.

(5) A representative of Vermont Land Trust, designated by its board.

(6) A representative of Upper Valley Land Trust, designated by its board.

(7) A representative of the Vermont Federation of Sportsmen's Clubs, designated by its board.

(8) A representative of the Vermont Green Mountain Club, designated by its board.

(9) A representative of the Vermont chapter of The Nature Conservancy, designated by its director.

(10) A representative of a regional or local land trust in Vermont, appointed by the governor.

(11) An attorney licensed in Vermont and practicing in or knowledgeable about both federal tax law and real estate law, including land conservation, appointed by the Vermont Bar Association.

(12) A representative from a farming organization who is knowledgeable about agricultural conservation, appointed by the governor.

(13) A representative of the Vermont Association of Snow Travelers, designated by its board;

(14) A Vermont landowner owning land subject to a conservation easement, appointed by the governor.

(15) A representative of the Vermont natural resources board, appointed by the board.

(16) A land surveyor licensed in Vermont, appointed by the Vermont Society of Land Surveyors.

(c) Structure; decision-making. The working group shall elect a chair from its membership. 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:

(1) Investigate the options for approval of conservation easement amendments contained in S.179 and H.553 of 2012, as introduced, and during the course of consideration of those bills in the relevant standing committees of the general assembly, including the following options:

(A) creating an easement amendment panel within the natural resources board to provide administrative oversight and approval for the amendment of conservation easements;

(B) requiring the housing and conservation board, in conjunction with the agency of agriculture, food and markets, to provide administrative oversight and approval for the amendment of conservation easement amendments;

(C) requiring all qualified holders to individually run a transparent public process for the approval of conservation easement amendments and to issue a written decision. Under this option, the working group should consider whether the decision should be revocable or appealable, and if so, by whom;

(D) requiring all qualified holders to get court approval for amendments that may have a significant effect on the conservation values protected by the easement.

(2) Investigate any other options for conservation easement amendment approval that the working group believes are relevant.

(3) Consider any other issues it identifies as relevant to the amendment of perpetual conservation easements.

(4) Develop a proposal setting out a transparent process or processes for the amendment of perpetual conservation easements held by land trusts, state agencies, and other entities qualified to hold perpetual conservation easements in Vermont.

(5) Develop proposed statutory provisions setting out criteria to be used by an administrative body, a court, or an easement holder in approving proposed amendments to perpetual conservation easements, which will ensure that conservation values protected by easement are protected in perpetuity, and that conservation easement holders in Vermont are in compliance with federal law.

(6) Study the issue and make recommendations as to whether conservation rights and interests should be excluded from the requirements of 27 V.S.A. § 603 concerning the re-recording of interests in land within a 40-year period.

(7) Investigate whether there is an existing online or other database appropriate for the storage of information about conservation easements alongside other information relevant to a specific property or parcel of land. This database should be available to an individual completing a title search.

(e) Report. On or before January 15, 2013, the working group shall submit to the general assembly its findings, recommendations, and proposed statutory revisions regarding the issues identified in subsection (d) of this section. This report shall be distributed to the house and senate committees on agriculture and on natural resources and energy.

(f) Assistance. For the purpose of its study of the issues identified in subsection (d) of this section and the preparation of its recommendations pursuant to subsection (e) of this section, the working group shall have the administrative and technical assistance of the housing and conservation board.

(g) Meetings. The member from the housing and conservation board shall convene the first meeting of the working group no later than July 15, 2012.

(h) Appointments. Within 30 days of the effective date of this section, 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 housing and conservation board.

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

House Proposal of Amendment Concurred In with Amendment

S. 181.

House proposal of amendment to Senate bill entitled:

An act relating to school resource officers.

Was taken up.

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

In Sec. 1, 16 V.S.A. § 1167, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read:

(b) A school board or its designee may enter into a memorandum of understanding with a law enforcement agency to define the nature and scope of assistance that a school resource officer will provide to the school system.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Mullin, on behalf of the Committee on Education, moved that the Senate concur in the House proposal of amendment with the following amendment thereto:

In Sec. 1, 16 V.S.A. § 1167, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) School boards and law enforcement agencies are encouraged to enter into memoranda of understanding relating to:

(1) the possession and use of weapons and devices by a school resource officer on school property; and

(2) the nature and scope of assistance that a school resource officer will provide to the school system.

Which was agreed to.

Proposal of Amendment; Third Reading Ordered

H. 440.

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

An act relating to creating an agency and secretary of education and clarifying the purpose of the state board.

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

Sec. 1. 3 V.S.A. chapter 49 is added to read:

CHAPTER 49. EDUCATION

§ 2701. AGENCY AND SECRETARY CREATED

There is created an agency of education that shall be under the direction and supervision of a secretary of education.

§ 2702. SECRETARY OF EDUCATION

(a) With the advice and consent of the senate, the governor shall appoint a secretary of education from among no fewer than three candidates proposed by the state board of education. The secretary shall serve at the pleasure of the governor.

(b) The secretary shall report directly to the governor and shall be a member of the governor's cabinet.

(c) At the time of appointment, the secretary shall have expertise in education management and policy and demonstrated leadership and management abilities.

Sec. 2. 16 V.S.A. § 161 is amended to read:

§ 161. STATE BOARD OF EDUCATION; APPOINTMENT OF MEMBERS; TERM; VACANCY

The state board shall consist of ten members. Two of the members shall be secondary students, one of whom shall be a full member and the other of whom shall be a junior member who may not vote. All members shall be appointed by the governor with the advice and consent of the senate. In the appointment of the nonstudent members ~~consideration~~, priority shall be given

to the selection of ~~such~~ persons ~~as shall adequately represent all sections of the state~~ with a demonstrated commitment to ensuring quality education for Vermont students. To the extent possible, the members shall represent geographically diverse areas of the state. The secretary shall serve on the state board as a nonvoting member.

* * *

Sec. 3. 16 V.S.A. § 163 is amended to read:

§ 163. ~~OFFICE~~ STAFF; MEETINGS

(a) ~~The office of the board shall be the office of the commissioner of education~~ The board shall be supported by adequate staff, who shall report to the board.

(b) The board shall meet monthly and shall hold special meetings as required for the performance of its duties. The times and places for regular and special meetings shall be designated by the ~~chairman~~ chair of the board. The ~~chairman~~ chair shall call a special meeting upon the written request of any two members.

Sec. 4. 16 V.S.A. § 164 is amended to read:

§ 164. STATE BOARD, GENERAL POWERS AND DUTIES

The state board shall ~~have supervision over, and management of the department of education and the public school system, except as otherwise provided; and shall~~ evaluate education policy proposals, including timely evaluation of policies presented by the governor and secretary; engage local school board members and the broader education community; and establish and advance education policy for the state of Vermont. In addition to other specified duties, the board shall:

* * *

(4) ~~Biennially or as required by the governor cause to be prepared a budget for all money to be expended by the department of education~~ Review and comment on an agency budget prepared by the secretary for the governor.

* * *

(10) ~~Establish an information clearinghouse and accessible database to help districts share information about educational programs and practices which improve student performance. Educational programs and practices include those designed to create and sustain a safe learning environment.~~ [Repealed.]

* * *

(19) ~~Develop, in consultation with the secretary of state, and make available to school boards, sample ballot language for items which may be voted on by Australian ballot and for which no statutory language exists.~~ [Repealed.]

* * *

(21) Report annually to the governor and the general assembly on the progress the board has made on the development of education policy for the state.

Sec. 5. 16 V.S.A. § 212(18), (19), (20), and (21) are added to read:

(18) Establish an information clearinghouse and accessible database to help districts share information about educational programs and practices that improve student performance. Educational programs and practices include those designed to create and sustain a safe learning environment.

(19) Develop, in consultation with the secretary of state, and make available to school boards sample ballot language for issues that may be decided by Australian ballot and for which no statutory language exists.

(20) Prepare a budget for the agency and submit it to the governor after review by the state board.

(21) Annually, prior to September 1, present the governor's education policy priorities to the state board.

Sec. 6. REPEAL

16 V.S.A. § 211 (appointment of commissioner by board of education; commissioner's reports to board) is repealed.

* * * Transition * * *

Sec. 7. AGENCY OF EDUCATION; SECRETARY OF EDUCATION; POWERS AND DUTIES

On January 1, 2013:

(1) the secretary of education shall assume all the powers, duties, rights, and responsibilities of the commissioner of education; provided, however, that if a secretary appointed by the governor has not assumed office by January 1, 2013, then the commissioner or acting commissioner of the department on that date shall continue to perform the duties until the day on which the secretary assumes office; and

(2) the agency of education shall assume all the powers, duties, rights, and responsibilities of the department of education.

Sec. 8. LEGISLATIVE COUNCIL; PREPARATION OF A DRAFT BILL

On or before January 15, 2013, the legislative council shall prepare and submit a draft bill to the house and senate committees on education that makes statutory amendments of a technical nature and identifies all statutory sections that the general assembly must amend substantively to effect the intent of this act.

Sec. 9. EFFECTIVE DATES

(a) This section and Secs. 7 (assumption of powers and duties) and 8 (legislative council) of this act shall take effect on passage.

(b) Secs. 1 (creation of agency), 2 (secretary as nonvoting member of board), and 6 (repeal of board's power to appoint commissioner) of this act shall take effect on January 1, 2013.

(c) Secs. 3 (board staff), 4 (board duties), and 5 (secretary's duties) of this act shall take effect on April 1, 2013.

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 on a roll call, Yeas 18, Nays 10.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Benning, Brock, Campbell, Carris, Doyle, Flory, Giard, Hartwell, Kitchel, Kittell, Lyons, Mazza, Miller, Mullin, Sears, Snelling, Starr.

Those Senators who voted in the negative were: Ayer, Baruth, Cummings, Galbraith, MacDonald, McCormack, Nitka, Pollina, Westman, White.

Those Senators absent and not voting were: Fox, Illuzzi.

Thereupon, third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 464.

Senator Lyons, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to a moratorium on hydraulic fracturing wells for natural gas and oil production.

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 and declares that:

(1) The drilling practice of hydraulic fracturing for natural gas exploration and production uses a variety of chemicals that are pumped into natural gas or oil wells.

(2) During hydraulic fracturing, chemicals and waste fluid pumped into wells may be introduced into and contaminate drinking water aquifers.

(3) To ensure that the state's underground sources of drinking water remain free of contamination, the general assembly should prohibit hydraulic fracturing for the purpose of the recovery of oil or natural gas until it is determined that hydraulic fracturing can be conducted without risk of contamination to the groundwater of Vermont.

(4) When hydraulic fracturing can be conducted without risk of contamination to the groundwater of Vermont, the general assembly should repeal the prohibition on hydraulic fracturing for oil and natural gas recovery.

Sec. 2. 29 V.S.A. § 503 is amended to read:

§ 503. DEFINITIONS

As used in this chapter:

* * *

(8) "Gas" means all natural gas, whether hydrocarbon or nonhydrocarbon, including hydrogen sulfide, helium, carbon dioxide, nitrogen, hydrogen, casinghead gas, and all other fluid hydrocarbons not defined as oil.

* * *

(15) "Oil" means crude petroleum, oil, and all hydrocarbons, regardless of specific gravity, that are in the liquid phase in the reservoir and are produced at the wellhead in liquid form.

(16) "Oil and gas" means both oil and gas, or either oil or gas, as the context may require to give effect to the purposes of this chapter.

* * *

(29) "Fluid" means any material or substance which flows or moves whether in semi-solid, liquid, sludge, gas, or any other form or state.

(30) "Hydraulic fracturing" means the process of pumping a fluid into or under the surface of the ground in order to create fractures in rock for the purpose of the production or recovery of oil or gas.

Sec. 3. 29 V.S.A. chapter 14, subchapter 8 is added to read:

Subchapter 8. Hydraulic Fracturing for Oil or Gas Recovery

§ 571. HYDRAULIC FRACTURING; PROHIBITION

(a) No person may engage in hydraulic fracturing in the state.

(b) No person may collect, store, or treat the wastewater from hydraulic fracturing in a manmade lagoon or pond in the state.

Sec. 4. 10 V.S.A. § 1259 is amended to read:

§ 1259. PROHIBITIONS

(a) No person shall discharge any waste, substance, or material into waters of the state, nor shall any person discharge any waste, substance, or material into an injection well or discharge into a publicly owned treatment works any waste which interferes with, passes through without treatment, or is otherwise incompatible with those works or would have a substantial adverse effect on those works or on water quality, without first obtaining a permit for that discharge from the secretary. This subsection shall not prohibit the proper application of fertilizer to fields and crops, nor reduce or affect the authority or policy declared in joint house resolution 7 of the 1971 session of the general assembly.

* * *

(c) No person shall cause a direct discharge into Class A waters of any wastes that, prior to treatment, contained organisms pathogenic to human beings. Except within a waste management zone, no person shall cause a direct discharge into Class B waters of any wastes that prior to treatment contained organisms pathogenic to human beings.

(d) No person shall cause a discharge of wastes into Class A waters, except for on-site disposal of sewage from systems with a capacity of 1,000 gallons per day (gpd), or less, that are either exempt from or comply with the environmental protection rules, or existing systems, which shall require a permit according to the provisions of subsection 1263(f) of this title.

* * *

(j) No person shall discharge waste from hydraulic fracturing, as that term is defined in 29 V.S.A. § 503, into or from a pollution abatement facility, as that term is defined in section 1571 of this title.

Sec. 5. AGENCY OF NATURAL RESOURCES REPORT; SAFETY OF HYDRAULIC FRACTURING FOR OIL OR NATURAL GAS RECOVERY

(a) On or before January 15, 2013, and annually thereafter, the secretary of natural resources shall submit to the senate and house committees on natural resources and energy and the house committee on fish, wildlife and water resources a report regarding:

(1) whether the process of hydraulic fracturing for the purpose of the production or recovery of oil or natural gas can be conducted in a manner that prevents contamination of groundwater; and

(2) whether the prohibition on the use of hydraulic fracturing for oil or natural gas recovery under 29 V.S.A. § 571 should be repealed.

(b) A recommendation under this section shall be based on regulatory guidance, industry practices, and scientific studies that are available to the secretary at the time of a report required under subsection (a) of this section.

Sec. 6. AGENCY OF NATURAL RESOURCES; UNDERGROUND INJECTION CONTROL RULEMAKING

When the secretary of natural resources amends the rules regulating the discharge of waste into an injection well, including those discharges into an injection well for oil and gas recovery for which the agency of natural resources has jurisdiction, the amended rules shall provide that no permit shall be issued under 10 V.S.A. chapter 47 for a discharge of waste into an injection well when such a discharge would endanger an underground source of drinking water.

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.

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

An act relating to hydraulic fracturing wells for natural gas and oil production.

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

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as moved by Senator Lyons? Senator Flory raised a *point of order* under Section 114 of Mason's Manual of Legislative Procedure in that

Senator Galbraith was asking a question to which he knew the answer in violation of Mason's Rule Section 114.6.

The President *overruled* the point of order stating that the current pending question of Senator Galbraith was not in violation of Mason's Rule section 114.6 as it inquired as to something to which he would not know the answer.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Natural Resources and Energy?, Senator Brock moved to amend the proposal of amendment of the Committee on Natural Resources and Energy as follows:

First: In Sec. 1, by striking out subdivisions (3) and (4) in their entirety and inserting in lieu thereof new subdivision (3) and (4) to read as follows:

(3) To ensure that the state's underground sources of drinking water remain free of contamination, the general assembly should impose a moratorium on hydraulic fracturing for the purpose of the recovery of oil or natural gas until it is determined that hydraulic fracturing can be conducted without risk of contamination to the groundwater of Vermont.

(4) When hydraulic fracturing can be conducted without risk of contamination to the groundwater of Vermont, the general assembly should repeal the moratorium on hydraulic fracturing for oil and natural gas recovery.

Second: In Sec. 3, 29 V.S.A. § 571, by striking out the following: "PROHIBITION" where it appears in the section title and inserting in lieu thereof the following: MORATORIUM

Third: In Sec. 5, subdivision (a)(2), by striking out the word "prohibition" where it appears and inserting in lieu thereof the following: moratorium

Which was disagreed to on a division of the Senate Yeas 7, Nays 21.

Thereupon, the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Natural Resources and Energy?, was decided in the affirmative on a roll call Yeas 27, Nays 1.

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, Galbraith, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

The Senator who voted in the negative was: Mullin.

Those Senators absent and not voting were: Fox, Illuzzi.

Thereupon, third reading of the bill was ordered.

Proposals of Amendment; Third Reading Ordered

H. 53.

Senator Benning, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to the Interstate Wildlife Violator Compact.

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

First: In Sec. 1, by striking out 10 V.S.A. § 4454 in its entirety and inserting in lieu thereof the following:

§ 4454. PENALTIES

(a) Notwithstanding section 4502 of this title, the commissioner may suspend a Vermont hunting, fishing, or trapping license and privileges to obtain such licenses of a person convicted of a wildlife violation in a state party to the compact, provided that the wildlife violation would have been the basis for suspension of license privileges in Vermont.

(b) No person whose license, privilege, or right to hunt, fish, trap, possess, or transport wildlife, having been suspended or revoked pursuant to this chapter, shall be permitted to obtain a license to hunt, fish, or trap in Vermont.

(c) A person shall be subject to the financial penalties as set forth under section 4518 of this title if he or she:

(1) hunts, fishes, traps, possesses, or transports wildlife in Vermont in violation of a suspension or revocation of a license under chapter 108 of this title; or

(2) purchases or possesses a license to hunt, fish, trap, possess, or transport wildlife in Vermont in violation of a suspension of revocation of a license under chapter 108 of this title.

(d)(1) Prior to suspending a Vermont hunting, fishing, or trapping license of a resident of this state under subsection (a) of this section, the commissioner shall notify the person in writing. A suspension shall be deemed effective:

(A) when given if notice is made in person; or

(B) three days after the deposit of notice in the United States mails, if notice is made in writing.

(2) A person receiving notice under subsection (a) of this section may, within 20 days of the date notice is given, request a hearing before the commissioner on whether the requirements for suspension or penalty have been met. The requesting person may present evidence and arguments at the hearing only regarding whether:

(A) A participating state suspended the person's privileges;

(B) There was a conviction in the participating state;

(C) The person failed to comply with the terms of a citation issued for a wildlife violation in a participating state; or

(D) A conviction in a participating state could have led to a license suspension or penalty in Vermont

(3) At the hearing, the commissioner or a hearing officer designated by the commissioner may:

(A) Administer oaths;

(B) Issue subpoenas for the attendance of witnesses; and

(C) Admit all relevant evidence and documents, including notifications from participating states.

(4) Following a hearing under this subsection, the commissioner or a designated hearing officer may, based on the evidence, affirm, modify, or rescind the suspension of a license.

(5) A decision of the commissioner or hearing officer under this section shall not be appealable.

Second: By striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. 10 V.S.A. § 4502 is amended to read:

§ 4502. UNIFORM POINT SYSTEM; REVOCATION OF LICENSE

(a) A uniform point system which assigns points to those convicted of a violation of a provision of this part is established. The conviction report from the court shall be prima facie evidence of the points assessed. In addition to other penalties assessed for violation of fish and wildlife statutes, the commissioner shall suspend licenses issued under this part which are held by a person who has accumulated ten or more points in accordance with the provisions of subsection (c) of this section.

(b) A person violating provisions of this part shall receive points for convictions in accordance with the following schedule (all sections are in Title 10 of Vermont Statutes Annotated):

* * *

(3) Twenty points shall be assessed for:

(A) § 4192. General powers and duties-failure to obey warden

* * *

(U) Appendix § 37, excluding violations of annual deer limits, requirements for youth deer hunting weekend, and limitations on feeding of deer.

(V) § 4454. Interstate Wildlife Violator Compact.

* * *

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

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

Consideration Postponed

S. 204.

Senator Cummings, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to creating an expert panel on the creation of a state bank.

Reported recommending 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. § 993 is added to read:

§ 993. PRIVATE ACTIVITY BOND ADVISORY COMMITTEE

(a)(1) Creation; composition. There is created a private activity bond advisory committee, which shall consist of the following members:

(A) the state treasurer or his or her designee;

(B) the secretary of administration or his or her designee;

(C) the secretary of commerce and community development or his or her designee;

(D) two members who shall be representatives of the public, appointed by the governor.

(2) Each public representative shall serve for a two-year term beginning February 1 or until his or her successor is appointed. The terms of the public

representatives shall be staggered so that only one member's term expires in each year.

(3) The state treasurer or designee shall serve as chair of the committee.

(4) The office of the state treasurer shall provide administrative support to the committee.

(5) Except as provided in section 1010(d) of this title, members of the committee who are not legislative members or Vermont state employees shall be entitled to receive per diem compensation and expense reimbursement pursuant to subsections 1010(b) and (c), respectively, of this title.

(b) Committee charge.

(1) The committee shall survey the expected need for private activity bond allocations among constituted and eligible issuing authorities empowered to issue such bonds on an annual basis.

(2)(A) The committee shall develop guidelines for allocation of private activity bonding capacity designed to maximize the availability of tax-exempt financing among various sectors of the Vermont economy with a focus on economic development, housing, education, redevelopment, public works, energy, waste management, waste and recycling collection, transportation, and other activities that the committee determines will benefit the citizens of Vermont.

(B) The guidelines should support efforts and entities that increase the number of well-paying jobs in the state, promote economic development, support affordable housing, support affordable access to postsecondary education and training, and encourage the use of Vermont's human and natural resources in endeavors that maximize Vermont's comparative economic advantages. The guidelines should be flexible enough to include new and innovative uses of private activity bonds consistent with federal regulations and the Internal Revenue Code.

(3) The committee shall meet at least annually and shall hold at least one public hearing prior to submitting its recommendations to the emergency board. The committee shall further submit its recommendations in an annual report of its activities to the governor and the general assembly.

(4) On or before December 1 of each year, the committee shall make recommendations to the emergency board on the allocation, including any amounts reserved for contingency allocations, of the state's private activity bond ceiling for the following calendar year to and among the constituted issuing authorities empowered to issue such bonds.

(5) On its own initiative, at the request of the governor, or at the request of the emergency board, the committee may make recommendations to the governor or the emergency board concerning assignments or reallocation of any unused portion of the ceiling subsequent to the emergency board's initial allocation in a given year.

Sec. 2. TRANSITION OF PRIVATE ACTIVITY BOND ADVISORY COMMITTEE

Notwithstanding any provision of law to the contrary, on the effective date of this act, the private activity bond advisory committee created in Executive Order 14-11 shall become for all lawful purposes the private activity bond committee authorized in Sec. 1 of this act; provided, however, that the term of the public representative first appointed by the governor pursuant to EO 14-11 shall end on February 1, 2013, and the term of the public representative appointed second by the governor shall end on February 1, 2014.

* * * Bonding Obligation Authority * * *

Sec. 3. 10 V.S.A. § 219(d) is amended to read:

(d) In order to assure the maintenance of the debt service reserve requirement in each debt service reserve fund established by the authority, there may be appropriated annually and paid to the authority for deposit in each such fund, such sum as shall be certified by the chair of the authority, to the governor or the governor-elect, the president of the senate, and the speaker of the house, as is necessary to restore each such debt service reserve fund to an amount equal to the debt service reserve requirement for such fund. The chair shall annually, on or about February 1, make, execute, and deliver to the governor or the governor-elect, the president of the senate, and the speaker of the house, a certificate stating the sum required to restore each such debt service reserve fund to the amount aforesaid, and the sum so certified may be appropriated, and if appropriated, shall be paid to the authority during the then current state fiscal year. The principal amount of bonds or notes outstanding at any one time and secured in whole or in part by a debt service reserve fund to which state funds may be appropriated pursuant to this subsection shall not exceed ~~$100,000,000.00~~ $115,000,000.00, provided that the foregoing shall not impair the obligation of any contract or contracts entered into by the authority in contravention of the Constitution of the United States.

Sec. 4. 10 V.S.A. § 262(5) is amended to read:

(5) The principal obligation of the authority's mortgage does not exceed ~~$1,300,000.00~~ $1,500,000.00 which may be secured by land and buildings or by machinery and equipment, or both; unless an integral element of the project consists of the generation of heat or electricity employing biomass,

geothermal, methane, solar, or wind energy resources to be primarily consumed at the project, in which case the principal obligation of the authority's mortgage does not exceed $2,000,000.00, which may be secured by land and by buildings, or machinery and equipment, or both; such principal obligation does not exceed 40 percent of the cost of the project; and the mortgagor is able to obtain financing for the balance of the cost of the project from other sources as provided in the following section;

Sec. 5. 10 V.S.A. § 216(15) is amended to read:

(15) To delegate to loan officers the power to review, approve and make loans under this chapter, subject to the approval of the manager, and to disburse funds on such loans, subject to the approval of the manager, provided that such loans do not exceed ~~$250,000.00~~ $350,000.00 in aggregate amount for any industrial loan for any three-year period for any particular individual, partnership, corporation, or other entity or related entity, or do not exceed ~~$200,000.00~~ $350,000.00 in aggregate amount if the loan is guaranteed by the Farm Services Agency, or its successor agency, or ~~$150,000.00~~ $300,000.00 in aggregate amount if the loan is not guaranteed by the Farm Services Agency, or its successor agency, for any agricultural loan for any three-year period for any particular individual, partnership, corporation, or other entity or related entity. No funds may be disbursed for any loan approved under this provision, except for any agricultural loan referenced above in an amount not to exceed $50,000.00, and no rejection of a loan by a loan officer pursuant to this subdivision shall become final, until three working days after the members of the authority are notified by facsimile, electronic mail, or overnight delivery mailed or sent on the day of approval or rejection, of the intention to approve or reject such loan. If any member objects within that three-day period, the approval or rejection will be held for reconsideration by the members of the authority at its next duly scheduled meeting;

Sec. 6. 10 V.S.A. § 221(a) is amended to read:

(a) Upon application of the proposed mortgagee, the authority may insure mortgage payments required to repay loans made by the mortgagee for the purpose of financing the costs of a project, upon such terms and conditions as the authority may prescribe; provided, however, that the total principal obligations of all mortgages insured under this subsection and under subsection (c) of this section outstanding at any one time shall not exceed ~~$9,000,000.00~~ $3,500,000.00. Before insuring any mortgage payments hereunder, the authority shall determine and incorporate each of the findings established by this subsection in its minutes. Such findings, when adopted by the authority shall be conclusive:

* * *

Sec. 7. COMPREHENSIVE CAPITAL GAPS STUDY COMMITTEE

(a) Creation. There is created an expert committee for the purpose of identifying areas of Vermont's economy that have unmet or underserved access to capital, determining what barriers are preventing the efficient and appropriate flow of capital, and developing innovative strategies to make capital more accessible to these underserved areas. The committee shall receive administrative support from the office of the treasurer.

(b) Membership. The committee shall be composed of seven members as follows:

(1) the state treasurer or designee, who shall serve as chair of the committee;

(2) the deputy commissioner of banking within the department of banking, insurance, securities, and health care administration or designee;

(3) the secretary of commerce and community development or designee;

(4) a senior officer of a Vermont bank, who shall be appointed by the governor;

(5) a member of the public, who shall be appointed by the speaker of the house;

(6) a member of the public, who shall be appointed by the president pro tempore of the senate; and

(7) an executive director of a Vermont nonprofit organization which, as part of its mission, directly lends or services loans or other similar obligations, who shall be appointed by the governor.

(c) Powers and duties.

(1) The committee shall identify:

(A) The areas of Vermont's economy that are currently underserved by traditional private and public capital sources. Such areas may include: equity and debt financing for start-ups and growing small businesses; mortgage financing for low income families, first-time homebuyers, and nonprofit developers; underwriting and risk capital for multifamily housing and community facilities; low-interest financing for sustainable agriculture, energy efficiency and renewable energy ventures; and affordable financing for higher education opportunities for Vermonters;

(B) Public and quasi-public agencies that provide a combination of direct lending, bond financing, loan guarantees, and grant programs for the subject areas referenced in subdivision (1)(A) of this subsection (c). The committee shall receive testimony and reports for the purpose of completing an

inventory of current capital sources and related services, missions, and goals, and the extent to which the results are consistent with expected volumes. These institutions may include: the Vermont economic development authority; the Vermont Housing Finance Agency; the Vermont Student Assistance Corporation; the Vermont municipal bond bank; the Vermont community loan fund; and the state treasurer's banking and investment services;

(C) Banking and private sector organizations that work with or provide services in the areas referenced in subdivision (1)(A) of this subsection (c);

(D) Economic impacts relative to financing activities undertaken by the organizations currently providing capital in the state;

(E) The main barriers, such as risk aversion, transactional limits, and existing regulations, that are inhibiting the access to capital in the underserved areas; and

(F) The extent to which capital to meet the needs identified in subdivision (1)(A) of this subsection (c) comes from Vermont sources or is invested in Vermont firms or organizations. Identify opportunities for local investment.

(2) On or before January 15, 2013, the committee shall submit a report of its findings and recommendations to the senate committee on finance and to the house committees on commerce and economic development and on ways and means. The report shall:

(A) Identify the extent to which the capital needs of the underserved areas are currently being met by traditional public and private funding sources, including how public and quasi-public agencies address their statutory missions, deploy Vermont's resources, and measure effectiveness;

(B) Recommend opportunities for collaboration to create efficiencies within existing public, quasi-public, and private financing channels with the goal of adding new capital investment rather than replacing existing markets;

(C) Identify and recommend options for combined activity, tools, policies, strategies, and funding options for strengthening the stated goals of various public and quasi-public agencies, the treasurer's office, financial institutions, and nonprofits that help to fill capital gaps in the marketplace;

(D) Recommend, where feasible, opportunities for collaboration to restructure or create efficiencies within and among state-sponsored financial institutions;

(E) Review feasibility of creating one or more vehicles or capacity to foster in-state investment opportunities where appropriate. These may include

new delivery strategies and changes to state treasury operations to foster local financing activities;

(F) Evaluate conceptual models of a state bank, green trust, or similar state-created institution authorized to aggregate state funds and raise capital and determine whether further detailed study should be conducted to determine whether one or more such institutions could effectively provide and leverage investment in the Vermont economy where capital needs are identified; and

(G) Provide recommendations that foster partnerships with banking institutions doing business in the state to address unmet needs.

Sec. 8. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass, and that after passage the title of the bill be amended to read:

An act relating to state bonding authority and evaluating capital needs.

And that when so amended the bill ought to pass.

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass when so amended.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Finance?, on motion of Senator Campbell, action on the bill was postponed until the next legislative day.

Consideration Postponed

H. 78.

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

An act relating to wages for laid-off employees.

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

Sec. 1. 9 V.S.A. § 1971 is amended to read:

§ 1971. ~~EXTENT OF LIEN~~ UNPAID WAGES; STATUTORY LIEN; PRIORITY OVER SUBSEQUENT MORTGAGE OR LIEN

(a) A statutory lien is created on the real and personal property of an employer for up to 30 days of unpaid wages.

(b) The liability of ~~a corporation~~ an employer as defined in 21 V.S.A. § 341 to ~~wage earners~~ an employee for unpaid wages which were earned ~~in the three months next~~ for a 30-day period prior to the filing of a new mortgage or other lien upon the property ~~and franchise of such corporation~~ of the employer, in all cases, shall be a first lien thereon, notwithstanding any mortgage or other lien thereon recorded after such wages were earned. ~~An individual who works for wages, salary or hire at a rate of compensation not exceeding $3,000.00 a year shall be deemed to be a wage earner within the meaning of this section.~~ Notice of the lien if on personal property shall be filed with the secretary of state's office and, if on real property, in the land records, by the employee or the department of labor acting on behalf of one or more employees. An employee who is owed wages or the department of labor acting on behalf of one or more employees may file an action to execute on the lien in the civil division of the superior court in the county in which the employer has its principal place of business in the state, or in the civil division of the Washington County superior court.

Sec. 2. 11A V.S.A. § 14.03 is amended to read:

§ 14.03. ARTICLES OF DISSOLUTION; CONTENT OF NOTICE; NOTICE TO DEPARTMENT OF LABOR REGARDING UNPAID WAGES

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:

(1) the name of the corporation;

(2) the date dissolution was authorized;

(3) if dissolution was approved by the shareholders:

(A) the number of votes entitled to be cast on the proposal to dissolve; and

(B) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval;

(4) if voting by voting groups was required, the information required by subdivision (3) of this subsection ~~must be~~, separately provided for each voting group entitled to vote separately on the plan to dissolve;

(5) a statement as to the settlement of debts, the distribution of property, and the status of pending litigation;

(6) a statement whether the corporation owes any unpaid wages to its employees.

(b) Subject to the provisions of section 14.09 of this title, a corporation is dissolved upon the effective date of its articles of dissolution.

(c) If a corporation owes unpaid wages to its employees, it shall also file a statement to that effect with the department of labor.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs?, on motion of Senator Campbell, action on the bill was postponed until the next legislative day.

Proposal of Amendment; Third Reading Ordered

H. 484.

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

An act relating to amendment to the Windham solid waste district charter.

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

First: In Sec. 2, 24 App. V.S.A. chapter 417, in § 1, by striking out the following: ". The member towns of the District are those identified on Attachment A"

Second: In Sec. 2, 24 App. V.S.A. chapter 417, in § 43, by striking out the word "CHARGE" in the section title and inserting in lieu thereof the word CHARGES

Third: In Sec. 2, 24 App. V.S.A. chapter 417, in § 62, in subdivision (4), by striking out the words "but not limited to" where it appears in the first sentence

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

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

Proposal of Amendment; Third Reading Ordered

H. 550.

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

An act relating to the Vermont administrative procedure 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. 3 V.S.A. § 844 is amended to read:

§ 844. EMERGENCY RULES

* * *

(d) Emergency rules adopted under this section shall include:

(1) as much of the information required for the filing of a proposed rule as is practicable under the circumstances; and

(2) a signed and dated statement by the adopting authority explaining the nature of the imminent peril to the public health, safety, or welfare and approving of the contents of the rules.

(e)(1) On a majority vote of the entire committee, the committee may object under this subsection if an emergency rule is:

~~(1)~~(A) beyond the authority of the agency;

~~(2)~~(B) contrary to the intent of the legislature;

~~(3)~~(C) arbitrary; or

~~(4)~~(D) not necessitated by an imminent peril to public health, safety, or welfare sufficient to justify adoption of an emergency rule.

(2) When objection is made under this subsection, on majority vote of the entire committee, the committee may file the objection in certified form with the secretary of state. The objection shall contain a concise statement of the committee's reasons for its action. The secretary shall affix to each objection a certification of its filing and as soon as practicable transmit a copy to the agency. After a committee objection is filed with the secretary under this subsection, to the extent that the objection covers a rule or portion of a rule, the burden of proof thereafter shall be on the agency in any action for judicial review or for enforcement of the rule to establish that the part objected to is within the authority delegated to the agency, is consistent with the intent of the legislature, is not arbitrary, and is justified by an imminent peril to the public health, safety, or welfare. If the agency fails to meet its burden of proof, the court shall declare the whole or portion of the rule objected to invalid. The failure of the committee to object to a rule is not an implied legislative authorization of its substantive or procedural lawfulness.

(3) When the committee makes an objection to an emergency rule under this subsection, the agency may withdraw the rule to which an objection was made. Prior to withdrawal, the agency shall give notice to the committee of its intent to withdraw the rule. A rule shall be withdrawn upon the filing of a notice of withdrawal with the secretary of state and the committee. If the emergency rule amended an existing rule, upon withdrawal of the emergency rule, the existing rule shall revert to its original form, as though the emergency rule had never been adopted.

Sec. 2. 3. V.S.A. § 817 is amended to read:

§ 817 LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES

* * *

(d) In addition to its powers under section 842 of this title concerning rules, the committee may, in similar manner, conduct public hearings, object, and file objections concerning existing rules. A rule reviewed under this subsection shall remain in effect until amended or repealed.

(e) At any time following its consideration of a final proposal under section 841 of this title, the committee, by majority vote of the entire committee, may request that any standing committees of the general assembly review the issues or questions presented therein which are outside the jurisdiction of the committee but are within the jurisdiction of the standing committees. On receiving a request for review under this subsection, a standing committee may at its discretion review the issues or questions and act on them. The committee's request for review shall not affect the review or review period of a final proposal.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 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, and the proposal of amendment was agreed to, and third reading of the bill was ordered.

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. 99, S. 181, H. 758, H. 759, H. 768, H. 770, H. 785.

Adjournment

On motion of Senator Campbell, the Senate adjourned until one o'clock in the afternoon on Thursday, April 19, 2012.

THURSDAY, APRIL 19, 2012

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 51

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

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 762. An act relating to workers' compensation and unemployment compensation.

H. 787. An act relating to approval of amendments to the charter of the city of Montpelier.

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. 209. An act relating to naturopathic physicians.

And has passed the same in concurrence.

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

J.R.S. 57. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

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

H. 403. An act relating to foreclosure of mortgages.

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

The Governor has informed the House that on the April 18, 2012, he approved and signed a bill originating in the House of the following title:

H. 634. An act relating to remedies for failure to pay municipal tickets.

Bill Ordered to Lie

Senator Lyons moved that the rules be suspended and that House bill entitled:

H. 774. An act relating to meat inspection, delivery of liquid fuels, dairy operations, and animal foot baths.

be committed to the Committee on Natural Resources and Energy with the reports of the Committees on Agriculture and on Finance *intact*,

Thereupon, pending the question, Shall the bill be committed to the Committee on Natural Resources and Energy with the reports of the Committees on Agriculture and on Finance *intact*?, Senator Lyons requested and was granted leave to withdraw the request and moved that the bill be ordered to lie.

Which was agreed to.

Bills Referred

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

H. 762.

An act relating to workers' compensation and unemployment compensation.

To the Committee on Rules.

H. 787.

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

To the Committee on Rules.

Bills Passed in Concurrence with Proposals of Amendment

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

H. 53. An act relating to the Interstate Wildlife Violator Compact.

H. 440. An act relating to creating an agency and secretary of education and clarifying the purpose of the state board.

H. 464. An act relating to a moratorium on hydraulic fracturing wells for natural gas and oil production.

H. 484. An act relating to amendment to the Windham solid waste district charter.

Point of Order; Consideration Postponed

S. 169.

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

An act relating to workers' compensation liens.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds:

(1) Several recent cases involving the search and rescue of persons lost in Vermont's outdoor recreation areas, including the tragic death of Levi Duclos on January 9, 2012 as he was hiking on the Emily Proctor Trail in Ripton, have raised questions concerning whether supervision of backcountry search and rescue operations should be maintained by the department of public safety or shared with or transferred to another governmental entity and whether regional protocols should be put into place to allow for a local or regional response utilizing a combination of qualified professional and qualified volunteer searchers and rescuers.

(2) Under current law and practice, the Vermont State Police division of the department of public safety has primary responsibility for finding lost hikers and other missing people in areas of the state which do not have municipal police departments and has the authority to call out qualified professional and qualified volunteer services. This duty was assigned when the Vermont State Police were first created in 1946 and has not changed since that time. According to Howard Paul, a public information officer and member of the board of directors of the National Association for Search and Rescue, Vermont is one of only five states that require their state police to find and rescue people who are lost or missing outdoors.

(3) In other states in which a significant amount of outdoor recreational activity occurs, such as New Hampshire and Maine, state fish and game agencies are in charge of finding lost outdoor recreationalists. Most eastern states turn to park rangers and fish and game wardens for search and rescue.

(4) Many states collaborate with nonprofit organizations to aid in search and rescue. For example, the Maine Warden Service is in charge of search and rescue throughout that state, and it relies on the Maine Association for Search

and Rescue, which is composed of approximately 15 approved member organizations.

(5) Vermont has an extensive number of first responders and emergency service personnel with specific training and experience conducting outdoor search and rescue operations. The Lincoln Fire Department, for example, has significant search and rescue experience, well-established strategies for conducting such operations, and the ability to have a team on the ground in sometimes 30 minutes or less on nights and weekends. Despite these resources, only four civilian organizations are approved by the department of public safety to provide search and rescue assistance in Vermont.

(6) In light of Vermont's minority status in charging the state police with responsibility for search and rescue of lost hikers and outdoor recreationalists and in light of the department's recent challenges in fulfilling this responsibility, it is an appropriate time to consider whether some other state entity, working with Vermont's extensive volunteer community, should assume responsibility for outdoor search and rescue operations.

Sec. 2. BACKCOUNTRY SEARCH AND RESCUE STUDY COMMITTEE

(a) Creation of committee. There is created a backcountry search and rescue study committee to determine whether the department of public safety or a different state agency should have lead or coauthority for supervising search and rescue operations for missing persons in Vermont's backcountry and outdoor recreational areas and to recommend an appropriate organizational structure to manage Vermont's various search and rescue resources. As used in the section, "backcountry search and rescue" means the search for and provision of aid to people who are lost or stranded in the outdoors on Vermont's land or inland waterways.

(b) Membership. The backcountry search and rescue study committee shall be composed of six members. The members of the committee shall be as follows:

(1) Three members of the house appointed by the speaker.

(2) Three members of the senate appointed by the committee on committees.

(c) For purposes of its study, the committee shall consult with and seek testimony from interested parties, including the following individuals and entities or their designees:

(1) The commissioner of public safety.

(2) The commissioner of fish and wildlife.

(3) The Vermont League of Cities and Towns.

(4) Stowe Mountain Rescue.

(5) Colchester Technical Rescue.

(6) A certified first responder with search and rescue experience.

(7) The Professional Firefighters of Vermont.

(8) A member of a volunteer fire department with search and rescue experience designated by the president of the Vermont State Firefighters Association.

(9) A sheriff designated by the department of sheriffs and state's attorneys.

(d) Powers and duties. The committee shall study whether the department of public safety or a different state agency should be responsible for supervising search and rescue operations for missing persons in Vermont's backcountry and outdoor recreational areas. The committee's study shall include:

(1) reviewing the existing method and responsibility for conducting backcountry search and rescue operations in Vermont and identifying the advantages and disadvantages of the current system;

(2) considering models in other states for supervision of backcountry search and rescue operations, including the New Hampshire approach of providing authority to the New Hampshire fish and game department;

(3) evaluating whether backcountry search and rescue operations would be conducted in a more timely and efficient manner if the authority for conducting such operations were held by one or more state or nongovernmental entities other than the department of public safety or whether there should be a shared or regional approach depending on the location of the search;

(4) considering and evaluating different organizational structures to determine how to most effectively manage Vermont's backcountry search and rescue processes and resources;

(5) considering whether minimum qualifications should be set for participation in backcountry search and rescue operations and whether backcountry search and rescue responders who are not state employees should be provided with insurance coverage;

(6) considering the feasibility of establishing an online database of missing persons that would provide automatic notice to first responders;

(7) developing methods of financing search and rescue operations, including consideration of methods used in other states such as:

(A) establishing an outdoor recreation search and rescue card available for purchase by users of outdoor recreation resources on a voluntary basis to help reimburse the expenses of search and rescue missions;

(B) imposing fees on recreational and outdoor licenses and permits; and

(C) permitting recovery of expenses from any person whose negligent conduct required a search and rescue response and, if so, who should bring such an action and who should be reimbursed; and

(8) proposing any statutory changes that the committee identifies as necessary to improve the conduct and supervision of backcountry search and rescue activities in Vermont.

(e) Report. The committee shall report its findings and recommendations, together with draft legislation if any legislative action is recommended, to the general assembly on or before January 15, 2013.

(f) Reimbursement. Members of the committee who are not employees of the state of Vermont shall be reimbursed at the per diem rate set forth in 32 V.S.A. § 1010.

(g) The legislative council shall provide administrative and drafting support to the committee.

After passage, the title of the bill is to be amended to read:

An act relating to a study of search and rescue operations.

And that when so amended the bill ought to pass.

Thereupon, pending the report of the Committee on Appropriations, Senator Snelling 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 Ashe 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 offered by Senator Ashe was *not germane* to the bill.

The President thereupon declared that the proposal of amendment offered by Senator Ashe could *not* be considered by the Senate and the recommendation of amendment was ordered stricken.

Thereupon, Senator Ashe moved to suspend the rules in order to permit consideration of the proposal of amendment of the Committee on Economic

Development, Housing and General Affairs. Thereupon, pending the question, Senator Ashe moved that action on the bill be postponed until the next legislative day. Which was agreed to.

Proposals of Amendment; Third Reading Ordered

H. 789.

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

An act relating to reapportioning the final representative districts of the House of Representatives.

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

First: In Sec. 1, by striking out districts BENNINGTON-3-1 and BENNINGTON-3-2 in their entirety and inserting in lieu thereof the following:

BENNINGTON-3-1	Glastenbury and Shaftsbury	1
BENNINGTON-3-2	Arlington, Sandgate, Sunderland, and that portion of the town of Rupert encompassed within a boundary beginning at the point where the boundary line of Rupert and the state of New York intersects with VT Route 153; then northeasterly along the southern side of the centerline of VT 153 to the intersection of East Street; then easterly along the southern side of the centerline of East Street to the intersection of Kent Hollow Road; then easterly along the southern side and southerly along the western side of the centerline of Kent Hollow Road to the boundary of Sandgate; then westerly along the Sandgate town line to the boundary of New York; then northerly along the New York state line to the point of beginning	1

Second: By striking out districts CHITTENDEN-4-1 and

CHITTENDEN-4-2 in their entirety and inserting in lieu thereof the following:

CHITTENDEN-4-1	Charlotte	1
CHITTENDEN-4-2	Hinesburg	1

Third: By striking out Sec. 3 (effective date) in its entirety and inserting in lieu thereof the following:

Sec. 3. 17 V.S.A. § 1881 is amended to read:

§ 1881. NUMBER TO BE ELECTED

Senatorial districts and the number of senators to be elected from each are as follows:

(1) Addison senatorial district, composed of the towns of Addison, ~~Brandon,~~ Bridport, Bristol, Buel's Gore, Cornwall, Ferrisburgh, Goshen, Granville, Hancock, Huntington, Leicester, Lincoln, Middlebury, Monkton, New Haven, Orwell, Panton, Ripton, Salisbury, Shoreham, Starksboro, Vergennes, Waltham, ~~Whiting and~~ Weybridge, and Whiting..... two;

(2) Bennington senatorial district, composed of the towns of Arlington, Bennington, Dorset, Glastenbury, Landgrove, Manchester, Peru, Pownal, Readsboro, Rupert, Sandgate, Searsburg, Shaftsbury, Somerset, Stamford, Sunderland, Wilmington, Winhall, and Woodford..... two;

(3) Caledonia senatorial district, composed of the towns of Barnet, Bradford, Burke, Danville, Fairlee, Groton, Hardwick, Kirby, Lyndon, Newark, Newbury, Orange, Peacham, Ryegate, St. Johnsbury, Sheffield, Stannard, Sutton, Topsham, Walden, Waterford, West Fairlee, and Wheelock..... two;

(4) Chittenden senatorial district, composed of the towns of Bolton, ~~Buel's Gore,~~ Burlington, Charlotte, Essex, Hinesburg, ~~Huntington,~~ Jericho, Milton, Richmond, St. George, Shelburne, South Burlington, Underhill, Westford, Williston, and Winooski..... six;

(5) Essex-Orleans senatorial district, composed of the towns of Albany, Averill, Avery's Gore, Barton, Bloomfield, Brighton, Brownington, Brunswick, Canaan, Charleston, Concord, Coventry, Craftsbury, Derby, East Haven, Eden, Ferdinand, Glover, Granby, Greensboro, Guildhall, Holland, Irasburg, Jay, Lemington, Lewis, Lowell, Lunenburg, Maidstone, Montgomery, Morgan, Newport City, Newport Town, Norton, Richford, Troy, Victory, Warner's Grant, ~~Warren's~~ Warren Gore, Westfield, Westmore, and Wolcott..... two;

(6) Franklin senatorial district, composed of the towns of ~~Alburg~~ Alburgh, Bakersfield, Berkshire, ~~Enosburg~~ Enosburgh, Fairfax, Fairfield, Fletcher, Franklin, Georgia, Highgate, St. Albans City, St. Albans Town, Sheldon, and Swanton..... two;

(7) Grand Isle senatorial district, composed of the towns of Colchester, Grand Isle, Isle La Motte, North Hero, and South Hero..... one;

(8) Lamoille senatorial district, composed of the towns of Belvidere, Cambridge, Elmore, Hyde Park, Johnson, Morristown, Stowe, and Waterville..... one;

(9) Orange senatorial district, composed of the towns of Braintree, Brookfield, Chelsea, Corinth, Randolph, Strafford, Thetford, Tunbridge, Vershire, Washington, and Williamstown..... one;

(10) Rutland senatorial district, composed of the towns of Benson, Brandon, Castleton, Chittenden, Clarendon, Danby, Fair Haven, Hubbardton, Ira, Killington, Mendon, Middletown Springs, ~~Mt. Holly,~~ Mt. Tabor, Pawlet, Pittsfield, Pittsford, Poultney, Proctor, Rutland City, Rutland Town, Shrewsbury, Sudbury, Tinmouth, Wallingford, Wells, West Haven, and West Rutland..... three;

(11) Washington senatorial district, composed of the towns of Barre City, Barre Town, Berlin, Cabot, Calais, Duxbury, East Montpelier, Fayston, Marshfield, Middlesex, Montpelier, Moretown, Northfield, Plainfield, Roxbury, Waitsfield, Warren, Waterbury, Woodbury, and Worcester..... three;

(12) Windham senatorial district, composed of the towns of Athens, Brattleboro, Brookline, Dover, Dummerston, Grafton, Guilford, Halifax, Jamaica, Londonderry, Marlboro, Newfane, Putney, Rockingham, ~~Somerset,~~ Stratton, Townshend, Vernon, Wardsboro, Westminster, Whitingham, and Windham..... two;

(13) Windsor senatorial district, composed of the towns of Andover, Baltimore, Barnard, Bethel, Bridgewater, Cavendish, Chester, Hartford, Hartland, Ludlow, Mt. Holly, Norwich, Plymouth, Pomfret, Reading, Rochester, Royalton, Sharon, Springfield, Stockbridge, Weathersfield, Weston, West Windsor, Windsor, and Woodstock..... three.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage and shall apply to representative and senatorial districts for the 2012 election cycle and thereafter.

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

An act relating to reapportioning the final representative districts of the House of Representatives and the senatorial districts of the Senate.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the Senate propose to the House to

amend the bill as recommended by the Committee on Reapportionment? Senator Galbraith 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 White as it related to the moving of county boundries was *not germane* to the bill and therefore could not be considered by the Senate.

Thereupon, Senator Galbraith requested and was granted leave to withdraw his request for a point of order.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Reapportionment?, Senator Flory moved to amend the proposal of amendment of the Committee on Reapportionment, by striking out the first and second proposals of amendment in their entirety.

Which was disagreed to.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Reapportionment?, Senator Mullin moved to amend the proposal of amendment of the Committee on Reapportionment, by striking out Sec. 1 in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. 17 V.S.A. § 1893, as amended by Sec. 1 of No. 74 of the Acts of the 2011 Adj. Sess. (2012), is amended to read:

§ 1893. INITIAL DIVISION

The state is divided into the following initial districts, each of which shall be entitled to the indicated number of representatives:

District	Towns and Cities	Representatives

* * *

BENNINGTON-3	Arlington, Glastenbury, Sandgate, Shaftsbury, ~~Stratton,~~ Sunderland, and that portion of the town of Rupert encompassed within a boundary beginning at the point where the boundary line of Rupert and the state of New York intersects with VT Route 153; then northeasterly along the southern side of the centerline of VT 153 to the intersection of ~~East Street; then easterly along the southern side of the centerline of East Street to the intersection of Kent Hollow Road; then southerly along the western side of the centerline of Kent Hollow Road to the boundary of the town of Sandgate; then westerly along the Sandgate town line to the boundary of New York; then northerly along the New York state line to the point of beginning~~ VT Route	

	315; then northeasterly along the eastern side of the centerline of VT 315 to the boundary of the town of Dorset; then southerly along the Dorset town line to the boundary of Sandgate; then westerly along the Sandgate town line to the boundary of New York; then northerly along the New York state line to the point of beginning	2
	* * *	
CHITTENDEN-4-1	Charlotte and~~, in Hinesburg, the following census block 003507: 1039~~ that portion of the town of Hinesburg encompassed within a boundary beginning at the point where the boundary line of Hinesburg and Charlotte intersects with Drinkwater Road; then easterly along the southern side of the centerline of Drinkwater Road to the intersection of Baldwin Road; then southerly along the western side of the centerline of Baldwin Road to the boundary of the town of Monkton; then westerly along the Monkton town line to the boundary of Charlotte; then northerly along the Charlotte town line to the point of beginning	1
CHITTENDEN-4-2	Hinesburg, except that portion of the town in CHITTENDEN-4-1	1
CHITTENDEN-5	Shelburne and St. George	2
CHITTENDEN-6	Burlington and Winooski	12
CHITTENDEN-7	South Burlington	4
CHITTENDEN-8-1	That portion of the town of Essex not included in CHITTENDEN-8-2 or 8-3	2
CHITTENDEN-8-2	The village of Essex Junction, except ~~the following census block 002601: 1023~~ that portion of the village encompassed within a boundary beginning at the point where Pearl Street intersects with Warner Avenue; then northerly along the western side of the centerline of Warner Avenue to the intersection with Sunderland Brook; then northwesterly along the southern side of the centerline of Sunderland Brook to the intersection with Susie Wilson Road and Pearl Street; then southeasterly along the northern side of the centerline of Pearl Street to the point of beginning	2

CHITTENDEN-8-3	Westford and that portion of the town of Essex encompassed within a boundary beginning at the point where the boundary line of Essex and the town of Colchester intersects with Curve Hill Road; then southeasterly along the northern side of the centerline of Curve Hill Road to the intersection of Lost Nation Road; then southeasterly along the northern side of the centerline of Lost Nation Road to the intersection of Old Stage Road; then northerly along the western side of the centerline of Old Stage Road to the intersection of Towers Road; then southeasterly along the northern side of the centerline of Towers Road to the intersection of ~~Clover Drive; then northeasterly along the western side of the centerline of Clover Drive to the intersection with Alder Brook; then southeasterly along the northern side of the centerline of Alder Brook to the intersection with~~ Brown's River Road; then easterly along the northern side of the centerline of Brown's River Road to the intersection of Weed Road; then easterly along the northern side of the centerline of Weed Road to the intersection of Jericho Road; then easterly along the northern side of the centerline of Jericho Road to the boundary of the town of Jericho; then northeasterly along the Jericho town line to the boundary of Westford; then westerly along the Westford town line to the boundary of Colchester; then southwesterly along the Colchester town line to the point of beginning	1
CHITTENDEN-9	Colchester	4
	* * *	
LAMOILLE-2	Belvidere, Hyde Park, Johnson, and Wolcott~~, and that portion of the town of Eden not in ORLEANS-LAMOILLE~~	2
	* * *	
ORLEANS-2	Coventry, Irasburg, Newport City, ~~and~~ Newport Town, and that portion of the town of Troy encompassed within a boundary beginning at the point where the boundary line of Troy and Newport Town intersects	

	with the Canadian Pacific railway; then northwesterly along the southern side of the centerline of the railway to the intersection of VT Route 105; then northwesterly along the southern side of the centerline of VT 105 to the intersection of East Hill Road; then southerly along the eastern side of the centerline of East Hill Road to the intersection of VT Route 100; then westerly along the southern side of the centerline of VT 100 to the intersection with the Missisquoi River; then southwesterly along the eastern side of the centerline of the Missisquoi River to the boundary of the town of Westfield; then southerly along the Westfield town line to the boundary of the town of Lowell; then easterly along the Lowell town line to the boundary of Newport Town; then northerly along the Newport Town boundary to the point of beginning	2
	* * *	
ORLEANS-LAMOILLE	Eden, Jay, Lowell, ~~Troy,~~ Westfield, and that portion of the town of ~~Eden that is west of the centerline of Route 100~~ Troy not in ORLEANS-2	1
RUTLAND-BENNINGTON	Middletown Springs, Pawlet, ~~Tinmouth, that portion of the town of~~ Wells ~~not in RUTLAND-1~~, and that portion of the town of Rupert not in ~~BENNINGTON-3~~ BENNINGTON-3-2	1
RUTLAND-1	Ira~~,~~ and Poultney~~, and that portion of the town of Wells encompassed within a boundary beginning at the point where the boundary line of Wells and Poultney intersects with West Lake Road; then southerly along the eastern and Lake St. Catherine side of the centerline of West Lake Road to the intersection of VT Route 30; then northerly along the western and Lake St. Catherine side of the centerline of VT 30 to the boundary of Poultney; then westerly along the Poultney town line to the point of beginning~~	1
RUTLAND-2	Clarendon, ~~Proctor,~~ Shrewsbury, Tinmouth, Wallingford, and West Rutland	2

RUTLAND-3	Castleton, Fair Haven, Hubbardton, Sudbury, and West Haven	2
	* * *	
RUTLAND-6	Brandon, Pittsford, and ~~Sudbury~~ Proctor	2
~~RUTLAND-WINDSOR-1~~		
RUTLAND-WINDSOR	Bridgewater, Chittenden, Killington, and Mendon	1
~~RUTLAND-WINDSOR-2~~	~~Ludlow, Mount Holly, and Shrewsbury~~	~~1~~
	* * *	
WINDHAM-5	Marlboro, Newfane, and ~~that portion of the town of~~ Townshend ~~not in WINDHAM-BENNINGTON~~	1
WINDHAM-6	Halifax, ~~Whitingham, and~~ Wilmington, and that portion of the town of Whitingham not in WINDHAM-BENNINGTON	1
WINDHAM-BENNINGTON	Dover, Readsboro, Searsburg, Somerset, Stamford, Wardsboro, and that portion of the town of ~~Townshend~~ Whitingham encompassed within a boundary beginning at the ~~northernmost point where the boundary line of Townshend and the town of Wardsboro intersects with West Hill Road; then northerly along the eastern side and easterly along the southern side of the centerline of West Hill Road to the intersection of State Forest Road; then easterly along the southern side and southerly along the western side of the centerline of State Forest Road to the boundary of the town of Newfane; then westerly along the town line of Newfane to the boundary line of Wardsboro; then northerly along the town line of Wardsboro to the point of beginning~~ point where the boundary line of Whitingham and Readsboro intersects with VT Route 100; then southerly along the Readsboro town line to the boundary of the state of Massachusetts; then easterly	

	along the Massachusetts state line to the intersection of Kentfield Road; then northerly along the western side of the centerline of Kentfield Road to the intersection with the Nog Brook; then northerly along the western side of the centerline of Nog Brook to the intersection with VT 100; then southerly along the eastern side and westerly along the southern side of the centerline of VT 100 to the point of beginning	1
WINDHAM- BENNINGTON- WINDSOR	Jamaica, Londonderry, Stratton, Weston, and Winhall	1
	* * *	
WINDSOR-3-1	Andover, Baltimore, Chester, and that portion of the town of Springfield encompassed within a boundary beginning at the point where the boundary line of Springfield and Chester intersects with Route 10; then easterly along the southern side of the centerline of Route 10 to the intersection of Cemetery Road; then easterly along the southern side of the centerline of Cemetery Road to the intersection of School Street; then southerly on the western side of the centerline of School Street to the intersection of Main Street; then easterly on the southern side of the centerline of Main Street to the intersection of Church Street; then southerly along the western side of the centerline of Church Street to the intersection ~~with Great Brook; then southerly along the western side of the centerline of Great Brook to the intersection with~~ of Spoonerville Road; then southerly along the western side of the centerline of Spoonerville Road to the boundary line of Chester; then northerly along the Chester town line to the point of beginning	1
WINDSOR-3-2	That portion of the town of Springfield not in WINDSOR-3-1	2
WINDSOR-4-1	Barnard, that portion of the town of Pomfret not in WINDSOR-5, and that portion of the town of Hartford encompassed within a boundary beginning at the point where the boundary line of Hartford and	

	the town of Norwich intersects with Newton Lane; then southerly along the western side of the centerline of Newton Lane to the intersection of Jericho Street; then westerly along the northern side of the centerline of Jericho Street to the intersection of Dothan Road; then southerly along the western side of the centerline of Dothan Road to the intersection of VT Route 14; then westerly along the northern side of the centerline of VT Route 14 to the intersection of the centerline of Runnels Road and VT Route 14; then at a right angle to a utility pole marked 137T/6 ET&T/3>/136/GMP Corp/156/40030 on the south edge of Route 14; then southerly in a straight line across the White River to the junction of Old River Road and the beginning of Costello Road; then southerly and easterly along the centerline of Costello Road to its end on U.S. Route 4; then westerly along the northern side of the centerline of U.S. Route 4 to the boundary of the town of Hartland; then westerly and northerly along the town line of Hartland to the boundary of Pomfret; then northeasterly along the town line of Pomfret to the boundary of Norwich; then southeasterly along the town line of Norwich to the point of beginning	1
WINDSOR-4-2	That portion of the town of Hartford not located in WINDSOR-4-1	2
WINDSOR-5	~~Plymouth,~~ Reading, ~~and~~ Woodstock, and that portion of the town of Pomfret encompassed within a boundary beginning at the point where the boundary line of Pomfret and the town of Barnard intersects with Stage Road; then southeasterly along the southern side of the centerline of Stage Road to the intersection of Pomfret Road; then southeasterly along the southern side of the centerline of Pomfret Road to the boundary of Woodstock; then westerly along the Woodstock town line to the boundary of Barnard; then northerly along the Barnard town line to the point of beginning	1
	* * *	
WINDSOR-RUTLAND-1	Ludlow, Mount Holly, and Plymouth	1

~~WINDSOR-~~
~~RUTLAND~~

WINDSOR-
RUTLAND-2 Bethel, Pittsfield, Rochester, and Stockbridge 1

Thereupon, pending the question, Shall the proposal of amendment of the Committee on Reapportionment be amended as proposed by Senator Mullin?, Senator Mullin requested and was granted leave to withdrawn the proposal of amendment.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as proposed by the Committee on Reapportionment?, Senator Sears moved to amend the proposal of amendment of the Committee on Reapportionment, by adding two new sections to be numbered Sec. 4 and Sec. 5 to read as follows:

Sec. 4. 24 V.S.A. § 3 is amended to read:

§ 3. BENNINGTON

The county of Bennington is formed of the towns of Arlington, Bennington, Dorset, Landgrove, Manchester, Peru, Pownal, Readsboro, Rupert, Sandgate, Searsburg, Shaftsbury, Stamford, Sunderland, Winhall, Woodford, and the unorganized ~~township~~ townships of Glastenbury and Somerset. Bennington and Manchester are the shire towns.

Sec. 5. 24 V.S.A. § 14 is amended to read:

§ 14. WINDHAM

The county of Windham is formed of the towns of Athens, Brattleboro, Brookline, Dover, Dummerston, Grafton, Guilford, Halifax, Jamaica, Londonderry, Marlboro, Newfane, Putney, Rockingham, Stratton, Townshend, Vernon, Wardsboro, Westminster, Whitingham, Wilmington, and Windham ~~and the unorganized township of Somerset~~. Newfane is the shire town.

And by renumbering the remaining sections to be numerically correct

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as moved by Senator Sears? Senator Galbraith 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 Sears 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 offered by Senator Sears was *not germane* to the bill.

The President explained that in deciding a question of germaneness, the threshold determination must be that of the subject matter of the bill and

amendment under consideration. The bill as it stands deals with House legislative districts. The amendment deals with changing county lines. Thus, I find the amendment does not flow in a natural and logical sequence to the subject matter of the bill as it stands, and that it introduces a different topic or subject. As such, the proposed amendment is ***not germane*** to H.789 and may not be considered by the Senate.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Reapportionment?, Senator Westman moved that the Senate propose to the House that the bill be amended as follows:

First: In Sec. 3, 17 V.S.A. § 1881, in subdivision (5) (Essex-Orleans senatorial district), after "East Haven," by striking out the word "Eden,"

Second: In Sec. 3, 17 V.S.A. § 1881, in subdivision (8) (Lamoille senatorial district), after "Cambridge," by inserting the word Eden,

Which was agreed to.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Reapportionment, as amended?, Senator Sears raised a *point of order* regarding the constitutionality of the recommendation of proposal of amendment of the Committee on Reapportionment with respect to the Township of Somerset being in the Bennington Senatorial District.

Thereupon, citing Mason's Manual of Legislative Procedure Section 242, the President *overruled* the point of order as it is not within the province of the Presiding Officer to decide as to the constitutionality of an amendment, or the legal effect of or expediency of a proposed amendment or bill.

Thereupon, the pending question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Reapportionment, as amended?, was decided in the affirmative on a roll call, Yeas 26, Nays 2.

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, Benning, Campbell, Carris, Cummings, Doyle, *Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

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

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

*Senator Galbraith explained his vote as follows:

"I am concerned that this reapportionment plan is unconstitutional. Like it or not, the US and Vermont constitutions say we represent people not territory. Population growth in Vermont has been in the Northwest. Based on population, the four northwest Senate districts should have eleven Senators. This plan only provides them ten.

"I attended enough meetings of the Reapportionment Committee to understand that the primary motive for the 18.29 % deviation in this bill is to preserve the status quo. This is not a constitutionally permissible reason for a deviation that is far beyond that of any state except for Hawaii.

"I regret that the Reapportionment Committee did not make a verbatim record of its deliberations, as would have been the case had the Senate not abruptly amended its rules to strip the Government Operations Committee of its responsibility for reapportionment. The Committee minutes are a poor substitute for a verbatim recording as they do not reflect how much the Committee focused on maintaining the status quo and how little justification there was for the resulting deviation. The failure to keep a verbatim record hurts Vermonters wishing to exercise their constitutional and statutory rights to challenge this plan in the Courts."

*Senator Flory explained her vote as follows:

"I reluctantly vote yes, with reservations because of the high deviation in the House portion of the bill being passed, but with the hope that this will be addressed in Conference."

Thereupon, third reading of the bill was ordered.

Adjournment

On motion of Senator Campbell, the Senate adjourned until nine o'clock in the morning on Friday, April 20, 2012.

FRIDAY, APRIL 20, 2012

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 52

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

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 533. An act relating to insurance business transfers.

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. 106. An act relating to miscellaneous changes to municipal government law.

S. 203. An act relating to child support enforcement.

S. 222. An act relating to cost-sharing for employer-sponsored insurance assistance plans.

S. 236. An act relating to health care practitioner signature authority.

S. 245. An act relating to requiring cardiovascular care instruction in public and independent schools.

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. 459. An act relating to approval of amendments to the charter of the town of Brattleboro.

And has severally concurred therein.

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

H. 413. An act relating to creating a civil action against those who abuse, neglect, or exploit a vulnerable adult.

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

Bills Referred to Committee on Appropriations

House bills of the following titles, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule were severally referred to the Committee on Appropriations:

H. 535. An act relating to racial disparities in the Vermont criminal justice system.

H. 559. An act relating to health care reform implementation.

Joint Resolution Referred

J.R.S. 58.

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

By Senator Pollina,

J.R.S. 58. Joint resolution relating to respectful language in the Vermont Statutes Annotated.

Whereas, the State of Vermont is committed to eliminating all forms of abuse and harassment and to protecting the civil rights of all Vermonters, and

Whereas, this commitment includes achieving long-term systemic change to end discrimination against people with disabilities, and

Whereas, deliberate use of disrespectful language directed at people with disabilities is a form of harassment and abuse, and

Whereas, even if a word or phrase was not originally used with discriminatory intent, evolving societal perceptions may now cause the word or phrase to be viewed as showing disrespect to persons with disabilities, and

Whereas, in 2010, the general assembly enacted Act 24, directing that a working group under the supervision of the agency of human services identify instances in the Vermont Statutes Annotated of language that is now viewed as disrespectful to persons with disabilities, and

Whereas, the working group prepared a comprehensive inventory of instances where disrespectful language appears in the Vermont Statutes Annotated and recommended alternative words and phrases as replacements, and

Whereas, the legislative council has the statutory revision authority provided in 2 V.S.A. § 424 to implement those language changes that do not substantively alter the meaning of the law, while other changes will require the enactment of legislation, and

Whereas, the general assembly desires that respectful language be used when referring to persons with disabilities, both in legislative deliberations and in the Vermont Statutes Annotated, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly requests that the legislative council implement, during the 2012 statutory revision process, those aspects of the Act 24 working group's report on respectful language that are within the council's legal

authority and further requests that a bill be prepared providing for the balance of the changes to the Vermont Statutes Annotated that would be presented to the house and senate committees on government operations no later than January 15, 2013.

Thereupon, the President, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Government Operations.

Bills Passed in Concurrence with Proposal of Amendment

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

H. 550. An act relating to the Vermont administrative procedure act.

H. 789. An act relating to reapportioning the final representative districts of the House of Representatives.

Rules Suspended; Bills Messaged

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

H. 550, H. 789.

Proposal of Amendment; Third Reading Ordered

H. 37.

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

An act relating to telemedicine.

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

Sec. 1. 8 V.S.A. chapter 107, subchapter 14 is added to read:

Subchapter 14. Telemedicine

§ 4100k. COVERAGE FOR TELEMEDICINE SERVICES

(a) All health insurance plans in this state shall provide coverage for telemedicine services delivered to a patient in a health care facility to the same extent that the services would be covered if they were provided through in-person consultation.

(b) A health insurance plan may charge a deductible, co-payment, or coinsurance for a health care service provided through telemedicine so long as

it does not exceed the deductible, co-payment, or coinsurance applicable to an in-person consultation.

(c) A health insurance plan may limit coverage to health care providers in the plan's network and may require originating site health care providers to document the reason the services are being provided by telemedicine rather than in person.

(d) Nothing in this section shall be construed to prohibit a health insurance plan from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered person's policy.

(e) A health insurance plan may reimburse for teleophthalmology or teledermatology provided by store and forward means and may require the distant site health care provider to document the reason the services are being provided by store and forward means.

(f) Nothing in this section shall be construed to require a health insurance plan to reimburse the distant site health care provider if the distant site health care provider has insufficient information to render an opinion.

(g) As used in this subchapter:

(1) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, as well as Medicaid, the Vermont health access plan, and any other public health care assistance program offered or administered by the state or by any subdivision or instrumentality of the state. The term does not include policies or plans providing coverage for specified disease or other limited benefit coverage.

(2) "Health care facility" shall have the same meaning as in 18 V.S.A. § 9402.

(3) "Store and forward" means an asynchronous transmission of medical information to be reviewed at a later date by a health care provider at a distant site who is trained in the relevant specialty and by which the health care provider at the distant site reviews the medical information without the patient present in real time.

(4) "Telemedicine" means the delivery of health care services such as diagnosis, consultation, or treatment through the use of live interactive audio and video over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. Telemedicine does not include the use of audio-only telephone, e-mail, or facsimile.

Sec. 2. 18 V.S.A. chapter 219 is redesignated to read:

CHAPTER 219. HEALTH INFORMATION TECHNOLOGY AND TELEMEDICINE

Sec. 3. STATUTORY REVISION

18 V.S.A. §§ 9351–9352 shall be recodified as subchapter 1 (Health Information Technology) of chapter 219.

Sec. 4. 18 V.S.A. chapter 219, subchapter 2 is added to read:

Subchapter 2. Telemedicine

§ 9361. HEALTH CARE PROVIDERS PROVIDING TELEMEDICINE OR STORE AND FORWARD SERVICES

(a) Subject to the limitations of the license under which the individual is practicing, a health care provider licensed in this state may prescribe, dispense, or administer drugs or medical supplies, or otherwise provide treatment recommendations to a patient after having performed an appropriate examination of the patient either in person or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically. Treatment recommendations made via electronic means, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional provider–patient settings. For purposes of this subchapter, "telemedicine" shall have the same meaning as in 8 V.S.A. § 4100k.

(b) Receiving teledermatology or teleophthalmology by store and forward means shall not preclude a patient from receiving real time telemedicine or face-to-face services with the distant site health care provider at a future date. Originating site health care providers involved in the store and forward process shall ensure informed consent from the patient. For purposes of this subchapter, "store and forward" shall have the same meaning as in 8 V.S.A. § 4100k.

Sec. 5. RULEMAKING

(a) The commissioner of Vermont health access may adopt rules pursuant to 3 V.S.A. chapter 25 to carry out the purposes of this act.

(b) The commissioner of banking, insurance, securities, and health care administration may adopt rules pursuant to 3 V.S.A. chapter 25 to carry out the purposes of this act.

Sec. 6. HEALTH CARE FACILITY; STUDY

(a) The commissioner of financial regulation or designee shall convene a workgroup comprising health care providers, health insurers, and other

interested stakeholders to consider whether and to what extent Vermont should require health insurance coverage of services delivered to a patient by telemedicine outside a health care facility.

(b) No later than January 15, 2013, the commissioner of financial regulation or designee shall report the workgroup's recommendations to the house committee on health care and the senate committees on health and welfare and on finance.

Sec. 7. EFFECTIVE DATE

(a) Sec. 1 of this act shall take effect on October 1, 2012 and shall apply to all health insurance plans on and after October 1, 2012 on such date as a health insurer offers, issues, or renews the health insurance plan, but in no event no later than October 1, 2013.

(b) The remaining sections of this act shall take effect on passage.

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

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

Consideration Resumed; Third Reading Ordered

H. 157.

Consideration was resumed on House bill entitled:

An act relating to restrictions on tanning beds.

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

Proposal of Amendment; Consideration Postponed

H. 485.

Senator McCormack, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to establishing universal recycling of solid waste.

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:

* * * Universal Recycling of Solid Waste * * *

Sec. 1. 10 V.S.A. § 6602 is amended to read:

§ 6602. DEFINITIONS

For the purposes of this chapter:

(1) "Secretary" means the secretary of the agency of natural resources, or his or her duly authorized representative.

(2) "Solid waste" means any discarded garbage, refuse, septage, sludge from a waste treatment plant, water supply plant, or pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous materials resulting from industrial, commercial, mining, or agricultural operations and from community activities but does not include animal manure and absorbent bedding used for soil enrichment; high carbon bulking agents used in composting; or solid or dissolved materials in industrial discharges which are point sources subject to permits under the Water Pollution Control Act, chapter 47 of this title.

* * *

(12) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any ground or surface waters.

(13) "Waste" means a material that is discarded or is being accumulated, stored, or physically, chemically, or biologically treated prior to being discarded or has served its original intended use and is normally discarded or is a manufacturing or mining by-product and is normally discarded.

* * *

(19) "Implementation plan" means that plan which is adopted to be consistent with the state solid waste management plan. This plan must include all the elements required for consistency with the state plan and an applicable regional plan and shall be approved by the secretary. This implementation plan is the basis for state certification of facilities under subsection 6605(c) of this title.

* * *

(27) "Closed-loop recycling" means a system in which a product made from one type of material is reclaimed and reused in the production process or the manufacturing of a new or separate product.

(28) "Commercial hauler" means any person that transports:

(A) regulated quantities of hazardous waste; or

(B) solid waste for compensation in a motor vehicle having a rated capacity of more than one ton.

(29) "Mandated recyclable" means the following source separated materials: aluminum and steel cans; aluminum foil and aluminum pie plates; glass bottles and jars from foods and beverages; polyethylene terephthalate (PET) plastic bottles or jugs; high density polyethylene (HDPE) plastic bottles and jugs; corrugated cardboard; white and colored paper; newspaper; magazines; catalogues; paper mail and envelopes; boxboard; and paper bags.

(30) "Leaf and yard residual" means source separated, compostable untreated vegetative matter, including grass clippings, leaves, kraft paper bags, and brush, which is free from noncompostable materials. It does not include such materials as pre- and postconsumer food residuals, food processing residuals, or soiled paper.

(31) "Food residual" means source separated and uncontaminated material that is derived from processing or discarding of food and that is recyclable, in a manner consistent with section 6605k of this title. Food residual may include preconsumer and postconsumer food scraps. "Food residual" does not mean meat and meat-related products when the food residuals are composted by a resident on site.

(32) "Source separated" or "source separation" means the separation of compostable and recyclable materials from noncompostable, nonrecyclable materials at the point of generation.

(33) "Wood waste" means trees, untreated wood, and other natural woody debris, including tree stumps, brush and limbs, root mats, and logs.

Sec. 2. 10 V.S.A. § 6604 is amended to read:

§ 6604. SOLID WASTE MANAGEMENT ~~PLANS~~ PLAN

(a) No later than ~~April 30, 1988~~ November 1, 2013, the secretary shall ~~publish and~~ adopt, after notice and public hearing pursuant to 3 V.S.A. chapter 25 ~~of Title 3~~, a solid waste management plan which sets forth a comprehensive statewide strategy for the management of waste~~, including whey. No later than July 1, 1991, the secretary shall publish and adopt, after notice and public hearing pursuant to chapter 25 of Title 3, a hazardous waste management plan, which sets forth a comprehensive statewide strategy for the management of hazardous waste~~.

(1)~~(A)~~ The ~~plans~~ plan shall ~~be based upon~~ promote the following priorities~~, in descending order~~, as found appropriate for certain waste streams,

based on data obtained by the secretary as part of the analysis and assessment required under subdivision (2) of this subsection:

~~(i)~~(A) the greatest feasible reduction in the amount of waste generated;

~~(ii)~~(B) materials management, which furthers the development of products that will generate less waste and which promotes responsibility by manufacturers for waste generated from goods produced by a manufacturer;

(C) the reuse and closed-loop recycling of waste to reduce to the greatest extent feasible the volume remaining for processing and disposal;

(D) the reduction of the state's reliance on waste disposal to the greatest extent feasible;

(E) the creation of an integrated waste management system that promotes energy conservation, reduces greenhouse gases, and limits adverse environmental impacts;

~~(iii)~~(F) waste processing to reduce the volume or toxicity of the waste stream necessary for disposal~~;~~

~~(iv) land disposal of the residuals.~~

~~(B) Processing and disposal alternatives shall be preferred which do not foreclose the future ability of the state to reduce, reuse, and recycle waste. In determining feasibility, the secretary shall evaluate alternatives in terms of their expected life-cycle costs~~.

(2) The ~~plans~~ plan shall be revised at least once every five years and shall include:

(A) an analysis of the volume and nature of wastes generated in the state, the source of the waste, and the current fate or disposition of the waste. Such an analysis shall include a waste composition study conducted in accordance with generally accepted practices for such a study;

(B) an assessment of the feasibility and cost of diverting each waste category from disposal, including, to the extent the information is available to the agency, the cost to stakeholders, such as municipalities, manufacturers, and customers. As used in this subdivision (a)(2), "waste category" means:

(i) marketable recyclables;

(ii) leaf and yard residuals;

(iii) food residuals;

(iv) construction and demolition residuals;

(v) household hazardous waste; and

(vi) additional categories or subcategories of waste that the secretary identifies that may be diverted to meet the priorities set forth under subdivision (a)(1) of this section;

(C) a survey of existing and potential markets for each waste category that can be diverted from disposal;

(D) measurable goals and targets for waste diversion for each waste category;

(E) methods to reduce and remove material from the waste stream, including commercially generated and other organic wastes, used clothing, and construction and demolition debris, and to separate, collect, and recycle, treat or dispose of specific waste materials that create environmental, health, safety, or management problems, including~~, but not limited to,~~ tires, batteries, obsolete electronic equipment, and unregulated hazardous wastes. These portions of the plans shall include strategies to assure recycling in the state, and to prevent the incineration or other disposal of marketable recyclables~~. They shall consider both the current solid waste stream and its projected changes, and shall be based on:~~

~~(i) an analysis of the volume and nature of wastes generated in the state, the sources of those wastes, and the current fate or disposition of those wastes;~~

~~(ii) an assessment of the feasibility and cost of recycling each type of waste, including an assessment of the feasibility of providing the option of single source recycling;~~

~~(iii) a survey of existing and potential markets for each type of waste that can be recycled~~;

(F) a coordinated education and outreach component that advances the objectives of the plan, including the source separation requirements, generator requirements to remove food residuals, and the landfill disposal bans contained within this chapter;

(G) performance and accountability measures to ensure that implementation plans are effective in meeting the requirements of this section;

~~(B)~~(H) ~~a proposal for the development~~ an assessment of facilities and programs necessary at the state, regional or local level to achieve the priorities identified in subdivision (a)(1) of this section and the goals established in the plan. ~~Consideration shall be given to the need for additional regional or local composting facilities, the need to expand the collection of commercially generated organic wastes, and the cost-effectiveness of developing single~~

~~stream waste management infrastructure adequate to serve the entire population, which may include material recovery centers.~~ These portions of the plan shall be based, in part, on an assessment of the status, capacity, and life expectancy of existing ~~treatment and disposal~~ solid waste facilities, and they shall include siting criteria for waste management facilities, and shall establish requirements for full public involvement.

(b) ~~The secretary may manage the hazardous wastes generated, transported, treated, stored or disposed in the state by administering a regulatory and management program which, at a minimum, meets the requirements of subtitle C of the Resource Conservation and Recovery Act of 1976, and amendments thereto, codified as 42 U.S.C. chapter 82, subchapter 3, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.~~

~~(1) Removal of hazardous waste from the waste stream. The secretary is authorized to carry out studies, evaluations and pilot projects to remove significant quantities of unregulated hazardous wastes from the waste stream, when in the secretary's opinion the public health and safety will not be adversely affected. One or more of these projects shall investigate the feasibility and effectiveness of separating from the rest of the waste stream those nonhazardous materials which require disposal in landfills, but which may not require the use of liners and leachate collection systems.~~

~~(2) Report on disposal of hazardous wastes. The secretary shall consult with interested persons on the disposal of hazardous waste, including persons with relevant expertise and representatives from state and local government, industry, the agricultural sector, the University of Vermont, and the general public. The secretary shall conduct public hearings, take relevant testimony, perform appropriate analysis and report to the general assembly and the governor by January 1, 1990, on the following:~~

~~(A) the nature, origin and amount of hazardous waste generated in the state;~~

~~(B) the cost and environmental impact of current disposal practices;~~

~~(C) options for the treatment and disposal of leachate collected from sanitary landfills;~~

~~(D) steps that can be taken to reduce waste flows, or recycle wastes;~~

~~(E) the need for recycling, treatment and disposal facilities to be located within the state; and~~

~~(F) a proposed process and proposed criteria for use in siting and constructing needed facilities within the state, and for obtaining the maximum amount of public input in any such process.~~

~~(c)~~ The secretary shall hold public hearings, ~~perform studies as required, conduct ongoing analyses,~~ conduct analyses, and make recommendations to the ~~general assembly with respect to the reduction~~ house and senate committees on natural resources and energy regarding the volume, amount, and toxicity of the waste stream. In this process, the secretary shall consult with manufacturers of commercial products and of packaging used with commercial products, retail sales enterprises, health and environmental advocates, waste management specialists, the general public, and state agencies. The goal of the process is to ensure that packaging used and products sold in the state are not an undue burden to the state's ability to manage its waste. The secretary shall seek voluntary changes on the part of the industrial and commercial sector in both their practices and the products they sell, so as to serve the purposes of this section. In this process, the secretary may obtain voluntary compliance schedules from the appropriate industry or commercial enterprise, and shall entertain recommendations for alternative approaches. The secretary shall report at the beginning of each biennium to the ~~general assembly~~ house and senate committees on natural resources and energy, with any recommendations or options for legislative consideration. At least 45 days prior to submitting its report, the secretary shall post any recommendations within the report to its website for notice and comment.

(1) In carrying out the provisions of this subsection, the secretary first shall consider ways to keep hazardous material; toxic substances, as that term is defined in subdivision 6624(7) of this title; and nonrecyclable, nonbiodegradable material out of the waste stream, as soon as possible. In this process, immediate consideration shall be given to the following:

(A) evaluation of products and packaging that contain large concentrations of chlorides, such as packaging made with polyvinyl chloride (PVC);

(B) evaluation of polystyrene packaging, particularly that used to package fast food on the premises where the food is sold;

(C) evaluation of products and packaging that bring heavy metals into the waste stream, such as disposable batteries, paint and paint products and containers, and newspaper supplements and similar paper products;

(D) identification of unnecessary packaging, which is nonrecyclable and nonbiodegradable.

(2) With respect to the above, the secretary shall consider the following:

(A) product and packaging bans, products or packaging which ought to be exempt from such bans, the existence of less burdensome alternatives, and alternative ways that a ban may be imposed;

(B) tax incentives, including the following options:

(i) product taxes, based on a sliding scale, according to the degree of undue harm caused by the product, the existence of less harmful alternatives, and other relevant factors;

(ii) taxes on all nonrecyclable, nonbiodegradable products or packaging;

(C) deposit and return legislation and extended producer responsibility legislation for certain products.

~~(d)~~(c) A portion of the state's solid waste management plan shall set forth a comprehensive statewide program for the collection, treatment, beneficial use, and disposal of septage and sludge. The secretary shall work cooperatively with the department of health and the agency of agriculture, food and markets in developing this portion of the plan and the rules to carry it out, both of which shall be consistent with or more stringent than that prescribed by section 405 of the Clean Water Act (33 U.S.C. § 1251, et seq.). In addition, the secretary shall consult with local governmental units and the interested public in the development of the plans. The sludge management plan and the septage management plan shall be developed and adopted by January 15, 1987. In the development of these portions of the plan, consideration shall be given to, but shall not be limited to, the following:

(1) the varying characteristics of septage and sludge;

(2) its value as a soil amendment;

(3) the need for licensing or other regulation of septage and sludge handlers;

(4) the need for seasonal storage capability;

(5) the most appropriate burdens to be borne by individuals, municipalities, and industrial and commercial enterprises;

(6) disposal site permitting procedures;

(7) appropriate monitoring and reporting requirements;

(8) actions which can be taken through existing state programs to facilitate beneficial use of septage and sludge;

(9) the need for regional septage facilities;

(10) an appropriate public information program; and

(11) the need for and proposed nature and cost of appropriate pilot projects.

~~(e)~~(d) Although the ~~plans~~ plan adopted under this section and any amendments to ~~these plans~~ the plan shall be adopted by means of a public process that is similar to the process involved in the adoption of administrative rules, the ~~plans~~ plan, as initially adopted or as amended, shall not be a rule.

Sec. 3. 10 V.S.A. § 6603 is amended to read:

§ 6603. SECRETARY; POWERS

In addition to any other powers conferred on him or her by law, the secretary shall have the power to:

(1) Adopt, amend, and repeal rules pursuant to 3 V.S.A. chapter 25 ~~of Title 3~~ implementing the provisions of this chapter;

(2) Issue compliance orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings;

(3) Encourage local units of government to manage solid waste problems within their respective jurisdictions, or by contract on a cooperative regional or interstate basis;

(4) Provide technical assistance to municipalities;

(5) Contract in the name of the state for the service of independent contractors under bond, or with an agency or department of the state, or a municipality, to perform services or to provide facilities necessary for the implementation of the state plan, including but not limited to the transportation and disposition of solid waste;

(6) Accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this chapter. This would include the ability to convey such grants or other funds to municipalities, or other instruments of state or local government.

(7) Prepare a report which proposes methods and programs for the collection and disposal of household quantities of hazardous waste. The report shall compare the advantages and disadvantages of alternate programs and their costs. The secretary shall undertake a voluntary pilot project to determine the feasibility and effectiveness of such a program when in the secretary's opinion such can be undertaken without undue risk to the public health and welfare. Such pilot program may address one or more forms of hazardous waste.

(8) Provide financial assistance to municipalities.

(9) Manage the hazardous wastes generated, transported, treated, stored, or disposed in the state by administering a regulatory and management program which, at a minimum, meets the requirements of subtitle C of the Resource Conservation and Recovery Act of 1976, and amendments thereto, codified as 42 U.S.C. Chapter 82, subchapter 3, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(10) Require a facility permitted under section 6605 of this title or a transporter permitted under section 6607 of this title to explain its rate structure for different categories of waste to ensure that the rate structure is transparent to residential consumers.

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

§ 6605. SOLID WASTE MANAGEMENT FACILITY CERTIFICATION

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

(A) the treatment facility does not utilize a process to further reduce pathogens in order to qualify for marketing and distribution; and

(B) the facility is not a drying bed, lagoon, or nonconcrete bunker; and

(C) the owner of the facility has submitted a sludge and septage management plan to the secretary and the secretary has approved the plan. Noncompliance with an approved sludge and septage management plan shall constitute a violation of the terms of this chapter, as well as a violation under chapters 201 and 211 of this title.

(2) Certification shall be valid for a period not to exceed ten years~~, except that a certification issued to a sanitary landfill or a household hazardous waste facility under this section shall be for a period not to exceed five years~~.

(b) Certification for a solid waste management facility, where appropriate, shall:

(1) Specify the location of the facility, including limits on its development;

(2) Require proper operation and development of the facility in accordance with the engineering plans approved under the certificate;

(3) Specify the projected amount and types of waste material to be disposed of at the facility, which, in case of landfills and incinerators, shall include the following:

(A) if the waste is being delivered from a municipality that has an approved implementation plan, hazardous materials and recyclables shall be removed from the waste according to the terms of that implementation plan;

(B) if the waste is being delivered from a municipality that does not have an approved implementation plan, ~~yard waste~~ leaf and yard residuals shall be removed from the waste stream, ~~as shall a minimum of approximately 75~~ and 100 percent of each of the following shall be removed from the waste stream: ~~marketable~~ mandated recyclables, hazardous waste from households, and hazardous waste from small quantity generators;

(4) Specify the type and numbers of suitable pieces of equipment that will operate the facility properly;

(5) Contain provisions for air, groundwater, and surface water monitoring throughout the life of the facility and provisions for erosion control, capping, landscaping, drainage systems, and monitoring systems for leachate and gas control;

(6) Contain such additional conditions, requirements, and restrictions as the secretary may deem necessary to preserve and protect the public health and the air, groundwater and surface water quality. This may include~~, but is not limited to,~~ requirements concerning reporting, recording, and inspections of the operation of the site.

(c) The secretary shall not issue a certification for a new facility or renewal for an existing facility, except for a sludge or septage land application project, unless it is included in an implementation plan adopted pursuant to 24 V.S.A. § 2202a, for the area in which the facility is located. ~~The implementation plan must be consistent with the state plan and in conformance with any municipal or regional plan adopted in accordance with 24 V.S.A. chapter 117. After July 1, 1990, the secretary shall not recertify a facility except for a sludge or septage land application project unless it is included in an implementation plan adopted pursuant to 24 V.S.A. § 2202a, for the area in which the facility is located. The implementation plan must be consistent with the state plan, unless the secretary determines that recertification promotes the public interest, considering the policies and priorities established in this chapter. After July 1, 1990, the secretary shall not recertify a facility, unless it is in conformance~~

~~with any municipal or regional plan adopted in accordance with 24 V.S.A. chapter 117.~~

* * *

(j) A facility certified under this section that offers the collection of municipal solid waste shall:

(1) Beginning July 1, 2014, collect mandated recyclables separate from other solid waste and deliver mandated recyclables to a facility maintained and operated for the management and recycling of mandated recyclables. A facility shall not be required to accept mandated recyclables from a commercial hauler.

(2) Beginning July 1, 2015, collect leaf and yard residuals separate from other solid waste and deliver leaf and yard residuals to a location that manages leaf and yard residuals in a manner consistent with the priority uses established under subdivisions 6605k(a)(3)–(5) of this title.

(3) Beginning July 1, 2016, collect food residuals separate from other solid waste and deliver food residuals to a location that manages food residuals in a manner consistent with the priority uses established under subdivisions 6605k(a)(2)–(5) of this title.

(k) The secretary may, by rule, adopt exemptions to the requirements of subsection (j) of this section, provided that the exemption is consistent with the purposes of this chapter and the objective of the state plan.

(l) A facility certified under this section that offers the collection of municipal solid waste shall not charge a separate fee for the collection of mandated recyclables. A facility certified under this section may incorporate the cost of the collection of mandated recyclables into the cost of the collection of municipal solid waste and may adjust the charge for the collection of municipal solid waste. A facility certified under this section may charge a separate fee for the collection of leaf and yard residuals or food residuals. If a facility collects mandated recyclables from a commercial hauler, the facility may charge a fee for the collection of those mandated recyclables.

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

§ 6605c. SOLID WASTE CATEGORICAL CERTIFICATIONS

* * *

(b) The secretary may, by rule, list certain solid waste categories as eligible for certification pursuant to this section:

(1) Solid waste categories to be deposited in a disposal facility shall not be a source of leachate harmful to human health or the environment.

(2) Solid waste categories to be managed in a composting facility shall not present an undue threat to human health or the environment.

(3) ~~Solid waste managed~~ Recyclable materials either recycled or prepared for recycling at a recycling facility ~~shall be restricted to facilities that manage 400 tons per year or less of recyclable solid waste~~.

* * *

Sec. 6. 10 V.S.A. § 6605k is added to read:

§ 6605k. FOOD RESIDUALS; MANAGEMENT HIERARCHY

(a) It is the policy of the state that food residuals collected under the requirements of this chapter shall be managed according to the following order of priority uses:

(1) Reduction of the amount generated at the source;

(2) Diversion for food consumption by humans;

(3) Diversion for agricultural use, including consumption by animals;

(4) Composting, land application, and digestion; and

(5) Energy recovery.

(b) A person who produces more than an amount identified under subsection (c) of this section in food residuals and is located within 20 miles of a certified organics management facility that has available capacity and that is willing to accept the materials shall:

(1) Separate food residuals from other solid waste, provided that a de minimis amount of food residuals may be disposed of in municipal solid waste when a person has established a program to separate food residuals and the program includes a component for the education of program users regarding the need to separate food residuals; and

(2) Arrange for the transfer of food residuals to a location that manages food residuals in a manner consistent with the priority uses established under subdivisions (a)(2)–(5) of this section or shall manage food residuals on site.

(c) The following persons shall be subject to the requirements of subsection (b) of this section:

(1) Beginning July 1, 2014, a person whose acts or processes produce more than 104 tons per year of food residuals;

(2) Beginning July 1, 2015, a person whose acts or processes produce more than 52 tons per year of food residuals;

(3) Beginning July 1, 2016, a person whose acts or processes produce more than 26 tons per year of food residuals;

(4) Beginning July 1, 2017, a person whose acts or processes produce more than 18 tons per year of food residuals; and

(5) Beginning July 1, 2018, any person who generates any amount of food residuals.

Sec. 7. 10 V.S.A. § 6605l is added to read:

§ 6605l. PUBLIC COLLECTION CONTAINERS FOR SOLID WASTE

(a) As used in this section:

(1) "Public building" means a state, county, or municipal building, airport terminal, bus station, railroad station, school building, or school.

(2) "Public land" means all land that is owned or controlled by a municipal or state governmental body. "Public land" shall not mean land leased by the state to a person for private use.

(b) Beginning July 1, 2015, when a container or containers in a public building or on public land are provided to the public for use for solid waste destined for disposal, an equal number of containers shall be provided for the collection of mandated recyclables. The containers shall be labeled to clearly show the containers are for recyclables and shall be placed as close to each other as possible in order to provide equally convenient access to users. Bathrooms in public buildings and on public land shall be exempt from the requirement of this section to provide an equal number of containers for the collection of mandated recyclables.

Sec. 8. 10 V.S.A. § 6607a is amended to read:

§ 6607a. WASTE TRANSPORTATION

(a) A commercial hauler desiring to transport waste within the state shall apply to the secretary for a permit to do so, by submitting an application on a form prepared for this purpose by the secretary and by submitting the disclosure statement described in section 6605f of this title. These permits shall have a duration of five years~~. The secretary shall establish a system whereby one-fifth of the permits issued under this section, or that were issued prior to July 1, 1996,~~ and shall be renewed annually. ~~The secretary may extend the expiration date of permits issued under this section as of July 1, 1996, for up to four years.~~ The application shall indicate the nature of the waste to be hauled ~~and the area to be served by the hauler~~. The secretary may specify conditions that the secretary deems necessary to assure compliance with state law. ~~If an area to be served is subject to a duly adopted flow control~~

~~ordinance, the entity that adopted the flow control ordinance may notify the secretary of that fact on forms provided by the secretary, and shall specify the facility or facilities which must be the recipient of the waste from that area. The secretary shall issue to the applicant a permit which specifies those facilities to which the applicant must deliver waste collected from an area that is subject to a duly adopted flow control ordinance, and which otherwise contains the solid waste management conditions established by the secretary, sufficient to assure compliance with state law.~~

* * *

(g)(1) Except as set forth in subdivisions (2) and (3) of this subsection, a transporter certified under this section that offers the collection of municipal solid waste shall:

(A) Beginning July 1, 2014, offer to collect mandated recyclables separated from other solid waste and deliver mandated recyclables to a facility maintained and operated for the management and recycling of mandated recyclables.

(B) Beginning July 1, 2015, offer to collect leaf and yard residuals separate from other solid waste and deliver leaf and yard residuals to a location that manages leaf and yard residuals in a manner consistent with the priority uses established under subdivisions 6605k(a)(3)–(5) of this title.

(C) Beginning July 1, 2016, offer collection of food residuals separate from other solid waste and deliver to a location that manages food residuals in a manner consistent with the priority uses established under subdivisions 6605k(a)(2)–(5) of this title.

(2) In a municipality that has adopted a solid waste management ordinance addressing the collection of mandated recyclables, leaf and yard residuals, or food residuals, a transporter in that municipality is not required to comply with the requirements of subdivision (1) of this subsection and subsection (h) of this section for the material addressed by the ordinance if the ordinance:

(A) is applicable to all residents of the municipality;

(B) prohibits a resident from opting out of municipally provided solid waste services; and

(C) does not apply a variable rate for the collection for the material addressed by the ordinance.

(3) A transporter is not required to comply with the requirements of subdivision (1)(B) or (C) of this subsection in a specified area within a municipality if:

(A) the secretary has approved a solid waste implementation plan for the municipality;

(B) the approved plan delineates an area where solid waste management services required by subdivision (1)(B) or (C) of this subsection are not required; and

(C) in the delineated area, alternatives to the services, including on site management, required under subdivision (1)(B) or (C) are offered, the alternative services have capacity to serve the needs of all residents in the delineated area, and the alternative services are convenient to residents of the delineated area.

(h) A transporter certified under this section that offers the collection of municipal solid waste shall not charge a separate fee for the collection of mandated recyclables from a residential customer. A transporter certified under this section may incorporate the cost of the collection of mandated recyclables into the cost of the collection of municipal solid waste and may adjust the charge for the collection of municipal solid waste. A transporter certified under this section that offers the collection of municipal solid waste may charge a separate fee for the collection of leaf and yard residuals or organic waste from a residential customer.

Sec. 9. 10 V.S.A. § 6613 is amended to read:

§ 6613. VARIANCES

(a) A person who owns or is in control of any plant, building, structure, process, or equipment may apply to the secretary for a variance from the rules adopted under this chapter. The secretary may grant a variance if he or she finds that:

(1) The variance proposed does not endanger or tend to endanger human health or safety.

(2) Compliance with the rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(3) The variance granted does not enable the applicant to generate, transport, treat, store, or dispose of hazardous waste in a manner which is less stringent than that required by the provisions of Subtitle C of the Resource Conservation and Recovery Act of 1976, and amendments thereto, codified in 42 U.S.C. Chapter 82, subchapter 3, and regulations promulgated under such subtitle.

(b) A person who owns or is in control of any facility may apply to the secretary for a variance from the requirements of subdivision 6605(j)(2) or (3) of this title if the applicant demonstrates alternative services, including on-site

management, are available in the area served by the facility, the alternative services have capacity to serve the needs of all persons served by the facility requesting the variance, and the alternative services are convenient to persons served by the facility requesting the variance.

(c) No variance shall be granted pursuant to this section except after public notice and an opportunity for a public meeting and until the secretary has considered the relative interests of the applicant, other owners of property likely to be affected, and the general public.

~~(c)~~(d) Any variance or renewal thereof shall be granted within the requirements of subsection (a) of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the air and water pollution involved, it shall be only until the necessary practicable means for prevention, abatement, or control become known and available, and subject to the taking of any substitute or alternate measures that the secretary may prescribe.

(2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the secretary, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a time schedule for the taking of action in an expeditious manner and shall be conditioned on adherence to the time schedule.

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subdivisions (1) and (2) of this subsection, it shall be for not more than one year, except that in the case of a variance from the siting requirements for a solid waste management facility, the variance may be for as long as the secretary determines necessary, including a permanent variance.

~~(d)~~(e) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods, which would be appropriate on initial granting of a variance. If a complaint is made to the secretary on account of the variance, no renewal thereof shall be granted, unless following public notice and an opportunity for a public meeting on the complaint, the secretary finds that renewal is justified. No renewal shall be granted except on application therefore. The application shall be made at least 60 days prior to

the expiration of the variance. Immediately upon receipt of an application for renewal, the secretary shall give public notice of the application.

~~(e)~~(f) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the secretary.

~~(f)~~(g) This section does not limit the authority of the secretary under section 6610 of this title concerning imminent hazards from solid waste, nor under section 6610a of this title concerning hazards from hazardous waste and violations of statutes, rules, or orders relating to hazardous waste.

Sec. 10. 10 V.S.A. § 6621a is amended to read:

§ 6621a. LANDFILL DISPOSAL REQUIREMENTS

(a) In accordance with the following schedule, no person shall knowingly dispose of the following materials in municipal solid waste or in landfills:

(1) Lead-acid batteries, after July 1, 1990.

(2) Waste oil, after July 1, 1990.

(3) White goods, after January 1, 1991. "White goods" include discarded refrigerators, washing machines, clothes ~~driers~~ dryers, ranges, water heaters, dishwashers, and freezers. Other similar domestic and commercial large appliances may be added, as identified by rule of the secretary.

(4) Tires, after January 1, 1992.

(5) Paint (whether water based or oil based), paint thinner, paint remover, stains, and varnishes. This prohibition shall not apply to solidified water based paint in quantities of less than one gallon, nor shall this prohibition apply to solidified water based paint in quantities greater than one gallon if those larger quantities are from a waste stream that has been subject to an effective paint reuse program, as determined by the secretary.

(6) Nickel-cadmium batteries, small sealed lead acid batteries, ~~and~~ nonconsumer mercuric oxide batteries, ~~after July 1, 1992, in any district or municipality in which there is an ongoing program to accept these wastes for treatment~~ and any other battery added by the secretary by rule.

(7)(A) Labeled mercury-added products on or before July 1, 2007.

(B) Mercury-added products, as defined in chapter 164 of this title, after July 1, 2007, except as other effective dates are established in that chapter.

(8) Banned electronic devices. After January 1, 2011, computers; peripherals; computer monitors; cathode ray tubes; televisions; printers; personal electronics such as personal digital assistants and personal music

players; electronic game consoles; printers; fax machines; wireless telephones; telephones; answering machines; videocassette recorders; digital versatile disc players; digital converter boxes; stereo equipment; and power supply cords (as used to charge electronic devices).

(9) Mandated recyclable materials after July 1, 2014.

(10) Leaf and yard residuals and wood waste after July 1, 2015.

(11) Food residuals after July 1, 2018.

(b) This section shall not prohibit the designation and use of separate areas at landfills for the storage or processing, or both, of material specified in this section.

(c) Insofar as it applies to the operator of a solid waste management facility, the secretary may suspend the application of this section to material specified in subdivisions (a)(2), (3), (4), (5), or (6) of this section, or any combination of these, upon finding that insufficient markets exist and adequate uses are not reasonably available to serve as an alternative to disposal.

Sec. 11. 24 V.S.A. § 2202a is amended to read:

§ 2202a. MUNICIPALITIES—RESPONSIBILITIES FOR SOLID WASTE

(a) Municipalities are responsible for the management and regulation of the storage, collection, processing, and disposal of solid wastes within their jurisdiction in conformance with the state solid waste management plan authorized under 10 V.S.A. chapter 159 ~~of Title 10~~. Municipalities may issue exclusive local franchises and may make, amend, or repeal rules necessary to manage the storage, collection, processing, and disposal of solid waste materials within their limits and impose penalties for violations thereof, provided that the rules are consistent with the state plan and rules ~~promulgated~~ adopted by the secretary of the agency of natural resources under 10 V.S.A. chapter 159. A fine may not exceed $1,000.00 for each violation. This section shall not be construed to permit the existence of a nuisance.

(b) Municipalities may satisfy the requirements of the state solid waste management plan and the rules of the secretary of the agency of natural resources through agreement between any other unit of government or any operator having a permit from the secretary, as the case may be.

(c)(1) No later than July 1, 1988 each municipality, as defined in subdivision 4303(12) of this title, shall join or participate in a solid waste management district organized pursuant to chapter 121 of this title no later than January 1, 1988 or participate in a regional planning commission's planning effort for purposes of solid waste implementation planning, as implementation planning is defined in 10 V.S.A. § 6602.

(2) No later than July 1, 1990 each regional planning commission shall work on a cooperative basis with municipalities within the region to prepare a solid waste implementation plan for adoption by all of the municipalities within the region which are not members of a solid waste district, that conforms to the state waste management plan and describes in detail how the region will achieve the priorities established by 10 V.S.A. § 6604(a)(1). A solid waste implementation plan adopted by a municipality that is not a member of a district shall not in any way require the approval of a district. No later than July 1, 1990 each solid waste district shall adopt a solid waste implementation plan that conforms to the state waste management plan, describes in detail how the district will achieve the priorities established by 10 V.S.A. § 6604(a)~~(1)~~, and is in conformance with any regional plan adopted pursuant to chapter 117 of this title. Municipalities or solid waste management districts that have contracts in existence as of January 1, 1987, which contracts are inconsistent with the state solid waste plan and the priorities established in 10 V.S.A. § 6604(a)~~(1)~~, shall not be required to breach those contracts, provided they make good faith efforts to renegotiate those contracts in order to comply. The secretary may extend the deadline for completion of a plan upon finding that despite good faith efforts to comply, a regional planning commission or solid waste management district has been unable to comply, due to the unavailability of planning assistance funds under 10 V.S.A. § 6603b(a) or delays in completion of a landfill evaluation under 10 V.S.A. § 6605a.

(3) A municipality that does not join or participate as provided in this subsection shall not be eligible for state funds to plan and construct solid waste facilities, nor can it use facilities certified for use by the region or by the solid waste management district.

(4) ~~By no later than July 1, 1992, a~~ A regional plan or a solid waste implementation plan shall include a component for the management of nonregulated hazardous wastes.

(A) At the outset of the planning process for the management of nonregulated hazardous wastes and throughout the process, solid waste management districts or regional planning commissions, with respect to areas not served by solid waste management districts, shall solicit the participation of owners of solid waste management facilities that receive mixed solid wastes, local citizens, businesses, and organizations by holding informal working sessions that suit the needs of local people. At a minimum, an advisory committee composed of citizens and business persons shall be established to provide guidance on both the development and implementation of the nonregulated hazardous waste management plan component.

(B) The regional planning commission or solid waste management district shall hold at least two public hearings within the region or district after public notice on the proposed plan component or amendment.

(C) The plan component shall be based upon the following priorities, in descending order:

(i) The elimination or reduction, whenever feasible, in the use of hazardous, particularly toxic, substances.

(ii) Reduction in the generation of hazardous waste.

(iii) Proper management of household and exempt small quantity generator hazardous waste.

(iv) Reduction in the toxicity of the solid waste stream, to the maximum extent feasible in accordance with the priorities of 10 V.S.A. § 6604(a)(1).

(D) At a minimum, this plan component shall include the following:

(i) An analysis of preferred management strategies that identifies advantages and disadvantages of each option.

(ii) An ongoing educational program for schools and households, promoting the priorities of this subsection.

(iii) An educational and technical assistance program for exempt small quantity generators that provides information on the following: use and waste reduction; preferred management strategies for specific waste streams; and collection, management and disposal options currently or potentially available.

(iv) A management program for household hazardous waste.

(v) A priority management program for unregulated hazardous waste streams that present the greatest risks.

(vi) A waste diversion program element, that is coordinated with any owners of solid waste management facilities and is designed to remove unregulated hazardous waste from the waste stream entering solid waste facilities and otherwise to properly manage unregulated hazardous waste.

(vii) A waste management system established for all the waste streams banned from landfills under 10 V.S.A. § 6621a.

(E) For the purposes of this subsection, nonregulated hazardous wastes include hazardous wastes generated by households and exempt small quantity generators as defined in the hazardous waste management regulations adopted under 10 V.S.A. chapter 159.

(d) By no later than July 1, 2015, a municipality shall implement a variable rate pricing system that charges for the collection of municipal solid waste from a residential customer for disposal based on the volume or weight of the waste collected.

(e) The education and outreach requirements of this section need not be met through direct mailings, but may be met through other methods such as television and radio advertising; use of the Internet, social media, or electronic mail; or the publication of informational pamphlets or materials.

Sec. 12. ANR REPORT ON SOLID WASTE

(a) On or before November 1, 2013, the secretary of natural resources shall submit to the house and senate committees on natural resources and energy a report addressing solid waste management in the state. At a minimum, the report shall include:

(1) Waste analysis. An analysis of the volume and nature of wastes generated in the state, the sources of those wastes, and the current fate or disposition of those wastes. This analysis shall include:

(A) the results of a waste composition study; and

(B) an analysis of the quantities and types of materials received at recycling facilities, the contamination levels of materials received at recycling facilities, and the final disposition of materials received by recycling facilities.

(2) Cost analysis.

(A) An estimate of the cost of implementation of the existing solid waste management system for the state, including the cost to consumers, avoided costs, and foreseeable future costs;

(B) An estimate of the cost of managing individual categories of solid waste as that term is defined in 10 V.S.A. § 6604(a)(2)(B);

(C) An estimate of the costs, cost savings, increased efficiencies, and economic opportunities attendant to the diversion of solid waste categories, including:

(i) the costs of recycling individual categories of materials, such as glass, aluminum, and polyethylene terephthalate (PET) plastic;

(ii) market opportunities for the sale of recyclable materials; and

(iii) the effect of fluctuating commodity prices on the diversion of solid waste and recycling and how to maintain existing recycling rates during commodity fluctuations;

(D) An estimate of the cost to and potential savings to all stakeholders, including municipalities, manufacturers, and customers, from beverage container deposit and return legislation and extended producer responsibility legislation.

(3) Local governance analysis. An analysis of the services provided by municipalities responsible for the management and regulation of the storage, collection, processing, and disposal of solid waste under 24 V.S.A. § 2202a. The analysis shall summarize:

(A) The organizational structure municipalities use to provide solid waste services, including the number of solid waste districts in the state and the number of towns participating in a solid waste district;

(B) The type of solid waste services provided by municipalities, including the categories of solid waste collected and the disposition of collected solid waste;

(C) The effectiveness of beverage container deposit and return legislation or other types of extended producer responsibility legislation for certain products in achieving the priorities and goals established by the state solid waste management plan;

(D) The effectiveness of those facilities and programs in achieving the priorities and goals established by the state solid waste plan; and

(E) The cost-effectiveness of solid waste services provided by municipalities.

(4) Infrastructure analysis.

(A) An assessment of facilities and programs necessary at the state, regional, or local level to achieve the priorities and the goals established in the state solid waste plan.

(B) An estimate of the landfill capacity available in Vermont and an estimated time at which there will be no landfill capacity remaining in the state.

(C) An assessment of the status, capacity, and life expectancy of existing solid waste management facilities.

(D) An estimate of the cost of infrastructure necessary for the mandatory recycling of categories of solid waste.

(5) Natural resources and environmental analysis.

(A) A general, narrative summary or assessment of the natural resources and environmental impacts of current solid waste management practices on air quality, greenhouse gas emissions, and water quality.

(B) A general, narrative summary of how litter or improper disposal or management of solid waste impacts scenic or aesthetic resources.

(6) Legislative recommendation. Recommendations for amending solid waste management practices in the state, including recommended legislative or regulatory changes to promote the reduction in solid waste generation and to increase recycling and diversion of solid waste. Recommendations submitted under this subdivision shall include a summary of the rationale for the recommendation and a general, narrative summary of the costs and benefits of the recommended action.

(b) In preparing the report required by subsection (a) of this section, the secretary shall consult with interested persons, including manufacturers, recyclers, collectors, retailers, solid waste districts, and environmental groups.

Sec. 13. REPEAL

10 V.S.A. § 7113 (advisory committee on mercury pollution) is repealed.

Sec. 14. AGENCY OF NATURAL RESOURCES REPORT OF WASTE TIRE MANAGEMENT AND DISPOSAL

On or before January 15, 2013, the secretary of natural resources shall submit to the house and senate committees on natural resources and energy a report regarding the management of waste tires within the state. The report shall include:

(1) An inventory of sites in the state where the secretary determines, in his or her discretion, that the disposal, management, or disposition of waste tires is a problem.

(2) An estimate of the number of waste tires disposed of or stored at the problem sites identified under subdivision (1) of this section.

(3) An estimate of how much it would cost to properly dispose of or arrange for the final disposition of the number of waste tires estimated under subdivision (2) of this section.

(4) An estimate of the amount of time required for the proper disposal or final disposition of the number of waste tires estimated under subdivision (2) of this section.

Sec. 15. 10 V.S.A. § 6618(b) is amended to read:

(b) The secretary may authorize disbursements from the solid waste management assistance account for the purpose of enhancing solid waste management in the state in accordance with the adopted waste management plan. This includes:

* * *

(10) the costs of the proper disposal of waste tires. Prior to disbursing funds under this subsection, the secretary shall provide a person with notice and opportunity to dispose of waste tires properly. The secretary may condition a disbursement under this subsection on the repayment of the disbursement. If a person fails to provide repayment subject to the terms of a disbursement, the secretary may initiate an action against the person for repayment to the fund or may record against the property of the person a lien for the costs of cleaning up waste tires at a property.

* * * Collection and Recycling of Electronic Devices * * *

Sec. 16. 10 V.S.A. § 7551 is amended to read:

§ 7551. DEFINITIONS

For the purposes of this chapter:

* * *

(4) "Collector" means a public or private entity that receives ~~covered electronic devices~~ electronic waste from covered entities~~,~~ or from another collector and that performs any of the following:

(A) arranges for the delivery of the ~~devices~~ electronic waste to a recycler.

(B) sorts electronic waste.

(C) consolidates electronic waste.

(D) provides data security services in a manner approved by the secretary.

(5) "Computer" means ~~an~~ a laptop computer, desktop computer, tablet computer, or central processing unit that conveys electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions~~, including a laptop computer, desktop computer, and central processing unit~~. "Computer" does not include an automated typewriter or typesetter or other similar device.

* * *

(8) "Covered electronic device" means a: computer; computer monitor; device containing a cathode ray tube; printer; or television ~~sold to~~ from a covered entity. "Covered electronic device" does not include: any motor vehicle or any part thereof; a camera or video camera; a portable or stationary radio; a wireless telephone; a household appliance, such as a clothes washer, clothes dryer, water heater, refrigerator, freezer, microwave oven, oven, range, or dishwasher; equipment that is functionally or physically part of a larger piece of equipment intended for use in an industrial, research and development,

or commercial setting; security or anti-terrorism equipment; monitoring and control instruments or systems; thermostats; hand-held transceivers; a telephone of any type; a portable digital assistant or similar device; a calculator; a global positioning system receiver or similar navigation device; commercial medical equipment that contains a cathode ray tube, a cathode ray tube device, a flat panel display, or similar video display that is not separate from the larger piece of equipment; or other medical devices, as the term "device" is defined under 21 U.S.C. § 321(h) of the Federal Food, Drug, and Cosmetic Act, as that section is amended from time to time.

(9) "Covered entity" means any household, charity, or school district in the state; or a business in the state that employs ten or fewer individuals. If seven or fewer covered electronic devices are delivered to a collector at any given time, those devices shall be presumed to be from a covered entity.

(10) "Electronic waste" means a: computer; computer monitor; computer peripheral; device containing a cathode ray tube; printer; or television ~~sold to~~ from a covered entity. "Electronic waste" does not include: any motor vehicle or any part thereof; a camera or video camera; a portable or stationary radio; a wireless telephone; a household appliance, such as a clothes washer, clothes dryer, water heater, refrigerator, freezer, microwave oven, oven, range, or dishwasher; equipment that is functionally or physically part of a larger piece of equipment intended for use in an industrial, library, research and development, or commercial setting; security or antiterrorism equipment; monitoring and control instruments or systems; thermostats; handheld transceivers; a telephone of any type; a portable digital assistant or similar device; a calculator; a global positioning system receiver or similar navigation device; commercial medical equipment that contains a cathode ray tube, a cathode ray tube device, a flat panel display, or similar video display that is not separate from the larger piece of equipment; or other medical devices, as the term "device" is defined under 21 U.S.C. § 321(h) of the Federal Food, Drug, and Cosmetic Act, as that section is amended from time to time.

* * *

(12) "Market share" means a "manufacturer's market share" which shall be the manufacturer's percentage share of the total weight of covered electronic devices sold in the state as determined by ~~the best available information, which may include~~ an estimate of the aggregate total weight of the manufacturer's covered electronic devices sold in the state during the previous program year based on national sales data unless the secretary approves a manufacturer to use actual sales data.

* * *

(14) "Program year" means the period ~~from July 1 through June 30~~ established by the secretary as the program year in the plan required by section 7552 of this title.

* * *

(20) "Transporter" means a person that moves electronic waste from a collector to either another collector or to a recycler.

* * * Beverage Container Redemption System * * *

Sec. 17. 10 V.S.A. § 1521 is amended to read:

§ 1521. DEFINITIONS

For the purpose of this chapter:

(1) "Beverage" means ~~beer or other malt beverages and mineral waters, mixed wine drink, soda water and carbonated soft drinks in liquid form and intended for human consumption. As of January 1, 1990 "beverage" also shall mean liquor~~:

(A) beer, mixed wine drinks, and other malt beverages in liquid form and intended for human consumption; and

(B) mineral water, soda water, carbonated soft drinks, and all nonalcoholic carbonated or noncarbonated drinks in liquid form and intended for human consumption, except for rice milk, soy milk, milk, and dairy.

(2) "Biodegradable material" means material which is capable of being broken down by bacteria into basic elements.

(3) "Container" means the individual, separate, bottle, can, jar, or carton composed of glass, metal, paper, plastic, or any combination of those materials ~~containing~~ that, at the time of sale, contains three liters or less of a consumer product. This definition shall not include containers made of biodegradable material.

(4) "Distributor" means every person who engages in the sale of consumer products in containers to a dealer in this state including any manufacturer who engages in such sales. Any dealer or retailer who sells, at the retail level, beverages in containers without having purchased them from a person otherwise classified as a distributor, shall be a distributor.

(5) "Manufacturer" means every person bottling, canning, packing, or otherwise filling containers for sale to distributors or dealers.

(6) "Recycling" means the process of sorting, cleansing, treating, and reconstituting waste and other discarded materials for the purpose of reusing the materials in the same or altered form.

(7) "Redemption center" means a store or other location where any person may, during normal business hours, redeem the amount of the deposit for any empty beverage container labeled or certified pursuant to section 1524 of this title.

(8) "Secretary" means the secretary of the agency of natural resources.

(9) "Mixed wine drink" means a beverage containing wine and more than 15 percent added plain, carbonated, or sparkling water; and which contains added natural or artificial blended material, such as fruit juices, flavors, flavoring, adjuncts, coloring, or preservatives; which contains not more than 16 percent alcohol by volume; or other similar product marketed as a wine cooler.

~~(10) "Liquor" means spirits as defined in 7 V.S.A. § 2.~~

Sec. 18. 10 V.S.A. § 1522 is amended to read:

§ 1522. BEVERAGE CONTAINERS; DEPOSIT

(a) ~~Except with respect to beverage containers which contain liquor, a~~ A deposit of not less than ~~five cents~~ $0.05 shall be paid by the consumer on each beverage container sold at the retail level and refunded to the consumer upon return of the empty beverage container. ~~With respect to beverage containers of volume greater than 50 ml. which contain liquor, a deposit of 15 cents shall be paid by the consumer on each beverage container sold at the retail level and refunded to the consumer upon return of the empty beverage container. The difference between liquor bottle deposits collected and refunds made is hereby retained by the liquor control fund for administration of this subsection.~~

(b) A retailer or a person operating a redemption center who redeems beverage containers shall be reimbursed by the manufacturer or distributor of such beverage containers in an amount which is ~~three and one-half cents~~ $0.035 per container for containers of beverage brands that are part of a commingling program and ~~four cents~~ $0.04 per container for containers of beverage brands that are not part of a commingling program.

(c) [Deleted.]

(d) Containers shall be redeemed during no fewer than 40 hours per week during the regular operating hours of the establishment.

Sec. 19. 10 V.S.A. § 1524 is amended to read:

§ 1524. LABELING

(a) Every beverage container sold or offered for sale at retail in this state shall clearly indicate by embossing or imprinting on the normal product label, or in the case of a metal beverage container on the top of the container, the

word "Vermont" or the letters "VT" and the refund value of the container in not less than one-eighth inch type size or such other alternate indications as may be approved by the secretary. This subsection does not prohibit including names or abbreviations of other states with deposit legislation comparable to this chapter.

~~(b) The commissioner of the department of liquor control may allow, in the case of liquor bottles, a conspicuous, adhesive sticker to be attached to indicate the deposit information required in subsection (a) of this section, provided that the size, placement, and adhesive qualities of the sticker are as approved by the commissioner. The stickers shall be affixed to the bottles by the manufacturer, except that liquor which is sold in the state in quantities less than 100 cases per year may have stickers affixed by personnel employed by the department.~~

(c) This section shall not apply to permanently labeled beverage containers.

(d) [Repealed.]

Sec. 20. 10 V.S.A. § 1528 is amended to read:

§ 1528. BEVERAGE REGISTRATION

No distributor or manufacturer shall sell a beverage container in the state of Vermont without the manufacturer registering the beverage container with the agency of natural resources prior to sale~~, unless distributed by the department of liquor control~~. This registration shall take place on a form provided by the secretary and include the following:

(1) The name and principal business address of the manufacturer;

(2) The name of the beverage and the container size;

(3) Whether the beverage is a part of an approved commingling agreement; and

(4) The name of the person picking up the empty beverage container, if that person is different from the manufacturer.

* * * Retail Use of Plastic Carryout Bags * * *

Sec. 21. 10 V.S.A. chapter 167 is added to read:

CHAPTER 167. RETAIL USE OF PLASTIC CARRYOUT BAGS

§ 7601. DEFINITIONS

As used in this chapter:

(1) "Compostable plastic bag" means a plastic bag that meets the current American Society for Testing Materials (ASTM) D6400 standard for compostable plastic, as that standard may be amended from time to time.

(2) "Plastic carryout bag" means a bag composed primarily of thermoplastic synthetic polymeric material that is provided by a retail establishment to a consumer at the time of sale.

(3) "Recyclable paper bag" means a bag that:

(A) is composed of 100 percent recyclable material;

(B) contains 40 percent postconsumer recycled content; and

(C) displays the words "reusable" and "recyclable."

(4) "Retail establishment" means a place where goods, food, or other products are offered to the public for sale, including supermarkets, grocery stores, convenience stores, retail merchandise stores, and restaurants.

(5) "Reusable bag" means a bag designed and manufactured for multiple reuse composed of:

(A) cloth or machine-washable fabric; or

(B) durable plastic that is at least 2.25 mils thick.

§ 7602. PROHIBITION ON USE OF PLASTIC CARRYOUT BAGS

Beginning January 1, 2014:

(1) A retail establishment shall not provide customers with plastic carryout bags; and

(2) A retail establishment shall provide only compostable plastic bags, recyclable paper bags, or reusable bags for the purpose of carrying goods, food, or other products from the retail establishment.

§ 7603. PENALTY

A person who violates a provision of this chapter shall be fined not more than $500.00 for each violation.

* * * Appeals, Enforcement, and Effective Dates * * *

Sec. 22. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes:

* * *

(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;

(23) 24 V.S.A. § 2202a, relating to a municipality's adoption and implementation of a municipal solid waste implementation plan that is consistent with the state solid waste plan; and

(24) 10 V.S.A. chapter 167, relating to the use of plastic carryout bags.

Sec. 23. 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:

* * *

(R) chapter 167 (use of plastic carryout bags).

* * *

(g) This chapter shall govern all appeals of an act or decision of the secretary of natural resources that a municipal solid waste implementation plan proposed under 24 V.S.A. § 2202a conforms with the state solid waste implementation plan adopted pursuant to section 6604 of this title.

Sec. 24. EFFECTIVE DATE

This act shall take effect on July 1, 2012, except that Secs. 17 (definitions; beverage redemption), 18 (beverage container deposit), 19 (beverage container labeling), and 20 (beverage registration) of this act shall take effect July 1, 2014.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the Senate propose to the House the bill be amended as recommended by the Committee on Natural Resources and Energy?, Senator McCormack, on behalf of the Committee on Natural Resources and Energy, moved to amend the proposal of amendment of the Committee on Natural Resources and Energy as follows:

By striking Secs. 17 through 24 in their entirety and inserting in lieu thereof the following:

* * * Studies of Ban on Plastic Carryout Bags and Expansion of Beverage Container Redemption System * * *

Sec. 17. ANR REPORT ON IMPLEMENTATION OF BAN ON PLASTIC CARRYOUT BAGS

(a) On or before January 15, 2013, the secretary of natural resources shall report to the senate and house committees on natural resources and energy regarding the use of plastic carryout bags in the state. The report shall include:

(1) An estimate of the number of plastic bags used in the state and a summary of how plastic carryout bags are currently disposed of or recycled;

(2) A recommendation on whether to ban the use of plastic carryout bags by retail establishments in the state, to allow the continued use of plastic carryout bags, or to regulate plastic carryout bags in some other manner, including a summary of the basis for the recommendation.

(3) If the secretary under subdivision (2) of this subsection recommends that plastic carryout bags should be banned or regulated, the secretary shall:

(A) Recommend a definition of "plastic carryout bag";

(B) Specify to whom the ban or regulation should apply;

(C) Recommend an effective date for the recommended ban or regulation; and

(D) Estimate the cost to implement the recommended ban or regulation.

(b) In preparing the report required by this section, the secretary of natural resources shall consult with interested parties, including representatives of: grocers in the state, retail establishments in the state, environmental groups, solid waste districts, and plastic or container industry associations.

Sec. 18. ANR REPORT ON EXPANSION OF THE BEVERAGE CONTAINER REDEMPTION SYSTEM

(a) On or before January 15, 2013, the secretary of natural resources shall report to the senate and house committees on natural resources and energy regarding the proposed expansion of the beverage container redemption system to all containers for noncarbonated beverages.

(1) The report shall include:

(A) An estimate of the number of containers redeemed in the state under the existing requirements of 10 V.S.A. chapter 53.

(B) A recommendation on whether to expand the beverage container redemption system or to implement an alternative method for the collection

and recycling of beverage containers, including a summary of the basis for the recommendation.

(2) If the secretary under subdivision (1) of this subsection recommends that the beverage container redemption system should be expanded, the secretary shall:

(A) Recommend the additional containers that will be subject to redemption requirement, including whether all containers for noncarbonated beverages should be subject to redemption requirements;

(B) Recommend an effective date for the recommended expansion; and

(C) Estimate the cost to implement the recommended expansion.

(3) If the secretary under subdivision (1) of this subsection recommends that an alternative method for the collection and recycling of beverage containers should be implemented, the secretary shall:

(A) Summarize the recommended alternative method and how it would provide for the collection and recycling of beverage containers;

(B) Recommend an effective date for implementation of the recommended alternative;

(C) Recommend whether the existing beverage container redemption requirements should be repealed and, if so, the effective date of the repeal; and

(D) Estimate the cost of implementing the recommended alternative method.

(b) In preparing the report required by this section, the secretary of natural resources shall consult with interested parties, including representatives of: beverage manufacturers and distributors, redemption centers, grocers in the state, environmental groups, solid waste districts, solid waste haulers or handlers, solid waste facilities, and the container industry.

* * * Appeals, Enforcement, and Effective Dates * * *

Sec. 19. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes:

* * *

(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; and

(23) 24 V.S.A. § 2202a, relating to a municipality's adoption and implementation of a municipal solid waste implementation plan that is consistent with the state solid waste plan.

Sec. 20. 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:

* * *

(g) This chapter shall govern all appeals of an act or decision of the secretary of natural resources that a municipal solid waste implementation plan proposed under 24 V.S.A. § 2202a conforms with the state solid waste implementation plan adopted pursuant to section 6604 of this title.

Sec. 21. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

Thereupon, pending the question, Shall the proposal of amendment recommended by the Committee on Natural Resources and Energy be amended as moved by Senator McCormack?, Senator Illuzzi moved to substitute for the amendment of Senator McCormack to the proposal of the Committee on Natural Resources and Energy as follows:

First: By striking out Secs. 17 through 21 in their entirety and inserting in lieu thereof the following:

Sec. 17. ANR REPORT ON THE COSTS AND BENEFITS OF EXPANSION OF THE BEVERAGE CONTAINER REDEMPTION SYSTEM

(a) Findings. The general assembly finds and declares that:

(1) the beverage container redemption system, commonly referred to as the bottle bill, originally was developed as a method of litter control and not as a comprehensive recycling system;

(2) since enactment of the beverage container redemption system, communities and solid waste haulers have developed the management, markets, and infrastructure necessary to implement zero-sort, single-stream

recycling programs that allow a broad range of recyclable material to be collected and recycled without source-separation and with minimal labor;

(3) in municipalities where zero-sort, single-stream recycling has been implemented, local recycling collection rates have increased 20 to 30 percent while program operating costs have been reduced by more than 10 percent;

(4) expanding the beverage container redemption system will divert higher-value recyclable material from zero-sort, single-stream recycling programs, which will reduce the dollar value municipalities receive from the commodities market for recyclable material, thereby increasing the costs of municipal solid waste programs; and

(5) in order to determine whether the bottle bill should be expanded, the secretary of natural resources should analyze the costs and benefits of the bottle bill under the existing recycling system and infrastructure in the state in order to determine if expansion of the bottle bill provides Vermont with the optimal, cost-efficient, and effective means of collecting and recycling solid waste in the state.

(b) Report on costs on bottle bill. On or before November 15, 2013, the secretary of natural resources shall submit to the senate and house committees on natural resources and energy, the senate committee on economic development, housing and general affairs, and the house committee on commerce a report regarding the costs and benefits of expanding the beverage container redemption system to include containers for all noncarbonated drinks. The report shall include:

(1) An estimate of the cost of implementing the existing beverage container redemption system;

(2) An estimate of the cost of implementing expansion of the beverage container redemption system to include containers for all noncarbonated drinks, including an estimate of the commodity value lost by municipalities due to diversion of recyclable material from single-stream recycling programs.

(3) An estimate of the cost of implementing a zero-sort, single-stream recycling program.

(4) A summary of the total recycling benefits of a single-stream recycling program in contrast to the beverage container redemption system.

(5) A recommendation from the secretary whether the beverage container redemption system should be expanded, remain unchanged, or be repealed.

Second: By striking out Sec. 24 in its entirety and inserting in lieu thereof the following:

Sec. 24. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

Thereupon, pending the question, Shall the Senate adopt the substitute proposal of amendment of Senator Illuzzi for the proposal of amendment of Senator McCormack to the proposal of amendment of the Committee on Natural Resources and Energy?, Senator Campbell moved that action on the bill be postponed until later in the legislative day, which was agreed to.

Proposal of Amendment; Third Reading Ordered

H. 627.

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

An act relating to an opioid addiction treatment system.

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

Sec. 1. 18 V.S.A. chapter 93 is added to read:

CHAPTER 93. TREATMENT OF OPIOID ADDICTION

§ 4751. PURPOSE

It is the purpose of this chapter to authorize the department of health to establish a regional system of opioid addiction treatment.

§ 4752. OPIOID ADDICTION TREATMENT SYSTEM

(a) The department of health shall establish by rule a regional system of opioid addiction treatment.

(b) The rules shall include the following requirements:

(1) Patients shall receive appropriate, comprehensive assessment and therapy from a physician or advanced practice registered nurse and from a licensed clinical professional with clinical experience in addiction treatment, including a psychiatrist, master's- or doctorate-level psychologist, mental health counselor, clinical social worker, or drug and alcohol abuse counselor.

(2) A medical assessment shall be conducted to determine whether pharmacological treatment, which may include methadone, buprenorphine, and other federally approved medications to treat opioid addiction, is medically appropriate.

(3) A routine medical assessment of the appropriateness for the patient of continued pharmacological treatment based on protocols designed to

encourage cessation of pharmacological treatment as medically appropriate for the individual treatment needs of the patient.

(4) Controlled substances for use in federally approved pharmacological treatments for opioid addiction shall be dispensed only by:

(A) a treatment program authorized by the department of health; or

(B) a physician or advanced practice registered nurse who is not affiliated with an authorized treatment program but who meets federal requirements for use of controlled substances in the pharmacological treatment of opioid addiction.

(5) Comprehensive education and training requirements shall apply for health care providers, pharmacists, and the licensed clinical professionals listed in subdivision (1) of this subsection, including relevant aspects of therapy and pharmacological treatment.

(6) Patients shall abide by rules of conduct, violation of which may result in discharge from the treatment program, including:

(A) provisions requiring urinalysis at such times as the program may direct;

(B) restrictions on medication dispensing designed to prevent diversion of medications and to diminish the potential for patient relapse; and

(C) such other rules of conduct as a provider authorized to provide treatment under subdivision (4) of this subsection may require.

(c) No later than January 15 of each year from 2013 through 2016, inclusive, the commissioner shall report to the house committees on human services and on health care and the senate committee on health and welfare regarding the regional system of opioid addiction treatment, including the system's effectiveness.

Sec. 2. REPEAL

Sec. 132 of No. 66 of the Acts of 2003 (Opiate addiction treatment) is repealed on passage of this act.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

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

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

Rules Suspended; Bill Committed

H. 468.

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

An act relating to the Vermont Energy Act of 2012.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Natural Resources and Energy, Senator Lyons moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Finance with the report of the Committee on Natural Resources and Energy *intact*,

Which was agreed to.

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. 53

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

Mr. President:

I am directed to inform the Senate that:

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

H. 789. An act relating to reapportioning the final representative districts of the House of Representatives.

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. Sweaney of Windsor
Rep. Hubert of Milton
Rep. Jewett of Ripton

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

J.R.S. 11. Joint resolution urging the United States Congress to propose amendments to the United States Constitution for the states' consideration relating to contributions and expenditures intended to affect elections and relating to the rights of corporations.

And has adopted the same in concurrence.

Message from the House No. 54

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

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 792. An act relating to approval of amendments to the charter of the city of Burlington.

H. 793. An act relating to approval of amendments to the charter of the Winooski incorporated school district.

H. 794. An act relating to the management of search and rescue operations.

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

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

H. 770. An act relating to the state’s transportation program.

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

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

Rep. Brennan of Colchester
Rep. Potter of Clarendon
Rep. Corcoran of Bennington

Message from the House No. 55

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

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 777. An act relating to licensed midwives and certified nurse midwives.

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. 136. An act relating to vocational rehabilitation.

S. 217. An act relating to closely held benefit corporations.

S. 237. An act relating to the genuine progress indicator.

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

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

H. 761. An act relating to executive branch fees, including motor vehicle and fish and wildlife fees.

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

Consideration Resumed; Consideration Postponed

H. 485.

Consideration was resumed on House bill entitled:

An act relating to establishing universal recycling of solid waste.

Thereupon, pending the question, Shall the Senate substitute the proposal of amendment of Senator Illuzzi for the proposal of amendment of Senator McCormack, to the proposal of amendment of the Committee on Natural Resources and Energy?, Senator Illuzzi requested and was granted leave to withdraw the substitute proposal of amendment.

Thereupon, pending the question, Shall the proposal of amendment of the Committee on Natural Resources be amended as recommended by Senator McCormack?, Senator McCormack requested and was granted leave to withdraw the proposal of amendment.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Natural Resources and Energy?, Senator McCormack moved to amend the proposal of amendment of the Committee on Natural Resources and Energy as follows:

By striking out Secs. 17 through 24 in their entirety and inserting in lieu thereof new Secs. 17 through 21 to read as follows:

* * * Studies of Ban on Plastic Carryout Bags and Expansion of Beverage Container Redemption System * * *

Sec. 17. ANR REPORT ON IMPLEMENTATION OF BAN ON PLASTIC CARRYOUT BAGS

(a) On or before January 15, 2013, the secretary of natural resources shall report to the senate and house committees on natural resources and energy regarding the use of plastic carryout bags in the state. The report shall include:

(1) An estimate of the number of plastic bags used in the state and a summary of how plastic carryout bags are currently disposed of or recycled;

(2) A recommendation on whether to ban the use of plastic carryout bags by retail establishments in the state, to allow the continued use of plastic carryout bags, or to regulate plastic carryout bags in some other manner, including a summary of the basis for the recommendation.

(3) If the secretary under subdivision (2) of this subsection recommends that plastic carryout bags should be banned or regulated, the secretary shall:

(A) Recommend a definition of "plastic carryout bag";

(B) Specify to whom the ban or regulation should apply;

(C) Recommend an effective date for the recommended ban or regulation; and

(D) Estimate the cost to implement the recommended ban or regulation.

(b) In preparing the report required by this section, the secretary of natural resources shall consult with interested parties, including representatives of: grocers in the state, retail establishments in the state, environmental groups, solid waste districts, and plastic or container industry associations.

Sec. 18. ANR REPORT ON THE COSTS AND BENEFITS OF EXPANSION OF THE BEVERAGE CONTAINER REDEMPTION SYSTEM

(a) Findings. The general assembly finds and declares that:

(1) the beverage container redemption system, commonly referred to as the bottle bill, originally was developed as a method of litter control and not as a comprehensive recycling system;

(2) since enactment of the beverage container redemption system, communities and solid waste haulers have developed the management,

markets, and infrastructure necessary to implement zero-sort, single-stream recycling programs that allow a broad range of recyclable material to be collected and recycled without source-separation and with minimal labor;

(3) in municipalities where zero-sort, single-stream recycling has been implemented, local recycling collection rates have increased 20 to 30 percent while program operating costs have been reduced by more than 10 percent;

(4) expanding the beverage container redemption system will divert higher-value recyclable material from zero-sort, single-stream recycling programs, which will reduce the dollar value municipalities receive from the commodities market for recyclable material, thereby increasing the costs of municipal solid waste programs; and

(5) in order to determine whether the bottle bill should be expanded, the secretary of natural resources should analyze the costs and benefits of the bottle bill under the existing recycling system and infrastructure in the state in order to determine if expansion of the bottle bill provides Vermont with the optimal, cost-efficient, and effective means of collecting and recycling solid waste in the state.

(b) Report on costs on bottle bill. On or before November 15, 2013, the secretary of natural resources shall submit to the senate and house committees on natural resources and energy, the senate committee on economic development, housing and general affairs, and the house committee on commerce a report regarding the costs and benefits of expanding the beverage container redemption system to include containers for all noncarbonated drinks. The report shall include:

(1) An estimate of the cost of implementing the existing beverage container redemption system;

(2) An estimate of the cost of implementing expansion of the beverage container redemption system to include containers for all noncarbonated drinks, including an estimate of the commodity value lost by municipalities due to diversion of recyclable material from single-stream recycling programs.

(3) An estimate of the cost of implementing a zero-sort, single-stream recycling program.

(4) A summary of the total recycling benefits of a single-stream recycling program in contrast to the beverage container redemption system.

(5) A recommendation from the secretary as to whether the beverage container redemption system should be expanded, remain unchanged, or be repealed.

* * * Appeals, Enforcement, and Effective Dates * * *

Sec. 19. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes:

* * *

(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; and

(23) 24 V.S.A. § 2202a, relating to a municipality's adoption and implementation of a municipal solid waste implementation plan that is consistent with the state solid waste plan.

Sec. 20. 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:

* * *

(g) This chapter shall govern all appeals of an act or decision of the secretary of natural resources that a municipal solid waste implementation plan proposed under 24 V.S.A. § 2202a conforms with the state solid waste implementation plan adopted pursuant to section 6604 of this title.

Sec. 21. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

Thereupon, the pending question, Shall the proposal of amendment of the Committee on Natural Resources and Energy be amended as recommended by Senator McCormack?, Senator Galbraith requested the question be divided and that Secs. 17 through 20 be voted on separately.

Thereupon, pending the question, Senator Campbell moved action on the bill be postponed until later in the legisaltive day, which was agreed to.

Committee Relieved of Further Consideration; Bills Committed

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bills entitled:

H. 784. An act relating to approval of the adoption and codification of the charter of the town of Williamstown.

H. 786. An act relating to approval of amendments to the charter of the town of Windsor.

H. 787. An act relating to approval of amendments to the charter of the city of Montpelier.

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

and the bills were severally committed to the Committee on Government Operations.

Proposal of Amendment; Third Reading Ordered

H. 254.

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

An act relating to consumer protection.

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

Sec. 1. 9 V.S.A. chapter 63, subchapter 1C is added to read:

Subchapter 1C. Discount Membership Programs

§ 2470aa. DEFINITIONS

In this subchapter:

(1) "Billing information" means any data that enables a seller of a discount membership program to access a consumer's credit or debit card, bank, or other account, but does not include the consumer's name, e-mail address, telephone number, or mailing address. For credit card and debit card accounts, billing information includes the full account number, card type, and expiration date, and, if necessary, the security code. For accounts at a financial institution, "billing information" includes the full account number and routing number, and, if necessary, the name of the financial institution holding the account.

(2) A "discount membership program" is a program that entitles consumers to receive discounts, rebates, rewards, or similar incentives on the purchase of goods or services or both, in whole or in part, from any third party.

§ 2470bb. APPLICABILITY

A discount membership program is a good or service within the meaning of subsection 2451a(b) of this chapter. This subchapter applies only to persons who are regularly and primarily engaged in trade or commerce in this state in connection with offering or selling discount membership programs. This subchapter shall not apply to an electronic payment system, as defined in 9 V.S.A. § 2480o, or to a financial institution, as defined in 8 V.S.A. § 11101(32).

§ 2470cc. REQUIRED DISCLOSURES; CONSENT

(a) No person shall charge or attempt to charge a consumer for a discount membership program, or to renew a discount membership program beyond the term expressly agreed to by the consumer or the term permitted under section 2470ff of this title, whichever is shorter, unless:

(1) Before obtaining the consumer's billing information, the person has clearly and conspicuously disclosed to the consumer all material terms of the transaction, including:

(A) A description of the types of goods and services on which a discount is available;

(B) The name of the discount membership program and the name and address of the seller of the program;

(C) The amount, or a good faith estimate, of the typical discount on each category of goods and services;

(D) The cost of the program, including the amount of any periodic charges, how often such charges are imposed, and the method of payment;

(E) The right to cancel and to terminate the program, which shall be no more restrictive than as required by section 2470ee of this subchapter, and a toll-free telephone number and e-mail address that can be used to cancel the membership;

(F) The maximum length of membership, as described in section 2470ff of this subchapter;

(G) In the event that the program is offered on the Internet through a link or referral from another business's website, the fact that the seller is not affiliated with that business;

(H) The fact that periodic notices of the program billings will be e-mailed or mailed to the consumer, as the case may be, consistent with section 2470dd of this title; and

(2) The person has received express informed consent for the charge from the consumer whose credit or debit card, bank, or other account will be charged, by:

(A) Obtaining from the consumer:

(i) the consumer's billing information; and

(ii) the consumer's name and address and a means to contact the consumer; and

(B) Requiring the consumer to perform an additional affirmative action, such as clicking on an online confirmation button, checking an online box that indicates the consumer's consent to be charged the amount disclosed, or expressly giving consent over the telephone.

(b) A person who sells discount membership programs shall retain evidence of a consumer's express informed consent for at least three years after the consent is given.

§ 2470dd. PERIODIC NOTICES

(a) A person who periodically charges a consumer for a discount membership program shall send the consumer a notice of the charge no less frequently than every three months from the date of initial enrollment that clearly and conspicuously discloses:

(1) A description of the program;

(2) The name of the discount membership program and the name and address of the seller of the program;

(3) The cost of the program, including the amount of any periodic charges, how often such charges are imposed, and the method of payment;

(4) The right to cancel and to terminate the program, which shall be no more restrictive than as required by section 2470ee of this subchapter, and a toll-free number and e-mail address that can be used to cancel the membership; and

(5) The maximum length of membership, as described in section 2470ff of this subchapter.

(b) The notice specified in subsection (a) of this section:

(1) Shall be sent:

(A) To the consumer's last known e-mail address, if the consumer enrolled in the discount membership program online or by e-mail, with the subject line, "IMPORTANT INFORMATION ABOUT YOUR DISCOUNT PROGRAM BILLING," or substantially similar words, provided that the sender takes reasonable steps to verify that the e-mail has been opened; or

(B) Otherwise by first-class mail to the consumer's last known mailing address, with the heading on the enclosure and outside envelope, "IMPORTANT INFORMATION ABOUT YOUR DISCOUNT PROGRAM BILLING," or substantially similar words; and

(2) Shall not include any solicitation or advertising.

§ 2470ee. CANCELLATION AND TERMINATION

(a) In addition to any other right to revoke an offer, a consumer may cancel the purchase of a discount membership program until midnight on the 30th day after the date the consumer has given express informed consent to be charged for the program. If the consumer cancels within the 30-day period, the seller of the discount membership program shall, within ten days of receiving the notice of cancellation, provide a full refund to the consumer.

(b) Notice of cancellation shall be deemed given when deposited in a mailbox properly addressed and postage prepaid or when e-mailed to the e-mail address of the seller of the discount membership program.

(c) In addition to the right to cancel described in this subchapter, a consumer may terminate a discount membership program at any time by providing notice to the seller by one of the methods described in this section. In that case, the consumer shall not be obligated to make any further payments under the program and shall not be entitled to any discounts under the program for any period of time after the last month for which payment has been made.

(d) If the seller of a discount membership program cancels the program for any reason other than nonpayment by the consumer, the seller shall make pro rata reimbursement to the consumer of all periodic charges paid by the consumer for periods of time after cancellation. Prior to such cancellation, the seller shall first provide reasonable notice and an explanation of the cancellation in writing to the consumer.

§ 2470ff. MAXIMUM LENGTH OF PLAN

No person shall sell, or offer for sale, a discount membership program lasting longer than 18 months.

§ 2470gg. BILLING INFORMATION

No person who offers or sells discount membership programs shall obtain billing information relating to a consumer except directly from the consumer.

§ 2470hh. VIOLATIONS

(a) A violation of this subchapter is deemed to be a violation of section 2453 of this title.

(b) The attorney general has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as is provided under subchapter 1 of this chapter.

Sec. 2. 9 V.S.A. chapter 63 is amended to read:

CHAPTER 63. CONSUMER ~~FRAUD~~ PROTECTION

* * *

§ 2453. PRACTICES PROHIBITED; ANTITRUST AND CONSUMER ~~FRAUD~~ PROTECTION

* * *

§ 2461e. REQUIREMENTS FOR GUARANTEED PRICE PLANS AND PREPAID CONTRACTS

* * *

(d) Private right of action under consumer ~~fraud~~ protection act. In addition to the remedies set forth in sections 2458 and 2461 of this title, a home heating oil, kerosene, or liquefied petroleum gas dealer may bring an action against its heating oil, kerosene, or liquefied petroleum gas suppliers for failing to honor its contract with the home heating oil, kerosene, or liquefied petroleum gas dealer. The home heating oil, kerosene, or liquefied petroleum gas dealer bringing the action may recover all remedies available to consumers under subsection 2461(b) of this title.

* * *

§ 2480q. PENALTIES

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

* * *

(3) A violation of section 2480p of this subchapter shall be deemed a violation of ~~chapter 63~~ section 2453 of this title~~, the Consumer Fraud Act~~. The attorney general has the same authority to conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under subchapter 1 ~~of chapter 63~~ of this ~~title~~ chapter.

* * *

Sec. 3. REDESIGNATION OF TERM "CONSUMER FRAUD" TO READ "CONSUMER PROTECTION"

(a) The legislative council, under its statutory revision authority pursuant to 2 V.S.A. § 424, is directed to delete the term "consumer fraud" and to insert in lieu thereof the term "consumer protection" wherever it appears in each of the following sections: 7 V.S.A. § 1010; 8 V.S.A. §§ 2706, 2709, and 2764; 9 V.S.A. § 2471; 18 V.S.A. §§ 1511, 1512, 4086, 4631, 4633, 4634, and 9473; 20 V.S.A. § 2757; and 33 V.S.A. §§ 1923 and 2010; and in any other sections as appropriate.

(b) Notwithstanding the provisions of 3 V.S.A. chapter 25, the attorney general shall have the authority to delete the term "consumer fraud" and to insert in lieu thereof the term "consumer protection" wherever it appears in the attorney general's rules, regulations, and procedures and shall exercise such authority upon passage of this act as he or she deems to be necessary, appropriate, and consistent with the purposes of this section.

Sec. 4. 9 V.S.A. chapter 62 is amended to read:

CHAPTER 62: PROTECTION OF PERSONAL INFORMATION

§ 2430. DEFINITIONS

The following definitions shall apply throughout this chapter unless otherwise required:

* * *

(5)(A) "~~Personal~~ Personally identifiable information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted or protected by another method that renders them unreadable or unusable by unauthorized persons:

(i) Social Security number;

(ii) Motor vehicle operator's license number or nondriver identification card number;

(iii) Financial account number or credit or debit card number, if circumstances exist in which the number could be used without additional identifying information, access codes, or passwords;

(iv) Account passwords or personal identification numbers or other access codes for a financial account.

(B) "~~Personal~~ Personally identifiable information" does not mean publicly available information that is lawfully made available to the general public from federal, state, or local government records.

* * *

(8)(A) "Security breach" means unauthorized acquisition ~~or access~~ of ~~computerized~~ electronic data or a reasonable belief of an unauthorized acquisition of electronic data that compromises the security, confidentiality, or integrity of ~~personal~~ a consumer's personally identifiable information maintained by the data collector.

(B) "Security breach" does not include good faith but unauthorized acquisition ~~or access~~ of ~~personal~~ personally identifiable information by an employee or agent of the data collector for a legitimate purpose of the data collector, provided that the ~~personal~~ personally identifiable information is not used for a purpose unrelated to the data collector's business or subject to further unauthorized disclosure.

(C) In determining whether personally identifiable information has been acquired or is reasonably believed to have been acquired by a person without valid authorization, a data collector may consider the following factors, among others:

(i) indications that the information is in the physical possession and control of a person without valid authorization, such as a lost or stolen computer or other device containing information;

(ii) indications that the information has been downloaded or copied;

(iii) indications that the information was used by an unauthorized person, such as fraudulent accounts opened or instances of identity theft reported; or

(iv) that the information has been made public.

§ 2435. NOTICE OF SECURITY BREACHES

(a) This section shall be known as the Security Breach Notice Act.

(b) Notice of breach.

(1) Except as set forth in subsection (d) of this section, any data collector that owns or licenses computerized ~~personal~~ personally identifiable information that includes personal information concerning a consumer shall notify the consumer that there has been a security breach following discovery or notification to the data collector of the breach. Notice of the security breach shall be made in the most expedient time possible and without unreasonable

delay, but not later than 45 days after the discovery or notification, consistent with the legitimate needs of the law enforcement agency, as provided in ~~subdivision~~ subdivisions (3) and (4) of this subsection, or with any measures necessary to determine the scope of the security breach and restore the reasonable integrity, security, and confidentiality of the data system.

(2) Any data collector that maintains or possesses computerized data containing ~~personal~~ personally identifiable information of a consumer that the ~~business~~ data collector does not own or license or any data collector that acts or conducts business in Vermont that maintains or possesses records or data containing ~~personal~~ personally identifiable information that the data collector does not own or license shall notify the owner or licensee of the information of any security breach immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in ~~subdivision~~ subdivisions (3) and (4) of this subsection.

(3) A data collector or other entity subject to this subchapter, other than a person or entity licensed or registered with the department of financial regulation under Title 8 or this title, shall provide notice of a breach to the attorney general's office as follows:

(A)(i) The data collector shall notify the attorney general of the date of the security breach and the date of discovery of the breach and shall provide a preliminary description of the breach within 14 business days, consistent with the legitimate needs of the law enforcement agency as provided in subdivisions (3) and (4) of this subsection, of the data collector's discovery of the security breach or when the data collector provides notice to consumers pursuant to this section, whichever is sooner.

(ii) Notwithstanding subdivision (A)(i) of this subdivision (b)(3), a data collector who, prior to the date of the breach, on a form and in a manner prescribed by the office of the attorney general, had sworn in writing to the attorney general that it maintains written policies and procedures to maintain the security of personally identifiable information and respond to a breach in a manner consistent with Vermont law shall notify the attorney general of the date of the security breach and the date of discovery of the breach and shall provide a description of the breach prior to providing notice of the breach to consumers pursuant to subdivision (1) of this subsection.

(iii) If the date of the breach is unknown at the time notice is sent to the attorney general, the data collector shall send the attorney general the date of the breach as soon as it is known.

(iv) Unless otherwise ordered by a court of this state for good cause shown, a notice provided under this subdivision (3)(A) shall not be disclosed to any person other than the authorized agent or representative of the

attorney general, a state's attorney, or another law enforcement officer engaged in legitimate law enforcement activities without the consent of the data collector.

(B)(i) When the data collector provides notice of the breach pursuant to subdivision (1) of this subsection (b), the data collector shall notify the attorney general of the number of Vermont consumers affected, if known to the data collector, and shall provide a copy of the notice provided to consumers under subdivision (1) of this subsection (b).

(ii) The data collector may send to the attorney general a second copy of the consumer notice, from which is redacted the type of personally identifiable information that was subject to the breach, and which the attorney general shall use for any public disclosure of the breach.

(4) The notice to a consumer required by this subsection shall be delayed upon request of a law enforcement agency. A law enforcement agency may request the delay if it believes that notification may impede a law enforcement investigation, or a national or homeland security investigation or jeopardize public safety or national or homeland security interests. In the event law enforcement makes the request in a manner other than in writing, the data collector shall document such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. A law enforcement agency shall promptly notify the data collector when the law enforcement agency no longer believes that notification may impede a law enforcement investigation, or a national or homeland security investigation or jeopardize public safety or national or homeland security interests. The data collector shall provide notice required by this section without unreasonable delay upon receipt of a written communication, which includes facsimile or electronic communication, from the law enforcement agency withdrawing its request for delay.

~~(4)~~(5) The notice to a consumer shall be clear and conspicuous. The notice shall include a description of each of the following, if known to the data collector:

(A) The incident in general terms.

(B) The type of ~~personal~~ personally identifiable information that was subject to the ~~unauthorized access or acquisition~~ security breach.

(C) The general acts of the ~~business~~ data collector to protect the ~~personal~~ personally identifiable information from further ~~unauthorized access or acquisition~~ security breach.

(D) A ~~toll-free~~ telephone number, toll-free if available, that the consumer may call for further information and assistance.

(E) Advice that directs the consumer to remain vigilant by reviewing account statements and monitoring free credit reports.

(F) The approximate date of the security breach.

~~(5)~~(6) For purposes of this subsection, notice to consumers may be provided by one of the following methods:

* * *

(h) Vermont law enforcement agencies, including the department of public safety, shall not be considered a data collector. Except as provided in subdivisions (b)(2) and (b)(3) of this section, Vermont law enforcement agencies, including the department of public safety, shall be exempt from this subchapter.

Sec. 5. 3 V.S.A. § 2222 is amended to read:

§ 2222. POWERS AND DUTIES; BUDGET AND REPORT

(a) In addition to the duties expressly set forth elsewhere by law the secretary shall:

* * *

(9) Submit to the general assembly concurrent with the governor's annual budget request required under 32 V.S.A. § 306, a strategic plan for information technology and information security which outlines the significant deviations from the previous year's ~~information technology~~ plan, and which details the plans for information technology activities of state government for the following fiscal year as well as the administration's financing recommendations for these activities. For purposes of this section, "information security" shall mean protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide integrity, confidentiality, and availability. All such plans shall be reviewed and approved by the commissioner of information and innovation prior to being included in the governor's annual budget request. The plan shall identify the proposed sources of funds for each project identified. The plan shall also contain a review of the state's information technology and information security and an identification of priority projects by agency. The plan shall include, for any proposed information technology activity with a cost in excess of $100,000.00:

(A) a life-cycle costs analysis including planning, purchase and development of applications, the purchase of hardware and the ~~on-going~~

ongoing operation and maintenance costs to be incurred over the expected life of the systems; and a cost-benefit analysis which shall include acquisition costs as well as operational and maintenance costs over the expected life of the system;

(B) the cost savings ~~and/or~~ or service delivery improvements or both which will accrue to the public or to state government;

(C) a statement identifying any impact of the proposed new computer system on the privacy or disclosure of individually identifiable information;

(D) a statement identifying costs and issues related to public access to nonconfidential information;

(E) a statewide budget for all information technology activities with a cost in excess of ~~$100,000~~ $100,000.00.

(10) The secretary shall annually submit to the general assembly a five-year information technology and information security plan which indicates the anticipated information technology activities of the legislative, executive, and judicial branches of state government. For purposes of this section, "information technology activities" shall mean:

(A) the creation, collection, processing, storage, management, transmission, or conversion of electronic data, documents, or records;

(B) the design, construction, purchase, installation, maintenance, or operation of systems, including both hardware and software, which perform these activities.

* * *

Sec. 6. 22 V.S.A. § 901 is amended to read:

§ 901. DEPARTMENT OF INFORMATION AND INNOVATION

The department of information and innovation, created in 3 V.S.A. § 2283b, shall have all the responsibilities assigned to it by law, including the following:

(1) to provide direction and oversight for all activities directly related to information technology and information security, including telecommunications services, information technology equipment, software, accessibility, and networks in state government. For purposes of this section, "information security" is defined as in 3 V.S.A. § 2222(a)(9);

(2) to manage GOVnet;

(3) to review all information technology and information security requests for proposal in accordance with agency of administration policies;

(4) to review and approve information technology activities in all departments with a cost in excess of $100,000.00, and annually submit to the general assembly a strategic plan and a budget for information technology and information security as required of the secretary of administration by 3 V.S.A. § 2222(a)(9). For purposes of this section, "information technology activities" is defined in 3 V.S.A. § 2222(a)(10);

(5) to administer the independent review responsibilities of the secretary of administration described in 3 V.S.A. § 2222(g);

(6) to perform the responsibilities of the secretary of administration under 30 V.S.A. § 227b;

(7) to administer communication, information, and technology services, which are transferred from the department of buildings and general services;

(8) to inventory technology assets within state government;

(9) to coordinate information technology and information security training within state government;

* * *

(11) to provide technical support and services to the department of human resources and of finance and management for the statewide central accounting and encumbrance system, the statewide budget development system, the statewide human resources management system, and other agency of administration systems as may be assigned by the secretary; and

(12) not later than July 1, 2013, to adopt rules requiring the auditing and updating of state websites.

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.

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

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

Proposal of Amendment; Third Reading Ordered

H. 496.

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

An act relating to preserving Vermont's working landscape.

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

Sec. 1. 6 V.S.A. § 2966 (Vermont agricultural development board) is repealed in its entirety and new §§ 2966 is added to read:

§ 2966. ESTABLISHMENT OF THE VERMONT WORKING LANDS ENTERPRISE BOARD

(a) Board Established. The Vermont working lands enterprise board is hereby established as the successor in interest to the Vermont agricultural development board.

(b) Goals. The Vermont working lands enterprise board shall perform its duties pursuant to sections 2967 and 2968 of this title:

(1) to promote job creation and the economic viability, growth, and sustainability of the working landscape;

(2) to attract a new generation of entrepreneurs to agriculture and forestry, food and forest systems, and value-added production as a foundation for rural job creation and working lands conservation;

(3) to increase the value and sales of the products of the working landscape by means which reward sound farm and forest management, including appropriate increases in the proportion of value-added farm and forest products relative to raw material exports; and

(4) to build Vermont's reputation as the national leader in food systems development, environmental quality, land stewardship, access to outdoor recreation, and working lands entrepreneurism.

(c) Board Composition. The board shall be composed of the following 24 members:

(1) six members appointed by the governor:

(A) a person with expertise in rural economic development issues;

(B) an employee of a Vermont postsecondary institution experienced in researching issues related to agriculture or forestry;

(C) a person familiar with the agricultural or forest tourism industry;

(D) a member of the Northeast Organic Farming Association of Vermont;

(E) a member of the Vermont Forest Products Association; and

(F) a member of the Vermont Wood Manufacturers Association;

(2) six members appointed by the speaker of the house of representatives:

(A) a person who produces an agricultural commodity other than dairy products;

(B) a person who creates a value-added product using ingredients substantially produced on Vermont farms or from Vermont forests;

(C) a person with expertise in sales and marketing;

(D) a person representing the feed, seed, fertilizer, or equipment enterprises;

(E) a member of the Vermont Woodlands Association; and

(F) a member of the Vermont Forest Stewardship Committee;

(3) six members appointed by the committee on committees of the senate:

(A) a representative of Vermont's dairy industry who is also a dairy farmer;

(B) a person with expertise in land planning and conservation efforts that support Vermont's working landscape;

(C) a representative from a Vermont agricultural or forestry advocacy organization;

(D) a person with experience in providing youth with educational opportunities enhancing understanding of agriculture or forestry;

(E) a member of the Green Mountain Division, Society of American Foresters; and

(F) a member of the Forest Guild who is a resident of Vermont.

(4) the following three members from the executive branch:

(A) the secretary of agriculture, food and markets;

(B) the secretary of commerce and community development; and

(C) the commissioner of forest, parks and recreation; and

(5) the following three members who shall serve as ex officio, non-voting members:

(A) the manager of the Vermont economic development authority;

(B) the executive director of the Vermont sustainable jobs fund; and

(C) the executive director of the Vermont housing conservation board.

(d) Governance.

(1) Eleven voting members of the board shall constitute a quorum, and an action of the board shall be taken by a majority of those members present and voting at a meeting of the members at which a quorum is present.

(2)(A) The chair of the board shall be elected by the board from its membership at the first meeting. The chair shall serve for the duration of his or her member term, until his or her earlier resignation, or until his or her unanimous removal by the governor, the speaker of the house, and the president pro tempore of the senate. A chair may be reappointed, provided that no individual may serve more than two consecutive three-year terms as chair.

(3) Each member of the board shall serve a term of three years, or until his or her earlier resignation. A member shall not serve more than two consecutive three-year terms. Any vacancy occurring among the members shall be filled by the respective appointing authority, and shall be filled for the balance of the unexpired term.

(e) Compensation. Members who are not state employees or whose membership is not supported by their employer or association may receive reimbursement for actual and necessary expenses incurred in the performance of their duties pursuant to 32 V.S.A. § 1010.

Sec. 2. 6 V.S.A. § 2967 is added to read:

§ 2967. POWERS AND DUTIES OF THE VERMONT WORKING LANDS ENTERPRISE BOARD

(a) The Vermont working lands enterprise board shall have the authority to promote job creation and the economic viability, growth, and sustainability of the working landscape through three mechanisms:

(1) Direct grants and investments in agricultural and forestry enterprises;

(2) Services and assistance to agricultural and forestry enterprises, both through direct coordination with public and private partners, and through performance contracts with one or more persons, including:

(A) technical assistance and product research services;

(B) marketing assistance, market development, and business and financial planning;

(C) local, statewide, regional, national, or international marketing of the Vermont working landscape, its entrepreneurs and sectors, and the public and private programs and partners supporting the working landscape;

(D) organizational, regulatory, and development assistance; and

(E) feasibility studies of facilities or capital investments to optimize construction and other cost efficiencies.

(3) Direct grants and investments in food and forest systems infrastructure.

(b) The board shall have the additional authority:

(1) to pursue, receive, and accept any type of funding from public or private funding sources for the performance of its work;

(2) to use the services and staff of the agency of agriculture, food and markets to assist in the performance of the board's duties, with the concurrence of the secretary of agriculture, food and markets;

(3) to contract for support, technical, or other professional services necessary to complete its work; and

(4) to advise and make recommendations to the secretary of agriculture, food and markets and to the commissioner of forests, parks and recreation on the adoption and amendment of laws, regulations, and governmental policies that affect agriculture and forestry.

Sec. 3. 6 V.S.A. § 2968 is added to read:

§ 2968. VERMONT WORKING LANDS ENTERPRISE FUND

There is created a special fund in the state treasury to be known as the "Vermont working lands enterprise fund." Notwithstanding any contrary provisions of 32 V.S.A. Chapter 7, subchapter 5:

(1) the fund shall be administered, and the monies of the funds shall be expended, by the Vermont working lands enterprise board created in section 2966 of this title;

(2) the fund shall be composed of moneys from time to time appropriated to the fund by the general assembly or received from any other source, private or public, approved by the board, and unexpended balances and any earnings shall remain in the fund from year to year; and

(3) the board shall make expenditures from the fund consistent with the duties and authority of the board to promote job creation and the economic viability, growth, and sustainability of the working landscape consistent with section 2967 of this title.

Sec. 4. TRANSITION

Notwithstanding any provision of Sec. 1. of this act to the contrary, upon the effective date of this act, each member of the Vermont agricultural

development board shall become a member of the Vermont working lands enterprise board and shall serve the remainder of his or her current term, upon the expiration of which a member may be reappointed or replaced as provided in 6 V.S.A. § 2966, as amended by this act.

Sec. 5. 10 V.S.A. chapter 15 is amended to read:

CHAPTER 15. VERMONT HOUSING AND CONSERVATION TRUST FUND

* * *

§ 302. POLICY, FINDINGS, AND PURPOSE

(a) The dual goals of creating affordable housing for Vermonters, and conserving and protecting Vermont's agricultural ~~land~~ and forest land, historic properties, important natural areas, and recreational lands are of primary importance to the economic vitality and quality of life of the state.

(b) In the best interests of all of its citizens and in order to improve the quality of life for Vermonters and to maintain for the benefit of future generations the essential characteristics of the Vermont countryside, Vermont should encourage and assist in creating affordable housing and in preserving the state's agricultural ~~land~~ and forest land, historic properties, important natural areas, and recreational lands.

(c) It is the purpose of this chapter to create the Vermont housing and conservation trust fund to be administered by the Vermont housing and conservation board to further the policies established by subsections (a) and (b) of this section.

§ 303. DEFINITIONS

As used in this chapter:

(1) "Board" means the Vermont housing and conservation board established by this chapter.

(2) "Fund" means the Vermont housing and conservation trust fund established by this chapter.

(3) "Eligible activity" means any activity which will carry out either or both of the dual purposes of creating affordable housing and conserving and protecting important Vermont lands, including activities which will encourage or assist:

(A) the preservation, rehabilitation or development of residential dwelling units which are affordable to lower income Vermonters;

(B) the retention of agricultural land for agricultural use, and of forest land for forestry use;

(C) the protection of important wildlife habitat and important natural areas;

(D) the preservation of historic properties or resources;

(E) the protection of areas suited for outdoor public recreational activity;

(F) the development of capacity on the part of an eligible applicant to engage in an eligible activity.

* * *

§ 311. CREATION OF THE VERMONT HOUSING AND CONSERVATION BOARD

(a) There is created and established a body politic and corporate to be known as the "Vermont housing and conservation board" to carry out the provisions of this chapter. The board is constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the board of the powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function of the state. The board is exempt from licensure under 8 V.S.A. chapter 73 ~~of Title 8~~.

(b) The board shall consist of the following 11 members:

(1) The secretary of agriculture, food and markets or his or her designee.

(2) The secretary of human services or his or her designee.

(3) The secretary of natural resources or his or her designee.

(4) The executive director of the Vermont housing finance agency or his or her designee.

(5) Three public members appointed by the governor with the advice and consent of the senate, who shall be residents of the state and who shall be experienced in creating affordable housing or conserving and protecting Vermont's agricultural ~~land~~ and forest land, historic properties, important natural areas, or recreational lands, one of whom shall be a representative of lower income Vermonters and one of whom shall be a farmer as defined in 32 V.S.A. § 3752(7).

(6) One public member appointed by the speaker of the house, who shall not be a member of the general assembly at the time of appointment.

(7) One public member appointed by the senate committee on committees, who shall not be a member of the general assembly at the time of appointment.

(8) Two public members appointed jointly by the speaker of the house and the president pro tempore of the senate as follows:

(A) One member from the nonprofit affordable housing organizations that qualify as eligible applicants under subdivision 303(4) of this title who shall not be an employee or board member of any of those organizations at the time of appointment.

(B) One member from the nonprofit conservation organizations whose activities are eligible under subdivision 303(3) of this title who shall not be an employee or member of the board of any of those organizations at the time of appointment.

* * *

§ 321. GENERAL POWERS AND DUTIES

* * *

(d) On behalf of the state of Vermont, the board shall seek and administer federal farmland protection and forestland conservation funds to facilitate the acquisition of interests in land to protect and preserve in perpetuity important farmland for future agricultural use and forestland for future forestry use. Such funds shall be used to implement and effectuate the policies and purposes of this chapter. In seeking federal farmland protection and forestland conservation funds under this subsection, the board shall seek to maximize state participation in the federal wetlands reserve program ~~in order~~ and such other programs as is appropriate to allow for increased or additional implementation of conservation practices on farmland and forestland protected or preserved under this chapter.

* * *

§ 324. STEWARDSHIP

If an activity funded by the board involves acquisition by the state of an interest in real property for the purpose of conserving and protecting agricultural ~~land~~ or forest land, important natural areas, or recreation lands, the board, in its discretion, may make a one-time grant to the appropriate state agency or municipality. The grant shall not exceed ten percent of the current appraised value of that property interest and shall be used to support its proper management or maintenance or both.

* * *

Sec. 6. APPROPRIATIONS

(a) The amount of $1,500,000.00 is appropriated from the general fund to the Vermont working lands enterprise fund in the amounts and for the purposes as follows:

(1) $500,000.00 for direct grants and investments in agricultural or forestry enterprises pursuant to 6 V.S.A. § 2966(a)(1).

(2) $375,000.00 to provide services and assistance to agricultural and forestry enterprises pursuant to 6 V.S.A. § 2966(a)(2).

(3) $500,000.00 for direct grants and investments in food and forest systems infrastructure pursuant to 6 V.S.A. § 2966(a)(3).

(b) The amount of $125,000.00 is appropriated from the general fund to the agency of agriculture, food and markets to provide funding for one full-time position of "Vermont working landscape development director," support staff, and for fiscal management and operations costs.

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.

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

Senator Starr, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Agriculture with the following amendment thereto:

By striking out Sec. 6 (appropriations) in its entirety and by inserting in lieu thereof a new Sec. 6 to read:

Sec. 6. PRIORITIES FOR WORKING LANDS INVESTMENTS

In the event that sources of funding for investments are available in the agency of agriculture, food and markets, the working lands enterprise board, and the working lands enterprise fund, it is the intent of the general assembly to invest in the following priorities:

(1) funding for direct grants and investments in food and forest systems infrastructure pursuant to 6 V.S.A. § 2966(a)(3).

(2) funding for direct grants and investments in agricultural or forestry enterprises pursuant to 6 V.S.A. § 2966(a)(1).

(3) funding to provide services and assistance to agricultural and forestry enterprises pursuant to 6 V.S.A. § 2966(a)(2).

(4) funding to the agency of agriculture, food and markets for one full-time position of "Vermont working landscape development director," for support staff, and for fiscal management and operations costs.

And by renumbering the remaining sections to be numerically correct

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of proposal of amendment of the Committee on Agriculture was amended as recommended by the Committee on Appropriations.

Thereupon, the proposal of amendment recommended by the Committee on Agriculture, as amended, was agreed to and third reading of the bill was ordered on a roll call, Yeas 28, Nays 0.

Senator Baruth 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, Carris, Cummings, Doyle, Flory, 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.

Those Senators absent and not voting were: Campbell, Fox.

Consideration Resumed; Bill Amended; Third Reading Ordered

H. 485.

Consideration was resumed on House bill entitled:

An act relating to establishing universal recycling of solid waste.

Thereupon, pending the question, Senator McCormack requested and was granted leave to withdraw his proposal of amendment.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Natural Resources and Energy?, Senators McCormack and Illuzzi moved to amend the recommendation of amendment of the Committee on Natural Resources and Energy proposal of amendment as follows:

First: By striking out Secs. 17 through 20 in their entirety

Second: By striking out Sec. 21 through 23 in its entirety

Third: By striking out Sec. 24 in its entirety

Fourth: By inserting new Secs. 17 through 20 to read as follows:

* * * Studies of Ban on Plastic Carryout Bags and Expansion of Beverage Container Redemption System * * *

Sec. 17. ANR REPORT ON IMPLEMENTATION OF BAN ON PLASTIC CARRYOUT BAGS

(a) On or before January 15, 2013, the secretary of natural resources shall report to the senate and house committees on natural resources and energy regarding the use of plastic carryout bags in the state. The report shall include:

(1) An estimate of the number of plastic bags used in the state and a summary of how plastic carryout bags are currently disposed of or recycled;

(2) A recommendation on whether to ban the use of plastic carryout bags by retail establishments in the state, to allow the continued use of plastic carryout bags, or to regulate plastic carryout bags in some other manner, including a summary of the basis for the recommendation.

(3) If the secretary under subdivision (2) of this subsection recommends that plastic carryout bags should be banned or regulated, the secretary shall:

(A) Recommend a definition of "plastic carryout bag";

(B) Specify to whom the ban or regulation should apply;

(C) Recommend an effective date for the recommended ban or regulation; and

(D) Estimate the cost to implement the recommended ban or regulation.

(b) In preparing the report required by this section, the secretary of natural resources shall consult with interested parties, including representatives of: grocers in the state, retail establishments in the state, environmental groups, solid waste districts, and plastic or container industry associations.

Sec. 18. ANR REPORT ON THE COSTS AND BENEFITS OF EXPANSION OF THE BEVERAGE CONTAINER REDEMPTION SYSTEM

(a) Findings. The general assembly finds and declares that:

(1) the beverage container redemption system, commonly referred to as the bottle bill, originally was developed as a method of litter control and not as a comprehensive recycling system;

(2) since enactment of the beverage container redemption system, communities and solid waste haulers have developed the management, markets, and infrastructure necessary to implement zero-sort, single-stream recycling programs that allow a broad range of recyclable material to be collected and recycled without source-separation and with minimal labor;

(3) in municipalities where zero-sort, single-stream recycling has been implemented, local recycling collection rates have increased 20 to 30 percent while program operating costs have been reduced by more than 10 percent;

(4) expanding the beverage container redemption system will divert higher-value recyclable material from zero-sort, single-stream recycling programs, which will reduce the dollar value municipalities receive from the commodities market for recyclable material, thereby increasing the costs of municipal solid waste programs; and

(5) in order to determine whether the bottle bill should be expanded, the secretary of natural resources should analyze the costs and benefits of the bottle bill under the existing recycling system and infrastructure in the state in order to determine if expansion of the bottle bill provides Vermont with the optimal, cost-efficient, and effective means of collecting and recycling solid waste in the state.

(b) Report on costs on bottle bill. On or before November 15, 2013, the secretary of natural resources shall submit to the senate and house committees on natural resources and energy, the senate committee on economic development, housing and general affairs, and the house committee on commerce a report regarding the costs and benefits of expanding the beverage container redemption system to include containers for all noncarbonated drinks. The report shall include:

(1) An estimate of the cost of implementing the existing beverage container redemption system;

(2) An estimate of the cost of implementing expansion of the beverage container redemption system to include containers for all noncarbonated drinks, including an estimate of the commodity value lost by municipalities due to diversion of recyclable material from single-stream recycling programs.

(3) An estimate of the cost of implementing a zero-sort, single-stream recycling program.

(4) A summary of the total recycling benefits of a single-stream recycling program in contrast to the beverage container redemption system.

(5) A recommendation from the secretary as to whether the beverage container redemption system should be expanded, remain unchanged, or be repealed.

* * * Appeals, Enforcement, and Effective Dates * * *

Sec. 19. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes:

* * *

(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; and

(23) 24 V.S.A. § 2202a, relating to a municipality's adoption and implementation of a municipal solid waste implementation plan that is consistent with the state solid waste plan.

Sec. 20. 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:

* * *

(g) This chapter shall govern all appeals of an act or decision of the secretary of natural resources that a municipal solid waste implementation plan proposed under 24 V.S.A. § 2202a conforms with the state solid waste implementation plan adopted pursuant to section 6604 of this title.

Fifth: By inserting a new Sec. 21 to read as follows:

Sec. 21. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

Thereupon, pending the question, Shall the proposal of amendment of the Committee on Natural Resources and Energy be amended as proposed by Senators McCormack and Illuzzi?, Senator Galbraith requested the question be divided and that the *first, third* and *fifth* proposals of amendment be voted on separately and that the *second* and *fourth* proposals of amendment be voted on separately.

Thereupon, the pending question, Shall the proposal of amendment of the Committee on Natural Resources and Energy be amended as proposed by Senators McCormack and Illuzzi in the *first, third* and *fifth* instances?, was decided in the affirmative on a roll call, Yeas 22, Nays 7.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Brock, Campbell, Carris, Cummings, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, Mazza, McCormack, Miller, Mullin, Nitka, Sears, Snelling, Starr, Westman.

Those Senators who voted in the negative were: Baruth, Benning, Doyle, Galbraith, MacDonald, Pollina, White.

The Senator absent and not voting was: Fox.

Thereupon, the pending question, Shall the proposal of amendment of the Committee on Natural Resources and Energy be amended as proposed by Senators McCormack and Illuzzi in *second* and *fouth* instances?, was agreed to.

Thereupon, pending 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?, Senator MacDonald moved to amend the proposal of amendment in Sec. 18 by striking out subsection (a) in its entirety which was decided in the affirmative.

Thereupon, pending 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?, Senator Pollina moved to amend the proposal of amendment in Sec. 18, subsection (b) by striking out the word "November" and inserting in lieu thereof the word January which was agreed to.

Thereupon, the pending question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Natural Resources and Energy, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Senate Concurrent Resolution

The following joint concurrent resolution, having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, was adopted on the part of the Senate:

By Senators Ayer and Giard,

By Representative Jewett and others,

S.C.R. 45.

Senate concurrent resolution congratulating the 2012 Vermont Prudential Spirit of Community Award winners.

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 adopted in concurrence:

By Representative Keenan and others,

By Senators Ayer, Kittell and Flory,

H.C.R. 353.

House concurrent resolution designating May 6–12, 2012 as National Nurses Week in Vermont.

By Representative Komline and others,

By Senators Sears and Hartwell,

H.C.R. 354.

House concurrent resolution congratulating the Bromley Mountain Ski Resort and the Bromley Outing Club on celebrating their respective 75th and 60th anniversaries.

By Representative Lenes and others,

By Senators Lyons and Snelling,

H.C.R. 355.

House concurrent resolution congratulating the Champlain Valley Union High School Redhawks 2012 Division I championship girls' Nordic ski team.

By Representative Russell and others,

By Senators Carris, Flory and Mullin,

H.C.R. 356.

House concurrent resolution commemorating the 25th anniversary of the Rutland Open Door Mission at its Park Street location.

By Representative Devereux and others,

H.C.R. 357.

House concurrent resolution in memory of Allyn Seward of East Wallingford.

By Representative Ancel and others,

H.C.R. 358.

House concurrent resolution congratulating Circus Smirkus on its 25th anniversary.

By Representative Martin and others,

H.C.R. 359.

House concurrent resolution congratulating Marita Johnson on being named the Springfield Regional Chamber of Commerce's 23rd Annual Citizen of the Year.

By Representatives French and Townsend,

H.C.R. 360.

House concurrent resolution honoring Brian Lowe for his volunteer ornithological protection activities.

By Representative Clarkson and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 361.

House concurrent resolution congratulating the Woodstock Union High School Wasps on winning their third consecutive Division II boys' Nordic skiing championship.

By Representative French and others,

H.C.R. 362.

House concurrent resolution honoring the educational and community leadership of Jerry Sullivan.

By Representative Mook and others,

By Senators Hartwell and Sears,

H.C.R. 363.

House concurrent resolution congratulating Alfred L. Pinsonneault Jr. on 50 exemplary years of service with the Town of Bennington Rescue Squad, Inc..

By Representative Greshin,

H.C.R. 364.

House concurrent resolution honoring Andreas Lehner for his outstanding administrative leadership in public education.

By Representative Pugh and others,

H.C.R. 365.

House concurrent resolution congratulating the South Burlington Dolphins on winning the 2011 Northern Vermont Youth Football League state championship.

By Representative Grad and others,

By Senator Mullin,

H.C.R. 366.

House concurrent resolution designating April as the month of the military child in Vermont.

By Representative Toll,

By Senators Cummings, Doyle and Pollina,

H.C.R. 367.

House concurrent resolution congratulating Blanche Lamore on her 100th birthday.

By Representative Strong and others,

H.C.R. 368.

House concurrent resolution remembering the life of U.S. Army Major Jonathan Kirk Weaver.

By Representative Haas,

H.C.R. 369.

House concurrent resolution congratulating the Rochester School winners of the 2012 Vermont aviation art contest.

Adjournment

On motion of Senator Campbell, the Senate adjourned until eleven o'clock in the morning on Saturday, April 21, 2012.

SATURDAY, APRIL 21, 2012

The Senate was called to order by the President.

Adjournment

On motion of Senator Pollina, the Senate adjourned, to reconvene on Monday, April 23, 2012, at three o'clock in the afternoon pursuant to J.R.S. 57.

MONDAY, APRIL 23, 2012

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. 56

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

Mr. President:

I am directed to inform the Senate that:

The House has considered the report of the 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.

And has adopted the same on its part.

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

H.C.R. 353. House concurrent resolution designating May 6–12, 2012 as National Nurses Week in Vermont.

H.C.R. 354. House concurrent resolution congratulating the Bromley Mountain Ski Resort and the Bromley Outing Club on celebrating their respective 75th and 60th anniversaries.

H.C.R. 355. House concurrent resolution congratulating the Champlain Valley Union High School Redhawks 2012 Division I championship girls' Nordic ski team.

H.C.R. 356. House concurrent resolution commemorating the 25th anniversary of the Rutland Open Door Mission at its Park Street location.

H.C.R. 357. House concurrent resolution in memory of Allyn Seward of East Wallingford.

H.C.R. 358. House concurrent resolution congratulating Circus Smirkus on its 25th anniversary.

H.C.R. 359. House concurrent resolution congratulating Marita Johnson on being named the Springfield Regional Chamber of Commerce's 23rd Annual Citizen of the Year.

H.C.R. 360. House concurrent resolution honoring Brian Lowe for his volunteer ornithological protection activities.

H.C.R. 361. House concurrent resolution congratulating the Woodstock Union High School Wasps on winning their third consecutive Division II boys' Nordic skiing championship.

H.C.R. 362. House concurrent resolution honoring the educational and community leadership of Jerry Sullivan.

H.C.R. 363. House concurrent resolution congratulating Alfred L. Pinsonneault Jr. on 50 exemplary years of service with the Town of Bennington Rescue Squad, Inc..

H.C.R. 364. House concurrent resolution honoring Andreas Lehner for his outstanding administrative leadership in public education.

H.C.R. 365. House concurrent resolution congratulating the South Burlington Dolphins on winning the 2011 Northern Vermont Youth Football League state championship.

H.C.R. 366. House concurrent resolution designating April as the month of the military child in Vermont.

H.C.R. 367. House concurrent resolution congratulating Blanche Lamore on her 100th birthday.

H.C.R. 368. House concurrent resolution remembering the life of U.S. Army Major Jonathan Kirk Weaver.

H.C.R. 369. House concurrent resolution congratulating the Rochester School winners of the 2012 Vermont aviation art contest.

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. 43. Senate concurrent resolution designating May 2012 as Lupus Awareness Month in Vermont.

S.C.R. 44. Senate concurrent resolution congratulating Robert Swartz on being named the 2012 Northeast Kingdom Chamber Citizen of the Year.

S.C.R. 45. Senate concurrent resolution congratulating the 2012 Vermont Prudential Spirit of Community Award winners.

And has adopted the same in concurrence.

Bills Referred

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

H. 533.

An act relating to insurance business transfers.

To the Committee on Rules.

H. 777.

An act relating to licensed midwives and certified nurse midwives.

To the Committee on Rules.

H. 792.

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

To the Committee on Rules.

H. 793.

An act relating to approval of amendments to the charter of the Winooski incorporated school district.

To the Committee on Rules.

H. 794.

An act relating to the management of search and rescue operations.

To the Committee on Rules.

Joint Senate Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senators Carris and Mullin,

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

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Thursday, April 26, 2012, or, Friday, April 27, 2012, it be to meet again no later than Tuesday, May 1, 2012.

Committee of Conference Appointed

H. 789.

An act relating to reapportioning the final representative districts of the House of Representatives.

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

Senator White
Senator Sears
Senator Illuzzi

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

Committee of Conference Appointed

H. 770.

An act relating to the state's transportation program.

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

Senator Mazza
Senator Kitchel
Senator Westman

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

Bill Passed in Concurrence

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

H. 157. An act relating to restrictions on tanning beds.

Bills Passed in Concurrence with Proposal of Amendment

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

H. 37. An act relating to telemedicine.

H. 254. An act relating to consumer protection.

H. 496. An act relating to preserving Vermont's working landscape.

H. 627. An act relating to an opioid addiction treatment system.

Proposals of Amendment; Third Reading Ordered

H. 769.

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

An act relating to department of environmental conservation fees.

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

First: In Sec. 1, 3 V.S.A. § 2822(j)(1)(B) by striking out the following: ", provided that a plant producing renewable energy as defined in 30 V.S.A. § 8002 shall pay an annual fee not exceeding $64,000.00"

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

Sec. 3. 10 V.S.A. § 1943 is amended to read:

§ 1943. PETROLEUM TANK ASSESSMENT

(a) Each owner of a category one tank used for storage of petroleum products shall remit to the secretary on October 1 of each year ~~beginning October 1, 1988,~~ a fee that shall be deposited in the petroleum cleanup fund established under section 1941 of this title.

(1) For retail gasoline outlets that sell 40,000 gallons or more of motor fuel per month the fee shall be:

(A) $100.00 per double-wall tank~~, which shall be deposited to the petroleum cleanup fund established by section 1941 of this title, except that:~~ system;

(B) $150.00 per combination tank system on October 1, 2012; $250.00 on October 1, 2013; $350.00 on October 1, 2014; and

(C) $200.00 per single-wall tank system on October 1, 2012; $400.00 on October 1, 2013; $600.00 on October 1, 2014.

~~(1)~~(2) ~~The fee shall be $50.00 per tank for~~ For retail gasoline outlets that sell less than 40,000 gallons of motor fuel per month, the fee shall be:

(A) $75.00 per double-wall tank system;

(B) $125.00 per combination tank system on October 1, 2012; $200.00 on October 1, 2013; $275.00 on October 1, 2014; and

(C) $175.00 per single-wall tank system on October 1, 2012; $300.00 on October 1, 2013; $425.00 on October 1, 2014.

~~(2)~~(3) The fee shall be reduced by 50 percent if the owner or permittee provides to the satisfaction of the secretary evidence of financial responsibility to allow the taking of corrective action in the amount of $100,000.00 per occurrence and the compensation of third parties for bodily injury and property damage in the amount of $300,000.00 per occurrence.

~~(3)~~(4) The fee shall be relieved if the owner provides to the satisfaction of the secretary, evidence of financial responsibility to allow the taking of corrective action and the compensation of third parties for bodily injury and property damage each in the amount of $1,000,000.00 per occurrence.

~~(4)~~(5) The fee for retail motor fuel outlets selling 20,000 gallons or less per month ~~shall not exceed $100.00 per year for all tanks at a single location~~ shall be:

(A) $50.00 per double-wall tank system;

(B) $75.00 per combination tank system on October 1, 2012; $125.00 on October 1, 2013; $175.00 on October 1, 2014; and

(C) $100.00 per single-wall tank system on October 1, 2012; $200.00 on October 1, 2013; $300.00 on October 1, 2014.

~~(5)~~(6) ~~The fee shall be $50.00 per tank for~~ For any municipality that uses an annual average of less than ~~an annual average of~~ 40,000 gallons of motor fuel per month, provided that all of the tanks of that municipality meet the requirements of this chapter, the fee shall be:

(A) $50.00 per double-wall tank system;

(B) $100.00 per combination tank system on October 1, 2012; $150.00 on October 1, 2013; $200.00 on October 1, 2014; and

(C) $150.00 per single-wall tank system on October 1, 2012; $250.00 on October 1, 2013; $350.00 on October 1, 2014.

(b) For purposes of this section, an occurrence is an accident, including continuous or repeated exposure to conditions, which results in the release of petroleum from one or more underground storage tanks at the same site.

(c) This tank assessment shall terminate on July 1, 2014.

(d) The secretary shall establish forms and procedures for the payment of the petroleum tank assessment, including a notice of the obligation 30 days

prior to being due. Failure to receive notice shall not waive the payment obligation.

Third: In Sec. 4, Petroleum advisory committee report, by adding a new subdivision (5) to read as follows:

(5) Current tank technology and its impact on safety and the rate of current tank fees.

Fourth: By striking out Sec. 8 in its entirety and inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. 10 V.S.A. § 6083a is amended to read:

§ 6083a. ACT 250 FEES

(a) All applicants for a land use permit under section 6086 of this title shall be directly responsible for the costs involved in the publication of notice in a newspaper of general circulation in the area of the proposed development or subdivision and the costs incurred in recording any permit or permit amendment in the land records. In addition, applicants shall be subject to the following fees for the purpose of compensating the state of Vermont for the direct and indirect costs incurred with respect to the administration of the Act 250 program:

* * *

(4) For projects involving the extraction of earth resources, including but not limited to sand, gravel, peat, topsoil, crushed stone, or quarried material, the greater of (a) a fee as determined under subdivision (1) of this subsection or (b) a fee equivalent to the rate of ~~$0.20~~ $0.02 per cubic yard of ~~maximum estimated annual extraction whichever is greater~~ the first million cubic yards of the total volume of earth resources to be extracted over the life of the permit, and $.01 per cubic yard of any such earth resource extraction above one million cubic yards. Extracted material that is not sold or does not otherwise enter the commercial marketplace shall not be subject to the fee. The fee assessed under this subdivision for an amendment to a permit shall be based solely upon any additional volume of earth resources to be extracted under the amendment.

* * *

Fifth: By striking out Secs. 9 and 11 in their entirety

Sixth: By adding seven new sections to be numbered Secs. 12, 13, 14, 15, 16, 17, and 18 to read as follows:

Sec. 12. 3 V.S.A. § 2809 is amended to read:

§ 2809. REIMBURSEMENT OF AGENCY COSTS

(a)(1) The secretary may require an applicant for a permit, license, certification, or order issued under a program that the secretary enforces under 10 V.S.A. § 8003(a) to pay for the cost of research, scientific, or engineering expertise or regulatory services ~~that~~ provided by the agency of natural resources ~~does not have when such expertise or services are~~ required for the processing of the application for the permit, license, certification, or order.

(2) The secretary may require an applicant under 10 V.S.A. chapter 151 ~~of Title 10~~ to pay for the time of agency of natural resources personnel providing research, scientific, or engineering services or for the cost of expert witnesses when agency personnel or expert witnesses are required for the processing of the permit application.

(3) ~~Except as~~ In addition to the authority set forth under 10 V.S.A. chapters 59 and 159 ~~of Title 10~~ and 10 V.S.A. § 1283, the secretary may require a person who caused the agency to incur expenditures or a person in violation of a permit, license, certification, or order issued by the secretary to pay for the time of agency personnel or the cost of other research, scientific, or engineering services incurred by the agency in response to a threat to public health or the environment presented by an emergency or exigent circumstance.

* * *

(d) The following apply to the authority established under subsection (a) of this section:

~~(1) The secretary may assess costs under subdivisions (a)(1) and (2) of this section to the applicant or applicants for the permit only with the approval of the governor. Costs assessed under subdivision (a)(3) shall not require approval of the governor.~~

~~(2) The secretary may require reimbursement only of costs in excess of $3,000.00.~~

~~(3)~~ The secretary may revise estimates previously noticed as necessary from time to time during the progress of the work and shall notify the applicant in writing of any revision.

~~(4)~~(2) The secretary shall provide the applicant with a detailed statement of a final assessment under this section showing the total amount of money expended or contracted for in the work and directing the manner and timing of payment by the applicant.

~~(5)~~(3) All funds collected from applicants shall be paid into the state treasury.

* * *

(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~~, the provisions of subsection (c)(mandatory meeting) of this section shall not apply.

Sec. 13. 24 V.S.A. § 4753(a)(9) is added to read:

(9) The Vermont wastewater and potable water revolving loan fund which shall be used to provide loans to individuals, in accordance with section 4763a of this title, for the design and construction of repairs to or replacement of wastewater systems and potable water supplies when the wastewater system or potable water supply is a failed system or supply as defined in 10 V.S.A. § 1972. The amount of $275,000.00 from the fees collected pursuant to 3 V.S.A. § 2822(j)(4) shall be deposited on an annual basis into this fund.

Sec. 14. 24 V.S.A. § 4763a is added to read:

§ 4763a. LOANS TO INDIVIDUALS FOR FAILED WASTEWATER SYSTEMS AND FAILED POTABLE WATER SUPPLIES

(a) Notwithstanding any other provision of law, when the wastewater system or potable water supply serving only one single-family residence on its own lot meets the definition of a failed supply or system, the secretary of natural resources may lend monies to the owner of the residence from the Vermont wastewater and potable water revolving loan fund established in section 4753 of this title. In such cases, the following conditions shall apply:

(1) loans may only be made to households with an income equal to or less than 200 percent of the state average median household income;

(2) loans may only be made to households where the recipient of the loan resides in the residence on a year-round basis;

(3) loans may only be made if the owner of the residence has been denied financing for the repair, replacement, or construction due to involuntary disconnection by at least two other financing entities;

(4) no construction loan shall be made to an individual under this subsection, nor shall any part of any revolving loan made under this subsection be expended, until all of the following take place:

(A) the secretary of natural resources determines that if a wastewater system and potable water supply permit is necessary for the design and construction of the project to be financed by the loan, the permit has been issued to the owner of the failed system or supply; and

(B) the individual applying for the loan certifies to the secretary of natural resources that the proposed project has secured all state and federal permits, licenses, and approvals necessary to construct and operate the project to be financed by the loan.

(5) all funds from the repayment of loans made under this section shall be deposited into the Vermont wastewater and potable water revolving loan fund.

(b) The secretary of natural resources shall establish standards, policies, and procedures as necessary for the implementation of this section.

Sec. 15. 24 V.S.A. § 4753a is amended to read:

§ 4753a. AWARDS FROM REVOLVING LOAN FUNDS

(a) Pollution control. The general assembly shall approve all categories of awards made from the special funds established by section 4753 of this title for water pollution control facility construction, in order to assure that such awards conform with state policy on water quality and pollution abatement, and with the state policy that~~, except as provided in subsection (c) of this section,~~ municipal entities shall receive first priority in the award of public monies for such construction, including monies returned to the revolving funds from previous awards. To facilitate this legislative oversight, the secretary of natural resources shall annually no later than January 15 report to the house and senate committees on institutions and on natural resources and energy on all awards made from the relevant special funds during the prior and current fiscal years, and shall report on and seek legislative approval of all the types of projects for which awards are proposed to be made from the relevant special funds during the current or any subsequent fiscal year. Where feasible, the specific projects shall be listed.

(b) Water supply. The secretary of natural resources shall no later than January 15, 2000 recommend to the house ~~and senate committees on institutions and~~ committee on corrections and institutions, the senate committee on institutions, and the house and senate committees on natural resources and energy a procedure for reporting to and seeking the concurrence of the legislature with regard to the special funds established by section 4753 of this title for water supply facility construction.

(c) ~~Notwithstanding other priorities established in law, the secretary may award up to $500,000.00 of the funds from the Vermont environmental~~

~~protection agency control fund and the Vermont pollution control revolving fund, combined, to a state agency, the Vermont housing finance agency, or a municipality for the administration of loans to households with income equal to or less than 200 percent of the state average median household income for the repair or replacement of failed wastewater systems and failed potable water supplies, as those terms are defined in section 1972 of Title 10. Upon award of funds under this section, the state agency, Vermont housing finance agency, or municipality shall agree, pursuant to a memorandum of understanding with the secretary of natural resources, to repay the funds awarded to the special fund from which they were drawn.~~

Sec. 16. ANR REPORT ON ENVIRONMENTAL IMPACT OF GROUNDWATER WITHDRAWALS FOR BOTTLING WATER

(a) On or before January 15, 2013, the secretary of natural resources shall report to the senate and house committees on natural resources and energy, the senate committee on finance, and the house committee on ways and means regarding the impact of groundwater withdrawals by public water systems for the purposes of transfer out of the state for bottling. The report shall include:

(1) An analysis of the environmental effect of withdrawing and transferring out of the state large volumes of groundwater for the purposes of bottling, including the impact of such withdrawals on drinking water supplies, agricultural use, groundwater tables, and surface water recharge.

(2) A summary of the fees charged by other states for the withdrawal of groundwater for bottling or bulk water transfer and a comparison of the fees of other states to the groundwater withdrawal fees charged in Vermont.

(b) In preparing the report required under subsection (a) of this section, the secretary of natural resources shall consult with interested parties, including owners of property in the proximity of public water systems withdrawing groundwater for the purposes of bottling water, public water systems, bottled water companies, environmental groups, and representatives of agriculture.

(c) As used in this section, "public water system" shall be defined as provided in 10 V.S.A. § 1671.

Sec. 17. STUDY; DEPARTMENT OF PUBLIC SAFETY

(a) The department of public safety shall study how it assesses fees or charges for services provided by the department to municipalities, fire departments, and other entities. The study shall also examine how fees or charges can be equitably assessed and what mechanism can be employed to collect fees or charges.

(b) The department shall report its findings and any recommendations to the house committee on ways and means and the senate committee on finance by January 15, 2013.

Sec. 18. REPORT; AGENCY OF NATURAL RESOURCES; AGENCY OF TRANSPORTATION

On or before January 15, 2013, the secretary of natural resources (ANR) and the secretary of transportation (AOT) shall jointly report to the house committee on ways and means and the senate committee on finance with a recommendation as to whether or not agency of natural resources fees and agency of transportation fees should be adjusted so that air pollution fees paid to ANR proportionally reflect the contribution of ANR permittees to state air pollution and so that air-pollution-related fees paid to AOT proportionally reflect the contribution of AOT licensees and permittees to state air pollution. If making adjustments to ANR and AOT fees is recommended for this purpose, the report shall recommend which fees should be adjusted and by what amount.

And by renumbering the sections to be numerically correct

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

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

Third Reading Ordered

H. 272.

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

An act relating to maintenance of private roads.

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.

Third Reading Ordered

H. 327.

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

An act relating to the uniform principal and income act .

Reported that the bill ought to pass in concurrence.

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

Bill Amended; Third Reading Ordered

S. 233.

Senator Lyons, for the Committee on Education, to which was referred Senate bill entitled:

An act relating to gradually increasing the mandatory age of school attendance.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Legal School Age * * *

Sec. 1. 16 V.S.A. § 1121 is amended to read:

§ 1121. ATTENDANCE BY CHILDREN OF SCHOOL AGE REQUIRED

~~A~~ (a) Except as provided in subsection (b) of this section, a person having the control of a child between the ages of six and 16 years, 183 days shall cause the child to attend a public school, an approved or recognized independent school, an approved education program, or a home study program for the full number of days for which that school is held, unless the child:

(1) is mentally or physically unable so to attend; ~~or~~

(2) ~~has completed the tenth grade; or~~ has completed all requirements necessary for graduation from secondary school;

(3) is excused by the superintendent or a majority of the school directors as provided in this chapter; or

(4) is enrolled in and attending a postsecondary school, as defined in subdivision 176(b)(1) of this title, which is approved or accredited in Vermont or another state.

(b) A person having the control of a child who is enrolled in a home study program for the academic year in which the child is 15 years old shall not be subject to the provisions of subsection (a) of this section when the child is 16 years old or older.

Sec. 2. 16 V.S.A. § 1121(a) is amended to read:

(a) Except as provided in subsection (b) of this section, a person having the control of a child between the ages of six and ~~16~~ 17 years~~, 183 days~~ shall cause the child to attend a public school, an approved or recognized independent

school, an approved education program, or a home study program for the full number of days for which that school is held, unless the child:

(1) is mentally or physically unable so to attend;

(2) has completed all requirements necessary for graduation from secondary school;

(3) is excused by the superintendent or a majority of the school directors as provided in this chapter; or

(4) is enrolled in and attending a postsecondary school, as defined in subdivision 176(b)(1) of this title, which is approved or accredited in Vermont or another state.

Sec. 3. 16 V.S.A. § 1121(a) is amended to read:

(a) Except as provided in subsection (b) of this section, a person having the control of a child between the ages of six and 17 years, 183 days shall cause the child to attend a public school, an approved or recognized independent school, an approved education program, or a home study program for the full number of days for which that school is held, unless the child:

(1) is mentally or physically unable so to attend;

(2) has completed all requirements necessary for graduation from secondary school;

(3) is excused by the superintendent or a majority of the school directors as provided in this chapter; or

(4) is enrolled in and attending a postsecondary school, as defined in subdivision 176(b)(1) of this title, which is approved or accredited in Vermont or another state.

Sec. 4. 16 V.S.A. § 1121(a) is amended to read:

(a) Except as provided in subsection (b) of this section, a person having the control of a child between the ages of six and ~~17~~ 18 years~~, 183 days~~ shall cause the child to attend a public school, an approved or recognized independent school, an approved education program, or a home study program for the full number of days for which that school is held, unless the child:

(1) is mentally or physically unable so to attend;

(2) has completed all requirements necessary for graduation from secondary school;

(3) is excused by the superintendent or a majority of the school directors as provided in this chapter; or

(4) is enrolled in and attending a postsecondary school, as defined in subdivision 176(b)(1) of this title, which is approved or accredited in Vermont or another state.

* * * Related Provisions * * *

Sec. 5. 16 V.S.A. § 1121a is added to read:

§ 1121a. PUPILS WHO ARE 16 YEARS OLD AND OLDER

(a) A child who is at least 16 years old but is younger than the legal school age established in section 1121 of this title and who is not subject to the exceptions set out in subdivisions (a)(1)–(4) or subsection (b) of that section may terminate his or her secondary education in a public school, an approved or recognized independent school, or an approved education program if the child and at least one of the child's parents or the child's legal guardian personally appear before the superintendent to sign a notice of withdrawal. The notice shall include a statement signed by the student, the parent or guardian, and the principal or headmaster of the school in which the child is enrolled that the child and the parent or guardian attended a final counseling session with the principal, headmaster, or school guidance counselor that included a discussion of alternative educational opportunities available to the child, including workforce development programs eligible to receive funding from the department of labor, and other services available to support the child, including Linking Learning to Life, Inc., Spectrum Youth and Family Services, Inc., Vermont Youth Build, and the Vermont Youth Conservation Corps, Inc.

(b) A school district shall contact each child who has voluntarily withdrawn from school pursuant to subsection (a) of this section within three months after the date of withdrawal to encourage the child to enroll in a public school, an approved or recognized independent school, a home study program, an approved education program, or a workforce development program or to pursue some other alternative educational or training opportunity.

(c) The departments of labor and of education shall publish and update at least annually a list of alternative education and workforce development programs under their respective jurisdictions that would be available to a student who has not completed secondary school.

Sec. 6. 16 V.S.A. § 1122 is amended to read:

§ 1122. PUPILS ~~OVER 16~~ WHO EXCEED THE LEGAL SCHOOL AGE

A person having the control of a child ~~over 16 years of~~ who exceeds the legal school age as established in section 1121 of this title who allows the child to become enrolled in a public school shall cause the child to attend the school continually for the full number of the school days of the term in which he or

she is enrolled, unless 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, 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 six and 16 years~~ of legal school age.

Sec. 7. 16 V.S.A. § 1126 is amended to read:

§ 1126. FAILURE TO ATTEND; NOTICE BY TEACHER

When a pupil ~~between the ages of six and 16 years~~ of legal school age, as established in section 1121 of this title, who is not excused or exempted from school attendance~~,~~ fails to enter school at the beginning ~~thereof~~ of the academic year, or being enrolled, fails to continue to attend ~~the same~~, and when a pupil who ~~has become 16 years of~~ exceeds the legal school age becomes enrolled in a public school and fails to attend, the teacher or principal shall forthwith notify the superintendent or school directors, and the truant officer, unless the teacher or principal is satisfied upon information that the pupil is absent on account of sickness.

Sec. 8. 16 V.S.A. § 1128(a) is amended to read:

(a) A superintendent may and the truant officer shall stop a child ~~between the ages of six and 16 years or a child 16 years of age or over and~~ of legal school age or a child who exceeds the legal school age but is enrolled in public school, wherever found during school hours, and shall, unless ~~such~~ the child is excused or exempted from school attendance, take the child to the school which she or he should attend.

Sec. 9. 16 V.S.A. § 1123(c) is amended to read:

(c) ~~The superintendent with the consent of a majority of the school board of the town in which the pupil resides, may excuse, in writing, a pupil who has reached the age of fifteen years and has completed the work required in the first six years of the elementary school course from further school attendance if his services are needed for the support of those dependent upon him, or for any other sufficient reason.~~ [Repealed.]

* * * Human Services * * *

Sec. 10. 33 V.S.A. § 5102(3) is amended to read:

(3) "Child in need of care or supervision (CHINS)" means a child who:

* * *

(D) is under the age of 16 and is habitually and without justification truant from compulsory school attendance.

* * * Flexible Pathways to Graduation; Dual Enrollment * * *

Sec. 11. 16 V.S.A. chapter 23, subchapter 6 is amended to read:

Subchapter 6. Flexible Pathways to Secondary School Completion; Adult Education and Literacy

§ 1049. ~~PROGRAMS~~ FLEXIBLE PATHWAYS; POLICY; INITIATIVE; GUIDELINES; DEFINITIONS

~~(a) The commissioner of education may provide programs designed to fit the individual needs and circumstances of adult students. Programs authorized under this section shall give priority to those adult persons with the lowest levels of literacy skills.~~

~~(b)(1) Fees for general educational development shall be $3.00 for a transcript.~~

~~(2) The adult diploma program (ADP) means an assessment process administered by the Vermont department of education through which an adult can receive a local high school diploma granted by one of the program's participating high schools.~~

~~(3) General educational development (GED) means a testing program administered jointly by the Vermont department of education, the GED testing service, and approved local testing centers through which an adult can receive a secondary school equivalency certificate based on successful completion of the tests of general educational development.~~

~~(c) Fees collected 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 providing those services.~~

(a) Policy. It is the policy of the state:

(1) to take all necessary measures to increase the Vermont secondary school completion rate to 100 percent;

(2) to promote opportunities for every Vermont student to have high-quality educational experiences; and

(3) to create opportunities for every Vermont student to achieve career and college readiness while respecting diverse student goals and personal learning styles and abilities.

(b) Flexible pathways initiative. There is created within the department a flexible pathways initiative:

(1) to promote opportunities for Vermont students to complete secondary school and achieve career and college readiness through high-quality educational experiences that acknowledge individual goals, learning styles, and abilities; and

(2) to encourage and support the creativity of school districts as they develop or expand high-quality alternative educational experiences that advance the policies set forth in subsection (a) of this section.

(c) Flexible pathways guidance. The commissioner of education shall develop, publish, and regularly update guidance, in the form of technical assistance, sharing of best practices, legal interpretations, and other support, designed to encourage and assist school districts:

(1) to identify and support elementary and secondary students who require additional assistance to succeed in school, including individual students identified under subsection 2902(c) of this title, or who would otherwise benefit from flexible pathways to graduation;

(2) to encourage movement toward development of a personalized learning plan by every student, in consultation with a representative of the school and the student's parents or legal guardian;

(3) to implement strategies and flexible pathways components such as:

(A) the provision of targeted assistance, including individual tutoring, evidence-based literacy instruction, alternative and extended scheduling, and the provision of a variety of opportunities to earn credits or demonstrate proficiency necessary to earn a high school diploma;

(B) the assignment of one or more adults from within the school community to provide continuity to the student;

(C) the opportunity to acquire knowledge and skills through applied or work-based learning opportunities, including those that foster appropriate social interactions with adults and other students;

(D) the opportunity to participate in dual enrollment courses with tutorial support provided as needed;

(E) assessments that allow the student to demonstrate proficiency by applying his or her knowledge and skills to tasks that are of interest to that student; and

(4) to oversee implementation of publicly funded components of flexible pathways established in this subchapter, including:

(A) the high school completion program as set forth in section 1049a:

(B) the dual enrollment program as set forth in section 1049b;

(C) other innovative components as set forth in section 1049c; and

(D) the adult diploma and general educational development programs as set forth in section 1049d.

(d) Definitions. In this title:

(1) "Approved provider" means an entity approved by the commissioner to provide educational services that may be awarded credits or used to determine proficiency necessary for a high school diploma.

(2) "Career and college readiness" means the ability to enter the workforce or pursue postsecondary education or training without the need for remediation.

(3) "Contracting agency" means an entity that enters into a contract with the department to provide "flexible pathways to graduation" services itself or in conjunction with one or more approved providers in Vermont.

(4) "Dual enrollment" means enrollment by a secondary student in a course offered by an accredited postsecondary institution as defined in section 913 of this title and for which, upon successful completion of the course, the student will receive:

(A) credit toward graduation from the secondary school in which the student is enrolled; and

(B) postsecondary credit from the institution that offered the course if the course is a credit-bearing course at that institution.

(5) "Flexible pathways to graduation" means any combination of high-quality academic and experiential components leading to secondary school completion and career and college readiness.

(6) "Personalized learning plan" means a written document developed by a student, a representative of the school, and, if the student is a minor, the student's parents or legal guardian that describes a flexible pathway to graduation that is unique to the individual student. The plan shall define the scope and rigor of services necessary for the student to attain a high school diploma and may describe educational services to be provided by a public school, an approved independent school, an approved provider, a contracting agency, or a combination of these.

(e) Other initiatives. Nothing in this subchapter shall be construed as limiting the authority of any school district to develop or continue to provide alternative educational opportunities for its students that are otherwise permitted, including participation in dual enrollment programs with

out-of-state postsecondary institutions or the provision of advanced placement courses.

(f) Scope. No individual entitlement or private right of action is created by this section.

§ 1049a. HIGH SCHOOL COMPLETION PROGRAM

(a) ~~In this section:~~

~~(1) "Graduation education plan" means a written plan leading to a high school diploma for a person who is 16 to 22 years of age and has not received a high school diploma, who may or may not be enrolled in a public or approved independent school. The plan shall define the scope and rigor of services necessary for the student to attain a high school diploma, and may describe educational services to be provided by a public high school, an approved independent high school, an approved provider, or a combination of these.~~

~~(2) "Approved provider" means an entity approved by the commissioner to provide educational services which may be counted for credit toward a high school diploma.~~

~~(3) "Contracting agency" means an agency that has entered into a contract with the department of education to provide adult education services in Vermont.~~ There is created a high school completion program to be a potential component of a flexible pathway for any student who is at least 16 years old, who has not received a high school diploma, and who may or may not be enrolled in a public or approved independent school.

(b) If a person who wishes to work on a ~~graduation education~~ personalized learning plan leading to graduation through the high school completion program is not enrolled in a public or approved independent school, then the commissioner shall assign the prospective student to a high school district, which shall be the district of residence whenever possible. The school district in which a student is enrolled or to which a non-enrolled student is assigned shall work with the contracting agency and the student to develop a ~~graduation education~~ personalized learning plan. The school district shall award a high school diploma upon successful completion of the plan.

(c) The commissioner shall reimburse, and net cash payments where possible, a school district that has agreed to a ~~graduation education~~ personalized learning plan under this section in an amount:

(1) established by the commissioner for development of the ~~graduation education~~ personalized learning plan and for other educational services typically provided by the assigned district or an approved independent school pursuant to the plan, such as counseling, health services, participation in

cocurricular activities, and participation in academic or other courses, provided this amount shall not be available to a district that provides services under this section to an enrolled student; and

(2) negotiated by the commissioner and the contracting agency, with the approved provider, for services and outcomes purchased from the approved provider on behalf of the student pursuant to the ~~graduation education~~ personalized learning plan.

§ 1049b. DUAL ENROLLMENT PROGRAM

(a) Program created. There is created a statewide dual enrollment program to be a potential component of a student's flexible pathway and through which a Vermont secondary student who is enrolled in a Vermont public school or a Vermont approved independent school at public expense or who is assigned to a public school through the high school completion program may enroll in up to four postsecondary courses for which the program shall pay tuition.

(b) Courses. The dual enrollment program shall include college courses offered on the campus of an accredited postsecondary institution and college courses offered by an accredited postsecondary institution on the campus of a secondary school. The program may include online college courses or components. Provided, however, a personalized learning plan that includes a dual enrollment course offered by an accredited postsecondary institution that is not approved pursuant to section 176 or 176a of this title shall be submitted to the program manager for review prior to enrollment in the course. The program manager may approve enrollment if it determines that the institution meets quality standards established by the manager or state board rule, that the student does not have access to the same or a comparable course offered by an institution approved pursuant to section 176 or 176a of this title, and that enrollment is in the best interest of the student. A student may appeal a decision of the program manager to the commissioner, whose decision shall be final.

(c) Postsecondary institutions.

(1) Vermont's public postsecondary institutions shall work together to ensure that dual enrollment opportunities are available throughout the state. Other nonprofit accredited postsecondary institutions may participate in the dual enrollment program pursuant to criteria established by this section, the state board, and the program manager.

(2) Each participating postsecondary institution shall:

(A) define how it will determine whether a student is sufficiently prepared to succeed academically in a dual enrollment course;

(B) develop the curriculum and select instructors for dual enrollment courses;

(C) maintain the postsecondary academic record of each participating student and provide transcripts on request;

(D) agree to accept as full payment for a dual enrollment course the tuition set forth in subsection (f) of this section; and

(E) to the extent permitted under the Family Educational Rights and Privacy Act, collect and send data related to student participation and success to the student's secondary school and the commissioner.

(d) Secondary schools. A public secondary school, regional technical center as defined in section 1522 of this title, and approved independent secondary school that receives publicly funded tuition dollars shall:

(1) provide access for eligible students to participate in dual enrollment courses offered on the campus of the secondary school;

(2) accept postsecondary credit awarded for dual enrollment courses as meeting secondary school graduation requirements;

(3) collect enrollment data as prescribed by the department for longitudinal review and evaluation;

(4) identify and provide necessary support for participating students and continue to provide services for students with disabilities; and

(5) provide support for a seamless transition to postsecondary enrollment upon graduation.

(e) Students.

(1) A Vermont resident in any flexible pathway who has completed grade 10 but has not received a high school diploma is eligible to participate in the dual enrollment program if:

(A) the student is enrolled in a Vermont public school or a Vermont approved independent school at public expense or is assigned to a public school through the high school completion program;

(B) dual enrollment is an element included within the student's personalized learning plan; and

(C) the secondary school and the postsecondary institution have determined that the student is sufficiently prepared to succeed in a dual enrollment course, which can be determined in part by the assessment tool or tools identified by the participating postsecondary institution.

(2) An eligible student may enroll in up to four dual enrollment courses prior to completion of secondary school for which the dual enrollment program will pay tuition. A student may enroll in courses offered while secondary school is in session and during the summer.

(3) A student's personalized learning plan shall include provisions for support services, including transitional support for students with disabilities and including academic, emotional, and other support services as appropriate.

(f) Tuition.

(1) For any course for which the postsecondary institution pays the instructor, the commissioner shall reimburse a secondary school district the full amount of tuition paid to the postsecondary institution, which shall not exceed the Community College of Vermont tuition rate charged at the time the dual enrollment course is offered.

(2) For any course that is taught by an instructor who is paid as part of employment by a secondary school, the commissioner shall reimburse a secondary school district the full amount of tuition paid to the postsecondary institution, which shall not exceed 50 percent of the Community College of Vermont tuition rate charged at the time the dual enrollment course is offered.

(g) Program management**.** The department shall manage or may contract for the management of the dual enrollment program in Vermont by:

(1) coordinating secondary and postsecondary partners to ensure success of the programs, including assisting partners to develop memoranda of understanding;

(2) marketing of the dual enrollment program to students and their families throughout the state;

(3) evaluating all aspects of the dual enrollment program;

(4) coordinating with secondary and postsecondary partners to understand and define student academic readiness;

(5) assessing what is needed to support student success;

(6) reviewing program costs;

(7) managing distribution of tuition funds;

(8) coordinating the use of technology to ensure access and coordination of the program;

(9) ensuring overall quality and accountability;

(10) convening regular meetings of interested parties to explore and develop improved student support services; and

(11) performing other necessary or related duties.

(h) Annually in January, the commissioner and program manager shall report to the house and senate committees on education regarding the dual enrollment program, including data relating to student demographics, levels of participation, and program success.

§ 1049c. INNOVATIVE COMPONENTS OF FLEXIBLE PATHWAYS

(a) The commissioner may use sums appropriated for the high school completion program to support other innovative components of a flexible pathway that are available to a student instead of or in addition to the high school completion program by reimbursing or awarding grants to Vermont public schools, Vermont career and technical education centers, Vermont supervisory unions, approved providers, and contracting agencies for activities that create opportunities for Vermont students to have high-quality educational experiences and achieve career and college readiness while respecting diverse student goals and personal learning styles and abilities, including:

(1) implementation of innovative, comprehensive programs offered by and within a school; and

(2) implementation of innovative, comprehensive programs offered through the school by entities other than the school or offered at a location other than the school campus, including work-based learning, virtual or blended learning, career and technical education, dual enrollment, and programs operated by the Vermont Youth Conservation Corps, Inc.

(b) Money awarded by the commissioner under this section shall be pursuant to criteria established in rule by the state board.

§ 1049d. ADULT DIPLOMA PROGRAM; GENERAL EDUCATIONAL DEVELOPMENT PROGRAM

(a) The department shall maintain an adult diploma program ("ADP"), which shall be an assessment process administered by the department through which an individual who is at least 20 years old can receive a local high school diploma granted by one of the program's participating high schools.

(b) The department shall maintain a general educational development ("GED") program, which it shall administer jointly with the GED testing service and approved local testing centers and through which an individual who is at least 16 years old and who is not enrolled in secondary school can receive a secondary school equivalency certificate based on successful completion of the GED tests.

(c) The commissioner of education may provide additional programs designed to address the individual needs and circumstances of adult students, particularly students with the lowest levels of literacy skills.

Sec. 12. APPROPRIATION

The sum of $1,200,000.00 is appropriated from the education fund in fiscal year 2013 to be used for the purposes of paying tuition under Sec. 11, 16 V.S.A. §§ 1049b (dual enrollment) of this act.

Sec. 13. EFFECTIVE DATES

(a) Sec. 1 of this act shall take effect on July 1, 2013, but shall not apply to a child who lawfully stopped attending school prior to that date.

(b) Sec. 2 of this act shall take effect on July 1, 2014, but shall not apply to a child who lawfully stopped attending school prior to that date.

(c) Sec. 3 of this act shall take effect on July 1, 2015, but shall not apply to a child who lawfully stopped attending school prior to that date.

(d) Sec. 4 of this act shall take effect on July 1, 2016, but shall not apply to a child who lawfully stopped attending school prior to that date.

(e) This section and Secs. 5 through 12 of this act shall take effect on July 1, 2012.

(f) The commissioner of education shall ensure that both new and updated guidance documents required by this act are published no later than July 1, 2012.

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

An act relating to the mandatory age of school attendance and creating flexible pathways to high school completion.

And that when so amended the bill ought to pass.

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

First: In Sec. 11, 16 V.S.A. chapter 23, subchapter 6, in § 1049b, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) Program created. There is created a statewide dual enrollment program to be a potential component of a student's flexible pathway and through which a Vermont secondary student who is enrolled in a Vermont public school or a Vermont-approved independent school at public expense or who is assigned to a public school through the high school completion program may enroll in

postsecondary courses for which neither the student nor the student's parent or guardian shall be required to pay tuition.

Second: In Sec. 11, 16 V.S.A. chapter 23, subchapter 6, § 1049b, in subsection (e), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

(2) Subject to available funding, an eligible student may enroll in up to four dual enrollment courses prior to completion of secondary school for which neither the student nor the student's parent or guardian shall be required to pay tuition. A student may enroll in courses offered while secondary school is in session and during the summer.

Third: In Sec. 11, 16 V.S.A. chapter 23, subchapter 6, in § 1049b, by striking out subsection (f) in its entirety and inserting in lieu thereof a new subsection (f) to read as follows:

(f) Tuition.

(1) For any course for which the postsecondary institution pays the instructor, tuition shall not exceed the Community College of Vermont tuition rate charged at the time the dual enrollment course is offered.

(2) For any course that is taught by an instructor who is paid as part of employment by a secondary school, tuition shall not exceed 50 percent of the Community College of Vermont tuition rate charged at the time the dual enrollment course is offered.

Fourth: In Sec. 11, 16 V.S.A. chapter 23, subchapter 6, by striking out § 1049c (innovative components of flexible pathways) in its entirety, redesignating § 1049d as § 1049c, and inserting a new § 1049d to read as follows:

§ 1049d. REPORT

Notwithstanding provisions of 2 V.S.A. § 20(d) to the contrary, the prekindergarten–16 council created in section 2905 of this title shall report annually in January to the senate and house committees on appropriations and on education, the senate committee on finance, and the house committee on ways and means regarding the flexible pathways initiative and its potential components as set forth in this subchapter 6, including detailed data regarding and analysis of:

(1) the annual expenditures from the education fund for dual enrollment courses and other alternative programs under this subchapter, including a breakdown of the amount spent for each program statewide and by each participating secondary school;

(2) the annual number of students accessing dual enrollment and alternative programs, including a breakdown by secondary school of:

(A) the total number of students eligible to participate;

(B) the number of students accessing each program;

(C) the per-student tuition and other costs paid for each program;

(3) the geographic areas of the state that are underserved or unable to access dual enrollment programs and each other type of alternative program; and

(4) whether participation in dual enrollment and other alternative programs has improved high school completion rates, student aspiration, college and career readiness, and completion of college or other postsecondary education or training.

Fifth: By striking out Sec. 12 (appropriation) in its entirety and inserting in lieu thereof a new Sec. 12 to read as follows:

Sec. 12. 16 V.S.A. § 2885(c) and (g) are amended to read:

(c) In August of each fiscal year~~, beginning in the year 2000~~, the state treasurer shall withdraw and divide an amount equal to five percent of the assets equally among the University of Vermont, the Vermont ~~state colleges~~ State Colleges, and the Vermont ~~student assistance corporation~~ Student Assistance Corporation. In this subsection, "assets" means the average of the fund's market values at the end of each quarter for the most recent 12 quarters, or all quarters of operation, whichever is less. Therefore, up to five percent of the fund assets are hereby annually allocated pursuant to this section, provided that the amount allocated shall not exceed an amount which would bring the fund balance below the initial funding made in fiscal year 2000 plus any additional contributions to the principal. The University of Vermont and the Vermont ~~state colleges~~ State Colleges shall use the funds to provide nonloan financial aid to Vermont students attending their institutions; the Vermont ~~student assistance corporation~~ Student Assistance Corporation shall use the funds to provide nonloan financial aid to Vermont students attending a Vermont postsecondary institution. For purposes of this section, "nonloan financial aid" includes tuition paid for financially needy Vermont students and Vermont students whose parents have not pursued higher education for:

(1) early college and dual enrollment programs; and

(2) Science, Technology, Engineering, and Mathematics ("STEM") programs.

(g) The University of Vermont, the Vermont State Colleges, and the Vermont Student Assistance Corporation shall review expenditures made from the fund, evaluate the impact of the expenditures on higher education in Vermont, and report this information to the state treasurer each year in January. In addition, in November of each year, the three entities shall report to the joint fiscal committee regarding expenditures made in connection with early college, dual enrollment, and STEM programs.

And that when so amended the bill ought to pass.

Thereupon, pending the question, Shall the recommendation of amendment of the Committee on Education be amended as recommended by the Committee on Appropriations? Senator Kitchel, on behalf of the Committee on Appropriations, moved to substitute a recommendation of amendment for the recommendation of amendment of the Committee on Appropriations, as follows:

First: In Sec. 11, 16 V.S.A. chapter 23, subchapter 6, in § 1049b, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) Program created. There is created a statewide dual enrollment program to be a potential component of a student's flexible pathway and through which a Vermont secondary student who is enrolled in a Vermont public school or a Vermont-approved independent school at public expense or who is assigned to a public school through the high school completion program may enroll in postsecondary courses for which neither the student nor the student's parent or guardian shall be required to pay tuition.

Second: In Sec. 11, 16 V.S.A. chapter 23, subchapter 6, § 1049b, in subsection (e), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

(2) Subject to available funding, an eligible student may enroll in up to four dual enrollment courses under this section prior to completion of secondary school for which neither the student nor the student's parent or guardian shall be required to pay tuition. A student may enroll in courses offered while secondary school is in session and during the summer.

Third: In Sec. 11, 16 V.S.A. chapter 23, subchapter 6, in § 1049b, by striking out subsection (f) in its entirety and inserting in lieu thereof a new subsection (f) to read as folows:

(f) Tuition.

(1) For any course for which the postsecondary institution pays the instructor, tuition shall not exceed the Community College of Vermont tuition rate charged at the time the dual enrollment course is offered.

(2) For any course that is taught by an instructor who is paid as part of employment by a secondary school, tuition shall not exceed 50 percent of the Community College of Vermont tuition rate charged at the time the dual enrollment course is offered.

Fourth: In Sec. 11, 16 V.S.A. chapter 23, subchapter 6, by inserting a new § 1049f to read as follows:

§ 1049f. REPORT

Notwithstanding provisions of 2 V.S.A. § 20(d) to the contrary, the prekindergarten–16 council created in section 2905 of this title, in cooperation with the department of education, shall report annually in January to the senate and house committees on appropriations and on education, the senate committee on finance, and the house committee on ways and means regarding the flexible pathways initiative and its potential components as set forth in this subchapter 6, including detailed data regarding and analysis of:

(1) the annual expenditures from the education fund for dual enrollment courses and other alternative programs under this subchapter, including a breakdown of the amount spent for each program statewide and by each participating secondary school;

(2) the annual number of students accessing dual enrollment and alternative programs including, to the extent permitted by the Federal Educational Rights and Privacy Act, a breakdown by secondary school of:

(A) the total number of students eligible to participate;

(B) the number of students accessing each program;

(C) the per-student tuition and other costs paid for each program;

(D) the number of students in the school who are eligible for free and reduced-price lunch and, of those, the number of students accessing each program;

(E) the number of students in the school whose parents have not completed a postsecondary degree and, of those, the number of students accessing each program;

(3) the geographic areas of the state that are underserved or unable to access dual enrollment programs and each other type of alternative program; and

(4) whether participation in dual enrollment and other alternative programs has improved high school completion rates, student aspiration, college and career readiness, and completion of college or other postsecondary education or training.

Fifth: By striking out Sec. 12 (appropriation) in its entirety and inserting in lieu thereof a new Sec. 12 to read as follows:

Sec. 12. 16 V.S.A. § 2885(c) and (g) are amended to read:

(c) In August of each fiscal year~~, beginning in the year 2000~~, the state treasurer shall withdraw and divide an amount equal to five percent of the assets equally among the University of Vermont, the Vermont ~~state colleges~~ State Colleges, and the Vermont ~~student assistance corporation~~ Student Assistance Corporation. In this subsection, "assets" means the average of the fund's market values at the end of each quarter for the most recent 12 quarters, or all quarters of operation, whichever is less. Therefore, up to five percent of the fund assets are hereby annually allocated pursuant to this section, provided that the amount allocated shall not exceed an amount which would bring the fund balance below the initial funding made in fiscal year 2000 plus any additional contributions to the principal. The University of Vermont and the Vermont ~~state colleges~~ State Colleges shall use the funds to provide nonloan financial aid to Vermont students attending their institutions; the Vermont ~~student assistance corporation~~ Student Assistance Corporation shall use the funds to provide nonloan financial aid to Vermont students attending a Vermont postsecondary institution. For purposes of this section, "nonloan financial aid" includes tuition paid for financially needy Vermont students to access early college and dual enrollment programs.

(g) The University of Vermont, the Vermont State Colleges, and the Vermont Student Assistance Corporation shall review expenditures made from the fund, evaluate the impact of the expenditures on higher education in Vermont, and report this information to the state treasurer each year in January. In addition, in November of each year, the three entities shall report to the joint fiscal committee regarding expenditures made in connection with early college and dual enrollment programs.

Which was agreed to.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment of the Committee on Education was amended as recommended by the Committee on Appropriations, as substituted.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Education, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Ordered to Lie

H. 699.

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

An act relating to scrap metal processors.

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

Sec. 1. 9 V.S.A. chapter 82 is amended to read:

CHAPTER 82. SCRAP METAL PROCESSORS

§ 3021. DEFINITIONS

As used in this chapter:

(1) ~~"Authorized scrap seller" means a licensed plumber, electrician, HVAC contractor, building or construction contractor, demolition contractor, construction and demolition debris contractor, public utility, transportation company, licensed peddler or broker, an industrial and manufacturing company; marine, automobile, or aircraft salvage and wrecking company, or a government entity.~~ [Repealed.]

* * *

(7) "Scrap metal processor" means:

(A) a salvage yard, as defined in 24 V.S.A. § 2241(7); or

(B) a person ~~authorized to conduct a business that processes and manufactures scrap metal into prepared grades for sale as raw material to mills, foundries, and other manufacturing facilities~~ engaged in the business of purchasing ferrous scrap, nonferrous scrap, metal articles, or proprietary articles, whether for resale or for processing into raw material products consisting of prepared grades.

(C) "Scrap metal processor" does not include:

(i) a salvage yard described in 24 V.S.A. § 2248(e); or

(ii) a salvage yard or salvage dealer that only accepts or dismantles motor vehicles and flattens or crushes the motor vehicles for transportation to a scrap metal processor.

§ 3022. PURCHASE OF NONFERROUS SCRAP, METAL ARTICLES, AND PROPRIETARY ARTICLES

(a) ~~A scrap metal processor may purchase nonferrous scrap, metal articles, and proprietary articles directly from an authorized scrap metal seller or the seller's authorized agent or employee~~. [Repealed.]

(b) A scrap metal processor may purchase nonferrous scrap, metal articles, and proprietary articles ~~from a person who is not an authorized scrap metal seller or the seller's authorized agent or employee, provided~~ only if the scrap metal processor complies with all the following procedures:

(1) At the time of sale, the processor:

(A) ~~requires~~ Requires the seller to provide a current government-issued photographic identification that indicates the seller's full name, current address, and date of birth, and records in a permanent ledger the identification information of the seller, the time and date of the transaction, the license number of the seller's vehicle, and a description of the items received from the seller. ~~This information shall be retained for at least five years at the processor's normal place of business or other readily accessible and secure location. On request, this information shall be made available to any law enforcement official or authorized security agent of a governmental entity who provides official credentials at the scrap metal processor's business location during regular business hours.~~

~~(2)~~(B) Requests and, if available, collects documentation from the seller of the items offered for sale, such as a bill of sale, receipt, letter of authorization, or similar evidence that establishes that the seller lawfully owns the items to be sold.

~~(3)~~(2) After purchasing an item from a person who fails to provide documentation pursuant to subdivision ~~(2)~~(1)(B) of this subsection ~~(b) of this section~~, the processor:

(A) ~~submits~~ Submits to the ~~local law enforcement agency~~ department of public safety no later than the close of the following business day a report that describes the item and the seller's identifying information required in subdivision (1)(A) of this subsection~~, and~~.

(B) ~~holds~~ Holds the proprietary article for at least ~~15~~ 30 days following purchase.

(c) The information collected by a scrap metal processor pursuant to this section shall be retained for at least five years at the processor's normal place of business or other readily accessible and secure location. On request, this information shall be made available to any law enforcement official or

authorized security agent of a governmental entity who provides official credentials at the scrap metal processor's business location during regular business hours.

§ 3023. PENALTIES

(a) A scrap metal processor who violates any provision of this chapter for the first time may be assessed a civil penalty not to exceed $1,000.00 for each transaction.

(b) A scrap metal processor who violates any provision of this chapter for a second or subsequent time shall be fined not more than $25,000.00 for each transaction.

Sec. 2. REPORTING SCRAP METAL SALES

The department of public safety, in collaboration with the department of environmental conservation, shall develop:

(1) a uniform form for the report required for purchases pursuant to 9 V.S.A. § 3022(b)(2)(A);

(2) an electronic form and reporting system through which scrap metal processors may submit to the department of public safety the report required for purchases pursuant to 9 V.S.A. § 3022(b)(2)(A); and

(3) an implementation and public outreach process to inform scrap metal processors that the electronic form and reporting system are available for use.

Sec. 3. 13 V.S.A. § 2561 is amended to read:

§ 2561. PENALTY FOR RECEIVING STOLEN PROPERTY; VENUE

~~(a)~~ A person who ~~is a dealer in property who~~ knowingly or recklessly buys, receives, sells, possesses ~~unless with the intent to restore to the owner~~, or aids in the concealment of stolen property~~, knowing or believing the property to be stolen~~ without the intent to restore the property to the rightful owner shall be punished the same as for the stealing of ~~such~~ the property. A prosecution under this section may be brought where the stolen item is recovered or in the location from where it was stolen.

~~(b) A person who buys, receives, sells, possesses unless with the intent to restore to the owner, or aids in the concealment of stolen property, knowing the same to be stolen, shall be punished the same as for the stealing of such property.~~

~~(c) A buyer, receiver, seller, possessor, or concealer under subsection (a) or (b) of this section may be prosecuted and punished in the criminal division of the superior court in the unit where the person stealing the property might be~~

~~prosecuted, although such property is bought, received, or concealed in another county or unit.~~

Sec. 4. 9 V.S.A. § 3865 is amended to read:

§ 3865. ~~PAWNBROKER'S RECORD BOOK~~ RECORDS OF A PAWNBROKER OR SECONDHAND DEALER

(a) A pawnbroker or a secondhand dealer shall keep ~~a book in which shall be fairly written in the English language, at the time of making a loan, an account and description of the goods, articles or things pawned or pledged, the amount of money loaned thereon, the time of pledging the same, the rate of interest to be paid on such loan, and the name and residence of the person pawning or pledging such property~~ the following records together for each transaction:

(1) a legible statement written at the time of making the loan describing the items pawned, pledged, or sold, and the amount of money lent or paid thereon, the time of the transaction, and the rate of interest to be paid on the loan, as applicable;

(2) a legible statement of the name, current address, telephone number, and vehicle license number of the person pawning, pledging, or selling the items;

(3) a photograph of the items pawned, pledged, or sold; and

(4) a photocopy of a government-issued identification card issued to the person pawning, pledging, or selling the items. If the seller does not have a government-issued identification card, the purchaser shall take and retain a photograph of the seller's face.

(b) At all reasonable times, ~~such book~~ the records required under subsection (a) of this section shall be open to the inspection of ~~the town or city authorities, all courts, the chief of police, or of any person who is duly authorized in writing for that purpose by such authority, court, or chief of police and who exhibits such written authority to such pawnbroker~~ law enforcement.

(c) In this section:

(1) "Precious metal" means gold, silver, platinum, or palladium.

(2) "Secondhand dealer" means a person in the business of purchasing used or estate precious metal, coins, or jewelry for the purpose of sale to consumers or for scrap.

Sec. 5. 9 V.S.A. § 3872 is added to read:

§ 3872. SECONDHAND DEALERS; RETENTION OF GOODS

A pawnbroker or secondhand dealer, as defined in section 3865 of this title, shall retain property pawned, pledged, or purchased for no fewer than 30 days before offering it for sale or for scrap.

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

An act relating to scrap metal processors, pawnbrokers, and secondhand dealers.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs?, Senator Sears moved to amend the proposal of amendment of the Committee on Economic Development, Housing and General Affairs as follows:

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

Sec. 3. POSSESSION OF STOLEN PROPERTY; STUDY; NONVIOLENT MISDEMEANOR SENTENCE REVIEW COMMITTEE

The nonviolent misdemeanor sentence review committee created by Sec. 4 of No. 41 of the Acts of 2011 shall study the feasibility and advisability of broadening the scope of Vermont's possession and receipt of stolen property statute, 13 V.S.A. § 2561. The study shall consider the practical and policy implications of amending 13 V.S.A. § 2561 to apply to reckless conduct or of otherwise amending state stolen property law to limit the likelihood that stolen property will be purchased and resold by pawnbrokers and other persons engaged in the business of reselling property.

Which was agreed to.

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

Thereupon, the pending question, Shall the Senate propose to the House to amend the bill as proposed by the Committee on Economic Development, Housing and General Affairs, as amended?, was disagreed to on a division of the Senate, Yeas 8, Nays 16.

Thereupon, on motion of Senator Sears, the bill was ordered to lie.

Proposal of Amendment; Third Reading Ordered

H. 559.

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

An act relating to health care reform implementation.

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

Sec. 1. 33 V.S.A. § 1802 is amended to read:

§ 1802. DEFINITIONS

For purposes of this subchapter:

* * *

(5) "Qualified employer" ~~means an employer that~~:

(A) means an entity which employed an average of not more than 50 employees on working days during the preceding calendar year and which:

(i) 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)~~(ii) elects to provide coverage through the Vermont health benefit exchange for all of its eligible employees who are principally employed in this state.

(B) on and after January 1, 2016, shall include an entity which:

(i) employed an average of not more than 100 employees on working days during the preceding calendar year; and

(ii) meets the requirements of subdivisions (A)(i) and (A)(ii) of this subdivision (5).

(C) on and after January 1, 2017, shall include all employers meeting the requirements of subdivisions (A)(i) and (ii) of this subdivision (5), regardless of size.

* * *

Sec. 2. 33 V.S.A. § 1804 is amended to read:

§ 1804. QUALIFIED EMPLOYERS

~~[Reserved.]~~

(a)(1) Until January 1, 2016, a qualified employer shall be an employer which, on at least 50 percent of its working days during the preceding calendar quarter, employed at least one and no more than 50 employees, and the term "qualified employer" includes self-employed persons. Calculation of the number of employees of a qualified employer shall not include a part-time employee who works fewer than 30 hours per week.

(2) An employer with 50 or fewer employees that offers a qualified health benefit plan to its employees through the Vermont health benefit exchange may continue to participate in the exchange even if the employer's size grows beyond 50 employees as long as the employer continuously makes qualified health benefit plans in the Vermont health benefit exchange available to its employees.

(b)(1) From January 1, 2016 until January 1, 2017, a qualified employer shall be an employer which, on at least 50 percent of its working days during the preceding calendar quarter, employed at least one and no more than 100 employees, and the term "qualified employer" includes self-employed persons. Calculation of the number of employees of a qualified employer shall not include a part-time employee who works fewer than 30 hours per week.

(2) An employer with 100 or fewer employees that offers a qualified health benefit plan to its employees through the Vermont health benefit exchange may continue to participate in the exchange even if the employer's size grows beyond 100 employees as long as the employer continuously makes qualified health benefit plans in the Vermont health exchange available to its employees.

(c) On and after January 1, 2017, a qualified employer shall be an employer of any size which elects to make all of its full-time employees eligible for one or more qualified health plans offered in the Vermont health benefit exchange, and the term "qualified employer" includes self-employed persons. A full-time employee shall be an employee who works more than 30 hours per week.

Sec. 2a. 33 V.S.A. § 1806(b) is amended to read:

(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. Said plans may include child-only policies or family policies. If permitted under federal law, a qualified health benefit plan offered in conjunction with a stand-alone dental plan providing pediatric dental benefits meeting the requirements of Section 1302(b)(1)(J) of the Affordable Care Act shall be deemed to meet the requirements of this subsection.

(2) At least the ~~silver~~ bronze 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.

* * *

Sec. 2b. 33 V.S.A. § 1807(b) is amended to read:

(b) Navigators shall have the following duties:

* * *

(7) Provide information about and facilitate employers' establishment of cafeteria or premium-only plans under Section 125 of the Internal Revenue Code that allow employees to pay for health insurance premiums with pretax dollars.

Sec. 2c. EXCHANGE OPTIONS

In approving benefit packages for the Vermont health benefit exchange pursuant to 18 V.S.A. § 9375(b)(7), the Green Mountain Care board shall approve a full range of cost-sharing structures for each level of actuarial value. To the extent permitted under federal law, the board shall also allow health insurers to establish rewards, premium discounts, split benefit designs, rebates, or otherwise waive or modify applicable co-payments, deductibles, or other cost-sharing amounts in return for adherence by an insured to programs of health promotion and disease prevention pursuant to 33 V.S.A. § 1811(f)(2)(B).

Sec. 2d. 33 V.S.A. § 1805 is amended to read:

§ 1805. DUTIES AND RESPONSIBILITIES

The Vermont health benefit exchange shall have the following duties and responsibilities consistent with the Affordable Care Act:

* * *

(17) Establishing procedures that allow licensed insurance agents and brokers to:

(A) enroll qualified individuals and qualified employers in any qualified health plan offered through the exchange for which the individual or employer is eligible and to be appropriately compensated for doing so; and

(B) assist qualified individuals in applying for premium tax credits and cost-sharing reductions for qualified health benefit plans purchased through the exchange.

Sec. 2e. 33 V.S.A. § 1806(e)(1) is amended to read:

(e)(1) A health insurer offering a qualified health benefit plan shall comply with the following insurance and consumer information requirements:

* * *

(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, the compensation paid to licensed insurance brokers and agents for enrollments made through the exchange, 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.

* * *

Sec. 3. 33 V.S.A. § 1811 is added to read:

§ 1811. HEALTH BENEFIT PLANS FOR INDIVIDUALS AND SMALL EMPLOYERS

(a) As used in this section:

(1) "Health benefit plan" means a health insurance policy, a nonprofit hospital or medical service corporation service contract, or a health maintenance organization health benefit plan offered through the Vermont

health benefit exchange and issued to an individual or to an employee of a small employer. The 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 in which 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.

(2) "Registered carrier" means any person, except an insurance agent, broker, appraiser, or adjuster, who issues a health benefit plan and who has a registration in effect with the commissioner of banking, insurance, securities, and health care administration as required by this section.

(3)(A) Until January 1, 2016, "small employer" means an employer which, on at least 50 percent of its working days during the preceding calendar quarter, employs at least one and no more than 50 employees. The term includes self-employed persons. Calculation of the number of employees of a small employer shall not include a part-time employee who works fewer than 30 hours per week. An employer may continue to participate in the exchange even if the employer's size grows beyond 50 employees as long as the employer continuously makes qualified health benefit plans in the Vermont health benefit exchange available to its employees.

(B) Beginning on January 1, 2016, "small employer" means an employer which, on at least 50 percent of its working days during the preceding calendar quarter, employs at least one and no more than 100 employees. The term includes self-employed persons. Calculation of the number of employees of a small employer shall not include a part-time employee who works fewer than 30 hours per week. An employer may continue to participate in the exchange even if the employer's size grows beyond 100 employees as long as the employer continuously makes qualified health benefit plans in the Vermont health benefit exchange available to its employees.

(b) No person may provide a health benefit plan to an individual or small employer unless the plan is offered through the Vermont health benefit exchange and complies with the provisions of this subchapter.

(c) No person may provide a health benefit plan to an individual or small employer unless such person is a registered carrier. The commissioner of

banking, insurance, securities, and health care administration shall establish, by rule, the minimum financial, marketing, service and other requirements for registration. Such registration shall be effective upon approval by the commissioner and shall remain in effect until revoked or suspended by the commissioner for cause or until withdrawn by the carrier. A carrier may withdraw its registration upon at least six months prior written notice to the commissioner. A registration filed with the commissioner shall be deemed to be approved unless it is disapproved by the commissioner within 30 days of filing.

(d) A registered carrier shall guarantee acceptance of all individuals, small employers, and employees of small employers, and each dependent of such individuals and employees, for any health benefit plan offered by the carrier.

(e) A registered carrier shall offer a health benefit plan rate structure which at least differentiates between single person, two person, and family rates.

(f)(1) A registered carrier shall use a community rating method acceptable to the commissioner of banking, insurance, securities, and health care administration for determining premiums for health benefit plans. Except as provided in subdivision (2) of this subsection, the following risk classification factors are prohibited from use in rating individuals, small employers, or employees of small employers, or the dependents of such individuals or employees:

(A) demographic rating, including age and gender rating;

(B) geographic area rating;

(C) industry rating;

(D) medical underwriting and screening;

(E) experience rating;

(F) tier rating; or

(G) durational rating.

(2)(A) The commissioner shall, by rule, adopt standards and a process for permitting registered carriers to use one or more risk classifications in their community rating method, provided that the premium charged shall not deviate above or below the community rate filed by the carrier by more than 20 percent and provided further that the commissioner's rules may not permit any medical underwriting and screening and shall give due consideration to the need for affordability and accessibility of health insurance.

(B) The commissioner's rules shall permit a carrier, including a hospital or medical service corporation and a health maintenance organization,

to establish rewards, premium discounts, split benefit designs, rebates, or otherwise waive or modify applicable co-payments, deductibles, or other cost-sharing amounts in return for adherence by a member or subscriber to programs of health promotion and disease prevention. The commissioner shall consult with the commissioner of health, the director of the Blueprint for Health, and the commissioner of Vermont health access in the development of health promotion and disease prevention rules that are consistent with the Blueprint for Health. Such rules shall:

(i) limit any reward, discount, rebate, or waiver or modification of cost-sharing amounts to not more than a total of 15 percent of the cost of the premium for the applicable coverage tier, provided that the sum of any rate deviations under subdivision (A) of this subdivision (2) does not exceed 30 percent;

(ii) be designed to promote good health or prevent disease for individuals in the program and not be used as a subterfuge for imposing higher costs on an individual based on a health factor;

(iii) provide that the reward under the program is available to all similarly situated individuals and shall comply with the nondiscrimination provisions of the federal Health Insurance Portability and Accountability Act of 1996; and

(iv) provide a reasonable alternative standard to obtain the reward to any individual for whom it is unreasonably difficult due to a medical condition or other reasonable mitigating circumstance to satisfy the otherwise applicable standard for the discount and disclose in all plan materials that describe the discount program the availability of a reasonable alternative standard.

(C) The commissioner's rules shall include:

(i) standards and procedures for health promotion and disease prevention programs based on the best scientific, evidence-based medical practices as recommended by the commissioner of health;

(ii) standards and procedures for evaluating an individual's adherence to programs of health promotion and disease prevention; and

(iii) any other standards and procedures necessary or desirable to carry out the purposes of this subdivision (2).

(D) The commissioner may require a registered carrier to identify that percentage of a requested premium increase which is attributed to the following categories: hospital inpatient costs, hospital outpatient costs, pharmacy costs, primary care, other medical costs, administrative costs, and

projected reserves or profit. Reporting of this information shall occur at the time a rate increase is sought and shall be in the manner and form directed by the commissioner. Such information shall be made available to the public in a manner that is easy to understand.

(g) A registered carrier shall file with the commissioner an annual certification by a member of the American Academy of Actuaries of the carrier's compliance with this section. The requirements for certification shall be as the commissioner prescribes by rule.

(h) A registered carrier shall provide, on forms prescribed by the commissioner, full disclosure to a small employer of all premium rates and any risk classification formulas or factors prior to acceptance of a plan by the small employer.

(i) A registered carrier shall guarantee the rates on a health benefit plan for a minimum of 12 months.

(j) The commissioner shall disapprove any rates filed by any registered carrier, whether initial or revised, for insurance policies unless the anticipated medical loss ratios for the entire period for which rates are computed are at least 80 percent, as required by the Patient Protection and Affordable Care Act (Public Law 111-148).

(k) The guaranteed acceptance provision of subsection (d) of this section shall not be construed to limit an employer's discretion in contracting with his or her employees for insurance coverage.

Sec. 4. 8 V.S.A. § 4080g is added to read:

§ 4080g. GRANDFATHERED PLANS

(a) Application. Notwithstanding the provisions of 33 V.S.A. § 1811, on and after January 1, 2014, the provisions of this section shall apply to an individual, small group, or association plan that qualifies as a grandfathered health plan under Section 1251 of the Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) ("Affordable Care Act"). In the event that a plan no longer qualifies as a grandfathered health plan under the Affordable Care Act, the provisions of this section shall not apply and the provisions of 33 V.S.A. § 1811 shall govern the plan.

(b) Small group plans.

(1) Definitions. As used in this subsection:

(A) "Small employer" means an employer who, on at least 50 percent of its working days during the preceding calendar quarter, employs at least one

and no more than 50 employees. The term includes self-employed persons. Calculation of the number of employees of a small employer shall not include a part-time employee who works fewer than 30 hours per week. The provisions of this subsection shall continue to apply until the plan anniversary date following the date that the employer no longer meets the requirements of this subdivision.

(B) "Small group" means:

(i) a small employer; or

(ii) an association, trust, or other group issued a health insurance policy subject to regulation by the commissioner under subdivision 4079(2), (3), or (4) of this title.

(C) "Small group plan" means a group health insurance policy, a nonprofit hospital or medical service corporation service contract, or a health maintenance organization health benefit plan offered or issued to a small group, including but not limited to common health care plans approved by the commissioner under subdivision (5) of this subsection. The term does not include disability insurance policies, accident indemnity or expense policies, long-term care insurance policies, student or athletic expense or indemnity policies, dental policies, policies that supplement the Civilian Health and Medical Program of the Uniformed Services, or Medicare supplemental policies.

(D) "Registered small group carrier" means any person except an insurance agent, broker, appraiser, or adjuster who issues a small group plan and who has a registration in effect with the commissioner as required by this subsection.

(2) No person may provide a small group plan unless the plan complies with the provisions of this subsection.

(3) No person may provide a small group plan unless such person is a registered small group carrier. The commissioner, by rule, shall establish the minimum financial, marketing, service and other requirements for registration. Such registration shall be effective upon approval by the commissioner and shall remain in effect until revoked or suspended by the commissioner for cause or until withdrawn by the carrier. A small group carrier may withdraw its registration upon at least six months prior written notice to the commissioner. A registration filed with the commissioner shall be deemed to be approved unless it is disapproved by the commissioner within 30 days of filing.

(4)(A) A registered small group carrier shall guarantee acceptance of all small groups for any small group plan offered by the carrier. A registered

small group carrier shall also guarantee acceptance of all employees or members of a small group and each dependent of such employees or members for any small group plan it offers.

(B) Notwithstanding subdivision (A) of this subdivision (b)(4), a health maintenance organization shall not be required to cover:

(i) a small employer which is not physically located in the health maintenance organization's approved service area; or

(ii) a small employer or an employee or member of the small group located or residing within the health maintenance organization's approved service area for which the health maintenance organization:

(I) is not providing coverage; and

(II) reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have the capacity within its network of providers to deliver adequate service because of its existing group contract obligations, including contract obligations subject to the provisions of this subsection and any other group contract obligations.

(5) A registered small group carrier shall offer one or more common health care plans approved by the commissioner. The commissioner, by rule, shall adopt standards and a process for approval of common health care plans that ensure that consumers may compare the costs of plans offered by carriers and that ensure the development of an affordable common health care plan, providing for deductibles, coinsurance arrangements, managed care, cost containment provisions, and any other term, not inconsistent with the provisions of this title, deemed useful in making the plan affordable. A health maintenance organization may add limitations to a common health care plan if the commissioner finds that the limitations do not unreasonably restrict the insured from access to the benefits covered by the plans.

(6) A registered small group carrier shall offer a small group plan rate structure which at least differentiates between single-person, two-person and family rates.

(7)(A) A registered small group carrier shall use a community rating method acceptable to the commissioner for determining premiums for small group plans. Except as provided in subdivision (B) of this subdivision (7), the following risk classification factors are prohibited from use in rating small groups, employees or members of such groups, and dependents of such employees or members:

(i) demographic rating, including age and gender rating;

(ii) geographic area rating;

(iii) industry rating;

(iv) medical underwriting and screening;

(v) experience rating;

(vi) tier rating; or

(vii) durational rating.

(B)(i) The commissioner shall, by rule, adopt standards and a process for permitting registered small group carriers to use one or more risk classifications in their community rating method, provided that the premium charged shall not deviate above or below the community rate filed by the carrier by more than 20 percent and provided further that the commissioner's rules may not permit any medical underwriting and screening.

(ii) The commissioner's rules shall permit a carrier, including a hospital or medical service corporation and a health maintenance organization, to establish rewards, premium discounts, split benefit designs, rebates, or otherwise waive or modify applicable co-payments, deductibles, or other cost-sharing amounts in return for adherence by a member or subscriber to programs of health promotion and disease prevention. The commissioner shall consult with the commissioner of health, the director of the Blueprint for Health, and the commissioner of Vermont health access in the development of health promotion and disease prevention rules that are consistent with the Blueprint for Health. Such rules shall:

(I) limit any reward, discount, rebate, or waiver or modification of cost-sharing amounts to not more than a total of 15 percent of the cost of the premium for the applicable coverage tier, provided that the sum of any rate deviations under subdivision (i) of this subdivision (7)(B) does not exceed 30 percent;

(II) be designed to promote good health or prevent disease for individuals in the program and not be used as a subterfuge for imposing higher costs on an individual based on a health factor;

(III) provide that the reward under the program is available to all similarly situated individuals and complies with the nondiscrimination provisions of the federal Health Insurance Portability and Accountability Act of 1996; and

(IV) provide a reasonable alternative standard to obtain the reward to any individual for whom it is unreasonably difficult due to a medical condition or other reasonable mitigating circumstance to satisfy the otherwise applicable standard for the discount and disclose in all plan materials that

describe the discount program the availability of a reasonable alternative standard.

(iii) The commissioner's rules shall include:

(I) standards and procedures for health promotion and disease prevention programs based on the best scientific, evidence-based medical practices as recommended by the commissioner of health;

(II) standards and procedures for evaluating an individual's adherence to programs of health promotion and disease prevention; and

(III) any other standards and procedures necessary or desirable to carry out the purposes of this subdivision (7)(B).

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

(D) The commissioner may exempt from the requirements of this subsection an association as defined in subdivision 4079(2) of this title which:

(i) offers a small group plan to a member small employer which is community rated in accordance with the provisions of subdivisions (A) and (B) of this subdivision (b)(7). The plan may include risk classifications in accordance with subdivision (B) of this subdivision (7);

(ii) offers a small group plan that guarantees acceptance of all persons within the association and their dependents; and

(iii) offers one or more of the common health care plans approved by the commissioner under subdivision (5) of this subsection.

(E) The commissioner may revoke or deny the exemption set forth in subdivision (D) of this subdivision (7) if the commissioner determines that:

(i) because of the nature, size, or other characteristics of the association and its members, the employees or members are in need of the protections provided by this subsection; or

(ii) the association exemption has or would have a substantial adverse effect on the small group market.

(8) A registered small group carrier shall file with the commissioner an annual certification by a member of the American Academy of Actuaries of the

carrier's compliance with this subsection. The requirements for certification shall be as the commissioner by rule prescribes.

(9) A registered small group carrier shall provide, on forms prescribed by the commissioner, full disclosure to a small group of all premium rates and any risk classification formulas or factors prior to acceptance of a small group plan by the group.

(10) A registered small group carrier shall guarantee the rates on a small group plan for a minimum of six months.

(11)(A) A registered small group carrier may require that 75 percent or less of the employees or members of a small group with more than 10 employees participate in the carrier's plan. A registered small group carrier may require that 50 percent or less of the employees or members of a small group with 10 or fewer employees or members participate in the carrier's plan. A small group carrier's rules established pursuant to this subdivision shall be applied to all small groups participating in the carrier's plans in a consistent and nondiscriminatory manner.

(B) For purposes of the requirements set forth in subdivision (A) of this subdivision (11), a registered small group carrier shall not include in its calculation an employee or member who is already covered by another group health benefit plan as a spouse or dependent or who is enrolled in Catamount Health, Medicaid, the Vermont health access plan, or Medicare. Employees or members of a small group who are enrolled in the employer's plan and receiving premium assistance under 33 V.S.A. chapter 19 shall be considered to be participating in the plan for purposes of this subsection. If the small group is an association, trust, or other substantially similar group, the participation requirements shall be calculated on an employer-by-employer basis.

(C) A small group carrier may not require recertification of compliance with the participation requirements set forth in this subdivision (11) more often than annually at the time of renewal. If, during the recertification process, a small group is found not to be in compliance with the participation requirements, the small group shall have 120 days to become compliant prior to termination of the plan.

(12) This subsection shall apply to the provisions of small group plans. This subsection shall not be construed to prevent any person from issuing or obtaining a bona fide individual health insurance policy; provided that no person may offer a health benefit plan or insurance policy to individual employees or members of a small group as a means of circumventing the requirements of this subsection. The commissioner shall adopt, by rule, standards and a process to carry out the provisions of this subsection.

(13) The guaranteed acceptance provision of subdivision (4) of this subsection shall not be construed to limit an employer's discretion in contracting with his or her employees for insurance coverage.

(14) Registered small group carriers, except nonprofit medical and hospital service organizations and nonprofit health maintenance organizations, shall form a reinsurance pool for the purpose of reinsuring small group risks. This pool shall not become operative until the commissioner has approved a plan of operation. The commissioner shall not approve any plan which he or she determines may be inconsistent with any other provision of this subsection. Failure or delay in the formation of a reinsurance pool under this subsection shall not delay implementation of this subdivision. The participants in the plan of operation of the pool shall guarantee, without limitation, the solvency of the pool, and such guarantee shall constitute a permanent financial obligation of each participant, on a pro rata basis.

(c) Nongroup health benefit plans.

(1) Definitions. As used in this subsection:

(A) "Individual" means a person who is not eligible for coverage by group health insurance as defined by section 4079 of this title.

(B) "Nongroup plan" means a health insurance policy, a nonprofit hospital or medical service corporation service contract, or a health maintenance organization health benefit plan offered or issued to an individual, including but not limited to common health care plans approved by the commissioner under subdivision (5) of this subsection. The term does not include disability insurance policies, accident indemnity or expense policies, long-term care insurance policies, student or athletic expense or indemnity policies, Medicare supplemental policies, and dental policies. The term also does not include hospital indemnity policies or specified disease indemnity or expense policies, provided such policies are sold only as supplemental coverage when a common health care plan or other comprehensive health care policy is in effect.

(C) "Registered nongroup carrier" means any person, except an insurance agent, broker, appraiser, or adjuster, who issues a nongroup plan and who has a registration in effect with the commissioner as required by this subsection.

(2) No person may provide a nongroup plan unless the plan complies with the provisions of this subsection.

(3) No person may provide a nongroup plan unless such person is a registered nongroup carrier. The commissioner, by rule, shall establish the minimum financial, marketing, service, and other requirements for registration.

Registration under this subsection shall be effective upon approval by the commissioner and shall remain in effect until revoked or suspended by the commissioner for cause or until withdrawn by the carrier. A nongroup carrier may withdraw its registration upon at least six months' prior written notice to the commissioner. A registration filed with the commissioner shall be deemed to be approved unless it is disapproved by the commissioner within 30 days of filing.

(4)(A) A registered nongroup carrier shall guarantee acceptance of any individual for any nongroup plan offered by the carrier. A registered nongroup carrier shall also guarantee acceptance of each dependent of such individual for any nongroup plan it offers.

(B) Notwithstanding subdivision (A) of this subdivision, a health maintenance organization shall not be required to cover:

(i) an individual who is not physically located in the health maintenance organization's approved service area; or

(ii) an individual residing within the health maintenance organization's approved service area for which the health maintenance organization:

(I) is not providing coverage; and

(II) reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have the capacity within its network of providers to deliver adequate service because of its existing contract obligations, including contract obligations subject to the provisions of this subsection and any other group contract obligations.

(5) A registered nongroup carrier shall offer two or more common health care plans approved by the commissioner. The commissioner, by rule, shall adopt standards and a process for approval of common health care plans that ensure that consumers may compare the cost of plans offered by carriers. At least one plan shall be a low-cost common health care plan that may provide for deductibles, coinsurance arrangements, managed care, cost-containment provisions, and any other term not inconsistent with the provisions of this title that are deemed useful in making the plan affordable. A health maintenance organization may add limitations to a common health care plan if the commissioner finds that the limitations do not unreasonably restrict the insured from access to the benefits covered by the plan.

(6) A registered nongroup carrier shall offer a nongroup plan rate structure which at least differentiates between single-person, two-person and family rates.

(7) For a 12-month period from the effective date of coverage, a registered nongroup carrier may limit coverage of preexisting conditions which exist during the 12-month period before the effective date of coverage; provided that a registered nongroup carrier shall waive any preexisting condition provisions for all individuals and their dependents who produce evidence of continuous health benefit coverage during the previous nine months substantially equivalent to the carrier's common health care plan approved by the commissioner. If an individual has a preexisting condition excluded under a subsequent policy, such exclusion shall not continue longer than the period required under the original contract or 12 months, whichever is less. Credit shall be given for prior coverage that occurred without a break in coverage of 63 days or more. For an eligible individual as such term is defined in Section 2741 of Title XXVII of the Public Health Service Act, a registered nongroup carrier shall not limit coverage of preexisting conditions.

(8)(A) A registered nongroup carrier shall use a community rating method acceptable to the commissioner for determining premiums for nongroup plans. Except as provided in subdivision (B) of this subsection, the following risk classification factors are prohibited from use in rating individuals and their dependents:

(i) demographic rating, including age and gender rating;

(ii) geographic area rating;

(iii) industry rating;

(iv) medical underwriting and screening;

(v) experience rating;

(vi) tier rating; or

(vii) durational rating.

(B)(i) The commissioner shall, by rule, adopt standards and a process for permitting registered nongroup carriers to use one or more risk classifications in their community rating method, provided that the premium charged shall not deviate above or below the community rate filed by the carrier by more than 20 percent and provided further that the commissioner's rules may not permit any medical underwriting and screening and shall give due consideration to the need for affordability and accessibility of health insurance.

(ii) The commissioner's rules shall permit a carrier, including a hospital or medical service corporation and a health maintenance organization, to establish rewards, premium discounts, and rebates or otherwise waive or modify applicable co-payments, deductibles, or other cost-sharing amounts in

return for adherence by a member or subscriber to programs of health promotion and disease prevention. The commissioner shall consult with the commissioner of health and the commissioner of Vermont health access in the development of health promotion and disease prevention rules. Such rules shall:

(I) limit any reward, discount, rebate, or waiver or modification of cost-sharing amounts to not more than a total of 15 percent of the cost of the premium for the applicable coverage tier, provided that the sum of any rate deviations under subdivision (B)(i) of this subdivision (8) does not exceed 30 percent;

(II) be designed to promote good health or prevent disease for individuals in the program and not be used as a subterfuge for imposing higher costs on an individual based on a health factor;

(III) provide that the reward under the program is available to all similarly situated individuals; and

(IV) provide a reasonable alternative standard to obtain the reward to any individual for whom it is unreasonably difficult due to a medical condition or other reasonable mitigating circumstance to satisfy the otherwise applicable standard for the discount and disclose in all plan materials that describe the discount program the availability of a reasonable alternative standard.

(iii) The commissioner's rules shall include:

(I) standards and procedures for health promotion and disease prevention programs based on the best scientific, evidence-based medical practices as recommended by the commissioner of health;

(II) standards and procedures for evaluating an individual's adherence to programs of health promotion and disease prevention; and

(III) any other standards and procedures necessary or desirable to carry out the purposes of this subdivision (8)(B).

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

(9) Notwithstanding subdivision (8)(B) of this subsection, the commissioner shall not grant rate increases, including increases for medical inflation, for individuals covered pursuant to the provisions of this subsection that exceed 20 percent in any one year; provided that the commissioner may grant an increase that exceeds 20 percent if the commissioner determines that the 20 percent limitation will have a substantial adverse effect on the financial safety and soundness of the insurer. In the event that this limitation prevents implementation of community rating to the full extent provided for in subdivision (8) of this subsection, the commissioner may permit insurers to limit community rating provisions accordingly as applicable to individuals who would otherwise be entitled to rate reductions.

(10) A registered nongroup carrier shall file with the commissioner an annual certification by a member of the American Academy of Actuaries of the carrier's compliance with this subsection. The requirements for certification shall be as the commissioner by rule prescribes.

(11) A registered nongroup carrier shall guarantee the rates on a nongroup plan for a minimum of 12 months.

(12) Registered nongroup carriers, except nonprofit medical and hospital service organizations and nonprofit health maintenance organizations, shall form a reinsurance pool for the purpose of reinsuring nongroup risks. This pool shall not become operative until the commissioner has approved a plan of operation. The commissioner shall not approve any plan which he or she determines may be inconsistent with any other provision of this subsection. Failure or delay in the formation of a reinsurance pool under this subsection shall not delay implementation of this subdivision. The participants in the plan of operation of the pool shall guarantee, without limitation, the solvency of the pool, and such guarantee shall constitute a permanent financial obligation of each participant, on a pro rata basis.

(13) The commissioner shall disapprove any rates filed by any registered nongroup carrier, whether initial or revised, for nongroup insurance policies unless the anticipated loss ratios for the entire period for which rates are computed are at least 70 percent. For the purpose of this subdivision, "anticipated loss ratio" shall mean a comparison of earned premiums to losses incurred plus a factor for industry trend where the methodology for calculating trend shall be determined by the commissioner by rule.

* * * Green Mountain Care Board * * *

Sec. 5. 18 V.S.A. § 9374 is amended to read:

§ 9374. BOARD MEMBERSHIP; AUTHORITY

* * *

(g) The chair of the board or designee may apply for grant funding, if available, to advance or support any responsibility within the board's jurisdiction.

(h)(1) Expenses incurred to obtain information, analyze expenditures, review hospital budgets, and for any other contracts authorized by the board shall be borne as follows:

(A) 40 percent by the state from state monies;

(B) 15 percent by the hospitals;

(C) 15 percent by nonprofit hospital and medical service corporations licensed under 8 V.S.A. chapter 123 or 125;

(D) 15 percent by health insurance companies licensed under 8 V.S.A. chapter 101; and

(E) 15 percent by health maintenance organizations licensed under 8 V.S.A. chapter 139.

(2) Expenses under subdivision (1) of this subsection shall be billed to persons licensed under Title 8 based on premiums paid for health care coverage, which for the purposes of this section shall include major medical, comprehensive medical, hospital or surgical coverage, and comprehensive health care services plans, but shall not include long-term care or limited benefits, disability, credit or stop loss, or excess loss insurance coverage.

(i) In addition to any other penalties and in order to enforce the provisions of this chapter and empower the board to perform its duties, the chair of the board may issue subpoenas, examine persons, administer oaths, and require production of papers and records. Any subpoena or notice to produce may be served by registered or certified mail or in person by an agent of the chair. Service by registered or certified mail shall be effective three business days after mailing. Any subpoena or notice to produce shall provide at least six business days' time from service within which to comply, except that the chair may shorten the time for compliance for good cause shown. Any subpoena or notice to produce sent by registered or certified mail, postage prepaid, shall constitute service on the person to whom it is addressed. Each witness who appears before the chair under subpoena shall receive a fee and mileage as provided for witnesses in civil cases in superior courts; provided, however, any person subject to the board's authority shall not be eligible to receive fees or mileage under this section.

(j) A person who fails or refuses to appear, to testify, or to produce papers or records for examination before the chair upon properly being ordered to do so may be assessed an administrative penalty by the chair of not more

than $2,000.00 for each day of noncompliance and proceeded against as provided in the Administrative Procedure Act, and the chair may recommend to the appropriate licensing entity that the person's authority to do business be suspended for up to six months.

Sec. 5a. BILL-BACK REPORT

No later than February 1, 2013, the department of banking, insurance, securities, and health care administration and the Green Mountain Care board shall report to the house committees on health care and on ways and means and the senate committees on health and welfare and on finance regarding the allocation of expenses among hospitals and health insurers to finance the department's and the board's regulatory activities pursuant to 18 V.S.A. §§ 9374(h) and 9415. The report shall address the basis for the formula and how it is applied and shall contain the department's and the board's recommendations for alternate expense allocation formulas or models.

* * * Unified Health Care Budget * * *

Sec. 6. 18 V.S.A. § 9373 is amended to read:

§ 9373. DEFINITIONS

* * *

(14) "Unified health care budget" means the budget established in accordance with section 9375a of this title.

(15) "Wellness services" means health services, programs, or activities that focus on the promotion or maintenance of good health.

Sec. 7. 18 V.S.A. § 9402 is amended to read:

§ 9402. DEFINITIONS

* * *

(15) ~~"Unified health care budget" means the budget established in accordance with section 9406 of this title.~~ [Deleted.]

* * *

Sec. 8. 18 V.S.A. § 9403 is amended to read:

§ 9403. DIVISION OF HEALTH CARE ADMINISTRATION; PURPOSES

The division of health care administration is created in the department of banking, insurance, securities, and health care administration. The division shall assist the commissioner in carrying out the policies of the state regarding health care delivery, cost, and quality~~,~~ by providing oversight of health care quality and expenditures through the ~~certificate of need program and the~~

~~unified health care budget for the state or with respect to Vermont residents~~, establishment and maintenance of consumer protection functions~~,~~ and oversight of quality assurance within the health care system. The division shall also establish and maintain a data base with information needed to carry out the commissioner's duties and obligations under this chapter and Title 8.

Sec. 9. 18 V.S.A. § 9405(b) is amended to read:

(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.

(1) The plan shall include:

* * *

(C) Consistent with the principles set forth in subdivision (A) of this subdivision (1), recommendations for the appropriate supply and distribution of resources, programs, and services identified in subdivision (B) of this subdivision (1), options for implementing such recommendations and mechanisms which will encourage the appropriate integration of these services on a local or regional basis. To arrive at such recommendations, the commissioner shall consider at least the following factors: the values and goals reflected in the state health plan; the needs of the population on a statewide basis; the needs of particular geographic areas of the state, as identified in the state health plan; the needs of uninsured and underinsured populations; the use of Vermont facilities by out-of-state residents; the use of out-of-state facilities by Vermont residents; the needs of populations with special health care needs; the desirability of providing high quality services in an economical and efficient manner, including the appropriate use of midlevel practitioners; the cost impact of these resource requirements on health care expenditures; the services appropriate for the four categories of hospitals described in subdivision 9402(12) of this title; the overall quality and use of health care services as reported by the Vermont program for quality in health care and the Vermont ethics network; the overall quality and cost of services as reported in the annual hospital community reports; individual hospital four-year capital budget projections; ~~the unified health care budget;~~ and the four-year projection of health care expenditures prepared by the division.

* * *

Sec. 10. 18 V.S.A. § 9406 is amended to read:

~~§ 9406. EXPENDITURE ANALYSIS; UNIFIED HEALTH CARE BUDGET~~

~~(a) Annually, the commissioner shall develop a unified health care budget and develop an expenditure analysis to promote the policies set forth in section 9401 of this title.~~

~~(1) The budget shall:~~

~~(A) Serve as a guideline within which health care costs are controlled, resources directed, and quality and access assured.~~

~~(B) Identify the total amount of money that has been and is projected to be expended annually for all health care services provided by health care facilities and providers in Vermont, and for all health care services provided to residents of this state.~~

~~(C) Identify any inconsistencies with the state health plan and the health resource allocation plan.~~

~~(D) Analyze health care costs and the impact of the budget on those who receive, provide, and pay for health care services.~~

~~(2) The commissioner shall enter into discussions with health care facilities and with health care provider bargaining groups created under section 9409 of this title concerning matters related to the unified health care budget.~~

~~(b)(1) Annually the division shall prepare a three-year projection of health care expenditures made on behalf of Vermont residents, based on the format of the health care budget and expenditure analysis adopted by the commissioner under this section, projecting expenditures in broad sectors such as hospital, physician, home health, or pharmacy. The projection shall include estimates for:~~

~~(A) expenditures for the health plans of any hospital and medical service corporation, health maintenance organizations, Medicaid program, or other health plan regulated by this state which covers more than five percent of the state population; and~~

~~(B) expenditures for Medicare, all self-insured employers, and all other health insurance.~~

~~(2) Each health plan payer identified under subdivision (1)(A) of this subsection may comment on the division's proposed projections, including comments concerning whether the plan agrees with the proposed projection, alternative projections developed by the plan, and a description of what mechanisms, if any, the plan has identified to reduce its health care expenditures. Comments may also include a comparison of the plan's actual~~

~~expenditures with the applicable projections for the prior year, and an evaluation of the efficacy of any cost containment efforts the plan has made.~~

~~(3) The division's projections prepared under this subsection shall be used as a tool in the evaluation of health insurance rate and trend filings with the department and shall be made available in connection with the hospital budget review process under subchapter 7 of this chapter, the certificate of need process under subchapter 5 of this chapter, and the development of the health resource allocation plan.~~

~~(4) The division shall prepare a report of the final projections made under this subsection, and file the report with the general assembly on or before January 15 of each year.~~ [Repealed.]

Sec. 11. 18 V.S.A. 9375a is added to read:

§ 9375a. EXPENDITURE ANALYSIS; UNIFIED HEALTH CARE BUDGET

(a) Annually, the board shall develop a unified health care budget and develop an expenditure analysis to promote the policies set forth in sections 9371 and 9372 of this title.

(1) The budget shall:

(A) Serve as a guideline within which health care costs are controlled, resources directed, and quality and access assured.

(B) Identify the total amount of money that has been and is projected to be expended annually for all health care services provided by health care facilities and providers in Vermont and for all health care services provided to residents of this state.

(C) Identify any inconsistencies with the state health plan and the health resource allocation plan.

(D) Analyze health care costs and the impact of the budget on those who receive, provide, and pay for health care services.

(2) The board shall enter into discussions with health care facilities and with health care provider bargaining groups created under section 9409 of this title concerning matters related to the unified health care budget.

(b)(1) Annually the board shall prepare a three-year projection of health care expenditures made on behalf of Vermont residents, based on the format of the health care budget and expenditure analysis adopted by the board under this section, projecting expenditures in broad sectors such as hospital, physician, home health, or pharmacy. The projection shall include estimates for:

(A) expenditures for the health plans of any hospital and medical service corporation, health maintenance organization, Medicaid program, or other health plan regulated by this state which covers more than five percent of the state population; and

(B) expenditures for Medicare, all self-insured employers, and all other health insurance.

(2) Each health plan payer identified under subdivision (1)(A) of this subsection may comment on the board's proposed projections, including comments concerning whether the plan agrees with the proposed projection, alternative projections developed by the plan, and a description of what mechanisms, if any, the plan has identified to reduce its health care expenditures. Comments may also include a comparison of the plan's actual expenditures with the applicable projections for the prior year and an evaluation of the efficacy of any cost containment efforts the plan has made.

(3) The board's projections prepared under this subsection shall be used as a tool in the evaluation of health insurance rate and trend filings with the department of banking, insurance, securities, and health care administration, and shall be made available in connection with the hospital budget review process under subchapter 7 of this chapter, the certificate of need process under subchapter 5 of this chapter, and the development of the health resource allocation plan.

(4) The board shall prepare a report of the final projections made under this subsection and file the report with the general assembly on or before January 15 of each year.

* * * Claims Edit Standards * * *

Sec. 11a. 18 V.S.A. § 9418a is amended to read:

§ 9418a. PROCESSING CLAIMS, DOWNCODING, AND ADHERENCE TO CODING RULES

(a) Health plans, contracting entities, covered entities, and payers shall accept and initiate the processing of all health care claims submitted by a health care provider pursuant to and consistent with the current version of the American Medical Association's Current Procedural Terminology (CPT) codes, reporting guidelines, and conventions; the Centers for Medicare and Medicaid Services Healthcare Common Procedure Coding System (HCPCS); American Society of Anesthesiologists; the National Correct Coding Initiative (NCCI); the National Council for Prescription Drug Programs coding; or other appropriate nationally recognized standards, guidelines, or conventions approved by the commissioner.

(b) When editing claims, health plans, contracting entities, covered entities, and payers shall adhere to edit standards ~~that are no more restrictive than the following,~~ except as provided in subsection (c) of this section:

(1) The CPT, HCPCS, and NCCI;

(2) National specialty society edit standards; or

(3) Other appropriate nationally recognized edit standards, guidelines, or conventions approved by the commissioner.

(c) Adherence to the edit standards in subdivision (b)(1) or (2) of this section is not required:

(1) When necessary to comply with state or federal laws, rules, regulations, or coverage mandates; or

(2) For ~~services not addressed by NCCI standards or national specialty society edit standards~~ edits that the payer determines are more favorable to providers than the edit standards in subdivisions (b)(1) through (3) of this section or to address new codes not yet incorporated by a payer's edit management software, provided the edit standards are developed with input from the relevant Vermont provider community and national provider organizations and provided the edits are available to providers on the plan's websites and in their newsletters.

(d) Nothing in this section shall preclude a health plan, contracting entity, covered entity, or payer from determining that any such claim is not eligible for payment in full or in part, based on a determination that:

(1) The claim is contested as defined in subdivision 9418(a)(2) of this title;

(2) The service provided is not a covered benefit under the contract, including a determination that such service is not medically necessary or is experimental or investigational;

(3) The insured did not obtain a referral, prior authorization, or precertification, or satisfy any other condition precedent to receiving covered benefits from the health care provider;

(4) The covered benefit exceeds the benefit limits of the contract;

(5) The person is not eligible for coverage or is otherwise not compliant with the terms and conditions of his or her coverage agreement;

(6) The health plan has a reasonable belief that fraud or other intentional misconduct has occurred; or

(7) The health plan, contracting entity, covered entity, or payer determines through coordination of benefits that another entity is liable for the claim.

(e) Nothing in this section shall be deemed to require a health plan, contracting entity, covered entity, or payer to pay or reimburse a claim, in full or in part, or to dictate the amount of a claim to be paid by a health plan, contracting entity, covered entity, or payer to a health care provider.

(f) No health plan, contracting entity, covered entity, or payer shall automatically reassign or reduce the code level of evaluation and management codes billed for covered services (downcoding), except that a health plan, contracting entity, covered entity, or payer may reassign a new patient visit code to an established patient visit code based solely on CPT codes, CPT guidelines, and CPT conventions.

(g) Notwithstanding the provisions of subsection (d) of this section, and other than the edits contained in the conventions in subsections (a) and (b) of this section, health plans, contracting entities, covered entities, and payers shall continue to have the right to deny, pend, or adjust claims for services on other bases and shall have the right to reassign or reduce the code level for selected claims for services based on a review of the clinical information provided at the time the service was rendered for the particular claim or a review of the information derived from a health plan's fraud or abuse billing detection programs that create a reasonable belief of fraudulent or abusive billing practices, provided that the decision to reassign or reduce is based primarily on a review of clinical information.

(h) Every health plan, contracting entity, covered entity, and payer shall publish on its provider website and in its provider newsletter if applicable:

(1) The name of any commercially available claims editing software product that the health plan, contracting entity, covered entity, or payer utilizes;

(2) The standard or standards, pursuant to subsection (b) of this section, that the entity uses for claim edits;

(3) The payment percentages for modifiers; and

(4) Any significant edits, as determined by the health plan, contracting entity, covered entity, or payer, added to the claims software product after the effective date of this section, which are made at the request of the health plan, contracting entity, covered entity, or payer.

(i) Upon written request, the health plan, contracting entity, covered entity, or payer shall also directly provide the information in subsection (h) of this

section to a health care provider who is a participating member in the health plan's, contracting entity's, covered entity's, or payer's provider network.

(j) For purposes of this section, "health plan" includes a workers' compensation policy of a casualty insurer licensed to do business in Vermont.

(k) ~~Prior to the effective date of subsections (b) and (c) of this section, MVP Healthcare is requested to convene~~ Blue Cross and Blue Shield of Vermont and the Vermont Medical Society are requested to continue convening a work group consisting of health plans, health care providers, state agencies, and other interested parties to study the edit standards in subsection (b) of this section, the edit standards in national class action settlements, and edit standards and edit transparency standards established by other states to determine the most appropriate way to ensure that health care providers can access information about the edit standards applicable to the health care services they provide. ~~No later than January 1, 2012, the~~ The work group is requested to ~~report its findings and recommendations, including any recommendations for legislative changes to subsections (b) and (c) of this section,~~ provide an annual progress report to the house committee on health care and the senate ~~committee~~ committees on health and welfare and on finance.

(l) With respect to the work group established under subsection (k) of this section and to the extent required to avoid violations of federal antitrust laws, the department shall facilitate and supervise the participation of members of the work group.

* * * Mental Health and Substance Abuse * * *

Sec. 11b. 18 V.S.A. chapter 221, subchapter 8 is added to read:

Subchapter 8. Mental Health and Substance Abuse Treatment Quality Assurance

§ 9461. QUALITY INDICATORS

(a) The department of banking, insurance, securities, and health care administration shall develop performance quality indicators to evaluate and ensure that health insurers, including managed care organizations that contract with health insurers to administer the insurers' mental health benefits, comply with the provisions of 8 V.S.A. § 4089b and related rules.

(b) The departments of health and of mental health shall develop clinical and performance quality measures to evaluate and ensure that health care professionals and health care facilities in Vermont provide high quality mental health and substance abuse treatment services to their patients.

§ 9462. QUALITY IMPROVEMENT PROJECTS

In addition to reviewing mental health and substance abuse treatment data pursuant to subdivision 9375(b)(12) of this title, the Green Mountain Care board shall consider the results of any quality improvement projects not otherwise confidential or privileged undertaken by managed care organizations for mental health and substance abuse care and treatment pursuant to 8 V.S.A. § 4089b(d)(1)(B)(vii) and subsection 9414(i) of this title.

Sec. 11c. 8 V.S.A. § 4089b(c) is amended to read:

(c) A health insurance plan shall provide coverage for treatment of a mental health condition and shall:

(1) not establish any rate, term, or condition that places a greater burden on an insured for access to treatment for a mental health condition than for access to treatment for other health conditions, including no greater co-payment for primary mental health care or services than the co-payment applicable to care or services provided by a primary care provider under an insured's policy and no greater co-payment for specialty mental health care or services than the co-payment applicable to care or services provided by a specialist provider under an insured's policy;

* * *

Sec. 11d. PARITY FOR PRIMARY MENTAL HEALTH CARE SERVICES; RULEMAKING

To carry out the purposes of Sec. 11c of this act, the commissioner of banking, insurance, securities, and health care administration shall adopt rules pursuant to 3 V.S.A. chapter 25, distinguishing between primary and specialty mental health services, taking into consideration factors such as mental health care providers' scope of practice and patterns of patient visitation.

Sec. 11e. 18 V.S.A. § 7259 is added to chapter 174 to read:

§ 7259. MENTAL HEALTH CARE OMBUDSMAN

(a) The department of mental health shall establish the office of the mental health care ombudsman within the agency designated by the governor as the protection and advocacy system for the state pursuant to 42 U.S.C. § 10801 et seq. The agency may execute the duties of the office of the mental health care ombudsman, including authority to assist individuals with mental health conditions and to advocate for policy issues on their behalf.

(b) The agency may provide a report annually to the general assembly regarding the implementation of this section.

(c) In the event the protection and advocacy system ceases to provide federal funding to the agency for the purposes described in this section, the general assembly may allocate sufficient funds to maintain the office of the mental health care ombudsman.

* * * Prior Authorization * * *

Sec. 11f. 18 V.S.A. § 9418b is amended to read:

§ 9418b. PRIOR AUTHORIZATION

* * *

(g)(1) Notwithstanding any provision of law to the contrary, on and after March 1, 2014, a health plan shall accept only the uniform prior authorization forms developed pursuant to subdivision (3) of this subsection when requiring prior authorization of prescription drugs, medical procedures, and medical tests. If a health plan fails to utilize or accept a uniform prior authorization form, or fails to respond within two business days of receipt of a completed prior authorization request from a prescribing health care provider, the prior authorization request shall be deemed to have been granted.

(2) No later than September 1, 2013, the department of banking, insurance, securities, and health care administration shall develop two uniform prior authorization forms. One form shall be used for prior authorization requests for prescription drugs, and one form shall be used for prior authorization requests for medical procedures and medical tests. Notwithstanding any provision of law to the contrary, beginning March 1, 2014, each prescribing health care provider licensed to practice in Vermont shall use the applicable uniform prior authorization forms to request prior authorization for coverage of prescription drugs, medical procedures, and medical tests, and each health plan licensed to do business in Vermont shall accept the uniform prior authorization forms as sufficient to request prior authorization for the applicable benefits.

(3) To the extent consistent with federal law, each uniform prior authorization form developed pursuant to subdivision (2) of this subsection shall meet the following criteria:

(A) The form shall not exceed two pages.

(B) The form shall be made available electronically by the department and by the health plan.

(C) The completed form may be submitted electronically from the prescribing health care provider to the health plan.

(D) The department shall develop the form with input from interested parties from at least one public meeting.

(E) In developing the uniform prior authorization form, the department shall take into consideration the following:

(i) existing prior authorization forms established by the federal Centers for Medicare and Medicaid Services, by the department of Vermont health access, and by insurance and Medicaid departments and agencies in other states; and

(ii) national standards related to electronic prior authorization, if available.

* * * Certificate of Need * * *

Sec. 12. 18 V.S.A. § 9375(b) is amended to read:

(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 this chapter ~~13, subchapter 2 of this title~~ are consistent with such reforms.

* * *

(6) ~~Review and approve recommendations from the commissioner of banking, insurance, securities, and health care administration, within 10 business~~ Approve or disapprove requests for health insurance rates pursuant to 8 V.S.A. § 4062 within 30 days of receipt of ~~such recommendations and~~ a request for approval from the commissioner of banking, insurance, securities, and health care administration, 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)~~(7) Review and establish hospital budgets pursuant to chapter 221, subchapter 7 of this title, beginning July 1, 2012~~; and~~.

~~(C)~~(8) Review and approve, approve with conditions, or deny applications for certificates of need pursuant to chapter 221, subchapter 5 of this title, beginning ~~July 1, 2012~~ January 1, 2013.

~~(7)~~(9) 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)~~(10) Develop and maintain a method for evaluating systemwide performance and quality, including identification of the appropriate process and outcome measures:

* * *

(11) Develop the unified health care budget pursuant to section 9375a of this title.

(12) Review data regarding mental health and substance abuse treatment reported to the department of banking, insurance, securities, and health care administration pursuant to 8 V.S.A. § 4089b(g)(1)(G) and discuss such information, as appropriate, with the mental health technical advisory group established pursuant to subdivision 9374(e)(2) of this title.

Sec. 13. 18 V.S.A. § 9402 is amended to read:

§ 9402. DEFINITIONS

As used in this chapter, unless otherwise indicated:

* * *

(5) "Expenditure analysis" means the expenditure analysis developed pursuant to section ~~9406~~ 9375a of this title.

(6) "Health care facility" means all institutions, whether public or private, proprietary or nonprofit, which offer diagnosis, treatment, inpatient, or ambulatory care to two or more unrelated persons, and the buildings in which those services are offered. The term shall not apply to any facility operated by religious groups relying solely on spiritual means through prayer or healing, but includes all institutions included in subdivision ~~9432(10)~~ 9432(8) of this title, except health maintenance organizations.

* * *

(10) "Health resource allocation plan" means the plan adopted by the commissioner of banking, insurance, securities, and health care administration under section 9405 of this title.

* * *

(15) "Unified health care budget" means the budget established in accordance with section ~~9406~~ 9375a of this title.

(16) "State health plan" means the plan developed under section 9405 of this title.

(17) "Green Mountain Care board" or "board" means the Green Mountain Care board established in chapter 220 of this title.

Sec. 14. 18 V.S.A. § 9412 is amended to read:

§ 9412. ENFORCEMENT

(a) In order to carry out the duties under this chapter, ~~the commissioner,~~ in addition to the powers provided in this chapter, in chapter 220 of this title, and in Title 8, the commissioner and the board may examine the books, accounts, and papers of health insurers, health care providers, health care facilities, health plans, contracting entities, covered entities, and payers, as defined in section 9418 of this title, and may administer oaths and may issue subpoenas to a person to appear and testify or to produce documents or things.

* * *

Sec. 14a. 18 V.S.A. § 9431(b) is amended to read:

(b) In order to carry out the policy goals of this subchapter, the ~~department~~ board shall adopt by rule by ~~October 1, 2005~~ January 1, 2013, certificate of need procedural guidelines to assist in its decision-making. The guidelines shall be consistent with the state health plan and the health resource allocation plan.

Sec. 15. 18 V.S.A. § 9433 is amended to read:

§ 9433. ADMINISTRATION

(a) The ~~commissioner~~ board shall exercise such duties and powers as shall be necessary for the implementation of the certificate of need program as provided by and consistent with this subchapter. The ~~commissioner~~ board shall issue or deny certificates of need.

(b) The ~~commissioner~~ board may adopt rules governing the review of certificate of need applications consistent with and necessary to the proper administration of this subchapter. All rules shall be adopted pursuant to 3 V.S.A. chapter 25 ~~of Title 3~~.

(c) The ~~commissioner~~ board shall consult with hospitals, nursing homes and professional associations and societies, the secretary of human services, and other interested parties in matters of policy affecting the administration of this subchapter.

(d) The ~~commissioner~~ board shall administer the certificate of need program.

Sec. 16. 18 V.S.A. § 9434 is amended to read:

§ 9434. CERTIFICATE OF NEED; GENERAL RULES

(a) A health care facility other than a hospital shall not develop, or have developed on its behalf a new health care project without issuance of a certificate of need by the ~~commissioner~~ board. For purposes of this subsection, a "new health care project" includes the following:

* * *

(3) The offering of any home health service, or the transfer or conveyance of more than a 50 percent ownership interest ~~of a home health agency~~ in a health care facility other than a hospital.

(4) The purchase, lease, or other comparable arrangement of a single piece of diagnostic and therapeutic equipment for which the cost, or in the case of a donation the value, is in excess of $1,000,000.00. For purposes of this subdivision, the purchase or lease of one or more articles of diagnostic or therapeutic equipment which are necessarily interdependent in the performance of their ordinary functions or which would constitute any health care facility included under subdivision ~~9432(7)(B)~~9432(8)(B) of this title, as determined by the ~~commissioner~~ board, shall be considered together in calculating the amount of an expenditure. The ~~commissioner's~~ board's determination of functional interdependence of items of equipment under this subdivision shall have the effect of a final decision and is subject to appeal under ~~this subchapter~~ section 9381 of this title.

* * *

(b) A hospital shall not develop or have developed on its behalf a new health care project without issuance of a certificate of need by the ~~commissioner~~ board. For purposes of this subsection, a "new health care project" includes the following:

* * *

(2) The purchase, lease, or other comparable arrangement of a single piece of diagnostic and therapeutic equipment for which the cost, or in the case of a donation the value, is in excess of $1,000,000.00. For purposes of this subdivision, the purchase or lease of one or more articles of diagnostic or therapeutic equipment which are necessarily interdependent in the performance of their ordinary functions or which would constitute any health care facility included under subdivision ~~9432(7)(B)~~9432(8)(B) of this title, as determined by the ~~commissioner~~ board, shall be considered together in calculating the amount of an expenditure. The ~~commissioner's~~ board's determination of functional interdependence of items of equipment under this subdivision shall

have the effect of a final decision and is subject to appeal under ~~this subchapter~~ section 9381 of this title.

* * *

(c) In the case of a project which requires a certificate of need under this section, expenditures for which are anticipated to be in excess of $30,000,000.00, the applicant first shall secure a conceptual development phase certificate of need, in accordance with the standards and procedures established in this subchapter, which permits the applicant to make expenditures for architectural services, engineering design services, or any other planning services, as defined by the ~~commissioner~~ board, needed in connection with the project. Upon completion of the conceptual development phase of the project, and before offering or further developing the project, the applicant shall secure a final certificate of need, in accordance with the standards and procedures established in this subchapter. Applicants shall not be subject to sanctions for failure to comply with the provisions of this subsection if such failure is solely the result of good faith reliance on verified project cost estimates issued by qualified persons, which cost estimates would have led a reasonable person to conclude the project was not anticipated to be in excess of $30,000,000.00 and therefore not subject to this subsection. The provisions of this subsection notwithstanding, expenditures may be made in preparation for obtaining a conceptual development phase certificate of need, which expenditures shall not exceed $1,500,000.00 for non-hospitals or $3,000,000.00 for hospitals.

(d) If the ~~commissioner~~ board determines that a person required to obtain a certificate of need under this subchapter has separated a single project into components in order to avoid cost thresholds or other requirements under this subchapter, the person shall be required to submit an application for a certificate of need for the entire project, and the ~~commissioner~~ board may proceed under section 9445 of this title. The ~~commissioner's~~ board's determination under this subsection shall have the effect of a final decision and is subject to appeal under ~~this subchapter~~ section 9381 of this title.

(e) Beginning January 1, ~~2005~~ 2013, and biannually thereafter, the ~~commissioner~~ board may by rule adjust the monetary jurisdictional thresholds contained in this section. In doing so, the ~~commissioner~~ board shall reflect the same categories of health care facilities, services, and programs recognized in this section. Any adjustment by the ~~commissioner~~ board shall not exceed the consumer price index rate of inflation.

Sec. 16a. 18 V.S.A. § 9435 is amended to read:

§ 9435. EXCLUSIONS

* * *

(b) Excluded from this subchapter are community mental health or developmental disability center health care projects proposed by a designated agency and supervised by the commissioner of mental health or the commissioner of disabilities, aging, and independent living, or both, depending on the circumstances and subject matter of the project, provided the appropriate commissioner or commissioners make a written approval of the proposed health care project. The designated agency shall submit a copy of the approval with a letter of intent to the ~~commissioner~~ board.

* * *

(e) Upon request under 8 V.S.A. § 5102(f) by a Program for All-Inclusive Care for the Elderly (PACE) authorized under federal Medicare law, or by a Prepaid Inpatient Health Plan (PIHP) or Prepaid Ambulatory Health Plan (PAHP) established in accordance with federal Medicare or Medicaid laws and regulations, the ~~commissioner~~ board may approve the exemption of the PACE program, PIHP, or PAHP from the provisions of this subchapter and from any other provisions of this chapter if the ~~commissioner~~ board determines that the purposes of this subchapter and the purposes of any other provision of this chapter will not be materially and adversely affected by the exemption. In approving an exemption, the ~~commissioner~~ board may prescribe such terms and conditions as the ~~commissioner~~ board deems necessary to carry out the purposes of this subchapter and this chapter.

Sec. 17. 18 V.S.A. § 9437 is amended to read:

§ 9437. CRITERIA

A certificate of need shall be granted if the applicant demonstrates and the ~~commissioner~~ board finds that:

(1) the application is consistent with the health resource allocation plan;

(2) the cost of the project is reasonable, because:

(A) the applicant's financial condition will sustain any financial burden likely to result from completion of the project;

(B) the project will not result in an undue increase in the costs of medical care. In making a finding under this subdivision, the ~~commissioner~~ board shall consider and weigh relevant factors, including:

* * *

Sec. 18. 18 V.S.A. § 9439 is amended to read:

§ 9439. COMPETING APPLICATIONS

(a) The ~~commissioner~~ board shall provide by rule a process by which any person wishing to offer or develop a new health care project may submit a competing application when a substantially similar application is pending. The competing application must be filed and completed in a timely manner, and the original application and all competing applications shall be reviewed concurrently. A competing applicant shall have the same standing for administrative and judicial review under this subchapter as the original applicant.

(b) When a letter of intent to compete has been filed, the review process is suspended and the time within which a decision must be made as provided in subdivision 9440(d)(4) of this title is stayed until the competing application has been ruled complete or for a period of 55 days from the date of notification under subdivision 9440(c)(8) as to the original application, whichever is shorter.

(c) Nothing in this subchapter shall be construed to restrict the ~~commissioner~~ board to granting a certificate of need to only one applicant for a new health care project.

(d) The ~~commissioner~~ board may, by rule, establish regular review cycles for the addition of beds for skilled nursing or intermediate care.

(e) In the case of proposals for the addition of beds for skilled nursing or intermediate care, the ~~commissioner~~ board shall identify in advance of the review the number of additional beds to be considered in that cycle or the maximum additional financial obligation to be incurred by the agencies of the state responsible for financing long-term care. The number of beds shall be consistent with the number of beds determined to be necessary by the health resource management plan or state health plan, whichever applies, and shall take into account the number of beds needed to develop a new, efficient facility.

(f) Unless an application meets the requirements of subsection 9440(e) of this title, the ~~commissioner~~ board shall consider disapproving a certificate of need application for a hospital if a project was not identified prospectively as needed at least two years prior to the time of filing in the hospital's four-year capital plan required under subdivision 9454(a)(6) of this title. The ~~commissioner~~ board shall review all hospital four-year capital plans as part of the review under subdivision 9437(2)(B) of this title.

Sec. 19. 18 V.S.A. § 9440 is amended to read:

§ 9440. PROCEDURES

(a) Notwithstanding 3 V.S.A. chapter 25 ~~of Title 3~~, a certificate of need application shall be in accordance with the procedures of this section.

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

(A) institutional utilization data, including an explanation of the unique character of services and a description of case mix;

(B) a population based description of the institution's service area;

(C) the applicant's financial statements;

(D) third party reimbursement data;

(E) copies of feasibility studies, surveys, designs, plans, working drawings, or specifications developed in relation to the proposed project;

(F) annual reports and four-year long range plans;

(G) leases, contracts, or agreements of any kind that might affect quality of care or the nature of services provided;

(H) the status of all certificates issued to the applicant under this subchapter during the three years preceding the date of the application. As a condition to deeming an application complete under this section, the ~~commissioner~~ board may require that an applicant meet with the ~~commissioner~~ board to discuss the resolution of the applicant's compliance with those prior certificates; and

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

(2) In addition to the information required for submission, an applicant may submit, and the ~~commissioner~~ board shall consider, any other information relevant to the application or the review criteria.

(c) The application process shall be as follows:

(1) Applications shall be accepted only at such times as the ~~commissioner~~ board shall establish by rule.

(2)(A) Prior to filing an application for a certificate of need, an applicant shall file an adequate letter of intent with the ~~commissioner~~ board no less than

30 days or, in the case of review cycle applications under section 9439 of this title, no less than 45 days prior to the date on which the application is to be filed. The letter of intent shall form the basis for determining the applicability of this subchapter to the proposed expenditure or action. A letter of intent shall become invalid if an application is not filed within six months of the date that the letter of intent is received or, in the case of review cycle applications under section 9439 of this title, within such time limits as the ~~commissioner~~ board shall establish by rule. Except for requests for expedited review under subdivision (5) of this subsection, public notice of such letters of intent shall be provided in newspapers having general circulation in the region of the state affected by the letter of intent. The notice shall identify the applicant, the proposed new health care project, and the date by which a competing application or petition to intervene must be filed. In addition, a copy of the public notice shall be sent to the clerk of the municipality in which the health care facility is located. Upon receipt, the clerk shall post the notice in or near the clerk's office and in at least two other public places in the municipality.

(B) Applicants who agree that their proposals are subject to jurisdiction pursuant to section 9434 of this title shall not be required to file a letter of intent pursuant to subdivision (A) of this subdivision (2) and may file an application without further process. Public notice of the application shall be provided upon filing as provided for in subdivision (A) of this subdivision (2) for letters of intent.

(3) The ~~commissioner~~ board shall review each letter of intent and, if the letter contains the information required for letters of intent as established by the ~~commissioner~~ board by rule, within 30 days, determine whether the project described in the letter will require a certificate of need. If the ~~commissioner~~ board determines that a certificate of need is required for a proposed expenditure or action, an application for a certificate of need shall be filed before development of the project begins.

(4) Within 90 days of receipt of an application, the ~~commissioner~~ board 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~~ board 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~~ board's notice that additional information is required shall not be included within the maximum review period permitted under this subsection. The ~~commissioner~~ board 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.

(5) An applicant seeking expedited review of a certificate of need application may simultaneously file a letter of intent and an application with the ~~commissioner~~ board. Upon making a determination that the proposed project may be uncontested and does not substantially alter services, as defined by rule, or upon making a determination that the application relates to a health care facility affected by bankruptcy proceedings, the ~~commissioner~~ board shall issue public notice of the application and the request for expedited review and identify a date by which a competing application or petition for interested party status must be filed. If a competing application is not filed and no person opposing the application is granted interested party status, the ~~commissioner~~ board may formally declare the application uncontested and may issue a certificate of need without further process, or with such abbreviated process as the ~~commissioner~~ board deems appropriate. If a competing application is filed or a person opposing the application is granted interested party status, the applicant shall follow the certificate of need standards and procedures in this section, except that in the case of a health care facility affected by bankruptcy proceedings, the ~~commissioner~~ board after notice and an opportunity to be heard may issue a certificate of need with such abbreviated process as the ~~commissioner~~ board deems appropriate, notwithstanding the contested nature of the application.

(6) If an applicant fails to respond to an information request under subdivision (4) of this subsection within six months or, in the case of review cycle applications under section 9439 of this title, within such time limits as the ~~commissioner~~ board shall establish by rule, the application will be deemed inactive unless the applicant, within six months, requests in writing that the application be reactivated and the ~~commissioner~~ board grants the request. If an applicant fails to respond to an information request within 12 months or, in the case of review cycle applications under section 9439 of this title, within such time limits as the ~~commissioner~~ board shall establish by rule, the application will become invalid unless the applicant requests, and the ~~commissioner~~ board grants, an extension.

(7) For purposes of this section, "interested party" status shall be granted to persons or organizations representing the interests of persons who demonstrate that they will be substantially and directly affected by the new health care project under review. Persons able to render material assistance to the ~~commissioner~~ board by providing nonduplicative evidence relevant to the determination may be admitted in an amicus curiae capacity but shall not be considered parties. A petition seeking party or amicus curiae status must be filed within 20 days following public notice of the letter of intent, or within 20 days following public notice that the application is complete. The ~~commissioner~~ board shall grant or deny a petition to intervene under this

subdivision within 15 days after the petition is filed. The ~~commissioner~~ board shall grant or deny the petition within an additional 30 days upon finding that good cause exists for the extension. Once interested party status is granted, the ~~commissioner~~ board shall provide the information necessary to enable the party to participate in the review process~~. Such information includes~~, including information about procedures, copies of all written correspondence, and copies of all entries in the application record.

(8) Once an application has been deemed to be complete, public notice of the application ~~will~~ shall be provided in newspapers having general circulation in the region of the state affected by the application. The notice shall identify the applicant, the proposed new health care project, and the date by which a competing application under section 9439 of this title or a petition to intervene must be filed.

(9) The health care ombudsman's office established under 8 V.S.A. chapter 107, subchapter ~~1A of chapter 107 of Title 8~~ or, in the case of nursing homes, the long-term care ombudsman's office established under 33 V.S.A. § 7502, is authorized but not required to participate in any administrative or judicial review of an application under this subchapter and shall be considered an interested party in such proceedings upon filing a notice of intervention with the ~~commissioner~~ board.

(d) The review process shall be as follows:

(1) The ~~commissioner~~ board shall review:

(A) The application materials provided by the applicant.

(B) Any information, evidence, or arguments raised by interested parties or amicus curiae, and any other public input.

(2) ~~The department~~ Except as otherwise provided in subdivision (c)(5) and subsection (e) of this section, the board shall hold a public hearing during the course of a review.

(3) The ~~commissioner~~ board 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~~ board 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.

(4) After reviewing each application, the ~~commissioner~~ board 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~~ board may impose

in furtherance of the purposes of this subchapter, or a denial. In granting a partial approval or a conditional approval the ~~commissioner~~ board 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.

(5) If the ~~commissioner~~ board proposes to render a final decision denying an application in whole or in part, or approving a contested application, the ~~commissioner~~ board 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~~ board. The ~~commissioner~~ board may also permit the parties to present additional evidence.

(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.

(7) The ~~commissioner~~ board shall establish rules governing the compilation of the record used by the ~~commissioner~~ board in connection with decisions made on applications filed and certificates issued under this subchapter.

(e) The ~~commissioner~~ board 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~~ board 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~~ board 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~~ board under this section may appeal ~~the decision to the supreme court~~ pursuant to the provisions of section 9381 of this title.

(g) If the ~~commissioner~~ board has reason to believe that the applicant has violated a provision of this subchapter, a rule adopted pursuant to this subchapter, or the terms or conditions of a prior certificate of need, the ~~commissioner~~ board may take into consideration such violation in determining whether to approve, deny, or approve the application subject to conditions. The applicant shall be provided an opportunity to contest whether such

violation occurred, unless such an opportunity has already been provided. The ~~commissioner~~ board may impose as a condition of approval of the application that a violation be corrected or remediated before the certificate may take effect.

Sec. 20. 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~~ board, and any testimony taken before the ~~commissioner~~ board or a hearing officer appointed by the ~~commissioner~~ board shall be submitted or taken under oath. The form and manner of the submission shall be prescribed by the ~~commissioner~~ board. The authority granted to the ~~commissioner~~ board under this section is in addition to any other authority granted to the ~~commissioner~~ board 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~~ board 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~~ board or a hearing officer appointed by the ~~commissioner~~ board or who knowingly testifies falsely in any proceeding before the ~~commissioner~~ board or a hearing officer appointed by the ~~commissioner~~ board shall be guilty of perjury and punished as provided in 13 V.S.A. § 2901.

Sec. 20a. 18 V.S.A. § 9440b is amended to read:

§ 9440b. INFORMATION TECHNOLOGY; REVIEW PROCEDURES

Notwithstanding the procedures in section 9440 of this title, upon approval by the general assembly of the health information technology plan developed under section 9351 of this title, the ~~commissioner~~ board shall establish by rule standards and expedited procedures for reviewing applications for the purchase or lease of health care information technology that otherwise would be subject to review under this subchapter. Such applications may not be granted or approved unless they are consistent with the health information technology plan and the health resource allocation plan. The ~~commissioner's~~ board's rules may include a provision requiring that applications be reviewed by the health information advisory group authorized under section 9352 of this title. The

advisory group shall make written findings and a recommendation to the ~~commissioner~~ board in favor of or against each application.

Sec. 20b. 18 V.S.A. § 9441 is amended to read:

§ 9441. FEES

(a) The ~~commissioner~~ board shall charge a fee for the filing of certificate of need applications. The fee shall be calculated at the rate of 0.125 percent of project costs.

(b) The maximum fee shall not exceed $20,000.00 and the minimum filing fee is $250.00 regardless of project cost. No fee shall be charged on projects amended as part of the review process.

(c) The ~~commissioner~~ board may retain such additional professional or other staff as needed to assist in particular proceedings under this subchapter and may assess and collect the reasonable expenses for such additional staff from the applicant. The ~~commissioner~~ board, on petition by the applicant and opportunity for hearing, may reduce such assessment upon a proper showing by the applicant that such expenses were excessive or unnecessary. The authority granted to the ~~commissioner~~ board under this section is in addition to any other authority granted to the ~~commissioner~~ board under law.

Sec. 20c. 18 V.S.A. § 9442 is amended to read:

§ 9442. BONDS

In any circumstance in which bonds are to be or may be issued in connection with a new health care project subject to the provisions of this subchapter, the certificate of need shall include the requirement that all information required to be provided to the bonding agency shall be provided also to the ~~commissioner~~ board within a reasonable period of time. The ~~commissioner~~ board shall be authorized to obtain any information from the bonding agency deemed necessary to carry out the duties of monitoring and oversight of a certificate of need. The bonding agency shall consider the recommendations of the ~~commissioner~~ board in connection with any such proposed authorization.

Sec. 20d. 18 V.S.A. § 9443 is amended to read:

§ 9443. EXPIRATION OF CERTIFICATES OF NEED

(a) Unless otherwise specified in the certificate of need, a project shall be implemented within five years or the certificate shall be invalid.

(b) No later than 180 days before the expiration date of a certificate of need, an applicant that has not yet implemented the project approved in the certificate of need may petition the ~~commissioner~~ board for an extension of the

implementation period. The ~~commissioner~~ board may grant an extension in ~~his or her~~ its discretion.

(c) Certificates of need shall expire on the date the ~~commissioner~~ board accepts the final implementation report filed in connection with the project implemented pursuant to the certificate.

* * *

Sec. 21. 18 V.S.A. § 9444 is amended to read:

§ 9444. REVOCATION OF CERTIFICATES; MATERIAL CHANGE

(a) The ~~commissioner~~ board may revoke a certificate of need for substantial noncompliance with the scope of the project as designated in the application, or for failure to comply with the conditions set forth in the certificate of need granted by the ~~commissioner~~ board.

(b)(1) In the event that after a project has been approved, its proponent wishes to materially change the approved project, all such changes are subject to review under this subchapter.

(2) Applicants shall notify the ~~commissioner~~ board of a nonmaterial change to the approved project. If the ~~commissioner~~ board decides to review a nonmaterial change, ~~he or she~~ the board may provide for any necessary process, including a public hearing, before approval. Where the ~~commissioner~~ board decides not to review a change, such change will be deemed to have been granted a certificate of need.

Sec. 21a. 18 V.S.A. § 9445 is amended to read:

§ 9445. ENFORCEMENT

(a) Any person who offers or develops any new health care project within the meaning of this subchapter without first obtaining a certificate of need as required herein, or who otherwise violates any of the provisions of this subchapter, may be subject to the following administrative sanctions by the ~~commissioner~~ board, after notice and an opportunity to be heard:

(1) The ~~commissioner~~ board may order that no license or certificate permitted to be issued by the department or any other state agency may be issued to any health care facility to operate, offer, or develop any new health care project for a specified period of time, or that remedial conditions be attached to the issuance of such licenses or certificates.

(2) The ~~commissioner~~ board may order that payments or reimbursements to the entity for claims made under any health insurance policy, subscriber contract, or health benefit plan offered or administered by any public or private health insurer, including the Medicaid program and any

other health benefit program administered by the state be denied, reduced, or limited, and in the case of a hospital that the hospital's annual budget approved under subchapter 7 of this chapter be adjusted, modified, or reduced.

(b) In addition to all other sanctions, if any person offers or develops any new health care project without first having been issued a certificate of need or certificate of exemption therefore, or violates any other provision of this subchapter or any lawful rule or regulation promulgated thereunder, the board, the commissioner, the state health care ombudsman, the state long-term care ombudsman, and health care providers ~~or~~ and consumers located in the state shall have standing to maintain a civil action in the superior court of the county wherein such alleged violation has occurred, or wherein such person may be found, to enjoin, restrain, or prevent such violation. Upon written request by the ~~commissioner~~ board, it shall be the duty of the attorney general of the state to furnish appropriate legal services and to prosecute an action for injunctive relief to an appropriate conclusion, which shall not be reimbursed under subdivision (2) of this subsection.

(c) After notice and an opportunity for hearing, the ~~commissioner~~ board may impose on a person who knowingly violates a provision of this subchapter, or a rule or order adopted pursuant to this subchapter or 8 V.S.A. § 15, a civil administrative penalty of no more than $40,000.00, or in the case of a continuing violation, a civil administrative penalty of no more than $100,000.00 or one-tenth of one percent of the gross annual revenues of the health care facility, whichever is greater, which shall not be reimbursed under subdivision (a)(2) of this section, and the ~~commissioner~~ board may order the entity to cease and desist from further violations, and to take such other actions necessary to remediate a violation. A person aggrieved by a decision of the ~~commissioner~~ board under this subdivision may appeal ~~the commissioner's decision to the supreme court~~ under section 9381 of this title.

(d) The ~~commissioner~~ board shall adopt by rule criteria for assessing the circumstances in which a violation of a provision of this subchapter, a rule adopted pursuant to this subchapter, or the terms or conditions of a certificate of need require that a penalty under this section shall be imposed, and criteria for assessing the circumstances in which a penalty under this section may be imposed.

Sec. 22. 18 V.S.A. § 9446 is amended to read:

§ 9446. HOME HEALTH AGENCIES; GEOGRAPHIC SERVICE AREAS

The terms of a certificate of need relating to the boundaries of the geographic service area of a home health agency may be modified by the ~~commissioner~~ board, in consultation with the commissioner of aging and independent living, after notice and opportunity for hearing, or upon written

application to the ~~commissioner~~ board by the affected home health agencies or consumers, demonstrating a substantial need therefor. Service area boundaries may be modified by the ~~commissioner~~ board to take account of natural or physical barriers that may make the provision of existing services uneconomical or impractical, to prevent or minimize unnecessary duplication of services or facilities, or otherwise to promote the public interest. The ~~commissioner~~ board shall issue an order granting such application only upon a finding that the granting of such application is consistent with the purposes of 33 V.S.A. chapter 63, subchapter 1A ~~of chapter 63 of Title 33~~ and the health resource allocation plan established under section 9405 of this title and after notice and an opportunity to participate on the record by all interested persons, including affected local governments, pursuant to rules adopted by the ~~commissioner~~ board.

* * * Hospital Budgets * * *

Sec. 23. 18 V.S.A. chapter 221, subchapter 7 is amended to read:

Subchapter 7. Hospital Budget Review

* * *

§ 9453. POWERS AND DUTIES

(a) The ~~commissioner~~ board shall:

* * *

(b) To effectuate the purposes of this subchapter the ~~commissioner~~ board may adopt rules under 3 V.S.A. chapter 25 ~~of Title 3~~.

§ 9454. HOSPITALS; DUTIES

(a) Hospitals shall file the following information at the time and place and in the manner established by the ~~commissioner~~ board:

* * *

(7) such other information as the ~~commissioner~~ board may require.

* * *

§ 9456. BUDGET REVIEW

(a) The ~~commissioner~~ board shall conduct reviews of each hospital's proposed budget based on the information provided pursuant to this subchapter, and in accordance with a schedule established by the ~~commissioner~~ board. The ~~commissioner~~ board shall require the submission of documentation certifying that the hospital is participating in the Blueprint for Health if required by section 708 of this title.

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

* * *

(10) require each hospital to provide information on administrative costs, as defined by the ~~commissioner~~ board, including specific information on the amounts spent on marketing and advertising costs.

(c) Individual hospital budgets established under this section shall:

(1) be consistent with the health resource allocation plan;

(2) take into consideration national, regional, or instate peer group norms, according to indicators, ratios, and statistics established by the ~~commissioner~~ board;

* * *

(d)(1) Annually, the ~~commissioner~~ board shall establish a budget for each hospital by September 15, followed by a written decision by October 1. Each hospital shall operate within the budget established under this section.

(2)(A) It is the general assembly's intent that hospital cost containment conduct is afforded state action immunity under applicable federal and state antitrust laws, if:

(i) the ~~commissioner~~ board requires or authorizes the conduct in any hospital budget established by the ~~commissioner~~ board under this section;

(ii) the conduct is in accordance with standards and procedures prescribed by the ~~commissioner~~ board; and

(iii) the conduct is actively supervised by the ~~commissioner~~ board.

(B) A hospital's violation of the ~~commissioner's~~ board's standards and procedures shall be subject to enforcement pursuant to subsection (h) of this section.

(e) The ~~commissioner~~ board may establish~~, by rule,~~ a process to define, on an annual basis, criteria for hospitals to meet, such as utilization and inflation benchmarks. The ~~commissioner~~ board may waive one or more of the review processes listed in subsection (b) of this section.

(f) The ~~commissioner~~ board may, upon application, adjust a budget established under this section upon a showing of need based upon exceptional or unforeseen circumstances in accordance with the criteria and processes established under section 9405 of this title.

(g) The ~~commissioner~~ board may request, and a hospital shall provide, information determined by the ~~commissioner~~ board to be necessary to determine whether the hospital is operating within a budget established under

this section. For purposes of this subsection, subsection (h) of this section, and subdivision 9454(a)(7) of this title, the ~~commissioner's~~ board's authority shall extend to an affiliated corporation or other person in the control of or controlled by the hospital to the extent that such authority is necessary to carry out the purposes of this subsection, subsection (h) of this section, or subdivision 9454(a)(7) of this title. As used in this subsection, a rebuttable presumption of "control" is created if the entity, hospital, or other person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 20 percent or more of the voting securities or membership interest or other governing interest of the hospital or other controlled entity.

(h)(1) If a hospital violates a provision of this section, the ~~commissioner~~ board may maintain an action in the superior court of the county in which the hospital is located to enjoin, restrain or prevent such violation.

(2)(A) After notice and an opportunity for hearing, the ~~commissioner~~ board may impose on a person who knowingly violates a provision of this subchapter, or a rule adopted pursuant to this subchapter, a civil administrative penalty of no more than $40,000.00, or in the case of a continuing violation, a civil administrative penalty of no more than $100,000.00 or one-tenth of one percent of the gross annual revenues of the hospital, whichever is greater. This subdivision shall not apply to violations of subsection (d) of this section caused by exceptional or unforeseen circumstances.

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

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

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

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

(ii) Orders issued under this subdivision (2)(B) shall be issued after notice and an opportunity to be heard, except where the ~~commissioner~~ board finds that a hospital's financial or other emergency circumstances pose an immediate threat of harm to the public or to the financial condition of the hospital. Where there is an immediate threat, the ~~commissioner~~ board may issue orders under this subdivision (2)(B) without written or oral notice to the hospital. Where an order is issued without notice, the hospital shall be notified of the right to a hearing at the time the order is issued. The hearing shall be held within 30 days of receipt of the hospital's request for a hearing, and a decision shall be issued within 30 days after conclusion of the hearing. The

~~commissioner~~ board may increase the time to hold the hearing or to render the decision for good cause shown. Hospitals may appeal any decision in this subsection to superior court. Appeal shall be on the record as developed by the ~~commissioner~~ board in the administrative proceeding and the standard of review shall be as provided in 8 V.S.A. § 16.

(3)(A) The ~~commissioner~~ board 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~~ board and required pursuant to this subchapter. The authority granted to the ~~commissioner~~ board under this subsection is in addition to any other authority granted to the ~~commissioner~~ board under law.

(B) A person who knowingly makes a false statement under oath or who knowingly submits false information under oath to the ~~commissioner~~ board or to a hearing officer appointed by the ~~commissioner~~ board or who knowingly testifies falsely in any proceeding before the ~~commissioner~~ board or a hearing officer appointed by the ~~commissioner~~ board shall be guilty of perjury and punished as provided in 13 V.S.A. § 2901.

* * *

* * * Provider Bargaining Groups * * *

Sec. 24. 18 V.S.A. § 9409 is amended to read:

§ 9409. HEALTH CARE PROVIDER BARGAINING GROUPS

(a) The commissioner may approve the creation of one or more health care provider bargaining groups, consisting of health care providers who choose to participate. A bargaining group is authorized to negotiate~~,~~ on behalf of all participating providers with the commissioner, the secretary of administration, the secretary of human services, the Green Mountain Care Board, or the commissioner of labor with respect to any matter in this chapter; chapter 13, 219, 220, or 222 of this title; ~~chapters~~ 21 V.S.A. chapter 9 ~~and 11 of Title 21~~; and ~~chapter~~ 33 V.S.A. chapters 18 and 19 ~~of Title 33, in regard~~ with respect to provider regulation, provider reimbursement, administrative simplification, information technology, workforce planning, or quality of health care.

* * *

(c) The rules relating to negotiations shall include a nonbinding arbitration process to assist in the resolution of disputes. Nothing in this section shall be construed to limit the authority of the commissioner, the commissioner of labor, the secretary of administration, the Green Mountain Care board, or the secretary of human services to reject the recommendation or decision of the arbiter.

* * * Medical Malpractice Reform * * *

Sec. 24a. 12 V.S.A. § 1051 is added to read:

§ 1051. CERTIFICATE OF MERIT

(a) No civil action shall be filed to recover damages resulting from personal injury or wrongful death occurring on or after February 1, 2013, in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action files a certificate of merit simultaneously with the filing of the complaint. In the certificate of merit, the attorney or plaintiff shall certify that he or she has consulted with a health care provider qualified pursuant to the requirements of Rule 702 of the Vermont Rules of Evidence and any other applicable standard, and that, based on the information reasonably available at the time the opinion is rendered, the health care provider has:

(1) Described the applicable standard of care;

(2) Indicated that based on reasonably available evidence, there is a reasonable likelihood that the plaintiff will be able to show that the defendant failed to meet that standard of care; and

(3) Indicated that there is a reasonable likelihood that the plaintiff will be able to show that the defendant's failure to meet the standard of care caused the plaintiff's injury.

(b) A plaintiff may satisfy this requirement through multiple consultations that collectively meet the requirements of subsection (a) of this section.

(c) A plaintiff must certify to having consulted with a health care provider as set forth in subsection (a) of this section with respect to each defendant identified in the complaint.

(d) Upon petition to the clerk of the court where the civil action will be filed, an automatic 90-day extension of the statute of limitations shall be granted to allow the reasonable inquiry required by this section.

(e) The failure to file the certificate of merit as required by this section shall be grounds for dismissal of the action without prejudice, except in the rare instances in which a court determines that expert testimony is not required to establish a case for medical malpractice.

(f) The requirements set forth in this section shall not apply to claims where the sole allegation against the health care provider is failure to obtain informed consent.

Sec. 24b. SORRY WORKS! PILOT PROGRAM

(a) For purposes of this section:

(1) "Commissioner" means the commissioner of banking, insurance, securities, and health care administration.

(2) "Department" means the department of banking, insurance, securities, and health care administration.

(b) The Sorry Works! pilot program is established under the oversight of the commissioner. Any hospital that voluntarily chooses to participate shall be eligible for the program beginning on February 1, 2013. Hospitals may participate only with the approval of the hospital administration and the hospital's medical staff.

(c)(1) Under the program, participating hospitals and physicians shall promptly acknowledge and apologize for mistakes in patient care that result in harm and promptly offer fair settlements. If a settlement is accepted, further litigation with respect to the mistake shall be prohibited.

(2) Participating hospitals shall provide to the patient written notification of the patient's right to legal counsel. The notification shall include an affirmative declaration that no action was taken to dissuade a patient from using counsel for the negotiations.

(3) A communication between parties engaged in negotiation pursuant to this program is privileged and is not subject to discovery or admissible in evidence in any civil or administrative proceeding. Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in negotiations pursuant to this program.

(4) Participation in Sorry Works! shall toll the applicable statute of limitations in cases where such negotiations are unsuccessful. The commissioner shall establish guidelines for determining when negotiations under the Sorry Works! program begin and end for purposes of tolling the statute of limitations.

(d) Participating hospitals shall report to the department their total costs for medical malpractice verdicts, settlements, and defense litigation for the preceding five years to enable the department to determine average costs for that hospital during that period. The department shall develop standards and protocols to compare costs for cases handled by traditional means and cases handled under the Sorry Works! program for purposes of reporting to the general assembly as to the financial impact of the program.

(e) The commissioner shall establish criteria for the program, including the criteria under which hospitals shall be selected to participate. A program participant may withdraw from the program by notifying the commissioner. Any mistakes in patient care that result in harm that occurred prior to the

program participant notifying the commissioner shall continue to be subject to this section and the terms of the program.

(f) In consultation with hospitals, providers, and other interested parties, the department shall adopt rules to implement the pilot program no later than October 1, 2012.

(g) The department shall initiate a dialogue with insurers and encourage them to participate in the Sorry Works! pilot program with any hospital that is willing to commit to the program.

Sec. 24c. 12 V.S.A. chapter 215, subchapter 2 is added to read:

Subchapter 2. Mediation Prior to Filing a Complaint of Malpractice

§ 7011. PURPOSE

The purpose of mediation prior to filing a medical malpractice case is to identify and resolve meritorious claims and reduce areas of dispute prior to litigation, which will reduce the litigation costs, reduce the time necessary to resolve claims, provide fair compensation for meritorious claims, and reduce malpractice-related costs throughout the system.

§ 7012. PRE-SUIT MEDIATION; SERVICE

(a) A potential plaintiff may serve upon each known potential defendant a request to participate in pre-suit mediation prior to filing a civil action in tort or in contract alleging that an injury or death resulted from the negligence of a health care provider and to recover damages resulting from the personal injury or wrongful death.

(b) Service of the request required in subsection (a) of this section shall be in letter form and shall be served on all known potential defendants by certified mail. The date of mailing such request shall toll all applicable statutes of limitations.

(c) The request to participate in pre-suit mediation shall name all known potential defendants, contain a brief statement of the facts that the potential plaintiff believes are grounds for relief, and be accompanied by a certificate of merit in accordance with section 1051 of this title, and may include other documents or information supporting the potential plaintiff's claim.

(d) Nothing in this chapter precludes potential plaintiffs and defendants from pre-suit negotiation or other pre-suit dispute resolution to settle potential claims.

§ 7013. MEDIATION RESPONSE

(a) Within 60 days of service of the request to participate in pre-suit mediation, each potential defendant shall accept or reject the potential

plaintiff's request for pre-suit mediation by mailing a certified letter to counsel or if the party is unrepresented to the potential plaintiff.

(b) If the potential defendant agrees to participate, within 60 days of the service of the request to participate in pre-suit mediation, each potential defendant shall serve a responsive certificate on the potential plaintiff by mailing a certified letter indicating that he or she, or his or her counsel, has consulted with a qualified expert within the meaning of section 1643 of this title and that expert is of the opinion that there are reasonable grounds to defend the potential plaintiff's claims of medical negligence. Notwithstanding the potential defendant's acceptance of the request to participate, if the potential defendant does not serve such a responsive certificate within the 60-day period, then the potential plaintiff need not participate in the pre-suit mediation under this title and may file suit. If the potential defendant is willing to participate, pre-suit mediation may take place without a responsive certificate of merit from the potential defendant at the plaintiff's election.

§ 7014. PROCESS; TIME FRAMES

(a) The mediation shall take place within 60 days of the service of all potential defendants' acceptance of the request to participate in pre-suit mediation. The parties may agree to an extension of time. If in good faith the mediation cannot be scheduled within the 60-day time period, the potential plaintiff need not participate and may proceed to file suit.

(b) If pre-suit mediation is not agreed to, the mediator certifies that mediation is not appropriate, or mediation is unsuccessful, the potential plaintiff may initiate a civil action as provided in the Vermont Rules of Civil Procedure. The action shall be filed:

(1) within 90 days of the potential plaintiff's receipt of the potential defendant's letter refusing mediation, the failure of the potential defendant to file a responsive certificate of merit within the specified time period, or the mediator's signed letter certifying that mediation was not appropriate or that the process was complete; or

(2) prior to the expiration of the applicable statute of limitations, whichever is later.

(c) If pre-suit mediation is attempted unsuccessfully, the parties shall not be required to participate in mandatory mediation under Rule 16.3 of the Vermont Rules of Civil Procedure.

§ 7015. CONFIDENTIALITY

All written and oral communications made in connection with or during the mediation process set forth in this chapter shall be confidential. The mediation

process shall be treated as a settlement negotiation under Rule 408 of the Vermont Rules of Evidence.

Sec. 24d. SUNSET

12 V.S.A. chapter 215, subchapter 2 shall be repealed on February 1, 2015.

Sec. 24e. REPORT

On or before September 1, 2014, the secretary of administration or designee shall report to the senate committees on health and welfare and on judiciary and the house committees on health care and on judiciary on the impacts of Secs. 24a (certificate of merit), 24b (Sorry Works! pilot program), and 24c (pre-suit mediation) of this act. The report shall address the impacts that these reforms have had on:

(1) consumers, physicians, and the provision of health care services;

(2) the rights of consumers to due process of law and to access to the court system; and

(3) any other service, right, or benefit that was or may have been affected by the establishment of the medical malpractice reforms in Secs. 24a, 24b, and 24c of this act.

Sec. 24f. 18 V.S.A. § 1919 is amended to read:

§ 1919. INCLUSION OF DATA IN HOSPITAL COMMUNITY REPORTS

The commissioner shall consult with the commissioner of banking, insurance, securities, and health care administration, and with patient safety experts, hospitals, health care professionals, and members of the public and shall make recommendations to the commissioner of banking, insurance, securities, and health care administration concerning which data should be included in the hospital community reports required by section 9405b of this title. Beginning in 2013, the community reports shall include at a minimum data from all Vermont hospitals of reportable adverse events aggregated in a manner that protects the privacy of the patients involved and does not identify the individual hospitals in which an event occurred together with analysis and explanatory comments about the information contained in the report to facilitate the public's understanding of the data. The commissioner shall make such recommendations no more than 18 months after data collection is initiated.

Sec. 24g. LEGISLATIVE INTENT; FEASIBILITY ANALYSIS

(a) The general assembly recognizes the need to balance the rights of consumers to due process of law and to access the court system with the

importance of reducing costs to the health care system created by the practice of defensive medicine.

(b) No later than January 15, 2013, the secretary of administration or designee shall report to the house committees on health care and on judiciary and the senate committees on health and welfare and on judiciary with an analysis of the feasibility of implementing a pretrial screening process for medical malpractice claims without jeopardizing patients' due process rights or their ability to access the courts. In addition to the feasibility analysis, the report shall also include recommendations designed to reduce the practice of defensive medicine without jeopardizing patient care.

* * * Insurance Rate Reviews * * *

Sec. 25. 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 filed by an insurer offering health insurance as defined in subdivision 3301(a)(2) of this title, a nonprofit hospital or medical service corporation, health maintenance organization, or a managed care organization and 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) 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~~ and

(B) a decision by the Green Mountain Care board has been applied by the commissioner as provided ~~herein, unless the commissioner shall sooner give his or her written approval thereto~~ in subdivision (2) of this subsection.

(2)(A) Prior to approving a rate ~~increase~~ pursuant to this subsection, the commissioner shall seek approval for such rate ~~increase~~ from the Green Mountain Care board established in 18 V.S.A. chapter 220~~, which~~. The commissioner shall make a recommendation to the Green Mountain Care board about whether to approve or disapprove the rate within 30 days of receipt of a completed application from an insurer. In the event that the commissioner does not make a recommendation to the board within the 30-day period, the commissioner shall be deemed to have recommended approval of the rate, and the Green Mountain Care board shall review the rate request pursuant to subdivision (B) of this subsection.

(B) The Green Mountain Care board shall review rate requests forwarded by the commissioner pursuant to subdivision (A) of this subsection and shall approve or disapprove ~~the~~ a rate ~~increase~~ request within ~~10 business~~ 30 days of receipt of the commissioner's recommendation or, in the absence of a recommendation from the commissioner, the expiration of the 30-day period following the department's receipt of the completed application. In the event that the board does not approve or disapprove a rate within 30 days, the board shall be deemed to have approved the rate request.

(C) The commissioner shall apply the decision of the Green Mountain Care board as to rates referred to the board within five business days of the board's decision.

~~(2)~~(3) 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 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. The board may, in its discretion, conduct a hearing on the premium rate jointly with any such hearing before the commissioner.

~~(3) After the expiration of the review period provided herein or at any time after having given written approval~~

(b) At any time after applying the decision of the Green Mountain Care board pursuant to subdivision (a)(2)(C) of this section, 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)~~(c) 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)~~ (d) of this section. In addition, the insurer shall post the summaries on its website.

~~(c)~~(d)(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 rate 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~~ submitting the policy or rate for the Green Mountain Care board's approval 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~~ rates.

~~(d)~~(e)(1) The following provisions of this section shall not apply to policies for specific disease, accident, injury, hospital indemnity, dental care, vision care, disability income, long-term care, or other limited benefit coverage~~, but shall apply to long-term care policies~~:

(A) the requirement in ~~subdivision~~ subdivisions (a)(1) and (2) for the Green Mountain Care board's approval ~~for any~~ on rate ~~increase~~ requests;

(B) the review standards in subdivision ~~(a)(2)~~ (a)(3) 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) and (d) 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.

(3) Medicare supplemental insurance policies shall be exempt only from the requirement in subdivisions (a)(1) and (2) of this section for the Green

Mountain Care board's approval on rate requests and shall be subject to the remaining provisions of this section.

Sec. 26. 18 V.S.A. § 9381 is amended to read:

§ 9381. APPEALS

(a)(1) 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.

(2) Only decisions by the board shall be appealable under this subsection. Recommendations to the board by the commissioner of banking, insurance, securities, and health care administration pursuant to 8 V.S.A. § 4062(a) shall not be subject to appeal.

* * *

(c) If an appeal or other petition for judicial review of a final order is not filed in connection with an order of the Green Mountain Care board pursuant to subsection (b) of this section, the chair may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

Sec. 26a. HEALTH CARE OMBUDSMAN REPORT

No later than January 15, 2013, the state health care ombudsman, in collaboration with the department of banking, insurance, securities, and health care administration and the agency of human services, shall report to the house committee on health care and the senate committees on health and welfare and on finance regarding the ombudsman's current and projected funding and resource needs, suggestions for funding mechanisms to meet those needs, and recommendations on how best to coordinate, consolidate, or both the consumer protection efforts of the ombudsman's office, the department, and the agency.

* * * Payment Reform Pilots * * *

Sec. 27. 18 V.S.A. § 9377 is amended to read:

§ 9377. PAYMENT REFORM; PILOTS

* * *

(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~~ this section.

(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:

* * *

~~(4)~~(3) In addition to the objectives identified in subdivision ~~(a)(3)~~ (a)(2) of this section, the design and implementation of payment reform pilot projects may consider:

* * *

(e) The board or designee 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 board in developing and implementing the pilot projects and to advise the Green Mountain Care board in setting overall policy goals.

(f) The first pilot project shall become operational no later than July 1, 2012, and two or more additional pilot projects shall become operational no later than October 1, 2012.

(g)(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.

(3) 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.

(4) After implementation of the pilot projects described in this subchapter, health insurers shall have appeal rights pursuant to section 9381 of this title.

* * * Blueprint for Health * * *

Sec. 28. 18 V.S.A. § 702 is amended to read:

§ 702. BLUEPRINT FOR HEALTH; STRATEGIC PLAN

(a)(1) The department of Vermont health access shall be responsible for the Blueprint for Health.

(2) The director of the Blueprint, in collaboration with the ~~commissioner~~ commissioners of health, of mental health, ~~and the commissioner~~ of Vermont health access, and of disabilities, aging, and independent living, shall oversee the development and implementation of the Blueprint for Health, including a strategic plan describing the initiatives and implementation time lines and strategies. Whenever private health insurers are concerned, the director shall collaborate with the commissioner of banking, insurance, securities, and health care administration and the chair of the Green Mountain Care board.

(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 include the commissioner of health; the commissioner of mental health; a representative from the ~~department of banking, insurance, securities, and health care administration~~ Green Mountain Care board; 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 licensed mental

health professional with clinical experience in Vermont; 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 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.

* * *

Sec. 28a. BLUEPRINT PARTICIPATION; LEGISLATIVE INTENT

It is the intent of the general assembly that:

(1) Health insurer and Medicaid payments for a community health team and access by patients and medical practices to the team should begin at least six months prior to the scheduled date to score a medical practice for Blueprint recognition.

(2) The director of the Blueprint use the statutory discretion afforded by 18 V.S.A. § 706(c)(2) to increase payments to medical home practices in recognition of the efforts needed to satisfy the updated National Committee for Quality Assurance scoring requirements.

(3) To the extent permitted under federal law, all health insurance plans, including the multistate plans, will be active participants in the Blueprint for Health.

* * * HMO Reporting Requirement * * *

Sec. 29. 8 V.S.A. § 5106(a) is amended to read:

(a) Every organization subject to this chapter, annually, within ~~120~~ 90 days of the close of its fiscal year, shall file a report with the commissioner, said report verified by an appropriate official of the organization, showing its financial condition on the last day of the preceding fiscal year. The report shall be prepared in accordance with the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual for health maintenance organizations and shall be in such general form and context, as approved by, and shall contain any other information required by the National Association of Insurance Commissioners together with any useful or necessary modifications or adaptations thereof required, approved or accepted by the commissioner for the type of organization to be reported upon, and as supplemented by additional information required by the commissioner.

* * * Vermont Program for Quality in Health Care * * *

Sec. 30. 18 V.S.A. § 9416 is amended to read:

§ 9416. VERMONT PROGRAM FOR QUALITY IN HEALTH CARE

(a) The commissioner of health shall contract with the Vermont Program for Quality in Health Care, Inc. to implement and maintain a statewide quality assurance system to evaluate and improve the quality of health care services rendered by health care providers of health care facilities, including managed care organizations, to determine that health care services rendered were professionally indicated or were performed in compliance with the applicable standard of care, and that the cost of health care rendered was considered reasonable by the providers of professional health services in that area. The commissioner of health shall ensure that the information technology components of the quality assurance system ~~are incorporated into and~~ comply with, and the commissioner of Vermont health access shall ensure such components are incorporated into, the statewide health information technology plan developed under section 9351 of this title and any other information technology initiatives coordinated by the secretary of administration pursuant to 3 V.S.A. § 2222a.

(b) The Vermont Program for Quality in Health Care, Inc. shall file an annual report with the commissioner of health. The report shall include an assessment of progress in the areas designated by the commissioner of health, including comparative studies on the provision and outcomes of health care and professional accountability.

* * *

* * * Discretionary Clauses * * *

Sec. 31. 8 V.S.A. § 4062f is added to read:

§ 4062f. DISCRETIONARY CLAUSES PROHIBITED

(a) The purpose of this section is to ensure that health insurance benefits, disability income protection coverage, and life insurance benefits are contractually guaranteed and to avoid the conflict of interest that may occur when the carrier responsible for providing benefits has discretionary authority to decide what benefits are due. Nothing in this section shall be construed to impose any requirement or duty on any person other than a health insurer or an insurer offering disability income protection coverage or life insurance.

(b) As used in this section:

(1) "Disability income protection coverage" means a policy, contract, certificate, or agreement that provides for weekly, monthly, or other periodic

payments for a specified period during the continuance of disability resulting from illness, injury, or a combination of illness and injury.

(2) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(3) "Health insurer" means an insurance company that provides health insurance as defined in subdivision 3301(a)(2) of this title, a nonprofit hospital or medical service corporation, a managed care organization, a health maintenance organization, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by a public or private entity; as well as entities offering policies for specific disease, accident, injury, hospital indemnity, dental care, disability income, long-term care, and other limited benefit coverage.

(4) "Life insurance" means a policy, contract, certificate, or agreement that provides life insurance as defined in subdivision 3301(a)(1) of this title.

(c) No policy, contract, certificate, or agreement offered or issued in this state by a health insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services may contain a provision purporting to reserve discretion to the health insurer to interpret the terms of the contract or to provide standards of interpretation or review that are inconsistent with the laws of this state, and any such provision in a policy, contract, certificate, or agreement shall be null and void.

(d) No policy, contract, certificate, or agreement offered or issued in this state providing for disability income protection coverage may contain a provision purporting to reserve discretion to the insurer to interpret the terms of the contract or to provide standards of interpretation or review that are inconsistent with the laws of this state, and any such provision in a policy, contract, certificate, or agreement shall be null and void.

(e) No policy, contract, certificate, or agreement of life insurance offered or issued in this state may contain a provision purporting to reserve discretion to the insurer to interpret the terms of the contract or to provide standards of interpretation or review that are inconsistent with the laws of this state, and any such provision in a policy, contract, certificate, or agreement shall be null and void.

* * * Prescription Drug Cost-Sharing * * *

Sec. 32. 8 V.S.A. § 4089i is amended to read:

§ 4089i. PRESCRIPTION DRUG COVERAGE

(a) A health insurance or other health benefit plan offered by a health insurer shall provide coverage for prescription drugs purchased in Canada, and

used in Canada or reimported legally or purchased through the I-SaveRx program on the same benefit terms and conditions as prescription drugs purchased in this country. For drugs purchased by mail or through the internet, the plan may require accreditation by the Internet and Mailorder Pharmacy Accreditation Commission (IMPAC/tm) or similar organization.

(b) A health insurance or other health benefit plan offered by a health insurer or pharmacy benefit manager shall not include an annual dollar limit on prescription drug benefits.

(c) A health insurance or other health benefit plan offered by a health insurer or pharmacy benefit manager shall limit a beneficiary's out-of-pocket expenditures for prescription drugs, including specialty drugs, to no more for self-only and family coverage per year than the minimum dollar amounts in effect under Section 223(c)(2)(A)(i) of the Internal Revenue Code of 1986 for self-only and family coverage, respectively.

(d) For prescription drugs benefits offered in conjunction with a high-deductible health plan (HDHP), the plan may not provide prescription drug benefits until the expenditures applicable to the deductible under the HDHP have met the amount of the minimum annual deductibles in effect for self-only and family coverage under Section 223(c)(2)(A)(i) of the Internal Revenue Code of 1986 for self-only and family coverage, respectively. Once the foregoing expenditure amount has been met under the HDHP, coverage for prescription drug benefits shall begin, and the limit on out-of-pocket expenditures for prescription drug benefits shall be as specified in subsection (c) of this section.

(e) As used in this section:

(1) "Health insurer" shall have the same meaning as in 18 V.S.A. § 9402.

(2) "Out-of-pocket expenditure" means a co-payment, coinsurance, deductible, or other cost-sharing mechanism.

(3) "Pharmacy benefit manager" shall have the same meaning as in section 4089j of this title.

(f) The department of banking, insurance, securities, and health care administration shall enforce this section and may adopt rules as necessary to carry out the purposes of this section.

Sec. 32a. 18 V.S.A. § 4631a is amended to read:

§ 4631a. EXPENDITURES BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a) As used in this section:

* * *

(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, or a combination product as defined in 21 C.F.R. § 3.2(e), but shall not include prescription eyeglasses, prescription sunglasses, or other prescription eyewear.

* * *

(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, a nonprescription medical device, ~~or~~ an item of nonprescription durable medical equipment, an item of medical food as defined in the federal Orphan Drug Act, as amended, 21 U.S.C. § 360ee(b)(3), or infant formula as defined in Section 201(z) of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321, provided to a health care provider for free distribution to patients.

* * *

(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 of financial donations or of free:

(i) prescription drugs;

(ii) over-the-counter drugs;

(iii) medical devices;

(iv) biological products;

(v) combination products;

(vi) medical food;

(vii) infant formula; or

(viii) medical equipment or supplies.

* * *

(d) The attorney general may bring an action in ~~Washington superior court~~ the civil division of the Washington unit of the 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. In any action brought pursuant to this section, the attorney general shall have the same authority to investigate and to obtain remedies as if the action were brought under the Consumer Fraud Act, 9 V.S.A. chapter 63.

Sec. 32b. 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 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 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:

* * *

(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~~ such products or connects individual recipients with the monetary value of the ~~samples~~ products provided.

* * *

(D) Any public reporting of the provision of free prescription or over-the-counter drugs, medical devices, biological products, medical equipment, combination products, medical food, infant formula, or supplies to a free clinic shall not include information that allows for the identification of

individual recipients of such products or that connects individual recipients with the monetary value of the products provided.

(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 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.

* * *

(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 October 1. The report shall include:

(A) Information on allowable expenditures and permitted gifts required to be disclosed under this section, which shall present information in aggregate form 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), (1)(D), and (2)(A) of this subsection, information on samples and donations to free clinics 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.

* * *

(c) The attorney general may bring an action in ~~Washington superior court~~ the civil division of the Washington unit of the 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. In any action brought pursuant to this section, the attorney general shall have the same authority to investigate and to obtain remedies as if the action were brought under the Consumer Fraud Act, 9 V.S.A. chapter 63.

(d) The terms used in this section shall have the same meanings as they do in section 4631a of this title.

* * * Medicaid Waiver Approval * * *

Sec. 33. DUAL ELIGIBLE PROJECT PROPOSAL

(a) It is the intent of the general assembly to provide the agency of human services with the authority to enter into negotiations with the Centers for Medicare and Medicaid Services (CMS) to seek waivers as needed to operate an integrated system of coverage for individuals who are eligible for Medicare and Medicaid, and to provide the agency of human services with the authority to implement the program approved by CMS. Any waivers sought pursuant to this section shall promote the health care reform goals established in No. 48 of the Acts of 2011, including universal coverage; integration of health, mental health, and substance abuse treatment; administrative simplification; and payment reform.

(b)(1) The agency of human services may seek a waiver or waivers from CMS to enable the agency to better serve individuals who are eligible for both Medicare and Medicaid ("dual eligibles") through a consolidated program operated by the agency of human services or by a department of the agency of human services. The waiver or waivers sought pursuant to this section may be consolidated with or filed in conjunction with Vermont's Medicaid Section 1115 Global Commitment to Health waiver renewal, any Choices for Care waiver modifications, or a state children's health insurance program (SCHIP) waiver. Any modifications of the Choices for Care waiver shall be consistent with No. 56 of the Acts of 2005.

(2) The agency may seek permission to serve the dual eligibles population as a public managed care organization or through another administrative mechanism that enables the agency to integrate services for the dual eligibles, pursue administrative flexibility and simplification, or otherwise align health coverage programs. The agency shall seek permission to implement payment mechanisms that ensure the health coverage provided under the waiver or waivers is consistent with and supportive of the payment reform initiatives established by the Green Mountain Care board.

(3) The agency shall seek a waiver to create a consolidated program which:

(A) includes eligibility standards, methodologies, and procedures that are neither more restrictive than the standards, methodologies, and procedures in effect as of January 1, 2012 nor more restrictive than the standards, methodologies, and procedures for dual eligible individuals who are not enrolled in this consolidated program.

(B) does not reduce the amount, duration, or scope of services covered by Medicaid and Medicare or impose limits on enrollment or access to services.

(C) ensures that an individual in the consolidated program receives a level of service that is equivalent to or greater than the individual would have received if he or she were not in the consolidated program.

(D) provides reasonable opportunity for an individual to disenroll from the consolidated program and transition to traditional Medicaid and Medicare coverage.

(E) as provided in the terms and conditions for the Choices for Care Section 1115 waiver, includes an independent advocacy system for all participants and applicants in the consolidated program which includes, at a minimum, access to area agency on aging advocacy, legal services, and the long-term care and health care ombudsmen.

(F) if the agency contracts with an integrated service provider (ISP) then, at a minimum, as required under 42 U.S.C. § 1395a(a), guarantees individuals a choice of health care providers who offer the same service or services within the individual's ISP and a choice of providers for services that are not offered through the individual's ISP.

(G) unless otherwise appropriated by the general assembly, invests at least 50 percent of the remaining funds at the end of the state fiscal year to enhance the consolidated program.

(H) maintains state provider payment rates in the consolidated program that:

(i) permit providers to deliver services, on a solvent basis, that are consistent with efficiency, economy, access, and quality of care; and

(ii) are at least comparable to the average weighted payment rates that eligible providers would have received from Medicaid and Medicare in the absence of the consolidated program, subject to modifications as a result of:

(I) changes to federal Medicare rates;

(II) provider rates set by the Green Mountain Care board pursuant to 18 V.S.A. § 9376; or

(III) rate negotiations between the providers in an ISP and the agency of human services.

(4) The agency of human services shall enter into a waiver only if it provides individuals enrolled in the consolidated program who become ineligible for Medicaid or Medicare or who choose to opt out of the program

with a seamless transition process between coverage provided by the consolidated program and traditional Medicaid coverage, Medicare coverage, or both to ensure that the process does not result in a reduction or loss of services during the transition.

(5) If the agency of human services contracts with an ISP, the agency or designee shall include the following provisions in its ISP contracts:

(A) A broad range of services for individuals, to be provided by the ISP or through contracts between the ISP and other service providers, and coordination between the ISP and other service or health care providers who are not participants in the ISP, as appropriate. Examples of entities that are unlikely to be part of an ISP include the individual's medical home and the Blueprint for Health community health teams.

(B) An enforcement mechanism to ensure that the ISP and any subcontractors provide integrated services as required by the waiver and the contract provisions.

(C) Transparent quality assurance measures for evaluating the performance of the ISP and any subcontractors and a method for making the measures public.

(6) The agency of human services shall provide dual eligible individuals with meaningful information about their care options, including services through Medicaid, Medicare, and the consolidated program established in this section. The agency shall develop enrollee materials and notices that are accessible and understandable to those individuals who will be enrolled in the consolidated program, including individuals with disabilities, speech and vision limitations, or limited English proficiency.

(7) The agency of human services shall establish by rule a comprehensive and accessible appeals process, including an opportunity for an individual to request an independent clinical assessment of medical or functional limitations when appealing an eligibility determination, a denial in services, or a reduction in services.

(c)(1) The agency of human services shall implement the program approved by CMS by rule.

(2) Prior to filing proposed rules, the agency shall seek input on the proposed rules from a workgroup that includes providers, beneficiaries, and advocates for beneficiaries.

Sec. 34. GLOBAL COMMITMENT; CHOICES FOR CARE; SCHIP

(a) It is the intent of the general assembly to provide the agency of human services with the authority to renew and implement Vermont's Medicaid

Section 1115 Global Commitment to Health ("Global Commitment") waiver or to request a new waiver from the Centers for Medicare and Medicaid Services (CMS) with similar terms and conditions as Global Commitment. It is also the intent of the general assembly to provide the agency with the authority to modify or renew the Choices for Care waiver consistent with the provisions of No. 56 of the Acts of 2005 and to seek a state children's health insurance program (SCHIP) waiver to allow for greater administrative flexibility and simplification, as well as to seek advantageous financial terms similar to those in the Global Commitment waiver. Any waivers sought pursuant to this section shall promote the health care reform goals established in No. 48 of the Acts of 2011, including universal coverage; administrative simplification; integration of health, mental health, and substance abuse; and payment reform.

(b) The secretary of human services or designee shall seek to renew the Global Commitment waiver, seek a new Medicaid or SCHIP waiver, modify the Choices for Care waiver, or a combination thereof, to enable the agency to:

(1) Maintain the public managed care entity structure, financial provisions, and flexibility provided in the Global Commitment terms and conditions and extend these provisions and flexibility to the Choices for Care and Dr. Dynasaur programs.

(2) Maintain the waiver terms for special demonstration populations, such as individuals with traumatic brain injury and others currently provided for in Global Commitment, as well as for any special demonstration populations covered and services provided to eligible individuals under Choices for Care.

(3) Eliminate terms and conditions which are outdated or for which state options are now available.

(4) Eliminate Catamount Health Assistance in order to comply with the insurance provisions in this act and in the federal Affordable Care Act.

(5) Obtain federal matching funds for any state financial assistance provided to individuals purchasing insurance through the Vermont health benefit exchange in order to promote seamless health coverage for eligible individuals and to achieve universal coverage, affordability, and administrative simplification. The secretary or designee shall analyze the impacts of offering state financial assistance to individuals with incomes below 350 percent of the federal poverty level.

(6) Ensure a streamlined transition between Medicaid and the Vermont health benefit exchange.

(7) Modify payment mechanisms to ensure that the health coverage provided under any waiver program is consistent with and supportive of the payment reform initiatives established by the Green Mountain Care board.

(8) Ensure affordable coverage for individuals who are eligible for Medicare but who are responsible for paying the full cost of Medicare coverage due to inadequate work history or for another reason. The agency shall align the upper income eligibility limitation with other populations, such as individuals receiving state assistance in the Vermont health benefit exchange or individuals receiving coverage as part of a Medicaid expansion population.

(c) Any waiver or waivers sought pursuant to this section may be consolidated or filed in conjunction with Vermont's Global Commitment to Health waiver renewal, Choices for Care waiver modifications, SCHIP waiver, or combination thereof. The secretary of human services or designee shall implement the program or programs approved by CMS by rule.

Sec. 34a. Sec. 17 of No. 128 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

Sec. 17. FEDERAL HEALTH CARE REFORM; DEMONSTRATION PROGRAMS

(a)(1) Medicare waivers. Upon establishment by the secretary of the U.S. Department of Health and Human Services (HHS) of an advanced practice primary care medical home demonstration program or a community health team demonstration program pursuant to Sec. 3502 of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, the secretary of human services may apply to the secretary of HHS to enable Vermont to include Medicare as a participant in the Blueprint for Health as described in 18 V.S.A. chapter 13 ~~of Title 18~~.

(2) Upon establishment by the secretary of HHS of a shared savings program pursuant to Sec. 3022 of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 or other federal authority established to allow for payment and delivery system reform, the secretary of human services may apply to the secretary of HHS to enable ~~Vermont~~ the state's Medicaid and SCHIP programs, including any waiver programs under Global Commitment to Health or Choices for Care, to ~~participate in the program by establishing~~ engage in payment reform ~~pilot projects as provided for by Sec. 14 of this act~~ activities consistent with the payment reform initiatives established by the Green Mountain Care board pursuant to 18 V.S.A. chapter 220. The chair of the Green Mountain Care board or

designee may apply to the secretary of HHS to enable Vermont to advance the payment reform goals established in No. 48 of the Acts of 2011 and consistent with the board's authority.

(b)(1) Medicaid waivers. The intent of this section is to provide the secretary of human services with the authority to pursue Medicaid and SCHIP participation in the Blueprint for Health and new payment reform initiatives established by the Green Mountain Care board through any existing or new waiver.

(2) Upon establishment by the secretary of HHS of a health home demonstration program pursuant to Sec. 3502 of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152; Section 1115 or 2107 of the Social Security Act; or other federal authority, the secretary of human services may apply to the secretary of HHS to include Medicaid or SCHIP as a participant in the Blueprint for Health as described in 18 V.S.A. chapter 13 ~~of Title 18~~ and other payment reform initiatives established by the Green Mountain Care board pursuant to 18 V.S.A. chapter 220. ~~In the alternative, under Section 1115 of the Social Security Act, the secretary of human services may apply for an amendment to an existing Section 1115 waiver or may include in the renegotiation of the Global Commitment for Health Section 1115 waiver a request to include Medicaid as a participant in the Blueprint for Health as described in chapter 13 of Title 18.~~

Sec. 35. WAIVER UPDATES AND INFORMATION

(a) The secretary of human services or designee shall present information and updates on the waiver proposal and transition planning to the house committees on appropriations, on human services, and on health care and the senate committees on appropriations and on health and welfare as requested, no later than January 30, 2013. When the general assembly is not in session, the secretary or designee shall present information and updates to the health access oversight committee upon request. The secretary or designee shall be available to the health access oversight committee on a monthly basis to provide an update in person or by telephone on the status of the waiver and transition planning, applications, and negotiations, including updates on the substantive provisions and issues provided for in Secs. 33–35a of this act. If the health access oversight committee elects not to meet in person or by telephone during any one month, the secretary or designee shall provide a monthly update by telephone conference call to interested parties and stakeholders, including a time for questions from the public. In addition, the secretary or designee shall provide updates at each meeting of the Medicaid and exchange advisory board and to other advisory committees upon request.

(b) The secretary of human services or designee shall present a transition plan for individuals eligible for or enrolled in the Vermont health access plan, the employer-sponsored insurance premium assistance program, and Catamount Health to the house committees on appropriations, on human services, and on health care and the senate committees on appropriations and on health and welfare by January 15, 2013.

Sec. 35a. WAIVERS AND TRANSITION PLANNING; INTENT

(a) It is the intent of the general assembly to ensure continued legislative oversight after adjournment through the health access oversight committee and the committees of jurisdiction of the transition from Vermont's current Medicaid expansion programs to new coverage options, including the Vermont health benefit exchange, for individuals and families in 2014. Because of federal time lines and the need to negotiate a waiver with the Centers for Medicare and Medicaid Services, continued development of the transition plan by the administration is expected during the summer and fall of 2012. It is the intent of the general assembly that the secretary of human services or designee not implement a basic health program without the approval of the general assembly. It is also the intent of the general assembly to continue to oversee the development of the transition plan during the 2013 legislative session.

(b) It is the intent of the general assembly that the transition from Catamount Health and the Vermont health access plan to the Vermont health benefit exchange should be accomplished in such a way that it minimizes the financial exposure of low income Vermonters, including the amounts of their premiums and out-of-pocket costs; ensures that health care providers receive compensation that is sufficient to enlist enough providers to ensure that health services are available to all Vermonters and are distributed equitably; and recognizes the need to limit the financial exposure of the state of Vermont.

(c) The department of Vermont health access, in consultation with the Medicaid and exchange advisory committee established by 33 V.S.A. § 402, shall evaluate the options available under Section 1115 of the Social Security Act and under the Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), for ensuring affordable coverage for individuals above 133 percent of the federal poverty level. The department shall consider financial implications to Vermonters, health care providers, and the state; administrative simplification of health care; continuity of coverage and reduction of churn; consistency with and promotion of other state health care reform efforts; and the likelihood of receiving approval from the U.S. Department of Health and Human Services, where necessary.

Sec. 35b. 33 V.S.A. § 402(b) is amended to read:

(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 at least 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, health insurance brokers and agents, 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.

* * *

Sec. 35c. EXCHANGE IMPLEMENTATION AND TRANSITION PLANNING; UPDATES

(a) The house committee on health care and the senate committee on health and welfare shall meet while the legislature is not in session during 2012 to receive updates on issues related to health care reform, including waivers, transition planning, health information technology, the Vermont Information Technology Leaders, Inc., and implementation of the Vermont health benefit exchange. The committees may meet up to four times, at the call of the chairs of both committees, or more often with the approval of the speaker of the house of representatives and the president pro tempore of the senate; provided, however, that the committees shall meet no less frequently than once every 90 days. To the extent practicable, such meetings shall coincide with scheduled meetings of the health access oversight committee.

(b) If the secretary of human services or designee receives the results of the federal government's review of Vermont's plan to implement its health benefit

exchange while the general assembly is not in session, the members of the administration team responsible for exchange implementation shall present the results to the health access oversight committee and to a joint meeting of the standing committees pursuant to subsection (a) of this section. If the secretary or designee receives the results of the federal review when the general assembly is in session, the members of the administration team shall present the results to the house committees on health care and on appropriations and the senate committees on health and welfare, on finance, and on appropriations.

(c) No later than February 1, 2013, the administration team responsible for exchange implementation shall present to the house committees on health care and on appropriations and the senate committees on health and welfare, on finance, and on appropriations the exchange certification application the secretary of human services or designee submitted to the federal government.

* * * Health Access Eligibility Unit * * *

Sec. 36. 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.

* * * Preconditions for Green Mountain Care * * *

Sec. 36a. 33 V.S.A. § 1822 is amended to read:

§ 1822. IMPLEMENTATION; WAIVER

(a) Green Mountain Care shall be implemented 90 days following the last to occur of:

* * *

(5) A determination by the Green Mountain Care ~~Board~~ board, as the result of a detailed and transparent analysis, 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. This determination shall include an analysis of the impact of implementation on economic growth.

(C) The financing for Green Mountain Care is sustainable. In this analysis, the board shall consider at least a five-year revenue forecast using the consensus process established in 32 V.S.A. § 305a, projections of federal and other funds available to support Green Mountain Care, and estimated expenses for Green Mountain Care for an equivalent time period.

(D) Administrative expenses borne by health care providers, health insurers, and the state of Vermont will be reduced below 2011 levels, adjusted for inflation and other factors as necessary to reflect the present value of 2011 dollars at the time of the analysis.

(E) Cost-containment efforts will result in a reduction in the rate of growth in Vermont's per-capita health care spending without reducing access to necessary care or resulting in excessive wait times for services.

(F) Health care professionals will be reimbursed at levels sufficient to allow Vermont to recruit and retain high-quality health care professionals.

* * *

(c) The Green Mountain Care board's analysis prepared pursuant to subdivision (a)(5) of this section shall be made available to the general assembly and the public and shall include:

(1) a complete fiscal projection of revenues and expenses, as described in subdivision (a)(5) of this section, including reserves, if recommended, and other costs in addition to the cost of services, over at least a five-year period for a public-private universal health care system providing benefits with an actuarial value of 80 percent or greater;

(2) the financing plans provided to the general assembly in January 2013 pursuant to Sec. 9 of No. 48 of the Acts of 2011;

(3) an analysis of how implementing Green Mountain Care will further the principles of health care reform expressed in 18 V.S.A. § 9371 beyond the reforms established through the Blueprint for Health; and

(4) a comparison of best practices for reducing health care costs in self-funded plans, if available.

Sec. 36b. JOINT FISCAL OFFICE REVIEW

(a) Within 90 days following a determination by the Green Mountain Care board pursuant to 33 V.S.A. § 1822 that the preconditions for Green Mountain Care have been met, the joint fiscal committee shall direct the legislative joint fiscal office to prepare a review of the board's findings, including an evaluation of the assumptions that formed the basis for the board's analysis. The joint fiscal office shall present its review to the house committees on

health care and on appropriations, the senate committees on health and welfare and on appropriations, the governor, and the Green Mountain Care board; provided, however, that if the general assembly is not in session at the time the office completes its review, the office shall present the review to the joint fiscal committee in lieu of the committees of jurisdiction.

(b) The joint fiscal office may hire consultants as necessary to carry out its duties under this section.

* * * Technical and Clarifying Changes * * *

Sec. 37. 18 V.S.A. § 701 is amended to read:

§ 701. DEFINITIONS

For the purposes of this chapter:

* * *

(8) "Health benefit plan" shall have the same meaning as health insurance plan in 8 V.S.A. § 4088h.

* * *

(11) "Hospital" shall have the same meaning as in section ~~9456~~ 9451 of this title.

* * *

Sec. 38. 18 V.S.A. § 9391 is amended to read:

§ 9391. NOMINATION AND APPOINTMENT PROCESS

* * *

(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 and the name of any incumbent who declares that he or she wishes to be a candidate to succeed himself or herself.

(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. The names of candidates submitted and not selected shall remain confidential.

* * *

Sec. 39. Sec. 31(a) of No. 48 of the Acts of 2011 is amended to read:

(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, as provided in 3 V.S.A. § 259.

* * * Sports Injuries * * *

Sec. 39a. 16 V.S.A. § 1431(d) is amended to read:

(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 ~~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 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.

* * * Rulemaking Authority * * *

Sec. 40. HOSPITAL BUDGET REVIEW RULES

For the purposes of hospital budget reviews pursuant to 18 V.S.A. chapter 221, subchapter 7, the Green Mountain Care board shall apply Rule 7.500 of the department of banking, insurance, securities, and health care administration, as that rule exists on the effective date of this section, until March 1, 2013 or the board's adoption of a permanent rule on hospital budget reviews pursuant to Sec. 40a of this act, whichever is earlier.

Sec. 40a. RULEMAKING

No later than January 1, 2013, the Green Mountain Care board shall adopt rules pursuant to 3 V.S.A. chapter 25 implementing the amendments in this act to 8 V.S.A. § 4062 (insurance rate review) and to 18 V.S.A. chapter 221, subchapters 5 (certificate of need) and 7 (hospital budget review).

* * * Position Transfer * * *

Sec. 40b. TRANSFER OF POSITION

On or before January 1, 2013, one health care administrator position shall be transferred from the department of banking, insurance, securities, and health care administration to the Green Mountain Care board.

* * * Maximizing Federal Funds * * *

Sec. 40c. MAXIMIZING PREMIUM TAX CREDITS AND COST-SHARING SUBSIDIES

No later than January 15, 2013, the secretary of administration or designee shall recommend to the house committees on health care and on ways and means and the senate committees on health and welfare and on finance strategies for maximizing the number of Vermont residents who will be eligible to receive federal premium tax credits or cost-sharing subsidies, or both, in the Vermont health benefit exchange and for maximizing the amount of the federal credits and subsidies that eligible Vermonters will receive.

* * * Health Access Oversight Committee * * *

Sec. 40d. 2 V.S.A. § 852 is amended to read:

§ 852. FUNCTIONS AND DUTIES

(a) The health access oversight committee shall ~~carry on~~ monitor, oversee, and provide a continuing review of ~~the operation of the Medicaid program and all Medicaid waiver programs that may affect the administration and beneficiaries of these programs~~ health care and human services programs in Vermont when the general assembly is not in session.

(b) In conducting its ~~review~~ oversight and in order to fulfill its duties, the committee ~~shall~~ may consult the following:

(1) Consumers and advocacy groups ~~regarding their satisfaction and complaints~~.

(2) Health care providers ~~regarding their satisfaction and complaints~~.

(3) The department of Vermont health access.

(4) The department of banking, insurance, securities, and health care administration.

(5) The department of health.

(6) The department for children and families.

(7) The department of disabilities, aging, and independent living.

(8) The department of mental health.

(9) The agency of human services.

(10) The agency of administration.

(11) The Green Mountain Care board.

(12) The director of health care reform.

~~(6)~~(13) The attorney general.

~~(7)~~(14) The health care ombudsman.

(15) The long-term care ombudsman.

~~(8)~~(16) The Vermont program for quality in health care.

~~(9)~~(17) Any other person or entity as determined by the committee.

(c) The committee shall work with, assist, and advise other committees of the general assembly, members of the executive branch, and the public on matters relating to ~~the state Medicaid program and other state~~ health care and human services programs. Annually, no later than January 15, the committee shall report its recommendations to the governor and the general assembly.

* * * Repeals * * *

Sec. 41. REPEALS

(a) 8 V.S.A. § 4089b(h) (insurance quality task force) is repealed July , 012.

(b) 18 V.S.A. § 9409a (provider reimbursement survey) is repealed on passage.

(c) 8 V.S.A. § 4080c (safety net) is repealed January 1, 2014, except that plans issued or renewed in 2013 shall remain in effect until their anniversary date in calendar year 2014 to the extent consistent with the provisions of the Affordable Care Act and related guidance and regulations.

(d) Sec. 6 (health access eligibility unit transfer) of No. 48 of the Acts of 2011 is repealed on passage.

(e) 33 V.S.A. chapter 13, subchapter 2 (payment reform pilots) is repealed on passage.

(f) 18 V.S.A. § 4632(a)(7) (DVHA prescribed product report) is repealed on passage.

(g) No. 2 of the Acts of 2005 (I-SaveRx prescription drug program) is repealed on passage. Notwithstanding any provision of Sec. 2 of No. 2 of the Acts of 2005 to the contrary, repeal of such act shall constitute Vermont's withdrawal from the I-SaveRx agreement and terminate its related cooperative relationship with the state of Illinois.

(h) 33 V.S.A. chapter 19, subchapter 3 (Vermont Health Access Plan; employer-sponsored insurance assistance) is repealed January 1, 2014, except that current enrollees may continue to receive transitional coverage by the department of Vermont health access as authorized by the Centers on Medicare and Medicaid Services.

(i) 8 V.S.A. §§ 4080a (small group market) and 4080b (nongroup market) are repealed January 1, 2014, except that plans issued or renewed in 2013 shall remain in effect until their anniversary date in calendar year 2014 to the extent consistent with the provisions of the Affordable Care Act and related guidance and regulations.

(j) 8 V.S.A. § 4062d (market security trust is repealed July 1, 2012.

Sec. 41a. TRANSITIONAL PROVISIONS; IMPLEMENTATION

(a) Except as otherwise provided in subsection (c) of this section, small employers may enroll in health insurance plans offered though the Vermont health benefit exchange beginning at the earliest on October 1, 2013 and at the latest on the renewal date of any small group plan the employer purchased prior to January 1, 2014.

(b) Except as otherwise provided in subsections (c) and (d) of this section, individuals in the nongroup market may enroll in health insurance plans offered though the Vermont health benefit exchange beginning at the earliest on October 1, 2013 and at the latest on March 31, 2014, pursuant to federal law.

(c) Notwithstanding Sec. 41(i) of this act, repealing 8 V.S.A. §§ 4080a and 4080b, the department of banking, insurance, securities, and health care administration and the Green Mountain Care board may continue to approve rates and forms for nongroup and small group health insurance plans under the statutes and rules in effect prior to the date of repeal if the Vermont health benefit exchange is not operational by January 1, 2014 and the department of Vermont health access or a health insurer is unable to facilitate enrollment in health benefit plans through another mechanism, including paper enrollment. In the alternative, the department of banking, insurance, securities, and health care administration may allow individuals and small employers to extend coverage under an existing health insurance plan. The department of banking, insurance, securities, and health care administration and the Green Mountain Care board shall maintain their authority pursuant to this subsection until the exchange is able to enroll all qualified individuals and small employers who apply for coverage through the exchange.

(d) Notwithstanding Sec. 41(h) of this act, repealing the Vermont health access plan and employer-sponsored insurance assistance, the department of Vermont health access may continue to provide employer-sponsored insurance assistance and coverage through the Vermont health access plan to eligible individuals beyond the date of repeal if the Vermont health benefit exchange is not operational by January 1, 2014 and the department of Vermont health access or a health insurer is unable to facilitate enrollment in health benefit plans through another mechanism, including paper enrollment. The

department of Vermont health access shall maintain its authority to administer these programs until the exchange is able to enroll all qualified applicants who apply for coverage through the exchange.

(e) Notwithstanding the provisions of 8 V.S.A. §§ 4080a(d)(1) and 4080b(d)(1), a health insurer shall not be required to guarantee acceptance of any individual, employee, or dependent on or after January 1, 2014 for a small group plan offered pursuant to 8 V.S.A. § 4080a or a nongroup plan offered pursuant to 8 V.S.A. § 4080b except as required by the department of banking, insurance, securities, and health care administration or the Green Mountain Care board, or both, pursuant to subsection (c) of this section.

(f) To the extent permitted under the Affordable Care Act, in implementing the Vermont health benefit exchange, it is the intent of the general assembly not to impair the health care coverage provided to Vermonters through collective bargaining agreements entered into prior to January 1, 2013 and in effect on January 1, 2014 until the date that any such collective bargaining agreement relating to such health care coverage terminates.

Sec. 42. EFFECTIVE DATES

(a) Secs. 5 (Green Mountain Care board authority), 5a (bill-back report), 6–11 (unified health care budget), 11a (claims edit standards), 11d (rulemaking on primary mental health care parity), 12–14 (Green Mountain Care board duties, health care administration), 23 (hospital budgets), 24 (provider bargaining groups), 24g (pretrial screening feasibility analysis), 25 and 26 (insurance rate reviews), 26a (ombudsman's report), 27 (payment reform pilot projects, 28 (Blueprint for Health), 28a (Blueprint intent), 29 (HMO reporting requirements), 33–35a (waivers), 35c (transition planning and exchange updates), 36 (health access eligibility unit), 36a (preconditions for Green Mountain Care), 36b (JFO review), 37–39 (technical/clarifying changes), 40b (transfer of position), 40c (maximizing federal funds), 41 (repeals), and 41a (transitional provisions) of this act and this section shall take effect on passage.

(b) Secs. 40 (hospital budget rules) and 40a (rulemaking) of this act shall take effect on passage, provided that in order to comply with the deadlines contained in this act, the Green Mountain Care board may begin the rulemaking process prior to passage.

(c) Secs. 1 and 2 (50 employees or fewer), 2a (qualified health benefit plans), 2b (navigators), 2c (exchange options), 2d (brokers and agents), and 2e (exchange disclosure) shall take effect on July 1, 2012.

(d) Sec. 30 (VPQHC) shall take effect on July 1, 2013.

(e) Sec. 31 (prohibition on discretionary clauses) shall take effect on January 1, 2013 and shall apply to all policies, contracts, certificates, and

agreements renewed, offered, or issued in this state with effective dates on or after such date.

(f)(1) Secs. 32(a), (e), and (f) (prescription drug coverage); 32a and 32b (prescribed products); 35b (Medicaid and exchange advisory committee); 39a (sports injuries); and 40d (health access oversight committee) shall take effect on July 1, 2012.

(2) Sec. 32(b), (c), and (d) (prescription drug cost-sharing) shall take effect on October 1, 2012 and shall apply to all health insurance plans and health benefit plans on and after October 1, 2012 on such date as a health insurer issues, offers, or renews the plan, but in no event later than October 1, 2013.

(g) Secs. 3 (merged insurance market) and 4 (grandfathered plans) shall take effect on January 1, 2013, provided that:

(1) the department of banking, insurance, securities, and health care administration and the Green Mountain Care board may adopt rules as needed before that date to ensure that enrollment in the health insurance plans will be available no later than October 1, 2013; and

(2) January 1, 2014 shall be the earliest date that coverage may begin under a plan offered in the merged market.

(h) Secs. 14a–22 (certificates of need) shall take effect on January 1, 2013, and the Green Mountain Care board shall have sole jurisdiction over all applications for new certificates of need and over the administration of all existing certificates of need on and after that date, provided that for applications already in process on that date, the rules and procedures in place at the time the application was filed shall continue to apply until a final decision is made on the application.

(i) Secs. 11b (mental health and substance abuse quality assurance), 11e (mental health ombudsman), and 11f (prior authorization) shall take effect on July 1, 2012.

(j) Sec. 11c (parity for primary mental health care services) shall apply to health insurance plans on or after July 1, 2013, on such date as a health insurer issues, offers, or renews the health insurance plan, but in no event later than July 1, 2014.

(k) Secs. 24a–24f (medical malpractice reform) shall take effect on February 1, 2013, except that Sec. 24b(f) (Sorry Works! rulemaking) shall take effect on passage.

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

Senator Cummings, for the Committee on Finance, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Health and Welfare with the following amendments thereto:

First: By replacing "of banking, insurance, securities, and health care administration" wherever it appears with "of financial regulation"

Second: In Sec. 2, 33 V.S.A. § 1804, in subdivisions (a)(1) and (b)(1), following the word "calendar", each time it appears, by striking out the word "quarter" and inserting in lieu thereof the word year

Third: By striking out Sec. 2d, 33 V.S.A. § 1805, in its entirety and inserting in lieu thereof the following:

Sec. 2d. 33 V.S.A. § 1805 is amended to read:

§ 1805. DUTIES AND RESPONSIBILITIES

The Vermont health benefit exchange shall have the following duties and responsibilities consistent with the Affordable Care Act:

* * *

(17) Establishing procedures that allow licensed insurance agents and brokers to be appropriately compensated for:

(A) facilitating the enrollment of qualified individuals and qualified employers in any qualified health plan offered through the exchange for which the individual or employer is eligible; and

(B) assisting qualified individuals in applying for premium tax credits and cost-sharing reductions for qualified health benefit plans purchased through the exchange.

Fourth: In Sec. 3, 33 V.S.A. § 1811, in subdivisions (a)(3)(A) and (B), following the word "calendar", each time it appears, by striking out the word "quarter" and inserting in lieu thereof the word year

Fifth: By striking out Secs. 11c and 11d in their entirety and inserting in lieu thereof the following:

Sec. 11c. PARITY FOR PRIMARY MENTAL HEALTH CARE SERVICES; RECOMMENDATIONS

No later than January 15, 2013, the commissioner of financial regulation or designee shall recommend to the house committee on health care and the senate committees on health and welfare and on finance guidelines for distinguishing between primary and specialty mental health services, taking into consideration factors such as mental health care providers' scope of

practice and patterns of patient visitation. In addition, the commissioner or designee shall provide the committees with an estimate of the impact on health insurance premiums if such guidelines are enacted into law.

Sixth: By inserting a new Sec. 11e to read as follows:

Sec. 11e. 18 V.S.A. § 9418 is amended to read:

§ 9418. PAYMENT FOR HEALTH CARE SERVICES

(a) Except as otherwise specified, as used in this subchapter:

* * *

(15) "Prior authorization" means the process used by a health plan to determine the medical necessity, medical appropriateness, or both, of otherwise covered drugs, medical procedures, medical tests, and health care services. The term "prior authorization" includes preadmission review, pretreatment review, and utilization review.

(16) "Procedure codes" means a set of descriptive codes indicating the procedure performed by a health care provider and includes the American Medical Association's Current Procedural Terminology codes (CPT), the Healthcare Common Procedure Coding System Level II Codes (HCPCS), the American Society of Anesthesiologists' (ASA) current procedural terminology, and the American Dental Association's current dental terminology.

~~(16)~~(17) "Product" means, to the extent permitted by state and federal law, one of the following types of categories of coverage for which a participating provider may be obligated to provide health care services pursuant to a health care contract:

* * *

and by redesignating the current Sec. 11e to be Sec. 11d

Seventh: By striking out Sec. 11f in its entirety and inserting in lieu thereof the following:

Sec. 11f. 18 V.S.A. § 9418b is amended to read:

§ 9418b. PRIOR AUTHORIZATION

* * *

(g)(1) Notwithstanding any provision of law to the contrary, on and after March 1, 2014, when requiring prior authorization for prescription drugs, medical procedures, and medical tests, a health plan shall accept:

(A) The HIPAA 278 standard transaction for sending or receiving authorizations electronically; or

(B) a uniform prior authorization form developed pursuant to subdivisions (2) and (3) of this subsection.

(2)(A) No later than September 1, 2013, the department of financial regulation shall develop a uniform prior authorization form for prior authorization requests for medical procedures and medical tests.

(B) No later than September 1, 2013, the department of financial regulation shall develop uniform forms for prior authorization requests for prescription drugs after determining the appropriate number of forms.

(3) Each uniform prior authorization form developed pursuant to subdivision (2) of this subsection shall meet the following criteria, where applicable:

(A) The form shall include the core set of common data requirements for prior authorization included in the HIPAA 278 standard transaction.

(B) The form shall be made available electronically by the department and by the health plan.

(C) The completed form may be submitted electronically from the prescribing health care provider to the health plan.

(D) The department shall develop the form with input from interested parties from at least one public meeting.

(E) The department shall consider input on the proposed form from the national ASC X-12 workgroup, if available.

(F) In developing the uniform prior authorization forms, the department shall take into consideration the following:

(i) existing prior authorization forms established by the federal Centers for Medicare and Medicaid Services, by the department of Vermont health access, and by insurance and Medicaid departments and agencies in other states; and

(ii) national standards related to electronic prior authorization.

(4) A health plan shall respond to a completed prior authorization request from a prescribing health care provider within two business days for urgent requests and within seven business days for non-urgent requests. The health plan shall notify a health care provider of or make available to a health care provider a receipt of the request for prior authorization and any needed missing information within 24 hours of receipt. If a health plan does not, within the time limits set forth in this section, respond to a completed prior

authorization request, acknowledge receipt of the request for prior authorization, or request missing information, the prior authorization request shall be deemed to have been granted.

Eighth: In Sec. 12, 18 V.S.A. § 9375(b), in subdivision (6), following "Approve", by inserting the following: , modify,

Ninth: By striking out Sec. 25, 8 V.S.A. § 4062, in its entirety and inserting in lieu thereof the following:

Sec. 25. 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 filed by an insurer offering health insurance as defined in subdivision 3301(a)(2) of this title, a nonprofit hospital or medical service corporation, health maintenance organization, or a managed care organization and 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) 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~~ financial regulation; ~~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~~ and

(B) a decision by the Green Mountain Care board has been applied by the commissioner as provided ~~herein, unless the commissioner shall sooner give his or her written approval thereto~~ in subdivision (2) of this subsection.

(2)(A) Prior to approving a rate ~~increase~~ pursuant to this subsection, the commissioner shall seek approval for such rate ~~increase~~ from the Green Mountain Care board established in 18 V.S.A. chapter 220~~, which~~. The commissioner shall make a recommendation to the Green Mountain Care board about whether to approve, modify, or disapprove the rate within 30 days of receipt of a completed application from an insurer. In the event that the commissioner does not make a recommendation to the board within the 30-day period, the commissioner shall be deemed to have recommended approval of the rate, and the Green Mountain Care board shall review the rate request pursuant to subdivision (B) of this subdivision (2).

(B) The Green Mountain Care board shall review rate requests forwarded by the commissioner pursuant to subdivision (A) of this subdivision (2) and shall approve, modify, or disapprove ~~the~~ a rate ~~increase~~ request within

~~10 business~~ 30 days of receipt of the commissioner's recommendation or, in the absence of a recommendation from the commissioner, the expiration of the 30-day period following the department's receipt of the completed application. In the event that the board does not approve or disapprove a rate within 30 days, the board shall be deemed to have approved the rate request.

(C) The commissioner shall apply the decision of the Green Mountain Care board as to rates referred to the board within five business days of the board's decision.

~~(2)~~(3) 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 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.

~~(3) After the expiration of the review period provided herein or at any time after having given written approval, the~~

(b) 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. For premium rates, such withdrawal may occur at any time after applying the decision of the Green Mountain Care board pursuant to subdivision (a)(2)(C) of this section. ~~Such disapproval~~ Disapproval pursuant to this subsection 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)~~(c) 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)~~

(d) of this section. In addition, the insurer shall post the summaries on its website.

~~(c)~~(d)(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 rate filings pursuant to subsection (a) of this section and summaries pursuant to subsection ~~(b)~~(c) 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~~ submitting the policy or rate for the Green Mountain Care board's approval 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~~ rates.

~~(d)~~(e)(1) The following provisions of this section shall not apply to policies for specific disease, accident, injury, hospital indemnity, dental care, vision care, disability income, long-term care, or other limited benefit coverage~~, but shall apply to long-term care policies~~:

(A) the requirement in ~~subdivision~~ subdivisions (a)(1) and (2) for the Green Mountain Care board's approval ~~for any~~ on rate ~~increase~~ requests;

(B) the review standards in subdivision ~~(a)(2)~~ (a)(3) 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) and (d) 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.

(3) Medicare supplemental insurance policies shall be exempt only from the requirement in subdivisions (a)(1) and (2) of this section for the Green Mountain Care board's approval on rate requests and shall be subject to the remaining provisions of this section.

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

Sec. 25a. 8 V.S.A. § 5104 is amended to read:

§ 5104. FILING AND APPROVAL OF RATES AND FORMS; SUPPLEMENTAL ORDERS

(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~~ the commissioner deems necessary to evaluate the filing. 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, or to seek the Green Mountain Care board's approval of, 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.

(b) In connection with a rate decision, the commissioner may also, with the prior approval of the Green Mountain Care board established in 18 V.S.A. chapter 220, make reasonable supplemental orders and may attach reasonable conditions and limitations to such orders as the commissioner finds, on the basis of competent and substantial evidence, necessary to insure that benefits and services are provided at reasonable cost under efficient and economical management of the organization. The commissioner shall not set the rate of payment or reimbursement made by the organization to any physician, hospital or health care provider.

Eleventh: By striking out Sec. 26a in its entirety and inserting in lieu thereof the following:

Sec. 26a. CONSUMER PROTECTION REPORT

No later than January 15, 2013, the department of financial regulation, in collaboration with the state health care ombudsman and the agency of human services, shall report to the house committee on health care and the senate committees on health and welfare and on finance regarding:

(1) recommendations on how best to represent the public interest before the Green Mountain Care board and other regulatory agencies and estimates of resource needs;

(2) recommendations on how best to coordinate, consolidate, or both the consumer protection efforts of the ombudsman's office, the department, and the agency; and

(3) the ombudsman's current and projected funding and resource needs to meet existing statutory responsibilities and suggestions for funding mechanisms to meet those needs.

Twelfth: In Sec. 28, 18 V.S.A. § 702, in subdivision (b)(1)(A), following "with clinical experience in Vermont;", by inserting the following: a representative of the Vermont council of developmental and mental health services;

Thirteenth: In Sec. 31, 8 V.S.A. § 4062f, in subsections (c), (d), and (e), preceding "any such provision", each time it appears, by inserting the following: on and after July 1, 2012,

Fourteenth: In Sec. 32b, 18 V.S.A. § 4632, in subdivisions (a)(1)(B) and (a)(5)(A), by striking out the word "and" preceding the word "items", each time it appears, and following the word "equipment", by inserting the following: , medical food, and infant formula in both places

Fifteenth: In Sec. 35c, Exchange Implementation and Transition Planning; Updates, in subsection (a), in the first sentence, following the word "senate", by striking the word "committee" and inserting in lieu thereof the word "committees" and following the word "welfare", by inserting the words "and on finance"; and in the second sentence, following the words "the chairs of", by striking out the word "both" and inserting in lieu thereof the word the

Sixteenth: By striking out Sec. 40d, 2 V.S.A. § 852, in its entirety and inserting in lieu thereof the following:

Sec. 40d. 2 V.S.A. chapter 24 is amended to read:

CHAPTER 24. HEALTH ~~ACCESS~~ CARE OVERSIGHT COMMITTEE

§ 851. CREATION OF COMMITTEE

(a) A legislative health ~~access~~ care oversight committee is created. The committee shall be appointed biennially and consist of ten members: five members of the house appointed by the speaker, not all from the same political party, and five members of the senate appointed by the senate committee on committees, not all from the same political party. The house appointees shall include ~~two members~~ one member from the house committee on human services, ~~two members~~ one member from the house committee on health care, ~~and~~ one member from the house committee on appropriations, and two at-large members. The senate appointees shall include ~~three members~~ one member from the senate committee on health and welfare, one member from the senate committee on finance, ~~and~~ one member from the senate committee on appropriations, and two at-large members.

(b) The committee may adopt rules of procedure to carry out its duties.

§ 852. FUNCTIONS AND DUTIES

(a) The health ~~access~~ care oversight committee shall ~~carry on~~ monitor, oversee, and provide a continuing review of ~~the operation of the Medicaid program and all Medicaid waiver programs that may affect the administration and beneficiaries of these programs~~ health care and human services programs in Vermont when the general assembly is not in session, including programs and initiatives related to mental health, substance abuse treatment, and health care reform.

(b) In conducting its ~~review~~ oversight and in order to fulfill its duties, the committee ~~shall~~ may consult the following:

(1) Consumers and advocacy groups ~~regarding their satisfaction and complaints~~.

(2) Health care providers ~~regarding their satisfaction and complaints~~.

(3) The department of Vermont health access.

(4) The department of ~~banking, insurance, securities, and health care administration~~ financial regulation.

(5) The department of health.

(6) The department for children and families.

(7) The department of disabilities, aging, and independent living.

(8) The department of mental health.

(9) The agency of human services.

(10) The agency of administration.

(11) The Green Mountain Care board.

(12) The director of health care reform.

~~(6)~~(13) The attorney general.

~~(7)~~(14) The health care ombudsman.

(15) The long-term care ombudsman.

~~(8)~~(16) The Vermont program for quality in health care.

~~(9)~~(17) Any other person or entity as determined by the committee.

(c) The committee shall work with, assist, and advise other committees of the general assembly, members of the executive branch, and the public on matters relating to ~~the state Medicaid program and other state~~ health care and human services programs. Annually, no later than January 15, the committee shall report its recommendations to the governor and the general assembly.

§ 853. MEETINGS AND STAFF SUPPORT

(a) The committee may meet during a session of the general assembly at the call of the chair or by a majority of the members of the committee. The committee may meet during adjournment subject to the approval of the speaker of the house and the president pro tempore of the senate.

(b) For attendance at meetings which are held when the general assembly is not in session, the members of the committee shall be entitled to the same per diem compensation and reimbursement for necessary expenses as those provided to members of standing committees under section 406 of this title.

(c) The staff of the legislative council and the joint fiscal office shall provide professional and administrative support to the committee. The department of ~~banking, insurance, securities, and health care administration~~ financial regulation, the agency of human services, and other agencies of the state shall provide information, assistance, and support upon request of the committee.

Seventeenth: In Sec. 41, Repeals, by striking out subsection (j) in its entirety and inserting in lieu thereof the following:

(j) 8 V.S.A. §§ 4062d (market security trust), 4077 (industrial policies), and 4078 (franchise plan policies) are repealed on July 1, 2012.

And by adding a subsection (k) to read as follows:

(k) Sec. 141c of No. 122 of the Acts of the 2003 Adj. Sess. (2004), as amended (mental health oversight committee), is repealed.

Eighteenth: In Sec. 41a, Transitional Provisions; Implementation, by redesignating the current subsection (a) to be subdivision (a)(1); in the new subdivision (a)(1), following the word "purchased", by inserting the words that took effect and by adding a subdivision (a)(2) to read as follows:

(2) Notwithstanding subdivision (1) of this subsection, the commissioner of financial regulation may, in his or her discretion, allow for the extension of a small group or association plan beyond the plan's renewal date in order to ensure a smooth and orderly transition from health plans offered in the small group and association markets in 2013 to health plans offered in the small group market through the Vermont health benefit exchange in 2014.

Nineteenth: By adding a new section to be numbered Sec. 41b to read as follows:

Sec. 41b. MEDICARE SUPPLEMENTAL INSURANCE; WEB PORTAL

Nothing in this act shall be construed to prohibit the department of Vermont health access from allowing Medicare supplemental insurance to be offered on the web portal for the Vermont health benefit exchange, nor to require that the cost of providing such offerings on the web portal be paid in whole or in part with federal funds. Prior to allowing Medicare supplemental insurance to be offered on the Vermont health benefit exchange web portal, the department shall seek the input of consumers, insurers, and other stakeholders.

Twentieth: In Sec. 42, Effective dates, in subsection (a), by striking out "11d (rulemaking on primary mental health parity)" and inserting in lieu thereof the following: 11c (parity for primary mental health care services) by striking out "25 and 26" and inserting in lieu thereof the following 25–26 following "26a", by striking out "(ombudsman's report)" and inserting in lieu thereof the following: (consumer protection report) by striking out the word "and" preceding "41a", and following "(transitional provisions)", by inserting the following: , and 41b (Medicare supplemental policies) in subsection (e), by striking out "January 1, 2013" and inserting in lieu thereof the following: July 1, 2012 in subdivision (f)(1), preceding the word "oversight", by striking out the word "access" and inserting in lieu thereof the word care in subsection (i), by striking out "11e" preceding "(mental health ombudsman)" and inserting in lieu thereof the following: 11d and following "(mental health ombudsman),", by inserting the following: 11e (payment; definitions), and by

striking out subsection (j) in its entirety and redesignating current subsection (k) to be subsection (j)

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

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass when so amended.

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

Thereupon, pending the question, Shall the recommendation of amendment of Health and Welfare be amended as recommended by the Committee on Finance? Senator Sears raised a *point of order* that Secs. 24a-24g of the recommendation of amendment of the Committee on Health and Welfare was *not germane* in that they dealt with medical malpractice and were beyond the scope of the purpose of the bill.

Thereupon, the President *overruled* the point of order stating that Sec. 24 of the underlying bill deals with medical malpractice and that medical malpractice reform is a related component of health care cost containment, one of the purposes of the bill.

Thereupon, the proposal of amendment of the Committee on Health and Welfare, was amended as proposed by the Committee on Finance.

Thereupon, the proposal of amendment of the Committee on Health and Welfare, as amended, was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Brock moved that the Senate proposal of amendment be amended as follows:

First: By inserting a Sec. 36c to read as follows:

Sec. 36c. FINDINGS

The general assembly finds:

(1) Health care costs and the financing of those costs have a significant impact on the life of every Vermonter.

(2) Decisions regarding health care financing have a significant impact on Vermont's economy.

(3) No. 48 of the Acts of 2011 directs the secretary of administration to recommend plans for sustainable financing for Green Mountain Care and for Vermont's health benefit exchange. Under the language of that act, both plans are due to the legislative committees of jurisdiction by January 15, 2013.

(4) The public has a right to hear and understand the proposed financing plans in advance of the November 2012 election, in which the future direction of Vermont's health care planning is likely to be a major issue for debate.

Second: By inserting a Sec. 36d to read as follows:

Sec. 36d. Sec. 9 of No. 48 of the Acts of 2011 is amended to read:

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~~ September 15, 2012.

* * *

Third: In Sec. 42, Effective Dates, in subsection (a), following "36b (JFO review)", by inserting ", 36c and 36d (financing plan)"

Which was disagreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Sears, moved that the Senate proposal of amendment be amended as follows:

First: By striking out Sec. 24b in its entirety and inserting in lieu thereof a new Sec. 24b to read as follows:

Sec. 24b. [DELETED]

Second: In Sec. 24c, 12 V.S.A. § 7012(c), by striking out the words "in accordance with" and inserting in lieu thereof the words prepared pursuant to

Third: In Sec. 24e by striking out ",24b (Sorry Works! pilot program),"

Fourth: In Sec. 24e(3) by striking out ", 24b,"

Fifth: By striking Sec. 24g in its entirety.

Thereupon, Senator Sears requested and was granted leave to withdraw the proposal of amendment.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Sears moved that the Senate proposal of amendment be amended as follows:

In Sec. 39a, 16 V.S.A. § 1413(d)(1), by striking out the words "reason to believe" and inserting in lieu thereof the words actual knowledge

Thereupon, Senator Sears requested and was granted leave to withdraw the proposal of amendment.

Thereupon, third reading of the bill was ordered.

Adjournment

On motion of Senator Campbell, the Senate adjourned until three o'clock in the afternoon on Tuesday, April 24, 2012.

TUESDAY, APRIL 24, 2012

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 57

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

Mr. President:

I am directed to inform the Senate that:

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

S. 189. An act relating to expanding confidentiality of cases accepted by the court diversion project.

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. 785. An act relating to capital construction and state bonding budget adjustment.

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

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

H. 464. An act relating to a moratorium on hydraulic fracturing wells for natural gas and oil production.

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. McCullough of Williston
Rep. Krebs of South Hero
Rep. Webb of Shelburne

Pursuant to the request of the Senate for a Committee of Conference on the disagreeing votes of the two Houses on Senate bill entitled:

S. 116. An act relating to probate proceedings.

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

Rep. Lippert of Hinesburg
Rep. Koch of Barre Town
Rep. Marek of Newfane

Pursuant to the request of the Senate for a Committee of Conference on the disagreeing votes of the two Houses on Senate bill entitled:

S. 199. An act relating to immunization exemptions and the immunization pilot program.

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

Rep. Fisher of Lincoln
Rep. Spengler of Colchester
Rep. Till of Jericho

The Governor has informed the House that on the April 20, 2012, he approved and signed bills originating in the House of the following titles:

H. 21. An act relating to the mutual benefit enterprise act.

H. 565. An act relating to regulating licensed lenders and mortgage loan originators.

Bill Passed

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

S. 233. An act relating to gradually increasing the mandatory age of school attendance.

Bills Passed in Concurrence

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

H. 272. An act relating to maintenance of private roads.

H. 327. An act relating to the uniform principal and income act.

Bill Passed in Concurrence with Proposal of Amendment

H. 559.

House bill entitled:

An act relating to health care reform implementation.

Was taken up.

Thereupon, pending third reading of the bill, Senator Sears moved to amend the Senate proposal of amendment as follows:

First: By striking Sec. 24b in its entirety and inserting in lieu thereof a new Sec. 24b to read as follows:

Sec. 24b. [DELETED]

Second: In Sec. 24c, 12 V.S.A. § 7012(c), by striking out the words "in accordance with" and inserting in lieu thereof the words prepared pursuant to

Third: In Sec. 24e by striking out ",24b (Sorry Works! pilot program),"

Fourth: In Sec. 24e(3) by striking out ", 24b,"

Fifth: By striking Sec. 24g in its entirety

Which was agreed to.

Senator Sears moved that the Senate proposal of amendment be amended by striking out Sec. 39a, (SPORTS INJURIES) in its entirety.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Sears?, Senator Mullin moved to substitute the following amendment for the proposal of amendment of Senator Sears:

In Sec. 39a, 16 V.S.A. § 1413(d)(1) and by striking the words "reason to believe" and inserting in lieu thereof the words an objectively reasonable belief under the circumstances

Which was agreed to.

Thereupon, the question, Shall the Senate proposal be amended as recommended by Senator Sears, as substituted?, was decided in the affirmative.

Senator Mullin moved to amend the Senate proposal of amendment in Sec. 11f, 18 V.S.A. § 9418b, in subdivisions (g)(2)(A) and (B), by striking out the following: "uniform" each time it appears and inserting in lieu thereof the following: clear, uniform, and readily accessible in both places; and in subdivision (g)(4), in the first sentence, by striking out the following: "two business days" and inserting in lieu thereof the following: 48 hours and by striking out the following: "seven business days" and inserting in lieu thereof the following: 120 hours

Which was agreed to.

Senator Pollina moved that the Senate proposal of amendment be amended as follows:

First: By inserting a new section to be numbered Sec. 11d to read as follows:

Sec. 11d. 8 V.S.A. § 4089b(c) is amended to read:

(c) A health insurance plan shall provide coverage for treatment of a mental health condition and shall:

(1) not establish any rate, term, or condition that places a greater burden on an insured for access to treatment for a mental health condition than for access to treatment for other health conditions, including no greater co-payment for primary mental health care or services than the co-payment applicable to care or services provided by a primary care provider under an insured's policy and no greater co-payment for specialty mental health care or services than the co-payment applicable to care or services provided by a specialist provider under an insured's policy;

Second: By inserting a new section to be numbered Sec. 11e to read as follows:

Sec. 11e. PARITY FOR MENTAL HEALTH CO-PAYMENTS; RULEMAKING

No later than October 1, 2013, the commissioner of financial regulation shall adopt rules pursuant to 3 V.S.A. chapter 25 establishing the guidelines for distinguishing between primary and specialty mental health services developed pursuant to Sec. 11c of this act, taking into account any recommendations received from the committees of jurisdiction.

and by relettering the remaining provisions to be alphabetically correct.

Third: In Sec. 42, Effective Dates, by striking out subsection (i) in its entirety and inserting in lieu thereof a new subsection (i) to read as follows:

(i) Secs. 11b (mental health and substance abuse quality assurance), 11e (rulemaking; mental health co-payment parity), 11f (mental health ombudsman), 11g (payment; definitions), and 11h (prior authorization) of this act shall take effect on July 1, 2012.

Fourth: In Sec. 42, Effective Dates, by adding a new subsection (k) to read as follows:

(k) Sec. 11d (parity for mental health co-payments) of this act shall take effect on January 1, 2014, and shall apply to health insurance plans on and after January 1, 2014 on such date as a health insurer issues, offers, or renews the health insurance plan, but in no event later than January 1, 2015.

Which was agreed to.

Senator Campbell moved that the Senate proposal of amendment be amended by adding a new section to be numbered Sec. 2f to read as follows:

Sec. 2f. 33 V.S.A. § 1806(g) is added to read:

(g) The Vermont health benefit exchange shall clearly display on each page of the exchange website on which a bronze-level plan is available for purchase a notice to prospective purchasers regarding the actuarial value of such plan. The notice shall alert prospective purchasers that a bronze plan will cover only 60 percent of their health care expenses, with the beneficiary responsible for the remaining 40 percent through a combination of deductibles, co-payments, and coinsurance.

Which was agreed to.

Senators Illuzzi and Miller moved that the Senate proposal of amendment be amended as follows:

First: In Sec. 3, 33 V.S.A. § 1811, in the first sentence of subdivision (a)(1), following "organization health benefit plan", by striking out offered through the Vermont health benefit exchange and and following "small employer", by inserting before the period the following: and, on and after January 1, 2015, offered through the Vermont health benefit exchange

Second: In Sec. 3, 33 V.S.A. § 1811, in subsection (b), by striking out the word "No" and inserting in lieu thereof the words On and after January 1, 2015, no

Third: By adding a new section to be numbered Sec. 3a to read as follows:

Sec. 3a. Sec. 2 of No. 48 of the Acts of 2011 is amended to read:

Sec. 2. STRATEGIC PLAN; UNIVERSAL AND UNIFIED HEALTH SYSTEM; EXTENDING DEADLINE BY WHICH MANDATORY PURCHASE ON THE HEALTH BENEFIT EXCHANGE REQUIRED

(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 112th 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:

* * *

(2)(A) As provided in Sec. 4 of this act, no later than ~~November~~ October 1, 2013, the Vermont health benefit exchange established in 33 V.S.A. chapter 18, subchapter 1 shall begin enrolling individuals and ~~small~~ employers with 50 or fewer employees for coverage beginning January 1, 2014. Beginning January 1, 2014, the commissioner of financial regulation may require qualified health benefit plans to be sold to individuals and small groups through the Vermont health benefit exchange, provided that the commissioner shall also allow qualified and nonqualified plans that comply with the required provision of the Affordable Care Act to be sold to individuals and small groups outside the exchange. Beginning January 1, 2015, the commissioner shall not allow qualified and nonqualified plans to be sold to individuals or small groups outside the exchange. 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.

* * *

(3) ~~As provided in Sec. 4 of this act, no~~ No later than October 1, 2015, the Vermont health benefit exchange established in 33 V.S.A. chapter 18, subchapter 1 shall begin enrolling employers with 100 or fewer employees for coverage beginning January 1, 2016. No later than ~~November~~ October 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.

* * *

Fourth: In Sec. 41, Repeals, in subsection (i), by striking out "January 1, 2014" and inserting in lieu thereof January 1, 2015; following "renewed in", by striking out "2013" and inserting in lieu thereof 2014; and following "calendar year", by striking out "2014" and inserting in lieu thereof 2015

Fifth: In Sec. 41a, Transitional Provisions, in subsection (a), by striking out "2014" and inserting in lieu thereof 2015; in subsection (b), by striking out "(c) and" and, following the word "exchange", by inserting in the first year; by striking out subsections (c) and (e) in their entirety and relettering the remaining subsections to be alphabetically correct

Seventh: In Sec. 42, Effective Dates, in subsection (g), following "Secs. 3 (merged insurance markets)", by inserting the following , 3a (strategic plan),

Which was disagreed to on a roll call, Yeas 12, Nays 15.

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: Benning, Brock, Doyle, Flory, Hartwell, Illuzzi, Mazza, Miller, Mullin, Sears, Snelling, Westman.

Those Senators who voted in the negative were: Ashe, Ayer, Baruth, Carris, Cummings, Fox, Galbraith, Giard, Kittell, Lyons, MacDonald, McCormack, Nitka, Pollina, White.

Those Senators absent and not voting were: Campbell, Kitchel, Starr.

Senator Illuzzi moved that the Senate proposal of amendment be amended as follows:

First: By striking out Sec. 2d, 33 V.S.A. § 1805, in its entirety and inserting in lieu thereof a new Sec. 2d to read as follows:

Sec. 2d. 33 V.S.A. § 1805 is amended to read:

§ 1805. DUTIES AND RESPONSIBILITIES; BROKERS; NAVIGATE TO EXCHANGE; ONE TIME ASSISTANCE

The Vermont health benefit exchange shall have the following duties and responsibilities consistent with the Affordable Care Act:

***

(17) Establishing procedures and a mechanism that allow licensed insurance agents and brokers to be reasonably compensated by the employer, the exchange, or an insurer:

(A) facilitating the enrollment of qualified individuals and qualified employers in any qualified health plan offered through the exchange for which the individual or employer is eligible; and

(B) assisting qualified individuals in applying for premium tax credits and cost-sharing reductions for qualified health benefit plans purchased through the exchange.

Second: By inserting a new section to be numbered Sec. 2f to read as follows:

Sec. 2f. CONTINGENCY PLAN; AFFORDABLE CARE ACT; U.S. SUPREME COURT

(a) In the event that the Patient Protection and Affordable Care Act of 2010, as amended, is struck in whole or part by the United States Supreme Court prior to January 1, 2013, the secretary of administration may modify the implementation planning for health care reform activities impacted by the decision of the U.S. Supreme Court in a manner which accomplishes the principles in No. 48 of the Acts of 2011. Notwithstanding 33 V.S.A. chapter 18, subchapter 1 (Vermont health benefit exchange), the secretary may suspend implementation of reform efforts which are no longer required by the Affordable Care Act due to the U.S. Supreme Court decision.

(b) The director of health care reform in the agency of administration shall brief the health care oversight committee about the United States Supreme Court's actions and solicit input from the committee on legislative preferences and intent on moving forward with health care reform. If the oversight committee elects not to schedule a briefing, the director shall inform the secretary of administration of the efforts made to inform the committee and solicit input.

Thereupon, Senator Mullin moved that the question be divided.

Thereupon, Senator Illuzzi, requested and was granted leave to withdraw the *first* proposal of amendment.

Thereupon, the *second* proposal of amendment was disagreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment on a roll call, Yeas 20, Nays 7.

Senator Cummings 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, Carris, Cummings, Fox, Galbraith, Giard, Illuzzi, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Sears, White.

Those Senators who voted in the negative were: Benning, Brock, Doyle, Flory, Hartwell, *Snelling, Westman.

Those Senators absent and not voting were: Campbell, Kitchel, Starr.

*Senator Snelling explained her vote as follows:

"Last year I stood here and expressed my hope that by this time this year we would have sufficient information to go forward with health care reform. Instead I find that I still have too many questions and concerns to vote favorably.

"This legislation includes valuable and necessary actions however the scope of this bill has also been broadly expanded and includes many provisions that are not to complete the exchange."

Consideration Postponed

S. 172.

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

An act relating to creating a private activity bond advisory committee.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. STUDY OF STATE OWNERSHIP INTEREST IN VERMONT'S TRANSMISSION ASSETS

(a) The joint fiscal office shall retain the services of a financial advisor to study the costs, benefits, and risks associated with the state's acquisition of up to a 51-percent ownership interest in Vermont's high-voltage bulk electric (115 kV and above) transmission assets, which are currently owned and financed by

Vermont Transco, LLC (Transco) and managed by the Vermont Electric Power Co., Inc. (VELCO). The financial advisor shall report his or her findings and recommendations to the senate committees on economic development, housing, and general affairs and on finance and the house committees on commerce and economic development and on ways and means not later than April 2, 2012. The advisor may rely on public financial filings with the U.S. Federal Energy Regulatory Commission, the Vermont public service board, ISO-New England, any bond prospectus prepared and issued by the corporation, as well as any other available, relevant information.

(b) The joint fiscal office shall retain the services of a consultant, who may or may not be the same advisor retained under subsection (a) of this section, to study whether the state's acquisition of transmission assets would position the state to influence public benefits such as:

(1) providing low income or underserved individuals or communities with beneficial products or services;

(2) promoting economic opportunity for individuals or communities with beneficial products or services;

(3) preserving or improving the environment; and

(4) accomplishing any other identifiable benefit for society or the environment.

The consultant shall report his or her findings and recommendations to the senate committees on economic development, housing, and general affairs and on finance and the house committees on commerce and economic development and on ways and means not later than April 2, 2012.

(c) Based on the reports authorized under subsections (a) and (b) of this section, the secretary of administration shall make a recommendation as to whether the acquisition of up to 51-percent of Vermont's transmission assets would benefit the people of Vermont and shall provide the reasons for his or her recommendation. The secretary shall submit his or her recommendation to the senate committees on economic development, housing, and general affairs and on finance and the house committees on commerce and economic development and on ways and means not later than April 9, 2012.

(d) Costs incurred in preparing the reports authorized by this section may be reimbursed from the general fund to the joint fiscal office up to $250,000.00.

Sec. 2. EFFECTIVE DATE

This act shall be effective on passage.

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

An act relating to the study of state ownership interest in Vermont's transmission assets.

And that when so amended the bill ought to pass.

Thereupon, Senator Cummings raised a *point of order* under Sec. 402 of Mason's Manual of Legislative Procedure on the ground that the Report of the Committee on Economic Development, Housing and General Affairs was *not germane* to the underlying bill and therefore could not be considered by the Senate.

Thereupon, the President *sustained* the point of order and ruled that the recommendation of amendment of the Committee on Economic Development, Housing and General Affairs was *not germane* to the underlying bill as it did not satisfy the criteria of Mason's Sec. 402 regarding germaneness in that it dealt with a difference topic or subject and changed the purpose, scope and object of the original bill and thus was not naturally related to and did not follow in a logical sequence the subject matter of the original bill.

The President declared that the proposal of amendment recommended by the Committee on Economic Development, Housing and General Affairs could *not* be considered by the Senate and the proposal of amendment was ordered stricken.

Thereupon, Senator Mazza moved that consideration of the bill be postponed until the next legislative day, which was agreed to.

Proposal of Amendment; Third Reading Ordered

H. 730.

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

An act relating to miscellaneous consumer protection laws.

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

First: By adding two new sections to be numbered Secs. 1a and 1b to read as follows:

Sec. 1a. 9 V.S.A. chapter 63 is amended to read:

CHAPTER 63. CONSUMER ~~FRAUD~~ PROTECTION

* * *

§ 2453. PRACTICES PROHIBITED; ANTITRUST AND CONSUMER. ~~FRAUD~~ PROTECTION

* * *

§ 2461e. REQUIREMENTS FOR GUARANTEED PRICE PLANS AND PREPAID CONTRACTS

* * *

(d) Private right of action under consumer ~~fraud~~ protection act. In addition to the remedies set forth in sections 2458 and 2461 of this title, a home heating oil, kerosene, or liquefied petroleum gas dealer may bring an action against its heating oil, kerosene, or liquefied petroleum gas suppliers for failing to honor its contract with the home heating oil, kerosene, or liquefied petroleum gas dealer. The home heating oil, kerosene, or liquefied petroleum gas dealer bringing the action may recover all remedies available to consumers under subsection 2461(b) of this title.

* * *

§ 2480q. PENALTIES

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

* * *

(3) A violation of section 2480p of this subchapter shall be deemed a violation of ~~chapter 63~~ section 2453 of this title~~, the Consumer Fraud Act~~. The attorney general has the same authority to conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under subchapter 1 ~~of chapter 63~~ of this ~~title~~ chapter.

* * *

Sec. 1b. REDESIGNATION OF TERM "CONSUMER FRAUD" TO READ "CONSUMER PROTECTION"

(a) The legislative council, under its statutory revision authority pursuant to 2 V.S.A. § 424, is directed to delete the term "consumer fraud" and to insert in lieu thereof the term "consumer protection" wherever it appears in each of the following sections: 7 V.S.A. § 1010; 8 V.S.A. §§ 2706, 2709, and 2764; 9 V.S.A. § 2471; 18 V.S.A. §§ 1511, 1512, 4086, 4631, 4633, 4634, and 9473; 20 V.S.A. § 2757; and 33 V.S.A. §§ 1923 and 2010; and in any other sections as appropriate.

(b) Notwithstanding the provisions of 3 V.S.A. chapter 25, the attorney general shall have the authority to delete the term "consumer fraud" and to insert in lieu thereof the term "consumer protection" wherever it appears in the attorney general's rules, regulations, and procedures and shall exercise such

authority upon passage of this act as he or she deems to be necessary, appropriate, and consistent with the purposes of this section.

Second: In Sec. 3, in 9 V.S.A. § 2463, in the first sentence, by striking out the following: "in the United States or Canada"

Third: In Sec. 4, by striking out subdivision (7) in its entirety.

Fourth: In Sec. 6, in the section catchline following "SERVICES" by inserting the following: ; OBLIGATION OF BUSINESS RECIPIENT TO NOTIFY SELLER and in 9 V.S.A. § 4401(b)(1), in the second sentence before the period by inserting the following: and shall have no further obligation to accommodate the seller's schedule for pick-up or return shipment or otherwise to facilitate the recovery of the item beyond the requirements of this section

Fifth: In Sec. 9, in 8 V.S.A. § 4260(a), by striking out the sixth sentence and inserting in lieu thereof a new sentence to read as follows: A customer is deemed to consent to receive notice and correspondence by electronic means if the insurer or vendor first discloses to the customer that by providing an electronic mail address the customer consents to receive electronic notice and correspondence at the address, and, the customer provides an electronic mail address.

Sixth: By striking out Sec. 13 in its entirety and inserting in lieu thereof a new Sec. 13 to read as follows:

Sec. 13. 33 V.S.A. § 2607 is amended to read:

§ 2607. PAYMENTS TO FUEL SUPPLIERS

* * *

(g) The public service board shall require natural gas suppliers to provide a discount to fuel assistance customers that is substantially similar to the discount required in public service board docket 7535 for Central Vermont Public Service Corporation and Green Mountain Power.

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

Sec. 13a. STUDY; RESIDENTIAL SPRINKLER SYSTEMS

The department of public safety, in consultation with the department of financial regulation, home builders, and insurance carriers, as well as other interested parties, shall study the costs of requiring sprinklers in new residential construction, including whether fire insurance carriers should be required to absorb all of the costs of sprinkler installation by offsetting premiums until the cost is paid in full and the reduction in premiums is not otherwise recovered in premiums charged to other insureds. The department

shall report its findings and any recommendations regarding the cost of installing and paying for residential sprinkler systems to the senate committee on economic development, housing and general affairs and the house committee on general, housing and military affairs on or before January 15, 2013.

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

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

Proposal of Amendment; Third Reading Ordered

H. 467.

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

An act relating to limited liability for a landowner who permits a person to enter the owner's land for recreational use.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 1, 12 V.S.A. § 5792(4), after "skiing" by adding the following: , snowboarding

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

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

Proposal of Amendment; Third Reading Ordered

H. 412.

House bill entitled:

An act relating to harassment and bullying in educational settings.

Having been called up, was taken up.

Thereupon, the pending question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Education?, was agreed to.

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

In Sec. 1, 16 V.S.A. § 14, subsection (c) by striking out subdivision (2) and inserting in lieu thereof a new subdivision (2) to read as follows:

(2) The conduct was either:

(A) for multiple instances of conduct, so pervasive that when viewed from an objective standard of a similarly situated reasonable person, it substantially and adversely affected the targeted student's equal access to educational opportunities or benefits provided by the educational institution; or

(B) for a single instance of conduct, so severe that when viewed from an objective standard of a similarly situated reasonable person, it substantially and adversely affected the targeted student's equal access to educational opportunities or benefits provided by the educational institution.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

House Proposal of Amendment Concurred In

S. 222.

House proposal of amendment to Senate bill entitled:

An act relating to cost-sharing for employer-sponsored insurance assistance plans.

Was taken up.

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

Sec. 1. 33 V.S.A. § 1974(c)(3) is amended to read:

(3) The premium assistance program under this subsection shall provide a subsidy of premiums or cost-sharing amounts based on the household income of the eligible individual, with greater amounts of financial assistance provided to eligible individuals with lower household income and lesser amounts of assistance provided to eligible individuals with higher household income. Until an approved employer-sponsored plan is required to meet the standard in subdivision (4)(B)(ii) of this subsection, the subsidy shall include premium assistance and assistance to cover cost-sharing amounts for chronic care health services covered by the Vermont health access plan that are related to evidence-based guidelines for ongoing prevention and clinical management of the chronic condition specified in the ~~blueprint~~ Blueprint for ~~health~~ Health in 18 V.S.A. § 702. The subsidy shall also include assistance to cover

cost-sharing amounts for supplemental prescription drug coverage equivalent to the benefits offered by the Vermont health access plan. Notwithstanding any other provision of law, when an individual is enrolled in Catamount Health solely under the high deductible standard outlined in 8 V.S.A. § 4080f(a)(9), the individual shall not be eligible for premium assistance for the 12-month period following the date of enrollment in Catamount Health.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

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

House Proposal of Amendment Concurred In

S. 236.

House proposal of amendment to Senate bill entitled:

An act relating to health care practitioner signature authority.

Was taken up.

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

In Sec. 1, 26 V.S.A. § 1616, following the words "nurse practitioner" by inserting the words or a nurse midwife

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

Rules Suspended; Bill Messaged

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

H. 559.

Message from the House No. 58

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

Mr. President:

I am directed to inform the Senate that:

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

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

And has adopted the same in concurrence.

The Governor has informed the House that on the April 24, 2012, he approved and signed bills originating in the House of the following titles:

H. 760. An act relating to lowering to 16 the age of consent for blood donation.

H. 765. An act relating to the mental health needs of the corrections population.

Adjournment

On motion of Senator Campbell, the Senate adjourned until three o'clock in the afternoon on Wednesday, April 25, 2012.

WEDNESDAY, APRIL 25, 2012

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 59

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

Mr. President:

I am directed to inform the Senate that:

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

S. 89. An act relating to Medicaid for Working Persons with Disabilities.

S. 200. An act relating to the reporting requirements of health insurers.

S. 223. An act relating to health insurance coverage for early childhood developmental disorders, including autism spectrum disorders.

S. 244. An act relating to referral to court diversion for driving with a suspended license.

S. 251. An act relating to miscellaneous amendments to laws pertaining to motor vehicles.

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

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

H. 759. An act relating to permitting the use of secure residential recovery facilities for continued involuntary treatment.

The House adheres to its proposal of amendment, and requests that the Senate recede from its proposal of amendment to the House proposal of amendment.

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

H. 503. An act relating to eliminating the ability of the sergeant at arms to employ a traffic control officer and requiring the certification of capitol police officers.

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

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

H. 496. An act relating to preserving Vermont's working landscape.

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. Partridge of Windham
Rep. Stevens of Shoreham
Rep. Lawrence of Lyndon

Committee Relieved of Further Consideration; Bill Committed

H. 506.

On motion of Senator Mazza, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to vinous beverages,

and the bill was committed to the Committee on Economic Development, Housing and General Affairs.

H. 762.

On motion of Senator Mazza, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to workers' compensation and unemployment compensation,

and the bill was committed to the Committee on Economic Development, Housing and General Affairs.

H. 792.

On motion of Senator Mazza, the Committee on Rules was relieved of further consideration of House bill entitled:

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

and the bill was committed to the Committee on Government Operations.

H. 793.

On motion of Senator Mazza, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to approval of amendments to the charter of the Winooski incorporated school district,

and the bill was committed to the Committee on Government Operations.

H. 794.

On motion of Senator Mazza, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to the management of search and rescue operations,

and the bill was committed to the Committee on Appropriations.

Bills Passed in Concurrence with Proposal of Amendment

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

H. 412. An act relating to harassment and bullying in educational settings.

H. 467. An act relating to limited liability for a landowner who permits a person to enter the owner's land for recreational use.

H. 730. An act relating to miscellaneous consumer protection laws.

Proposal of Amendment; Point of Order; Third Reading Ordered

H. 745.

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

An act relating to the Vermont prescription monitoring system.

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

It is the purpose of this act to maximize the effectiveness and appropriate utilization of the Vermont prescription monitoring system, which serves as an important tool in promoting public health by providing opportunities for treatment for and prevention of abuse of controlled substances without interfering with the legal medical use of those substances.

Sec. 1a. 18 V.S.A. § 4201~~(26)~~ is amended to read:

§ 4201. DEFINITIONS

As used in this chapter, unless the context otherwise requires:

* * *

(26) "Prescription" means an order for a regulated drug made by a physician, advanced practice registered nurse, dentist, or veterinarian licensed under this chapter to prescribe such a drug which shall be in writing except as otherwise specified ~~herein~~ in this subdivision. Prescriptions for such drugs shall be made to the order of an individual patient, dated as of the day of issue and signed by the prescriber. The prescription shall bear the full name ~~and~~, address, and date of birth of the patient, or if the patient is an animal, the name and address of the owner of the animal and the species of the animal. Such prescription shall also bear the full name, address, and registry number of the prescriber and shall be written with ink, indelible pencil, or typewriter; if typewritten, it shall be signed by the ~~physician~~ prescriber. A written or typewritten prescription for a controlled substance, as defined in 21 C.F.R. Part 1308, shall contain the quantity of the drug written both in numeric and word form.

* * *

Sec. 2. 18 V.S.A. § 4215b is added to read:

§ 4215b. IDENTIFICATION

Prior to dispensing a prescription for a Schedule II, III, or IV controlled substance, a pharmacist shall require the individual receiving the drug to provide a signature and show valid and current government-issued photographic identification as evidence that the individual is the patient for whom the prescription was written, the owner of the animal for which the prescription was written, or the bona fide representative of the patient or animal owner. If the individual does not have valid, current

government-issued photographic identification, the pharmacist may request alternative evidence of the individual's identity, as appropriate.

Sec. 3. 18 V.S.A. § 4218 is amended to read:

§ 4218. ENFORCEMENT

* * *

(d) Nothing in this section shall authorize the department of public safety and other authorities described in subsection (a) of this section to have access to VPMS (Vermont prescription monitoring system) created pursuant to chapter 84A of this title, except as provided in that chapter.

(e) Notwithstanding subsection (d) of this section, a drug diversion investigator, as defined in section 4282 of this title, with a warrant may request VPMS data from the department of health pursuant to subdivision 4284(b)(2)(F) of this title.

(f) The department of public safety shall adopt a written policy and protocols for accessing pharmacy records through the authority granted in this section. These policies and protocols shall be a public record.

Sec. 3a. DEPARTMENT OF PUBLIC SAFETY; REPORTING POLICIES AND PROTOCOLS

No later than December 15, 2012, the commissioner of public safety shall submit to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare the department's written policy and protocols used to access pharmacy records at individual pharmacies pursuant to 18 V.S.A. § 4218. Subsequently, if the policy and protocols are substantively amended by the department, it shall submit the amended policy and protocols to the same committees as soon as practicable.

Sec. 4. [Deleted.]

Sec. 5. 18 V.S.A. § 4282 is amended to read:

§ 4282. DEFINITIONS

As used in this chapter:

* * *

(5) "Delegate" means an individual employed by a health care facility or pharmacy, in the office of the chief medical examiner, or in the office of the medical director of the department of Vermont health access and authorized by a health care provider or dispenser, the chief medical examiner, or the medical director to request information from the VPMS relating to a bona fide current

patient of the health care provider or dispenser, to a bona fide investigation or inquiry into an individual's death, or to a patient for whom a Medicaid claim for a Schedule II, III, or IV controlled substance has been submitted.

(6) "Department" means the department of health.

(7) "Drug diversion investigator" means an employee of the department of public safety whose primary duties include investigations involving violations of laws regarding prescription drugs or the diversion of prescribed controlled substances, and who has completed a training program established by the department of health by rule that is designed to ensure that officers have the training necessary to use responsibly and properly any information that they receive from the VPMS.

(8) "Evidence-based" means based on criteria and guidelines that reflect high-quality, cost-effective care. The methodology used to determine such guidelines shall meet recognized standards for systematic evaluation of all available research and shall be free from conflicts of interest. Consideration of the best available scientific evidence does not preclude consideration of experimental or investigational treatment or services under a clinical investigation approved by an institutional review board.

Sec. 6. 18 V.S.A. § 4283 is amended to read:

§ 4283. CREATION; IMPLEMENTATION

(a) ~~Contingent upon the receipt of funding, the~~ The department ~~may establish~~ shall maintain an electronic database and reporting system for monitoring Schedules II, III, and IV controlled substances, as defined in 21 C.F.R. Part 1308, as amended and as may be amended, that are dispensed within the state of Vermont by a health care provider or dispenser or dispensed to an address within the state by a pharmacy licensed by the Vermont board of pharmacy.

* * *

(e) It is not the intention of the department that a health care provider or a dispenser shall have to pay a fee or tax or purchase hardware or proprietary software required by the department specifically for the use, establishment, maintenance, or transmission of the data. The department shall seek grant funds and take any other action within its financial capability to minimize any cost impact to health care providers and dispensers.

*** * ***

Sec. 7. 18 V.S.A. § 4284 is amended to read:

§ 4284. PROTECTION AND DISCLOSURE OF INFORMATION

(a) The data collected pursuant to this chapter and all related information and records shall be confidential, except as provided in this chapter, and shall not be subject to public records law. The department shall maintain procedures to protect patient privacy, ensure the confidentiality of patient information collected, recorded, transmitted, and maintained, and ensure that information is not disclosed to any person except as provided in this section.

(b)(1) The department shall ~~be authorized to provide data to only~~ provide only the following persons with access to query the VPMS:

~~(1) A patient or that person's health care provider, or both, when VPMS reveals that a patient may be receiving more than a therapeutic amount of one or more regulated substances.~~

~~(2)~~(A) A health care provider ~~or,~~ dispenser, or delegate who ~~requests information~~ is registered with the VPMS and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient.

(B) Personnel or contractors, as necessary for establishing and maintaining the VPMS.

(C) The medical director of the department of Vermont health access, for the purposes of Medicaid quality assurance, utilization, and federal monitoring requirements with respect to Medicaid recipients for whom a Medicaid claim for a Schedule II, III, or IV controlled substance has been submitted.

(D) A medical examiner from the office of the chief medical examiner, for the purpose of conducting an investigation or inquiry into the cause, manner, and circumstances of an individual's death.

(E) A health care provider or medical examiner licensed to practice in another state, to the extent necessary to provide appropriate medical care to a Vermont resident or to investigate the death of a Vermont resident.

(2) The department shall provide reports of data available to the department through the VPMS only to the following persons:

(A) A patient or that person's health care provider, or both, when VPMS reveals that a patient may be receiving more than a therapeutic amount of one or more regulated substances.

~~(3)~~(B) A designated representative of a board responsible for the licensure, regulation, or discipline of health care providers or dispensers pursuant to a bona fide specific investigation.

~~(4)~~(C) A patient for whom a prescription is written, insofar as the information relates to that patient.

~~(5)~~(D) The relevant occupational licensing or certification authority if the commissioner reasonably suspects fraudulent or illegal activity by a health care provider. The licensing or certification authority may report the data that are the evidence for the suspected fraudulent or illegal activity to a ~~trained law enforcement officer~~ drug diversion investigator.

~~(6)~~(E)(i) The commissioner of public safety, personally, or the deputy commissioner of public safety, personally, if the commissioner of health, personally, or the deputy commissioner for alcohol and drug abuse programs, 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.

(ii) The commissioner of public safety, personally, or the deputy commissioner of public safety, personally, when he or she requests data from the commissioner of health, and the commissioner of health believes, after consultation with at least one of the patient's health care providers, that disclosure is necessary to avert a serious and imminent threat to a person or the public.

(iii) The commissioner or deputy commissioner of public safety may disclose such data received pursuant to this subdivision (E) as is necessary, in his or her discretion, to avert the serious and imminent threat.

~~(7) Personnel or contractors, as necessary for establishing and maintaining the VPMS.~~

(F) A drug diversion investigator, as defined in section 4282 of this section, with a warrant.

(G) A prescription monitoring system or similar entity in another state pursuant to a reciprocal agreement to share prescription monitoring information with the Vermont department of health as described in section 4288 of this title.

(c) A person who receives data or a report from VPMS or from the department shall not share that data or report with any other person or entity not eligible to receive that data pursuant to subsection (b) of this section, except as necessary and consistent with the purpose of the disclosure and in the

normal course of business. Nothing shall restrict the right of a patient to share his or her own data.

(d) The commissioner shall offer health care providers and dispensers training in the proper use of information they may receive from VPMS. Training may be provided in collaboration with professional associations representing health care providers and dispensers.

(e) ~~A trained law enforcement officer who may receive information pursuant to this section shall not have access to VPMS except for information provided to the officer by the licensing or certification authority.~~ [Deleted.]

(f) The department is authorized to use information from VPMS for research, trend analysis, and other public health promotion purposes provided that data are aggregated or otherwise de-identified. The department shall post the results of trend analyses on its website for use by health care providers, dispensers, and the general public. When appropriate, the department shall send alerts relating to identified trends to health care providers and dispensers by electronic mail.

(g) Knowing disclosure of transmitted data to a person not authorized by subsection (b) of this section, or obtaining information under this section not relating to a bona fide specific investigation, shall be punishable by imprisonment for not more than one year or a fine of not more than $1,000.00, or both, in addition to any penalties under federal law.

(h) All information and correspondence relating to the disclosure of information by the commissioner to a patient's health care provider pursuant to subdivision (b)(2)(A) of this section shall be confidential and privileged, exempt from the public access to records law, immune from subpoena or other disclosure, and not subject to discovery or introduction into evidence.

(i) Each request for disclosure of data pursuant to subdivision (b)(2)(B) of this section shall document a bona fide specific investigation and shall specify the name of the person who is the subject of the investigation.

(j) Each request for disclosure of data pursuant to a warrant or to subdivision (b)(2)(E) of this section shall document a bona fide specific investigation and shall specify the name of the person who is the subject of the investigation.

Sec. 8. 18 V.S.A. § 4286 is amended to read:

§ 4286. ADVISORY COMMITTEE

(a)(1) The commissioner shall establish an advisory committee to assist in the implementation and periodic evaluation of VPMS.

(2) The department shall consult with the committee concerning any potential operational or economic impacts on dispensers and health care providers related to transmission system equipment and software requirements.

(3) The committee shall develop guidelines for use of VPMS by dispensers ~~and~~, health care providers, and delegates, and shall make recommendations concerning under what circumstances, if any, the department shall or may give VPMS data, including data thresholds for such disclosures, to law enforcement personnel. The committee shall also review and approve advisory notices prior to publication.

(4) The committee shall make recommendations regarding ways to improve the utility of the VPMS and its data.

(5) The committee shall have access to aggregated, de-identified data from the VPMS.

* * *

(d) The committee shall issue a report to the senate and house committees on judiciary, the senate committee on health and welfare, and the house committee on human services no later than January 15th in 2008, 2010, ~~and~~ 2012, and 2014.

(e) This section shall sunset on July 1, ~~2012~~ 2014 and thereafter the committee shall cease to exist.

Sec. 9. 18 V.S.A. § 4287 is amended to read:

§ 4287. RULEMAKING

The department shall adopt rules for the implementation of VPMS as defined in this chapter consistent with 45 C.F.R. Part 164, as amended and as may be amended, that limit the disclosure to the minimum information necessary for purposes of this act ~~and shall keep the senate and house committees on judiciary, the senate committee on health and welfare, and the house committee on human services advised of the substance and progress of initial rulemaking pursuant to this section~~.

Sec. 10. 18 V.S.A. § 4288 is added to read:

§ 4288. RECIPROCAL AGREEMENTS

The department of health may enter into reciprocal agreements with other states that have prescription monitoring programs so long as access under such agreement is consistent with the privacy, security, and disclosure protections in this chapter.

Sec. 11. 18 V.S.A. § 4289 is added to read:

§ 4289. STANDARDS AND GUIDELINES FOR HEALTH CARE PROVIDERS AND DISPENSERS

(a) Each professional licensing authority for health care providers shall develop evidence-based standards to guide health care providers in the appropriate prescription of Schedules II, III, and IV controlled substances for treatment of chronic pain and for other medical conditions to be determined by the licensing authority.

(b)(1) Each health care provider who prescribes any Schedule II, III, or IV controlled substances shall register with the VPMS.

(2) If the VPMS shows that a patient has filled a prescription for a controlled substance written by a health care provider who is not a registered user of VPMS, the commissioner of health shall notify such provider by mail of the provider's registration requirement pursuant to subdivision (1) of this subsection.

(3) The commissioner of health shall develop additional procedures to ensure that all health care providers who prescribe controlled substances are registered in compliance with subdivision (1) of this subsection.

(c) Each dispenser who dispenses any Schedule II, III, or IV controlled substances shall register with the VPMS.

(d)(1) Each professional licensing authority for health care providers and dispensers authorized to prescribe or dispense Schedules II, III, and IV controlled substances shall adopt standards regarding the frequency and circumstances under which their respective licensees shall query the VPMS.

(2) Each professional licensing authority for dispensers shall adopt standards regarding the frequency and circumstances under which its licensees shall report to the VPMS, which shall be no less than once every seven days.

(3) Each professional licensing authority for health care providers and dispensers shall consider the standards adopted pursuant to this section in disciplinary proceedings when determining whether a licensee has complied with the applicable standard of care.

(4) No later than January 15, 2013, each professional licensing authority subject to this subsection shall submit its standards to the VPMS advisory committee established in section 4286 of this title.

Sec. 12. 18 V.S.A. § 4290 is added to read:

§ 4290. REPLACEMENT PRESCRIPTIONS AND MEDICATIONS

(a) As used in this section, "replacement prescription" means an unscheduled prescription request in the event that the document on which a patient's prescription was written or the patient's prescribed medication is reported to the prescriber as having been lost or stolen.

(b) When a patient or a patient's parent or guardian requests a replacement prescription for a Schedule II, III, or IV controlled substance, the patient's health care provider shall query the VPMS prior to writing the replacement prescription to determine whether the patient may be receiving more than a therapeutic dosage of the controlled substance.

(c) When a health care provider writes a replacement prescription pursuant to this section, the provider shall clearly indicate as much by writing the word "REPLACEMENT" on the face of the prescription.

(d) When a dispenser fills a replacement prescription, the dispenser shall report the required information to the VPMS and shall indicate that the prescription is a replacement by completing the VPMS field provided for such purpose. In addition, the dispenser shall report to the VPMS the name of the person picking up the replacement prescription, if not the patient.

(e) The VPMS shall create a mechanism by which individuals authorized to access the system pursuant to section 4284 of this title may search the database for information on all or a subset of all replacement prescriptions.

Sec. 13. UNIFIED PAIN MANAGEMENT SYSTEM ADVISORY COUNCIL

(a) There is hereby created a unified pain management system advisory council for the purpose of advising the commissioner of health on matters relating to the appropriate use of controlled substances in treating chronic pain and addiction and in preventing prescription drug abuse.

(b) The unified pain management system advisory council shall consist of the following members:

(1) the commissioner of health or designee, who shall serve as chair;

(2) the deputy commissioner of health for alcohol and drug abuse programs or designee;

(3) the commissioner of mental health or designee;

(4) the director of the Blueprint for Health or designee;

(5) the chair of the board of medical practice or designee, who shall be a clinician;

(6) a representative of the Vermont state dental society, who shall be a dentist;

(7) a representative of the Vermont board of pharmacy, who shall be a pharmacist;

(8) a faculty member from the academic detailing program at the University of Vermont's College of Medicine;

(9) a faculty member from the University of Vermont's College of Medicine with expertise in the treatment of addiction or chronic pain management;

(10) a representative of the Vermont Medical Society, who shall be a primary care clinician;

(11) a representative of the American Academy of Family Physicians, Vermont chapter, who shall be a primary care clinician;

(12) a representative of the federally qualified health centers, who shall be a primary care clinician selected by the Bi-State Primary Care Association;

(13) a representative of the Vermont Ethics Network;

(14) a representative of the Hospice and Palliative Care Council of Vermont;

(15) a representative of the office of the health care ombudsman;

(16) the medical director for the department of Vermont health access;

(17) a clinician who works in the emergency department of a hospital, to be selected by the Vermont Association of Hospitals and Health Systems in consultation with any nonmember hospitals;

(18) a member of the Vermont board of nursing subcommittee on APRN practice, who shall be an advanced practice registered nurse;

(19) a representative from the Vermont Assembly of Home Health and Hospice Agencies;

(20) a psychologist licensed pursuant to 26 V.S.A. chapter 55 who has experience in treating chronic pain, to be selected by the board of psychological examiners;

(21) a drug and alcohol abuse counselor licensed pursuant to 33 V.S.A. chapter 8, to be selected by the deputy commissioner of health for alcohol and drug abuse programs; and

(22) a consumer representative who is either a consumer in recovery from prescription drug abuse or a consumer receiving medical treatment for chronic noncancer-related pain.

(c) Advisory council members who are not employed by the state shall be entitled to per diem and expenses as provided by 32 V.S.A. § 1010.

(d) A majority of the members of the advisory council shall constitute a quorum. The advisory council shall act only by a majority vote of the members present and voting and only at meetings called by the chair or by any three of the members.

(e) To the extent funds are available, the advisory council shall have the following duties:

(1) to develop and recommend principles and components of a unified pain management system, including the appropriate use of controlled substances in treating noncancer-related chronic pain and addiction and in preventing prescription drug abuse;

(2) to identify and recommend components of evidence-based training modules and minimum requirements for the continuing education of all licensed health care providers in the state who treat chronic pain or addiction or prescribe controlled substances in Schedule II, III, or IV consistent with a unified pain management system;

(3) to identify and recommend evidence-based training modules for all employees of the agency of human services who have direct contact with recipients of services provided by the agency or any of its departments; and

(4) to identify and recommend system goals and planned assessment tools to ensure that the initiative's progress can be monitored and adapted as needed.

(f) The commissioner of health may designate subcommittees as appropriate to carry out the work of the advisory council.

(g) On or before January 15, 2013, the advisory council shall submit its recommendations to the senate committee on health and welfare, the house committee on human services, and the house committee on health care.

Sec. 14. UNUSED DRUG DISPOSAL PROGRAM

No later than January 15, 2013, the commissioners of health and of public safety shall establish a drug disposal program for unused over-the-counter and prescription drugs, which program shall be available to Vermont residents throughout the state at no charge to the consumer. The commissioners shall

take steps to publicize the program and to make all Vermont residents aware of opportunities to avail themselves of it.

Sec. 15. ADVISORY COMMITTEE REPORT

No later than January 15, 2013, the VPMS advisory committee established in 18 V.S.A. § 4286 shall provide recommendations to the house committee on human services and the senate committee on health and welfare regarding ways to maximize the effectiveness and appropriate use of the VPMS database, including adding new reporting capabilities, in order to improve patient outcomes and avoid prescription drug diversion.

Sec. 16. SPENDING AUTHORITY

Providing financial support for the unified pain management system advisory council established in Sec. 13 of this act, upgrading the VPMS software, and implementing enhancements to the VPMS shall all be acceptable uses of the monies in the evidence-based education and advertising fund established in 33 V.S.A. § 2004a. The commissioner of health shall seek excess receipts authority to make expenditures as needed from the evidence-based education and advertising fund for these purposes.

Sec. 17. INTEGRATION; LEGISLATIVE INTENT

It is the intent of the general assembly that the initiatives described in this act should be integrated to the extent possible with the Blueprint for Health and the mental health system of care.

Sec. 18. EFFECTIVE DATES

(a) This section and Sec. 8 of this act (18 V.S.A. § 4286) shall take effect on passage and shall apply retroactively as of January 15, 2012.

(b) Secs. 10 (18 V.S.A. § 4288; reciprocal agreements), 11 (18 V.S.A. § 4289; standards and guidelines), and 12 (18 V.S.A. § 4290; replacement prescriptions) and Sec. 7(b)(2)(G) (18 V.S.A. § 4284(b)(2)(G); interstate data sharing) shall take effect on October 1, 2012.

(c) The remaining sections of this act shall take effect on July 1, 2012.

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

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

In Sec. 13, Unified Pain Management System Advisory Council, in subsection (c), following the word "state", by inserting the following: or whose participation is not supported through their employment or association

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposal of amendment by the Committee on Health and Welfare was amended as recommended by the Committee on Appropriations.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Health and Welfare, as amended?, Senators Sears, Cummings, Snelling and White moved to amend the proposal of amendment of the Committee on Health and Welfare, as amended, as follows:

First: By striking out Secs. 3 and 3a in their entirety inserting in lieu thereof new Secs. 3 and 3a to read as follows:

Sec. 3. 18 V.S.A. § 4218 is amended to read:

§ 4218. ENFORCEMENT

* * *

(d) Nothing in this section shall authorize the department of public safety and other authorities described in subsection (a) of this section to have access to VPMS (Vermont prescription monitoring system) created pursuant to chapter 84A of this title, except as provided in that chapter.

(e) Notwithstanding subsection (d) of this section, a drug diversion investigator, as defined in section 4282 of this title, may request VPMS data from the department of health pursuant to subdivision 4284(b)(3) of this title.

(f) The department of public safety shall adopt standard operating guidelines for accessing pharmacy records through the authority granted in this section. Any person authorized to access pharmacy records pursuant to subsection (a) of this section shall follow the department of public safety's guidelines. These guidelines shall be a public record.

Sec. 3a. DEPARTMENT OF PUBLIC SAFETY; REPORTING STANDARD OPERATING GUIDELINES

No later than December 15, 2012, the commissioner of public safety shall submit to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare the department's written standard operating guidelines used to access pharmacy records at individual pharmacies pursuant to 18 V.S.A. § 4218. Subsequently, if the guidelines are substantively amended by the department, it shall submit the amended guidelines to the same committees as soon as practicable.

Second: In Sec. 7, 18 V.S.A. § 4284, subsection (b), by striking out subdivision (2)(F) in its entirety and relettering the remaining subdivision to be alphabetically correct

Third: In Sec. 7, 18 V.S.A. § 4284, subsection (b), by adding a new subdivision (3) to read as follows:

(3)(A) The department shall provide data available to the department through the VPMS to a drug diversion investigator in accordance with this subdivision (3). The department shall release data pursuant to a request by an officer conducting:

(i) an investigation with a reasonable, good faith belief that it could lead to the filing of criminal proceedings related to a violation of this title; or

(ii) an investigation that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution related to a violation of this title in the foreseeable future.

(B) An investigation under subdivision (A) of this subdivision (3) shall be based upon a report from a pharmacist or a health care provider.

(C) Upon a request in compliance with subdivision (A) of this subdivision (3), the department shall provide the officer with only the following information:

(i) Name and date of birth of the subject of the request.

(ii) The name and address of any pharmacy that has provided a Schedule II, III, or IV regulated drug to the subject of the request.

(iii) The name and address of any health care provider who has prescribed a Schedule II, III, or IV regulated drug to the subject of the request.

(D) An investigation under this subdivision shall be identified by a law enforcement case number for tracking and documentation purposes.

Fourth: In Sec. 7, 18 V.S.A. § 4284, by striking out subsection (j) in its entirety

Fifth: By adding four new sections to be numbered Secs. 4a–4d to read as follows:

Sec. 4a. 7 V.S.A. § 656 is amended to read:

§ 656. MINORS MISREPRESENTING AGE, PROCURING, POSSESSING, OR CONSUMING LIQUORS; FIRST OFFENSE; CIVIL VIOLATION

(a) A minor 16 years of age or older shall not:

(1) falsely represent his or her age for the purpose of procuring or attempting to procure malt or vinous beverages or spirituous liquor from any licensee, state liquor agency, or other person or persons;

(2) possess malt or vinous beverages or spirituous liquor for the purpose of consumption by himself or herself or other minors, except in the regular performance of duties as an employee of a licensee licensed to sell alcoholic liquor; or

(3) consume malt or vinous beverages or spirituous liquors. A violation of this subdivision may be prosecuted in a jurisdiction where the minor has consumed malt or vinous beverages or spirituous liquors, or in a jurisdiction where the indicators of consumption are observed.

(b)(1) A law enforcement officer shall issue a notice of violation, in a form approved by the court administrator, to a person who violates this section if the person has not previously been adjudicated in violation of this section or convicted of violating section 657 of this title. The notice of violation shall require the person to provide his or her name and address, and shall explain procedure under this section, including that:

(A) the person must contact the diversion board in the county where the offense occurred within 15 days;

(B) failure to contact the diversion board within 15 days will result in the case being referred to the judicial bureau, where the person, if found liable for the violation, will be subject to a penalty of $300.00 and a 90-day suspension of the person's operator's license, and may face substantially increased insurance rates;

(C) no money should be submitted to pay any penalty until after adjudication; and

(D) the person shall notify the diversion board if the person's address changes.

(2) When a person is issued a notice of violation under subdivision (1) of this subsection, the law enforcement officer shall complete a summons and complaint for the offense and send it to the diversion board in the county where the offense occurred. The summons and complaint shall not be filed with the judicial bureau at that time.

(3) Within 15 days after receiving a notice of violation issued under subdivision (1) of this subsection, the person shall contact the diversion board in the county where the offense occurred and register for the teen alcohol and drug safety program. If the person fails to do so, the diversion board shall file the summons and complaint with the judicial bureau for adjudication under 4 V.S.A. chapter 29 ~~of Title 4~~. The diversion board shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation, and shall provide two copies to the person charged with the violation.

(c) A person who violates this section commits a civil violation and shall be subject to a civil penalty of $300.00, and the person's operator's license and privilege to operate a motor vehicle shall be suspended for a period of 90 days. The state may obtain a violation under this section or a conviction under section 657 of this title, but not both.

(d) If a person fails to pay a penalty imposed under this section by the time ordered, the judicial bureau shall notify the commissioner of motor vehicles, who shall suspend the person's operator's license and privilege to operate a motor vehicle until payment is made.

(e) Upon adjudicating a person in violation of this section, the judicial bureau shall notify the commissioner of motor vehicles, who shall maintain a record of all such adjudications which shall be separate from the registry maintained by the department for motor vehicle driving records. The identities of persons in the registry shall only be revealed to a law enforcement officer determining whether the person has previously violated this section.

(f)(1) Upon receipt from a law enforcement officer of a summons and complaint completed under subdivision (b)(2) of this section, the diversion board shall send the person a notice to report to the diversion board. The notice to report shall provide that:

(A) The person is required to complete all conditions related to the offense imposed by the diversion board, including substance abuse screening and, if deemed appropriate following the screening, substance abuse education or substance abuse counseling, or both.

(B) If the person does not satisfactorily complete the substance abuse screening, any required substance abuse education or substance abuse counseling, or any other conditions related to the offense imposed by the diversion board, the case will be referred to the judicial bureau, where the person, if found liable for the violation, shall be assessed a penalty of $300.00, the person's driver's license will be suspended for 90 days, and the person's automobile insurance rates may increase substantially.

(C) If the person satisfactorily completes the substance abuse screening, any required substance abuse education or substance abuse counseling, and any other conditions related to the offense imposed by the diversion board, no penalty shall be imposed and the person's operator's license will not be suspended.

(2)(A) Upon being contacted by a person who has been issued a notice of violation under subdivision (b)(1) of this section, the diversion board shall register the person in the teen alcohol and drug safety program. Pursuant to the teen alcohol and drug safety program, the diversion board shall impose

conditions on the person. The conditions imposed shall include only conditions related to the offense, and in every case shall include a condition requiring satisfactory completion of substance abuse screening and, if deemed appropriate following the screening, substance abuse education or substance abuse counseling, or both. If the screener recommends substance abuse counseling, the person shall choose a state-certified or state-licensed substance abuse counselor or substance abuse treatment provider to provide the services.

(B) Substance abuse screening required under this subsection shall be completed within 60 days after the diversion board receives a summons and complaint completed under subdivision (b)(2) of this section. The person shall complete all conditions at his or her own expense.

(3) When a person has satisfactorily completed substance abuse screening, any required substance abuse education or substance abuse counseling, and any other conditions related to the offense which the diversion board has imposed, the diversion board shall:

(A) void the summons and complaint with no penalty due; and

(B) send copies of the voided summons and complaint to the judicial bureau and to the law enforcement officer who completed them. Before sending copies of the voided summons and complaint to the judicial bureau under this subdivision, the diversion board shall redact all language containing the person's name, address, social security number or any other information which identifies the person.

(4) If a person does not satisfactorily complete substance abuse screening, any required substance abuse education or substance abuse counseling, or any other conditions related to the offense imposed by the diversion board, or if the person fails to pay the diversion board any required program fees, the diversion board shall file the summons and complaint with the judicial bureau for adjudication under 4 V.S.A. chapter 29 ~~of Title 4~~. The diversion board shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation, and shall provide two copies to the person charged with the violation.

(5) A person aggrieved by a decision of the diversion board or alcohol counselor may seek review of that decision pursuant to Rule 75 of the Vermont Rules of Civil Procedure.

(g) The state's attorney may dismiss without prejudice a violation brought under this section.

Sec. 4b. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

(a) Possession and cultivation.

(1) A person knowingly and unlawfully possessing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of more than one ounce containing any marijuana shall be imprisoned not more than six months or fined not more than $500.00, or both. A person convicted of a second or subsequent offense under this subdivision shall be imprisoned not more than two years or fined not more than $2,000.00, or both. Upon an adjudication of guilt for a first offense under this subdivision, the court may defer sentencing as provided in 13 V.S.A. § 7041 except that the court may in its discretion defer sentence without the filing of a presentence investigation report and except that sentence may be imposed at any time within two years from and after the date of entry of deferment. The court may prior to sentencing, order that the defendant submit to a drug assessment screening which may be considered at sentencing in the same manner as a presentence report.

* * *

Sec. 4c. 18 V.S.A. § 4230a is added to read:

§ 4230a. MARIJUANA; CIVIL PENALTY

(a) No person shall knowingly and unlawfully possess marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or less containing any marijuana.

(b) A person 21 years of age or older who violates this section shall be assessed a civil penalty of not more than $100.00. For a fifth or subsequent violation of this section, a person 21 years of age or older shall be fined not more than $500.00.

(c) Except as otherwise provided in this section, a person under the age of 21 who violates subsection (a) of this section shall be punished in accordance with the provisions set forth in 7 V.S.A. §§ 656 and 657 regarding minors misrepresenting age and procuring, possessing, or consuming liquors.

(d)(1) Except as otherwise provided in this section, a person who possesses one ounce or less of marijuana or who possesses paraphernalia for marijuana use shall not be penalized or sanctioned in any manner by the state or any of its political subdivisions or denied any right or privilege under state law, including:

(A) denying the offender student financial aid, unemployment benefits, public housing, or any other form of public financial assistance;

(B) denying the offender's right to operate a motor vehicle; or

(C) disqualifying an offender from serving as a foster or adoptive parent.

(2) A violation of this section shall not result in the creation of a criminal history record of any kind, and information about the violation shall not be maintained in any criminal record or database.

(e) This section shall not:

(1) exempt any person from arrest or prosecution for being under the influence of marijuana while operating a vehicle of any kind;

(2) be construed to repeal or modify existing laws or policies concerning the operation of vehicles of any kind while under the influence of marijuana;

(3) be construed to prohibit a municipality from regulating, prohibiting, or providing additional penalties for the use of marijuana in public places;

(4) be construed to limit the authority of primary and secondary schools to impose noncriminal penalties for the possession of marijuana on school property;

(5) be construed to affect the search and seizure laws afforded to duly authorized law enforcement officers under the laws of this state.

(f) If a person suspected of violating this section challenges the presence of cannabinoids, the person may request that the state crime laboratory test the substance at the person's expense. If the substance tests negative for the presence of cannabinoids, the state shall reimburse the person at state expense.

(g) Upon request by a law enforcement officer who reasonably suspects that a person has committed or is committing a violation of this section, the person shall give his or her name and address to the law enforcement officer and shall produce a Vermont operator's license, a Vermont identification card, a passport, or another suitable form of identification.

(h) The enforcement of this section by villages, towns, and cities shall be by a local law enforcement officer or a law enforcement officer by contract with the village, town, or city. Law enforcement officers under this subsection shall have met minimum training requirements as provided in 20 V.S.A. § 2358.

(i) Fifty percent of the fines and penalties imposed by the judicial bureau for violations of this section shall be retained by the state for the funding of law enforcement officers on the drug task force, except for a $12.50

administrative charge for each violation which shall be retained by the state. The remaining 50 percent shall be paid to the court diversion program for funding of the teen alcohol and drug and safety program.

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

§ 1102. JUDICIAL BUREAU; JURISDICTION

* * *

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

* * *

(23) Violations of 18 V.S.A. § 4230a, relating to possession of one ounce or less of marijuana.

* * *

Sixth: By striking out Sec. 14 in its entirety and inserting in lieu thereof a new Sec. 14 to read as follows:

Sec. 14. UNUSED DRUG DISPOSAL PROGRAM PROPOSAL

(a) No later than October 15, 2012, the commissioners of health and of public safety shall provide recommendations to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare regarding implementation of a statewide drug disposal program for unused over-the-counter and prescription drugs at no charge to the consumer. In preparing their recommendations, the commissioners shall consider successful unused drug disposal programs in Vermont, including the Bennington County sheriff's department's program, and in other states.

(b) The commissioners of health and of public safety shall take steps toward implementing a program prior to October 15, 2012, if practicable.

Seventh: By adding a new section to be numbered Sec. 14a to read as follows:

Sec. 14a. TRACK AND TRACE PILOT PROJECT

(a) The departments of health and of Vermont health access shall establish a track and trace pilot project with one or more manufacturers of buprenorphine to create a high-integrity monitoring tool capable of use across disciplines. The tool shall be designed to identify irregularities related to dosing and quality in a manner that disrupts practice operations to the least extent possible. The departments shall work with all willing Medicaid-enrolled prescribing practices and pharmacies to utilize the tool.

(b) No later than January 15, 2013, the commissioners of health and of Vermont health access shall provide testimony on the status of the pilot project established pursuant to this section to the house committees on human services and on judiciary and the senate committees on health and welfare and on judiciary.

Eighth: By adding a new section to be numbered Sec. 14b to read as follows:

Sec. 14b. DEPARTMENT OF HEALTH REPORT; OPIOID ANTAGONISTS

No later than November 15, 2012, the department of health shall report to the general assembly detailed recommendations for permitting a practitioner to lawfully prescribe and dispense naloxone or another opioid antagonist to a person at risk of experiencing an opiate-related overdose or to a family member, friend, or other person in a position to assist a person at risk of experiencing an opiate-related overdose.

Thereupon, pending the question, Shall the proposal of amendment of the Committee on Health and Welfare, as amended be amended as moved by Senator Sears, Cummings, Snelling and White?, Senator Flory raised a *point of order* under Sec. 402 of Mason's Manual of Legislative Procedure on the grounds that the *fifth* proposal of amendment offered by Senator Sears, Cummings, Snelling and White 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 *fifth* proposal of amendment offered by Senator Sears, Cummings, Snelling and White was *not germane* to the bill as it did not satisfy the criteria of Mason's Sec. 402 regarding germaness in that it dealt with a different subject and changed the purpose, scope and object of the original bill and was not naturally related to and did not follow in a logical sequence the subject matter of the original bill

The President thereupon declared that the *fifth* proposal of amendment offered by Senator Sears, Cummings, Snelling and White could *not* be considered by the Senate and the proposal of amendment was ordered stricken.

Thereupon, Senator Benning requested that the question be divided and the *first* through *fourth* proposal of amendment be voted on separately.

Thereupon, the *first* through *fourth* proposals of amendment were agreed to on a roll call, Yeas 18, Nays 11.

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

Roll Call

Those Senators who voted in the affirmative were: Ayer, Brock, Campbell, Carris, Cummings, Doyle, Flory, Hartwell, Illuzzi, Mazza, Miller, Mullin, Nitka, Sears, Snelling, Starr, Westman, White.

Those Senators who voted in the negative were: Ashe, Baruth, Benning, Fox, Galbraith, Giard, Kittell, Lyons, MacDonald, McCormack, Pollina.

The Senator absent and not voting was: Kitchel.

Thereupon, the *sixth* through *eighth* proposals of amendment were agreed to.

Thereupon, the question, Shall the Senate propose to the House to amend the bill as proposed by the Committee on Health and Welfare, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered on a roll call, Yeas 22, Nays 8.

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

Roll Call

Those Senators who voted in the affirmative were: Ayer, Brock, Campbell, Carris, Cummings, Doyle, Flory, Fox, Giard, Hartwell, Illuzzi, Kitchel, Lyons, Mazza, Miller, Mullin, Nitka, Sears, Snelling, Starr, Westman, White.

Those Senators who voted in the negative were: Ashe, Baruth, Benning, Galbraith, Kittell, MacDonald, McCormack, Pollina.

Rules Suspended; Immediate Consideration; Motion Failed

J.R.S. 60.

Senator Campbell, moved that the rules be suspended to take up for immediate consideration a Joint Senate resolution entitled:

Joint resolution expressing the General Assembly's expectation that the full range of concerns and issues raised by the general public regarding the merger of Central Vermont Public Service Corporation and Green Mountain Power Corporation will be given full consideration, and that the final agreement must be in the best interests of the ratepayers and people of the State of Vermont.

Which was disagreed to on a division of the Senate, Yeas 11, Nays 10 (3/4ths necessary to suspend the rules not being attained).

Message from the House No. 60

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

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 790. An act relating to approval of amendments to the charter of the town of Hartford.

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. 215. An act relating to evaluating net costs of government purchasing.

And has passed the same in concurrence.

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

S. 181. An act relating to school resource officers.

And has concurred therein.

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

H. 53. An act relating to the Interstate Wildlife Violator Compact.

H. 440. An act relating to creating an agency and secretary of education and clarifying the purpose of the state board.

H. 484. An act relating to amendment to the Windham solid waste district charter.

H. 550. An act relating to the Vermont administrative procedure act.

And has severally concurred therein.

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

H. 37. An act relating to telemedicine.

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

The Governor has informed the House that on April 25, 2012, he approved and signed a bill originating in the House of the following title:

H. 613. An act relating to governance of the Community High School of Vermont.

Proposal of Amendment; Consideration Interrupted by Adjournment

H. 781.

Senator Kitchel, for the Committee on Appropriations, to which was referred House bill entitled:

An act relating to making appropriations for the support of government.

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

Sec. A.100 SHORT TITLE

(a) This bill may be referred to as the BIG BILL – Fiscal Year 2013 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 2013. 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, 2012. Agency and department heads are directed to implement staffing and service levels at the beginning of fiscal year 2013 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 2013.

(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, 2013.

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 2013, 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 2013, federal funds available to the state of Vermont and designated as federal in this and other acts of the 2012 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 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 2013 except for new positions authorized by the 2012 session. Limited service positions approved pursuant to 32 V.S.A. § 5 shall not be subject to this restriction.

Sec. A.108 LEGEND

(a) The bill is organized by functions of government. The sections between B.100 and B.9999 contain appropriation of funds for the upcoming budget year. The sections between E.100 and E.9999 contain language that relates to specific appropriations and/or government functions. The function areas by section numbers are as follows:

B.100–B.199 and E.100–E.199	General Government
B.200–B.299 and E.200–E.299	Protection to Persons and Property
B.300–B.399 and E.300–E.399	Human Services
B.400–B.499 and E.400–E.499	Labor
B.500–B.599 and E.500–E.599	General Education
B.600–B.699 and E.600–E.699	Higher Education
B.700–B.799 and E.700–E.799	Natural Resources
B.800–B.899 and E.800–E.899	Commerce and Community Development
B.900–B.999 and E.900–E.999	Transportation
B.1000–B.1099 and E.1000–E.1099	Debt Service
B.1100–B.1199 and E.1100–E.1199	One-time and other appropriation actions

(b) The C sections contain any amendments to the current fiscal year and the D sections contain fund transfers and reserve allocations for the upcoming budget year.

Sec. B.100 Secretary of administration - secretary's office

Personal services	781,049
Operating expenses	98,019
Total	879,068
Source of funds	
General fund	879,068
Total	879,068

Sec. B.101 Information and innovation - communications and information technology

Personal services	7,277,590
Operating expenses	6,142,373
Grants	900,000
Total	14,319,963
Source of funds	
Internal service funds	14,090,577
Interdepartmental transfers	229,386
Total	14,319,963

Sec. B.102 Finance and management - budget and management

Personal services	1,051,469
Operating expenses	237,448
Total	1,288,917
Source of funds	
General fund	1,055,204
Interdepartmental transfers	233,713
Total	1,288,917

Sec. B.103 Finance and management - financial operations

Personal services	2,530,508
Operating expenses	291,793
Total	2,822,301
Source of funds	
Internal service funds	2,822,301
Total	2,822,301

Sec. B.104 Human resources - operations

Personal services	5,544,850
Operating expenses	635,826

Total	6,180,676
Source of funds	
General fund	1,520,545
Special funds	213,814
Internal service funds	3,443,391
Interdepartmental transfers	1,002,926
Total	6,180,676

Sec. B.105 Human resources - employee benefits & wellness

Personal services	1,038,445
Operating expenses	720,645
Total	1,759,090
Source of funds	
Internal service funds	1,745,417
Interdepartmental transfers	13,673
Total	1,759,090

Sec. B.106 Libraries

Personal services	1,887,486
Operating expenses	1,479,724
Grants	69,118
Total	3,436,328
Source of funds	
General fund	2,391,244
Special funds	126,425
Federal funds	815,264
Interdepartmental transfers	103,395
Total	3,436,328

Sec. B.107 Tax - administration/collection

Personal services	12,420,214
Operating expenses	3,056,262
Total	15,476,476
Source of funds	
General fund	13,973,154
Special funds	1,390,600
Interdepartmental transfers	112,722
Total	15,476,476

Sec. B.108 Buildings and general services - administration

Personal services	1,647,902
Operating expenses	208,339
Total	1,856,241

Source of funds	
Interdepartmental transfers	1,856,241
Total	1,856,241

Sec. B.109 Buildings and general services - engineering

Personal services	2,089,763
Operating expenses	343,727
Total	2,433,490
Source of funds	
Interdepartmental transfers	2,433,490
Total	2,433,490

Sec. B.110 Buildings and general services - information centers

Personal services	3,057,602
Operating expenses	1,164,759
Grants	33,000
Total	4,255,361
Source of funds	
General fund	592,251
Transportation fund	3,638,110
Special funds	25,000
Total	4,255,361

Sec. B.111 Buildings and general services - purchasing

Personal services	761,351
Operating expenses	134,005
Total	895,356
Source of funds	
General fund	895,356
Total	895,356

Sec. B.112 Buildings and general services - postal services

Personal services	619,080
Operating expenses	121,154
Total	740,234
Source of funds	
General fund	35,716
Internal service funds	704,518
Total	740,234

Sec. B.113 Buildings and general services - copy center

Personal services	634,249
Operating expenses	128,012

Total	762,261
Source of funds	
Internal service funds	762,261
Total	762,261

Sec. B.114 Buildings and general services - fleet management services

Personal services	542,830
Operating expenses	126,436
Total	669,266
Source of funds	
Internal service funds	669,266
Total	669,266

Sec. B.115 Buildings and general services - federal surplus property

Personal services	72,596
Operating expenses	19,196
Total	91,792
Source of funds	
Enterprise funds	91,792
Total	91,792

Sec. B.116 Buildings and general services - state surplus property

Personal services	71,437
Operating expenses	96,094
Total	167,531
Source of funds	
Internal service funds	167,531
Total	167,531

Sec. B.117 Buildings and general services - property management

Personal services	1,240,875
Operating expenses	1,099,421
Total	2,340,296
Source of funds	
Internal service funds	2,340,296
Total	2,340,296

Sec. B.118 Buildings and general services - workers' compensation insurance

Personal services	1,226,115
Operating expenses	306,347
Total	1,532,462

Source of funds	
Internal service funds	1,532,462
Total	1,532,462

Sec. B.119 Buildings and general services - general liability insurance

Personal services	275,346
Operating expenses	59,879
Total	335,225
Source of funds	
Internal service funds	335,225
Total	335,225

Sec. B.120 Buildings and general services - all other insurance

Personal services	24,132
Operating expenses	20,823
Total	44,955
Source of funds	
Internal service funds	44,955
Total	44,955

Sec. B.121 Buildings and general services - fee for space

Personal services	11,852,272
Operating expenses	13,747,132
Total	25,599,404
Source of funds	
Internal service funds	25,599,404
Total	25,599,404

Sec. B.122 Geographic information system

Grants	378,700
Total	378,700
Source of funds	
Special funds	378,700
Total	378,700

Sec. B.123 Executive office - governor's office

Personal services	1,204,827
Operating expenses	404,987
Total	1,609,814
Source of funds	
General fund	1,416,314
Interdepartmental transfers	193,500
Total	1,609,814

Sec. B.124 Legislative council

Personal services	2,061,578
Operating expenses	214,458
Total	2,276,036
Source of funds	
General fund	2,276,036
Total	2,276,036

Sec. B.125 Legislature

Personal services	3,585,526
Operating expenses	3,289,626
Total	6,875,152
Source of funds	
General fund	6,875,152
Total	6,875,152

Sec. B.126 Legislative information technology

Personal services	394,911
Operating expenses	550,361
Total	945,272
Source of funds	
General fund	945,272
Total	945,272

Sec. B.127 Joint fiscal committee

Personal services	1,277,145
Operating expenses	131,624
Total	1,408,769
Source of funds	
General fund	1,408,769
Total	1,408,769

Sec. B.128 Sergeant at arms

Personal services	469,253
Operating expenses	68,280
Total	537,533
Source of funds	
General fund	537,533
Total	537,533

Sec. B.129 Lieutenant governor	
Personal services	141,223
Operating expenses	31,849
Total	173,072
Source of funds	
General fund	173,072
Total	173,072
Sec. B.130 Auditor of accounts	
Personal services	3,435,521
Operating expenses	142,405
Total	3,577,926
Source of funds	
General fund	379,580
Special funds	53,099
Internal service funds	3,145,247
Total	3,577,926
Sec. B.131 State treasurer	
Personal services	2,588,617
Operating expenses	347,133
Grants	16,484
Total	2,952,234
Source of funds	
General fund	988,481
Special funds	1,874,673
Interdepartmental transfers	89,080
Total	2,952,234
Sec. B.132 State treasurer - unclaimed property	
Personal services	793,619
Operating expenses	238,102
Total	1,031,721
Source of funds	
Private purpose trust funds	1,031,721
Total	1,031,721
Sec. B.133 Vermont state retirement system	
Personal services	7,053,372
Operating expenses	30,257,342
Total	37,310,714

Source of funds	
Pension trust funds	37,310,714
Total	37,310,714

Sec. B.134 Municipal employees' retirement system

Personal services	2,271,444
Operating expenses	526,796
Total	2,798,240
Source of funds	
Pension trust funds	2,798,240
Total	2,798,240

Sec. B.135 State labor relations board

Personal services	171,850
Operating expenses	42,114
Total	213,964
Source of funds	
General fund	198,620
Special funds	2,788
Interdepartmental transfers	12,556
Total	213,964

Sec. B.136 VOSHA review board

Personal services	25,760
Operating expenses	20,770
Total	46,530
Source of funds	
General fund	23,265
Interdepartmental transfers	23,265
Total	46,530

Sec. B.137 Homeowner rebate

Grants	14,545,808
Total	14,545,808
Source of funds	
General fund	14,545,808
Total	14,545,808

Sec. B.138 Renter rebate

Grants	9,623,000
Total	9,623,000
Source of funds	
General fund	2,886,900

Education fund	6,736,100
Total	9,623,000

Sec. B.139 Tax department - reappraisal and listing payments

Grants	3,243,196
Total	3,243,196
Source of funds	
Education fund	3,243,196
Total	3,243,196

Sec. B.140 Municipal current use

Grants	12,640,000
Total	12,640,000
Source of funds	
General fund	12,640,000
Total	12,640,000

Sec. B.141 Lottery commission

Personal services	1,649,942
Operating expenses	1,387,667
Total	3,037,609
Source of funds	
Enterprise funds	3,037,609
Total	3,037,609

Sec. B.142 Payments in lieu of taxes

Grants	5,800,000
Total	5,800,000
Source of funds	
Special funds	5,800,000
Total	5,800,000

Sec. B.143 Payments in lieu of taxes - Montpelier

Grants	184,000
Total	184,000
Source of funds	
Special funds	184,000
Total	184,000

Sec. B.144 Payments in lieu of taxes - correctional facilities

Grants	40,000
Total	40,000

Source of funds	
Special funds	40,000
Total	40,000

Sec. B.145 Total general government

Source of funds	
General fund	66,637,340
Transportation fund	3,638,110
Special funds	10,089,099
Education fund	9,979,296
Federal funds	815,264
Internal service funds	57,402,851
Interdepartmental transfers	6,303,947
Enterprise funds	3,129,401
Pension trust funds	40,108,954
Private purpose trust funds	1,031,721
Total	199,135,983

Sec. B.200 Attorney general

Personal services	7,518,981
Operating expenses	977,285
Total	8,496,266
Source of funds	
General fund	3,801,997
Special funds	1,278,455
Tobacco fund	459,000
Federal funds	745,364
Interdepartmental transfers	2,211,450
Total	8,496,266

Sec. B.201 Vermont court diversion

Grants	1,830,866
Total	1,830,866
Source of funds	
General fund	1,310,869
Special funds	519,997
Total	1,830,866

Sec. B.202 Defender general - public defense

Personal services	8,335,000
Operating expenses	892,734
Total	9,227,734

Source of funds	
General fund	8,714,446
Special funds	513,288
Total	9,227,734

Sec. B.203 Defender general - assigned counsel

Personal services	3,663,580
Operating expenses	48,909
Total	3,712,489
Source of funds	
General fund	3,587,225
Special funds	125,264
Total	3,712,489

Sec. B.204 Judiciary

Personal services	28,807,441
Operating expenses	8,192,875
Grants	70,000
Total	37,070,316
Source of funds	
General fund	31,030,271
Special funds	2,967,507
Tobacco fund	39,871
Federal funds	888,205
Interdepartmental transfers	2,144,462
Total	37,070,316

Sec. B.205 State's attorneys

Personal services	9,365,417
Operating expenses	1,413,992
Total	10,779,409
Source of funds	
General fund	8,382,669
Special funds	16,884
Federal funds	31,000
Interdepartmental transfers	2,348,856
Total	10,779,409

Sec. B.206 Special investigative unit

Grants	1,252,650
Total	1,252,650
Source of funds	
General fund	1,152,650

Federal funds	100,000
Total	1,252,650

Sec. B.207 Sheriffs

Personal services	3,339,862
Operating expenses	274,773
Total	3,614,635
Source of funds	
General fund	3,614,635
Total	3,614,635

Sec. B.208 Public safety - administration

Personal services	1,788,617
Operating expenses	469,509
Total	2,258,126
Source of funds	
General fund	1,706,775
Federal funds	551,351
Total	2,258,126

Sec. B.209 Public safety - state police

Personal services	43,959,260
Operating expenses	7,043,093
Grants	6,860,000
Total	57,862,353
Source of funds	
General fund	19,937,245
Transportation fund	25,238,498
Special funds	2,585,518
Federal funds	9,011,627
Interdepartmental transfers	1,089,465
Total	57,862,353

Sec. B.210 Public safety - criminal justice services

Personal services	7,234,576
Operating expenses	2,496,734
Grants	33,600
Total	9,764,910
Source of funds	
General fund	6,948,145
Special funds	1,685,406
Federal funds	1,131,359
Total	9,764,910

Sec. B.211 Public safety - emergency management

Personal services	1,324,091
Operating expenses	693,266
Grants	1,515,892
Total	3,533,249
Source of funds	
Federal funds	3,533,249
Total	3,533,249

Sec. B.212 Public safety - fire safety

Personal services	4,927,464
Operating expenses	1,435,551
Grants	206,000
Total	6,569,015
Source of funds	
General fund	600,735
Special funds	5,591,200
Federal funds	332,080
Interdepartmental transfers	45,000
Total	6,569,015

Sec. B.213 Public safety - homeland security

Personal services	9,514,027
Operating expenses	222,337
Grants	3,000,000
Total	12,736,364
Source of funds	
General fund	427,007
Federal funds	12,309,357
Total	12,736,364

Sec. B.214 Radiological emergency response plan

Personal services	662,736
Operating expenses	374,180
Grants	1,284,594
Total	2,321,510
Source of funds	
Special funds	2,321,510
Total	2,321,510

Sec. B.215 Military - administration

Personal services	472,318
Operating expenses	405,416
Grants	100,000
Total	977,734
Source of funds	
General fund	977,734
Total	977,734

Sec. B.216 Military - air service contract

Personal services	5,206,919
Operating expenses	1,214,629
Total	6,421,548
Source of funds	
General fund	471,703
Federal funds	5,949,845
Total	6,421,548

Sec. B.217 Military - army service contract

Personal services	3,762,000
Operating expenses	9,185,720
Total	12,947,720
Source of funds	
General fund	125,876
Federal funds	12,821,844
Total	12,947,720

Sec. B.218 Military - building maintenance

Personal services	938,770
Operating expenses	437,499
Total	1,376,269
Source of funds	
General fund	1,376,269
Total	1,376,269

Sec. B.219 Military - veterans' affairs

Personal services	501,009
Operating expenses	125,246
Grants	205,000
Total	831,255
Source of funds	
General fund	677,808

Special funds	71,041
Federal funds	82,406
Total	831,255

Sec. B.220 Center for crime victims' services

Personal services	1,590,567
Operating expenses	321,278
Grants	9,289,817
Total	11,201,662
Source of funds	
General fund	1,164,892
Special funds	5,996,342
Federal funds	4,040,428
Total	11,201,662

Sec. B.221 Criminal justice training council

Personal services	1,277,366
Operating expenses	1,195,505
Total	2,472,871
Source of funds	
General fund	2,221,393
Interdepartmental transfers	251,478
Total	2,472,871

Sec. B.222 Agriculture, food and markets - administration

Personal services	876,873
Operating expenses	378,386
Grants	388,910
Total	1,644,169
Source of funds	
General fund	1,130,085
Special funds	254,851
Federal funds	160,961
Global Commitment fund	56,272
Interdepartmental transfers	42,000
Total	1,644,169

Sec. B.223 Agriculture, food and markets - food safety and consumer protection

Personal services	2,733,957
Operating expenses	567,250
Grants	2,400,000
Total	5,701,207

Source of funds	
General fund	2,173,755
Special funds	2,912,594
Federal funds	573,852
Global Commitment fund	34,006
Interdepartmental transfers	7,000
Total	5,701,207

Sec. B.224 Agriculture, food and markets - agricultural development

Personal services	1,090,891
Operating expenses	534,548
Grants	1,361,000
Total	2,986,439
Source of funds	
General fund	756,937
Special funds	1,438,908
Federal funds	745,143
Interdepartmental transfers	45,451
Total	2,986,439

Sec. B.225 Agriculture, food and markets - laboratories, agricultural resource management and environmental stewardship

Personal services	3,114,267
Operating expenses	751,280
Grants	933,674
Total	4,799,221
Source of funds	
General fund	1,844,046
Special funds	1,947,242
Federal funds	754,469
Interdepartmental transfers	253,464
Total	4,799,221

Sec. B.226 Banking, insurance, securities, and health care administration - administration

Personal services	1,700,967
Operating expenses	192,064
Total	1,893,031
Source of funds	
Special funds	1,893,031
Total	1,893,031

Sec. B.227 Banking, insurance, securities, and health care administration - banking

Personal services	1,344,820
Operating expenses	252,764
Total	1,597,584
Source of funds	
Special funds	1,597,584
Total	1,597,584

Sec. B.228 Banking, insurance, securities, and health care administration - insurance

Personal services	5,663,896
Operating expenses	446,457
Total	6,110,353
Source of funds	
Special funds	4,101,506
Federal funds	1,268,147
Global Commitment fund	615,700
Interdepartmental transfers	125,000
Total	6,110,353

Sec. B.229 Banking, insurance, securities, and health care administration - captive

Personal services	3,600,947
Operating expenses	429,555
Total	4,030,502
Source of funds	
Special funds	4,030,502
Total	4,030,502

Sec. B.230 Banking, insurance, securities, and health care administration - securities

Personal services	529,156
Operating expenses	153,631
Total	682,787
Source of funds	
Special funds	682,787
Total	682,787

Sec. B.231 Banking, insurance, securities, and health care administration - health care administration

Personal services	2,695,600
Operating expenses	102,964
Total	2,798,564
Source of funds	
Special funds	2,029,462
Federal funds	236,136
Global Commitment fund	432,966
Interdepartmental transfers	100,000
Total	2,798,564

Sec. B.232 Secretary of state

Personal services	6,029,934
Operating expenses	1,857,787
Grants	945,114
Total	8,832,835
Source of funds	
General fund	1,518,552
Special funds	5,239,283
Federal funds	2,000,000
Interdepartmental transfers	75,000
Total	8,832,835

Sec. B.233 Public service - regulation and energy

Personal services	9,693,417
Operating expenses	2,041,069
Grants	4,428,959
Total	16,163,445
Source of funds	
Special funds	10,345,714
Federal funds	843,755
ARRA funds	4,909,080
Interdepartmental transfers	27,200
Enterprise funds	37,696
Total	16,163,445

Sec. B.234 Public service board

Personal services	2,682,650
Operating expenses	392,931
Total	3,075,581

Source of funds	
Special funds	2,823,980
ARRA funds	251,601
Total	3,075,581

Sec. B.235 Enhanced 9-1-1 Board

Personal services	3,668,108
Operating expenses	509,310
Grants	810,000
Total	4,987,418
Source of funds	
Special funds	4,987,418
Total	4,987,418

Sec. B.236 Human rights commission

Personal services	408,510
Operating expenses	63,794
Total	472,304
Source of funds	
General fund	391,093
Federal funds	81,211
Total	472,304

Sec. B.237 Liquor control - administration

Personal services	2,606,023
Operating expenses	519,774
Total	3,125,797
Source of funds	
Tobacco fund	6,661
Enterprise funds	3,119,136
Total	3,125,797

Sec. B.238 Liquor control - enforcement and licensing

Personal services	1,968,858
Operating expenses	408,275
Total	2,377,133
Source of funds	
Tobacco fund	285,284
Enterprise funds	2,091,849
Total	2,377,133

Sec. B.239 Liquor control - warehousing and distribution

Personal services	804,429
Operating expenses	362,234
Total	1,166,663
Source of funds	
Enterprise funds	1,166,663
Total	1,166,663

Sec. B.240 Total protection to persons and property

Source of funds	
General fund	106,044,812
Transportation fund	25,238,498
Special funds	67,957,274
Tobacco fund	790,816
Federal funds	58,191,789
ARRA funds	5,160,681
Global Commitment fund	1,138,944
Interdepartmental transfers	8,765,826
Enterprise funds	6,415,344
Total	279,703,984

Sec. B.300 Human services - agency of human services - secretary's office

Personal services	8,968,380
Operating expenses	3,216,136
Grants	5,235,805
Total	17,420,321
Source of funds	
General fund	5,048,148
Special funds	7,517
Tobacco fund	291,330
Federal funds	9,307,818
Global Commitment fund	415,000
Interdepartmental transfers	2,350,508
Total	17,420,321

Sec. B.301 Secretary's office - global commitment

Grants	1,170,854,293
Total	1,170,854,293
Source of funds	
General fund	176,444,449
Special funds	19,403,040
Tobacco fund	31,343,693

State health care resources fund	266,423,947
Federal funds	676,551,029
Interdepartmental transfers	688,135
Total	1,170,854,293

Sec. B.302 Rate setting

Personal services	819,376
Operating expenses	82,162
Total	901,538
Source of funds	
Global Commitment fund	901,538
Total	901,538

Sec. B.303 Developmental disabilities council

Personal services	235,696
Operating expenses	58,633
Grants	248,388
Total	542,717
Source of funds	
Federal funds	542,717
Total	542,717

Sec. B.304 Human services board

Personal services	301,131
Operating expenses	47,907
Total	349,038
Source of funds	
General fund	113,997
Federal funds	149,715
Interdepartmental transfers	85,326
Total	349,038

Sec. B.305 AHS - administrative fund

Personal services	350,000
Operating expenses	4,650,000
Total	5,000,000
Source of funds	
Interdepartmental transfers	5,000,000
Total	5,000,000

Sec. B.306 Department of Vermont health access - administration

Personal services	104,339,779
Operating expenses	3,063,851

Grants	24,260,263
Total	131,663,893
Source of funds	
General fund	941,059
Special funds	1,552,963
Federal funds	79,787,828
ARRA funds	76,790
Global Commitment fund	45,228,136
Interdepartmental transfers	4,077,117
Total	131,663,893

Sec. B.307 Department of Vermont health access - Medicaid program - global commitment

Grants	672,639,153
Total	672,639,153
Source of funds	
Global Commitment fund	672,639,153
Total	672,639,153

Sec. B.308 Department of Vermont health access - Medicaid program - long term care waiver

Grants	201,240,298
Total	201,240,298
Source of funds	
General fund	87,683,279
Federal funds	113,557,019
Total	201,240,298

Sec. B.309 Department of Vermont health access - Medicaid program - state only

Grants	29,191,562
Total	29,191,562
Source of funds	
General fund	27,776,633
Global Commitment fund	1,414,929
Total	29,191,562

Sec. B.310 Department of Vermont health access - Medicaid non-waiver matched

Grants	44,440,781
Total	44,440,781
Source of funds	
General fund	18,573,485

Federal funds	25,867,296
Total	44,440,781
Sec. B.311 Health - administration and support	
Personal services	5,668,858
Operating expenses	1,946,031
Grants	3,370,200
Total	10,985,089
Source of funds	
General fund	1,039,062
Special funds	579,063
Federal funds	5,642,395
ARRA funds	35,000
Global Commitment fund	3,689,569
Total	10,985,089
Sec. B.312 Health - public health	
Personal services	31,255,732
Operating expenses	5,670,400
Grants	33,940,880
Total	70,867,012
Source of funds	
General fund	6,851,240
Special funds	10,345,713
Tobacco fund	1,594,000
Federal funds	34,079,848
ARRA funds	110,000
Global Commitment fund	16,771,971
Interdepartmental transfers	1,104,240
Permanent trust funds	10,000
Total	70,867,012
Sec. B.313 Health - alcohol and drug abuse programs	
Personal services	2,791,666
Operating expenses	327,258
Grants	27,904,134
Total	31,023,058
Source of funds	
General fund	3,446,756
Special funds	363,884
Tobacco fund	1,386,234
Federal funds	5,858,397
Global Commitment fund	19,617,787

Interdepartmental transfers	350,000
Total	31,023,058

Sec. B.314 Mental health - mental health

Personal services	7,560,273
Operating expenses	1,028,785
Grants	165,312,253
Total	173,901,311
Source of funds	
General fund	1,477,732
Special funds	6,836
Federal funds	6,713,296
Global Commitment fund	165,683,447
Interdepartmental transfers	20,000
Total	173,901,311

Sec. B.316 Department for children and families - administration & support services

Personal services	37,308,143
Operating expenses	6,637,625
Grants	1,506,996
Total	45,452,764
Source of funds	
General fund	15,331,675
Special funds	250,000
Federal funds	14,167,492
Global Commitment fund	15,442,598
Interdepartmental transfers	260,999
Total	45,452,764

Sec. B.317 Department for children and families - family services

Personal services	23,343,490
Operating expenses	3,251,569
Grants	60,455,303
Total	87,050,362
Source of funds	
General fund	21,297,433
Special funds	1,691,637
Federal funds	26,652,367
Global Commitment fund	37,244,871
Interdepartmental transfers	164,054
Total	87,050,362

Sec. B.318 Department for children and families - child development

Personal services	3,292,420
Operating expenses	367,946
Grants	61,380,763
Total	65,041,129
Source of funds	
General fund	26,506,976
Special funds	1,820,000
Federal funds	27,902,282
Global Commitment fund	8,805,419
Interdepartmental transfers	6,452
Total	65,041,129

Sec. B.319 Department for children and families - office of child support

Personal services	8,769,222
Operating expenses	3,990,861
Total	12,760,083
Source of funds	
General fund	2,992,459
Special funds	455,718
Federal funds	8,924,306
Interdepartmental transfers	387,600
Total	12,760,083

Sec. B.320 Department for children and families - aid to aged, blind and disabled

Personal services	1,827,113
Grants	11,382,054
Total	13,209,167
Source of funds	
General fund	9,459,167
Global Commitment fund	3,750,000
Total	13,209,167

Sec. B.321 Department for children and families - general assistance

Grants	6,649,371
Total	6,649,371
Source of funds	
General fund	4,845,580
Federal funds	1,111,320
Global Commitment fund	692,471
Total	6,649,371

Sec. B.322 Department for children and families - 3SquaresVT

Grants	24,860,290
Total	24,860,290
Source of funds	
Federal funds	24,860,290
Total	24,860,290

Sec. B.323 Department for children and families - reach up

Grants	47,930,572
Total	47,930,572
Source of funds	
General fund	18,256,509
Special funds	19,916,856
Federal funds	7,882,807
Global Commitment fund	1,874,400
Total	47,930,572

Sec. B.324 Department for children and families - home heating fuel assistance/LIHEAP

Personal services	20,000
Operating expenses	90,000
Grants	11,547,664
Total	11,657,664
Source of funds	
Federal funds	11,657,664
Total	11,657,664

Sec. B.325 Department for children and families - office of economic opportunity

Personal services	268,987
Operating expenses	66,265
Grants	4,976,859
Total	5,312,111
Source of funds	
General fund	1,304,908
Special funds	57,990
Federal funds	3,746,725
Global Commitment fund	202,488
Total	5,312,111

Sec. B.326 Department for children and families - OEO - weatherization assistance

Personal services	160,534
Operating expenses	130,839
Grants	7,682,112
Total	7,973,485
Source of funds	
Special funds	6,992,573
Federal funds	980,912
Total	7,973,485

Sec. B.327 Department for children and families - Woodside rehabilitation center

Personal services	3,695,668
Operating expenses	575,294
Total	4,270,962
Source of funds	
General fund	791,852
Global Commitment fund	3,424,218
Interdepartmental transfers	54,892
Total	4,270,962

Sec. B.328 Department for children and families - disability determination services

Personal services	4,506,460
Operating expenses	1,138,408
Total	5,644,868
Source of funds	
Federal funds	5,398,351
Global Commitment fund	246,517
Total	5,644,868

Sec. B.329 Disabilities, aging, and independent living - administration & support

Personal services	24,854,382
Operating expenses	3,344,406
Total	28,198,788
Source of funds	
General fund	6,808,267
Special funds	1,281,646
Federal funds	11,735,745
Global Commitment fund	5,887,278

Interdepartmental transfers	2,485,852
Total	28,198,788

Sec. B.330 Disabilities, aging, and independent living - advocacy and independent living grants

Grants	21,051,422
Total	21,051,422
Source of funds	
General fund	8,361,703
Federal funds	7,640,264
Global Commitment fund	4,411,955
Interdepartmental transfers	637,500
Total	21,051,422

Sec. B.331 Disabilities, aging, and independent living - blind and visually impaired

Grants	1,481,457
Total	1,481,457
Source of funds	
General fund	364,064
Special funds	223,450
Federal funds	648,943
Global Commitment fund	245,000
Total	1,481,457

Sec. B.332 Disabilities, aging, and independent living - vocational rehabilitation

Grants	8,795,971
Total	8,795,971
Source of funds	
General fund	1,535,695
Special funds	70,000
Federal funds	4,062,389
Global Commitment fund	7,500
Interdepartmental transfers	3,120,387
Total	8,795,971

Sec. B.333 Disabilities, aging, and independent living - developmental services

Grants	157,203,376
Total	157,203,376
Source of funds	
General fund	155,125
Special funds	15,463

Federal funds	359,857
Global Commitment fund	156,672,931
Total	157,203,376

Sec. B.334 Disabilities, aging, and independent living -TBI home and community based waiver

Grants	4,772,899
Total	4,772,899
Source of funds	
Global Commitment fund	4,772,899
Total	4,772,899

Sec. B.335 Corrections - administration

Personal services	1,992,190
Operating expenses	226,070
Total	2,218,260
Source of funds	
General fund	2,218,260
Total	2,218,260

Sec. B.336 Corrections - parole board

Personal services	251,226
Operating expenses	70,819
Total	322,045
Source of funds	
General fund	322,045
Total	322,045

Sec. B.337 Corrections - correctional education

Personal services	4,072,336
Operating expenses	640,774
Total	4,713,110
Source of funds	
Education fund	4,337,051
Interdepartmental transfers	376,059
Total	4,713,110

Sec. B.338 Corrections - correctional services

Personal services	98,971,228
Operating expenses	17,406,483
Grants	7,445,709
Total	123,823,420

Source of funds	
General fund	118,338,441
Special funds	483,963
Federal funds	470,962
Global Commitment fund	4,133,739
Interdepartmental transfers	396,315
Total	123,823,420

Sec. B.339 Corrections - Correctional services-out of state beds

Personal services	10,149,922
Total	10,149,922
Source of funds	
General fund	10,149,922
Total	10,149,922

Sec. B.340 Corrections - correctional facilities - recreation

Personal services	447,238
Operating expenses	345,501
Total	792,739
Source of funds	
Special funds	792,739
Total	792,739

Sec. B.341 Corrections - Vermont offender work program

Personal services	912,386
Operating expenses	548,231
Total	1,460,617
Source of funds	
Internal service funds	1,460,617
Total	1,460,617

Sec. B.342 Vermont veterans' home - care and support services

Personal services	15,077,958
Operating expenses	4,024,056
Total	19,102,014
Source of funds	
Special funds	10,606,072
Federal funds	7,084,986
Global Commitment fund	1,410,956
Total	19,102,014

Sec. B.343 Commission on women

Personal services	253,203
Operating expenses	63,368
Total	316,571
Source of funds	
General fund	311,571
Special funds	5,000
Total	316,571

Sec. B.344 Retired senior volunteer program

Grants	131,096
Total	131,096
Source of funds	
General fund	131,096
Total	131,096

Sec. B.345 Green Mountain Care Board

Personal services	2,199,217
Operating expenses	276,798
Total	2,476,015
Source of funds	
General fund	467,038
Special funds	392,351
Global Commitment fund	1,477,740
Interdepartmental transfers	138,886
Total	2,476,015

Sec. B.346 Total human services

Source of funds	
General fund	579,345,626
Special funds	77,314,474
Tobacco fund	34,615,257
State health care resources fund	266,423,947
Education fund	4,337,051
Federal funds	1,123,345,020
ARRA funds	221,790
Global Commitment fund	1,177,064,510
Internal service funds	1,460,617
Interdepartmental transfers	21,704,322
Permanent trust funds	10,000
Total	3,285,842,614

Sec. B.401 Labor - programs

Personal services	24,050,596
Operating expenses	5,544,657
Grants	1,873,000
Total	31,468,253
Source of funds	
General fund	2,894,425
Special funds	3,363,869
Federal funds	23,751,533
Interdepartmental transfers	1,458,426
Total	31,468,253

Sec. B.402 Total labor

Source of funds	
General fund	2,894,425
Special funds	3,363,869
Federal funds	23,751,533
Interdepartmental transfers	1,458,426
Total	31,468,253

Sec. B.500 Education - finance and administration

Personal services	5,276,764
Operating expenses	1,864,917
Grants	12,333,500
Total	19,475,181
Source of funds	
General fund	2,905,528
Special funds	13,204,648
Education fund	795,372
Federal funds	1,732,359
Global Commitment fund	829,274
Interdepartmental transfers	8,000
Total	19,475,181

Sec. B.501 Education - education services

Personal services	12,258,423
Operating expenses	1,596,567
Grants	124,528,547
Total	138,383,537
Source of funds	
General fund	5,715,014
Special funds	2,532,427

Federal funds	130,136,096
Total	138,383,537

Sec. B.502 Education - special education: formula grants

Grants	157,889,563
Total	157,889,563
Source of funds	
Education fund	157,659,563
Global Commitment fund	230,000
Total	157,889,563

Sec. B.503 Education - state-placed students

Grants	15,500,000
Total	15,500,000
Source of funds	
Education fund	15,500,000
Total	15,500,000

Sec. B.504 Education - adult education and literacy

Grants	7,463,656
Total	7,463,656
Source of funds	
General fund	787,995
Education fund	5,800,000
Federal funds	875,661
Total	7,463,656

Sec. B.505 Education - adjusted education payment

Grants	1,160,482,149
Total	1,160,482,149
Source of funds	
Education fund	1,160,482,149
Total	1,160,482,149

Sec. B.506 Education - transportation

Grants	16,366,435
Total	16,366,435
Source of funds	
Education fund	16,366,435
Total	16,366,435

Sec. B.507 Education - small school grants

Grants	7,585,338
Total	7,585,338
Source of funds	
Education fund	7,585,338
Total	7,585,338

Sec. B.508 Education - capital debt service aid

Grants	84,801
Total	84,801
Source of funds	
Education fund	84,801
Total	84,801

Sec. B.509 Education - tobacco litigation

Personal services	140,405
Operating expenses	47,015
Grants	804,511
Total	991,931
Source of funds	
Tobacco fund	991,931
Total	991,931

Sec. B.510 Education - essential early education grant

Grants	5,966,869
Total	5,966,869
Source of funds	
Education fund	5,966,869
Total	5,966,869

Sec. B.511 Education - technical education

Grants	13,018,754
Total	13,018,754
Source of funds	
Education fund	13,018,754
Total	13,018,754

Sec. B.512 Education - Act 117 cost containment

Personal services	1,093,827
Operating expenses	130,269
Grants	91,000
Total	1,315,096

Source of funds	
Special funds	1,315,096
Total	1,315,096

Sec. B.513 Appropriation and transfer to education fund

Grants	282,317,280
Total	282,317,280
Source of funds	
General fund	282,317,280
Total	282,317,280

Sec. B.514 State teachers' retirement system

Personal services	7,974,488
Operating expenses	25,138,141
Grants	63,613,130
Total	96,725,759
Source of funds	
General fund	63,613,130
Pension trust funds	33,112,629
Total	96,725,759

Sec. B.515 Total general education

Source of funds	
General fund	355,338,947
Special funds	17,052,171
Tobacco fund	991,931
Education fund	1,383,259,281
Federal funds	132,744,116
Global Commitment fund	1,059,274
Interdepartmental transfers	8,000
Pension trust funds	33,112,629
Total	1,923,566,349

Sec. B.600 University of Vermont

Grants	40,746,633
Total	40,746,633
Source of funds	
General fund	36,740,477
Global Commitment fund	4,006,156
Total	40,746,633

Sec. B.601 Vermont Public Television

Grants	557,683
Total	557,683
Source of funds	
General fund	557,683
Total	557,683

Sec. B.602 Vermont state colleges

Grants	23,107,247
Total	23,107,247
Source of funds	
General fund	23,107,247
Total	23,107,247

Sec. B.603 Vermont state colleges - allied health

Grants	1,116,503
Total	1,116,503
Source of funds	
General fund	711,096
Global Commitment fund	405,407
Total	1,116,503

Sec. B.604 Vermont interactive technology

Grants	785,679
Total	785,679
Source of funds	
General fund	785,679
Total	785,679

Sec. B.605 Vermont student assistance corporation

Grants	18,363,607
Total	18,363,607
Source of funds	
General fund	18,363,607
Total	18,363,607

Sec. B.606 New England higher education compact

Grants	84,000
Total	84,000
Source of funds	
General fund	84,000
Total	84,000

Sec. B.607 University of Vermont - Morgan Horse Farm

Grants	1
Total	1
Source of funds	
General fund	1
Total	1

Sec. B.608 Total higher education

Source of funds	
General fund	80,349,790
Global Commitment fund	4,411,563
Total	84,761,353

Sec. B.700 Natural resources - agency of natural resources - administration

Personal services	2,750,386
Operating expenses	834,016
Grants	45,510
Total	3,629,912
Source of funds	
General fund	3,423,982
Special funds	54,484
Federal funds	25,000
Interdepartmental transfers	126,446
Total	3,629,912

Sec. B.701 Natural resources - state land local property tax assessment

Operating expenses	2,128,733
Total	2,128,733
Source of funds	
General fund	1,707,233
Interdepartmental transfers	421,500
Total	2,128,733

Sec. B.702 Fish and wildlife - support and field services

Personal services	13,553,595
Operating expenses	5,095,830
Grants	731,517
Total	19,380,942
Source of funds	
General fund	2,301,129
Special funds	20,000
Fish and wildlife fund	16,877,322

Interdepartmental transfers	182,491
Total	19,380,942

Sec. B.703 Forests, parks and recreation - administration

Personal services	975,288
Operating expenses	593,461
Grants	1,815,492
Total	3,384,241
Source of funds	
General fund	1,113,363
Special funds	1,307,878
Federal funds	963,000
Total	3,384,241

Sec. B.704 Forests, parks and recreation - forestry

Personal services	4,550,319
Operating expenses	562,277
Grants	501,000
Total	5,613,596
Source of funds	
General fund	3,096,073
Special funds	975,069
Federal funds	1,412,454
Interdepartmental transfers	130,000
Total	5,613,596

Sec. B.705 Forests, parks and recreation - state parks

Personal services	5,781,254
Operating expenses	2,165,473
Total	7,946,727
Source of funds	
General fund	333,431
Special funds	7,613,296
Total	7,946,727

Sec. B.706 Forests, parks and recreation - lands administration

Personal services	450,740
Operating expenses	1,208,771
Total	1,659,511
Source of funds	
General fund	385,306
Special funds	179,205
Federal funds	1,050,000

Interdepartmental transfers	45,000
Total	1,659,511

Sec. B.707 Forests, parks and recreation - youth conservation corps

Grants	574,702
Total	574,702
Source of funds	
General fund	42,320
Special funds	188,382
Federal funds	94,000
Interdepartmental transfers	250,000
Total	574,702

Sec. B.708 Forests, parks and recreation - forest highway maintenance

Personal services	20,000
Operating expenses	134,925
Total	154,925
Source of funds	
General fund	154,925
Total	154,925

Sec. B.709 Environmental conservation - management and support services

Personal services	4,083,151
Operating expenses	884,656
Grants	137,426
Total	5,105,233
Source of funds	
General fund	1,024,692
Special funds	1,960,991
Federal funds	1,633,669
Interdepartmental transfers	485,881
Total	5,105,233

Sec. B.710 Environmental conservation - air and waste management

Personal services	9,671,663
Operating expenses	6,666,655
Grants	2,419,500
Total	18,757,818
Source of funds	
General fund	646,287
Special funds	14,493,478
Federal funds	3,313,053

Interdepartmental transfers	305,000
Total	18,757,818

Sec. B.711 Environmental conservation - office of water programs

Personal services	13,686,115
Operating expenses	1,786,364
Grants	2,637,546
Total	18,110,025
Source of funds	
General fund	5,361,698
Special funds	5,565,217
Federal funds	6,518,985
Interdepartmental transfers	664,125
Total	18,110,025

Sec. B.712 Environmental conservation - tax-loss-Connecticut river flood control

Operating expenses	34,700
Total	34,700
Source of funds	
General fund	3,470
Special funds	31,230
Total	34,700

Sec. B.713 Natural resources board

Personal services	2,365,799
Operating expenses	351,832
Total	2,717,631
Source of funds	
General fund	751,745
Special funds	1,965,886
Total	2,717,631

Sec. B.714 Total natural resources

Source of funds	
General fund	20,345,654
Special funds	34,355,116
Fish and wildlife fund	16,877,322
Federal funds	15,010,161
Interdepartmental transfers	2,610,443
Total	89,198,696

Sec. B.800 Commerce and community development - agency of commerce and community development - administration

Personal services	1,864,080
Operating expenses	602,833
Grants	1,711,570
Total	4,178,483
Source of funds	
General fund	3,053,483
Federal funds	1,100,000
Interdepartmental transfers	25,000
Total	4,178,483

Sec. B.801 Economic, housing, and community development

Personal services	7,994,679
Operating expenses	1,480,643
Grants	6,687,833
Total	16,163,155
Source of funds	
General fund	5,739,558
Special funds	3,971,206
Federal funds	6,422,391
Interdepartmental transfers	30,000
Total	16,163,155

Sec. B.802 Historic sites - special improvements

Operating expenses	13,000
Total	13,000
Source of funds	
Special funds	13,000
Total	13,000

Sec. B.803 Community development block grants

Grants	11,210,494
Total	11,210,494
Source of funds	
Federal funds	11,210,494
Total	11,210,494

Sec. B.804 Downtown transportation and capital improvement fund

Personal services	79,041
Grants	304,925
Total	383,966

Source of funds	
Special funds	383,966
Total	383,966
Sec. B.805 Tourism and marketing	
Personal services	1,282,608
Operating expenses	1,657,545
Grants	143,500
Total	3,083,653
Source of funds	
General fund	3,083,653
Total	3,083,653
Sec. B.806 Vermont life	
Personal services	720,000
Operating expenses	53,053
Total	773,053
Source of funds	
Enterprise funds	773,053
Total	773,053
Sec. B.807 Vermont council on the arts	
Grants	507,607
Total	507,607
Source of funds	
General fund	507,607
Total	507,607
Sec. B.808 Vermont symphony orchestra	
Grants	113,821
Total	113,821
Source of funds	
General fund	113,821
Total	113,821
Sec. B.809 Vermont historical society	
Grants	807,694
Total	807,694
Source of funds	
General fund	807,694
Total	807,694

Sec. B.810 Vermont housing and conservation board

Grants	28,407,233
Total	28,407,233
Source of funds	
Special funds	13,993,588
Federal funds	14,413,645
Total	28,407,233

Sec. B.811 Vermont humanities council

Grants	172,670
Total	172,670
Source of funds	
General fund	172,670
Total	172,670

Sec. B.812 Total commerce and community development

Source of funds	
General fund	13,478,486
Special funds	18,361,760
Federal funds	33,146,530
Interdepartmental transfers	55,000
Enterprise funds	773,053
Total	65,814,829

Sec. B.900 Transportation - finance and administration

Personal services	9,524,960
Operating expenses	1,931,538
Grants	310,000
Total	11,766,498
Source of funds	
Transportation fund	10,882,996
Federal funds	883,502
Total	11,766,498

Sec. B.901 Transportation - aviation

Personal services	1,724,402
Operating expenses	4,079,395
Grants	376,500
Total	6,180,297
Source of funds	
Transportation fund	2,983,547

Federal funds	3,196,750
Total	6,180,297

Sec. B.902 Transportation - buildings

Operating expenses	2,661,000
Total	2,661,000
Source of funds	
Transportation fund	1,556,000
TIB fund	1,105,000
Total	2,661,000

Sec. B.903 Transportation - program development

Personal services	36,309,069
Operating expenses	247,244,191
Grants	37,369,326
Total	320,922,586
Source of funds	
Transportation fund	32,466,313
TIB fund	16,673,911
Federal funds	257,640,181
Interdepartmental transfers	3,770,000
Local match	1,372,181
TIB proceeds fund	9,000,000
Total	320,922,586

Sec. B.904 Transportation - rest areas construction

Personal services	170,000
Operating expenses	5,973,000
Total	6,143,000
Source of funds	
Transportation fund	116,628
TIB fund	1,041,168
Federal funds	4,985,204
Total	6,143,000

Sec. B.905 Transportation - maintenance state system

Personal services	34,893,490
Operating expenses	34,458,501
Grants	50,000
Total	69,401,991
Source of funds	
Transportation fund	68,615,000
Federal funds	686,991

Interdepartmental transfers	100,000
Total	69,401,991

Sec. B.906 Transportation - planning, outreach and community affairs

Personal services	3,823,747
Operating expenses	1,289,488
Grants	4,985,709
Total	10,098,944
Source of funds	
Transportation fund	1,878,444
Federal funds	7,773,303
Interdepartmental transfers	447,197
Total	10,098,944

Sec. B.907 Transportation - rail

Personal services	3,695,897
Operating expenses	23,648,091
Total	27,343,988
Source of funds	
Transportation fund	9,508,058
TIB fund	1,509,000
Federal funds	10,024,977
ARRA funds	6,301,953
Total	27,343,988

Sec. B.908 Transportation - public transit

Personal services	724,629
Operating expenses	168,280
Grants	24,745,887
Total	25,638,796
Source of funds	
Transportation fund	7,482,900
Federal funds	18,155,896
Total	25,638,796

Sec. B.909 Transportation - central garage

Personal services	3,729,034
Operating expenses	14,924,210
Total	18,653,244
Source of funds	
Internal service funds	18,653,244
Total	18,653,244

Sec. B.910 Department of motor vehicles

Personal services	16,717,817
Operating expenses	8,960,544
Grants	50,000
Total	25,728,361
Source of funds	
Transportation fund	22,630,649
Federal funds	3,097,712
Total	25,728,361

Sec. B.911 Transportation - town highway structures

Grants	6,333,500
Total	6,333,500
Source of funds	
Transportation fund	6,333,500
Total	6,333,500

Sec. B.912 Transportation - town highway Vermont local roads

Grants	400,000
Total	400,000
Source of funds	
Transportation fund	235,000
Federal funds	165,000
Total	400,000

Sec. B.913 Transportation - town highway class 2 roadway

Grants	7,248,750
Total	7,248,750
Source of funds	
Transportation fund	7,248,750
Total	7,248,750

Sec. B.914 Transportation - town highway bridges

Personal services	4,200,000
Operating expenses	16,646,405
Total	20,846,405
Source of funds	
Transportation fund	624,804
TIB fund	962,303
Federal funds	16,712,123
Local match	1,547,175

TIB proceeds fund	1,000,000
Total	20,846,405

Sec. B.915 Transportation - town highway aid program

Grants	25,982,744
Total	25,982,744
Source of funds	
Transportation fund	25,982,744
Total	25,982,744

Sec. B.916 Transportation - town highway class 1 supplemental grants

Grants	128,750
Total	128,750
Source of funds	
Transportation fund	128,750
Total	128,750

Sec. B.917 Transportation - town highway: state aid for nonfederal disasters

Grants	1,150,000
Total	1,150,000
Source of funds	
Transportation fund	1,150,000
Total	1,150,000

Sec. B.917.1 Transportation - town highway: state aid for federal disasters

Grants	3,600,000
Total	3,600,000
Source of funds	
Transportation fund	400,000
Federal funds	3,200,000
Total	3,600,000

Sec. B.918 Transportation - municipal mitigation grant program

Grants	1,262,998
Total	1,262,998
Source of funds	
Transportation fund	247,998
Federal funds	1,015,000
Total	1,262,998

Sec. B.919 Transportation - public assistance grant program

Grants	66,500,000
Total	66,500,000

Source of funds	
Special funds	3,500,000
Federal funds	63,000,000
Total	66,500,000
Sec. B.920 Transportation board	
Personal services	70,496
Operating expenses	12,504
Total	83,000
Source of funds	
Transportation fund	83,000
Total	83,000
Sec. B.921 Total transportation	658,074,852
Source of funds	
Transportation fund	200,555,081
TIB fund	21,291,382
Special funds	3,500,000
Federal funds	390,536,639
ARRA funds	6,301,953
Internal service funds	18,653,244
Interdepartmental transfers	4,317,197
Local match	2,919,356
TIB proceeds fund	10,000,000
Total	658,074,852
Sec. B.1000 Debt service	
Operating expenses	72,111,263
Total	72,111,263
Source of funds	
General fund	63,667,340
General obligation bonds debt service fund	2,321,565
Transportation fund	2,482,442
TIB debt service fund	1,758,486
Special funds	628,150
ARRA funds	1,253,280
Total	72,111,263
Sec. B.1001 Total debt service	
Source of funds	
General fund	63,667,340
General obligation bonds debt service fund	2,321,565
Transportation fund	2,482,442

TIB debt service fund	1,758,486
Special funds	628,150
ARRA funds	1,253,280
Total	72,111,263

Sec. B. 1100 NEXT GENERATION; APPROPRIATIONS AND TRANSFERS

(a) In fiscal year 2013, $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. The amount of $1,863,400 as follows:

(A) Workforce Education and Training Fund (WETF). The amount of $1,303,400 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, $350,000 shall be allocated for the Vermont career internship program pursuant to 10 V.S.A. § 544.

(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) The amount of $200,000 is appropriated to the agency of commerce and community development to issue performance grants to the University of Vermont and the Vermont center for emerging technologies for patent development and commercialization of technology and to enhance the development of high technology businesses and next generation employment opportunities throughout Vermont.

(2) Loan repayment. The amount of $330,000 as follows:

(A) Health care loan repayment. The amount 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. The amount of $30,000 is appropriated to the agency of agriculture, food and markets for a loan forgiveness program for large animal veterinarians pursuant to 6 V.S.A. § 20.

(3) Scholarships and grants. The amount of $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 amount of $150,000 is appropriated to Military – administration to be transferred to the Vermont Student Assistance Corporation for the national guard educational assistance program established in 16 V.S.A. § 2856.

(C) Scholarships. The amount 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, 2012, 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 recommendation for funding in fiscal year 2014.

(D) Dual enrollment programs. The amount 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) Science Technology Engineering and Math (STEM) Incentive. The amount of $55,100 is appropriated to the agency of commerce and community development for an incentive payment pursuant to Sec. 6 of No. 52 of the Acts of 2011.

Sec. B.1100.1 DEPARTMENT OF LABOR RECOMMENDATION FOR FISCAL YEAR 2014 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, 2012 how $4,793,000 from the next generation fund should be allocated or appropriated in fiscal year 2014 to provide maximum benefit to workforce development, participation in postsecondary education by underrepresented groups, and support for promising economic sectors in Vermont. The department of labor shall actively and publically promote the availability of these funds to eligible entities that have not previously been funded.

Sec. B.1101 ONE-TIME ELECTIONS EXPENSE APPROPRIATION

(a) In fiscal year 2013, there is appropriated to the secretary of state for 2012 primary and general elections:

General fund	$135,000
Special fund	$375,000

Sec. B.1102 ONE-TIME UNEMPLOYMENT INSURANCE INTEREST

(a) The amount of $1,888,385 in general funds is appropriated in fiscal year 2013 to the department of labor for unemployment insurance interest payments to the federal government.

Sec. B.1103 ONE-TIME SERGEANT AT ARMS SECURITY APPROPRIATION

(a) The amount of $20,000 in general funds is appropriated in fiscal year 2013 to the sergeant at arms for use in the event that unforeseen security is needed in the state house. Any unused portion shall carry forward for use in subsequent years until expended.

Sec. B.1104 ONE-TIME LEGAL AID HOMEOWNER ASSISTANCE APPROPRIATION

(a) The amount of $300,000 in general funds is appropriated in fiscal year 2013 to the department of banking, insurance, securities, and health care administration – banking to be used to provide a grant to Vermont legal aid to fund legal services for homeowners facing foreclosure.

Sec. B.1105 [DELETED]

Sec. B.1106 ONE-TIME WORKING LANDSCAPE APPROPRIATION

(a) The amount of $500,000 in general funds is appropriated in fiscal year 2013 to the agency of agriculture, food and markets for direct grants and investments in food and forest systems infrastructure pursuant to 6 V.S.A. § 2966(a)(3), including grants that enable farmers' markets to accept electronic benefit transfer funds and to fund one working landscape staff position in the agency.

Sec. B.1107 ONE-TIME MOBILE HOME AFFORDABILITY AND TECHNICAL ASSISTANCE

(a) The amount of $650,000 in general funds is appropriated in fiscal year 2013 to the department of economic, housing and community development for purposes described in Sec. 12 of S.99 of the 2012 legislative session.

Sec. B.1200 FISCAL YEAR 2013 PAY ACT APPROPRIATIONS

(a) Executive Branch. The two-year agreements between the state of Vermont and the Vermont State Employees' Association for the defender general, nonmanagement, supervisory, and corrections bargaining units for the period of July 1, 2012 through June 30, 2014; the collective bargaining agreement with the Vermont Troopers' Association for the period of July 1, 2012 through June 30, 2013; and salary increases for employees in the executive branch not covered by the bargaining agreement shall be funded in fiscal year 2013 as follows:

(1) Fiscal Year 2013.

(A) General Fund. The amount of $11,729,056 is appropriated from the general fund to the secretary of administration for distribution to departments to fund the collective bargaining agreements and the requirements of this act.

(B) Transportation Fund. The amount of $3,400,000 is appropriated from the transportation fund to the secretary of administration for distribution to the agency of transportation, the transportation board, and the department of public safety to fund collective bargaining agreements and the requirements of this act.

(C) Other funds. The administration shall provide additional spending authority to departments through the existing process of excess receipts to fund collective bargaining agreements and the requirements of this act. The estimated amounts are $16,236,181 from special fund, federal, and other sources.

(D) With due regard to the possible availability of other funds, for fiscal year 2013, the secretary of administration may transfer from the various appropriations and various funds and from the receipts of the liquor control board such sums as the secretary may determine to be necessary to carry out the purposes of this act to the various agencies supported by state funds.

(E) The appropriations authorized by this subsection shall include sufficient funding to ensure the administration of exempt pay plans authorized under 32 V.S.A. § 1020(c).

(b) Judicial Branch.

(1) The chief justice of the Vermont supreme court may extend the provisions of the judiciary's collective bargaining agreement to judiciary employees who are not covered by the bargaining agreement.

(2) The two-year agreements between the state of Vermont and the Vermont State Employees' Association for the judicial bargaining unit for the period of July 1, 2012 through June 30, 2014 and salary increases for employees not covered by the bargaining agreement shall be funded in fiscal year 2013 as follows:

(A) Fiscal Year 2013: General Fund. The amount of $1,720,000 is appropriated from the general fund to the judiciary to fund the collective bargaining agreement and the requirements of this act.

(c) Legislative Branch. For the period of July 1, 2012 through June 30, 2013, the legislature shall be funded as follows:

(1) Fiscal Year 2013: The amount of $285,000 is appropriated from the general fund to the legislature.

Sec. BB.1200 FISCAL YEAR 2014 PAY ACT APPROPRIATIONS

(a) Executive Branch. The two-year agreements between the state of Vermont and the Vermont State Employees' Association for the defender general, nonmanagement, supervisory, and corrections bargaining units for the period of July 1, 2012 through June 30, 2014; and salary increases for employees in the executive branch not covered by the bargaining agreement shall be funded in fiscal year 2014 as follows:

(1) Fiscal Year 2014.

(A) General Fund. The amount of $7,171,193 is appropriated from the general fund to the secretary of administration for distribution to departments to fund the collective bargaining agreements and the requirements of this act.

(B) Transportation Fund. The amount of $2,200,000 is appropriated from the transportation fund to the secretary of administration for distribution to the agency of transportation, the transportation board, and the department of public safety to fund the collective bargaining agreements and the requirements of this act.

(C) Other funds. The administration shall provide additional spending authority to departments through the existing process of excess receipts to fund the collective bargaining agreements and the requirements of this act. The estimated amounts are $11,591,844 from special fund, federal, and other sources.

(D) With due regard to the possible availability of other funds, for fiscal year 2014, the secretary of administration may transfer from the various appropriations and various funds and from the receipts of the liquor control board such sums as the secretary may determine to be necessary to carry out the purposes of this act to the various agencies supported by state funds.

(E) The appropriations authorized by this subsection shall include sufficient funding to ensure the administration of exempt pay plans authorized under 32 V.S.A. § 1020(c).

(b) Judicial Branch.

(1) The chief justice of the Vermont supreme court may extend the provisions of the judiciary's collective bargaining agreement to judiciary employees who are not covered by the bargaining agreement.

(2) The two-year agreements between the state of Vermont and the Vermont State Employees' Association for the judicial bargaining unit for the period of July 1, 2012 through June 30, 2014 and salary increases for employees not covered by the bargaining agreement shall be funded in fiscal year 2014 as follows:

(A) Fiscal Year 2014: General Fund. The amount of $893,972 is appropriated from the general fund to the judiciary to fund the collective bargaining agreement and the requirements of this act.

(c) Legislative Branch. For the period of July 1, 2013 through June 30, 2014, the legislature shall be funded as follows:

(1) Fiscal Year 2014. The amount of $180,000 is appropriated from the general fund to the legislature.

Sec. C. 100 Sec. B.306 of No. 63 of the Acts of 2011, as amended by Sec. 16 of No. 75 of the Acts of the 2011 Adj. Sess. (2012), is further amended to read:

Sec. B.306 Department of Vermont health access - administration

Personal services	~~86,056,056~~	81,496,056
Operating expenses	~~(1,759,604)~~	2,800,396
Grants	7,604,073	7,604,073
Total	91,900,525	91,900,525
Source of funds		
General fund	489,014	489,014
Special funds	1,579,123	1,579,123
Federal funds	39,064,279	39,064,279
ARRA funds	2,505,044	2,505,044
Global Commitment fund	44,185,948	44,185,948
Interdepartmental transfers	4,077,117	4,077,117
Total	91,900,525	91,900,525

Sec. C.101 Sec. B.307 of No. 63 of the Acts of 2011, as amended by Sec. 17 of No. 75 of the Acts of the 2011 Adj. Sess. (2012) is amended to read:

Sec. B.307 Department of Vermont health access - Medicaid program - global commitment

Grants	~~638,970,335~~	631,851,208
Total	~~638,970,335~~	631,851,208
Source of funds		
Global Commitment fund	~~638,970,335~~	631,851,208
Total	~~638,970,335~~	631,851,208

Sec. C.200 18 V.S.A. § 1130(b)(1) is amended to read:

(b)(1) The department of health shall establish an immunization pilot program with the ultimate goal of ensuring universal access to vaccines for all Vermonters at no charge to the individual and to reduce the cost at which the state may purchase vaccines. The pilot program shall be in effect from January 1, 2010, through December 31, ~~2012~~ 2014. During the term of the pilot program, the department shall purchase, provide for the distribution of, and monitor the use of vaccines as provided for in this subsection and subsection (c) of this section. The cost of the vaccines and an administrative surcharge shall be reimbursed by health insurers as provided for in subsections (e) and (f) of this section.

Sec. C.201 POTENTIAL PROPERTY VALUATION LOSS; CURRENT HOMEOWNERS

(a) Due to the extreme emergency circumstances created by Tropical Storm Irene and the emergency need for additional hospital beds, the department of mental health is developing a temporary hospital in Morrisville. Any current homeowner whose property abuts the temporary Morrisville facility, identified by the commissioner of mental health and licensed by the department of health to provide acute inpatient services, who sells at a loss his or her principal residence, as defined in 32 V.S.A. § 10002a(a), as a result of the temporary facility's operations shall be compensated for that loss. The valuation of the loss shall be determined by an independent assessor paid for by the department and cannot exceed 25 percent of the appraised value. Any compensation under this section shall be paid for from the budget of the department of mental health. The department of mental health shall inform the general assembly of any costs incurred and shall present any offsetting budgetary need as part of the budge adjustment process. The department shall explore utilization of Federal Emergency Management Agency (FEMA) funds, Global Commitment, or other matching resources in making these payments.

Sec. C.202 ONE-TIME APPROPRIATION FOR FEDERAL FUNDS REDUCTION

(a) The amount of $5,100,000 general fund is appropriated in fiscal year 2012 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 federal funds.

Sec. C.203 Sec. D.101(b) of No. 63 of the Acts of 2011 as amended by Sec. 72a of No. 75 of the Acts of the 2011 Adj. Sess. (2012), is further amended to read:

(b) The amount of ~~$37,983,264~~ $43,083,264 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. C.204 GRANTS FROM FISCAL YEAR 2012 WORKFORCE EDUCATION AND TRAINING FUNDS

(a) Of the amounts remaining in the workforce education and training fund allocated to the Vermont department of labor in fiscal year 2012, the commissioner is authorized to allocate:

(1) The amount of $100,000 in grant funding in coordination with the agency of human services to support professional development opportunities for Vermont workers in early childhood education and afterschool programs

that are designed to improve the workers' knowledge, skills, and career opportunities, including innovative programs of competency-based education, training, apprenticeship, and mentoring.

(2) The amount of $148,000 for statewide emergency medical services training by a grant to the University of Vermont rural emergency medical services program for the purpose of offering 50-percent tuition assistance to students enrolled in the paramedic level training program.

(3) Of any remaining unobligated funds, an amount up to $75,000 shall be used for projects in southeastern Vermont that will provide economic incentives for skill development and training opportunity, to employees in communities that suffered adverse economic impact from Tropical Storm Irene.

Sec. C.205 Sec. 73 of No. 75 of the Acts of the 2011 Adj. Sess. (2012) is amended to read:

Sec. 73. FISCAL YEAR 2012 GENERAL FUND REVENUE ESTIMATE AND GENERAL FUND BALANCE

(a) ~~Any increase in the January 2012 emergency board fiscal year 2012 general fund revenue estimate above the July 21, 2011 estimate shall be reserved in the human services caseload reserve, and any decrease in the estimate shall be unreserved from the human services caseload reserve established in 32 V.S.A. § 308b.~~

~~(b)~~ At the end of fiscal year 2012, ~~notwithstanding subsection (a) of this section and~~ notwithstanding 32 V.S.A. §§ 308c and 308d, after the general fund budget stabilization reserve attains its statutory maximum, up to $15,000,000 of any additional unreserved and undesignated general fund balance shall be appropriated to the secretary of administration to be reserved for transfer upon approval of the emergency board to the department of buildings and general services for pending state building projects that are a direct result of the impact of damage to state properties from Tropical Storm Irene or to the emergency relief and assistance fund for state and local match for Federal Emergency Management Agency (FEMA) funds. The secretary shall provide a quarterly report to the house and senate committees on appropriations and to the house committee on corrections and institutions and the senate committee on institutions on any funds that are available under this provision and on funds obligated and expended from the available funds. Any remaining balance shall be deposited into the human services caseload reserve established in 32 V.S.A. § 308b to be used for caseload costs, offsets to federal funding changes, or related human service expenditures in fiscal year 2013.

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 $582,000 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 $582,000 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 $13,688,640 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 $13,688,640 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.

(C) facilities operations fund established in 29 V.S.A. § 160a: $3,024,189.

(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: $383,966.

(3) 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 2014 transportation infrastructure bonds debt service: $1,764,213.

Sec. D.102 32 V.S.A. § 308c is amended to read:

§ 308c. GENERAL FUND AND TRANSPORTATION FUND ~~SURPLUS~~ BALANCE RESERVES

(a) There is hereby created within the general fund a general fund ~~surplus~~ balance reserve, also known as the "rainy day reserve." After satisfying the requirements of section 308 of this title, and after other reserve requirements have been met, any remaining unreserved and undesignated end of fiscal year general fund surplus ~~not to exceed one percent of the appropriations from the general fund for the prior fiscal year~~ shall be reserved in the general fund ~~surplus~~ balance reserve. The general fund balance reserve shall not exceed five percent of the appropriations from the general fund for the prior fiscal year without legislative authorization. Monies from this reserve shall be available for appropriation by the general assembly.

(1) The emergency board shall, at the end of fiscal year 2013 and at the end of any following fiscal year, determine at its July meeting the amount of available general funds that is greater than the amount of forecast available general funds most recently adopted by the board for fiscal year 2013 or in any subsequent fiscal year.

(2) Of the amount added to the general fund balance reserve each year, to the extent available, one-half of the amount identified in subdivision (1) is hereby appropriated in the fiscal year just concluded for deposit in the supplemental property tax relief fund established by 32 V.S.A. § 6075. If the amount added to the general fund balance reserve is insufficient to support both the appropriation in this subdivision and the appropriation in subdivision (3), the appropriation in this subdivision shall take precedence.

(3) Of the amount added to the general fund balance reserve each year, to the extent available, one-quarter of the amount identified in subdivision (1) is hereby appropriated in the fiscal year just concluded to the secretary of administration to be used only upon emergency board action to transfer these funds to appropriations to offset reduced federal funding.

(b) There is hereby created within the transportation fund a transportation fund ~~surplus~~ balance reserve. After satisfying the requirements of section 308a of this title, and after other reserve requirements have been met, any remaining unreserved and undesignated end of fiscal year transportation fund surplus shall be reserved in the transportation fund ~~surplus~~ balance reserve. Monies from this reserve shall be available for appropriation by the general assembly.

(c) In any fiscal year, if the general assembly determines there are insufficient revenues to fund expenditures for the operation of state government at a level the general assembly finds prudent and required, it may specifically appropriate the use of the general fund and transportation fund balance reserves to compensate for a reduction of revenues or fund such unforeseen or emergency needs as the general assembly may determine.

(d) Determination of the amounts of the general fund and transportation fund balance reserves shall be made by the commissioner of finance and management and reported, along with the amounts appropriated pursuant to subsection (a) of this section, to the legislative joint fiscal committee at its first meeting following September 1 of each year.

Sec. D.103 32 V.S.A. § 6075 is added to read:

§ 6075. SUPPLEMENTAL PROPERTY TAX RELIEF FUND

(a) There is created a special fund to be called the "supplemental property tax relief fund." The purpose of the fund is to provide education property tax relief to homestead taxpayers who file homestead declarations under section 5410 of this title. The fund shall be administered by the commissioner of taxes. The fund shall consist of receipts from subdivision 308c(a)(2) of this title.

(b) Annually, on or by October 1, the commissioner shall determine the balance in the fund and the total number of homestead owners who have filed a homestead declaration under section 5410 of this title. The commissioner shall divide the balance in the fund by the total number of homestead owners who have filed a homestead declaration under section 5410 of this title. If the amount determined by the commissioner in the preceding sentence is greater than $30.00, the commissioner shall send that amount to each homestead owner who has filed a homestead declaration under section 5410 of this title. Except as provided in this subsection, the commissioner shall not disburse any moneys from the fund.

Sec. D.103.1 REPEAL

(a) 32 V.S.A. § 308c(a)(2) (appropriation and deposit in the supplemental property tax relief fund) is repealed January 1, 2018.

(b) 32 V.S.A. § 6075 (supplemental property tax relief fund) is repealed January 1, 2018.

(c) 32 V.S.A. § 308d (revenue shortfall reserve; creation and purpose) is repealed.

Sec. D.103.2 TRANSITIONAL PROVISIONS

(a) Upon repeal of 32 V.S.A. § 308d, the balance in the revenue shortfall reserve shall be transferred to the general fund balance ("rainy day") reserve created in 32 V.S.A. § 308c(a).

(b) The additions to the general fund balance reserve in fiscal year 2013 due to Sec.D.109(b) of this act and subsection (a) of this section shall not be considered as part of "the amount added to the general fund balance reserve" for purposes of 32 V.S.A. § 308c(a).

Sec. D.104 TOBACCO LITIGATION SETTLEMENT FUND BALANCE

(a) Notwithstanding 18 V.S.A. § 9502(b), the actual balances at the end of fiscal year 2012 in the tobacco litigation settlement fund shall remain for appropriation in fiscal year 2013.

Sec. D.105 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 2013 and any additional amount necessary to ensure the balance in the tobacco litigation settlement fund at the close of fiscal year 2013 is not negative shall be transferred from the tobacco trust fund to the tobacco litigation settlement fund in fiscal year 2013.

Sec. D.106 [DELETED]

Sec. D.107 TRANSFER OF NATIONAL MORTGAGE FORECLOSURE SETTLEMENT FUNDS

(a) Any funds received in fiscal year 2012 or 2013 from the national mortgage foreclosure settlement that are deposited into the fees and reimbursement special fund (#21638) in the office of the attorney general shall be transferred to the general fund except for any amount the settlement may require to be directed to the department of banking, insurance, securities, and health care administration.

Sec. D.108 FOURTH QUARTER FISCAL YEAR 2013 TRANSFERS AND APPROPRIATIONS

(a) The following general fund transfers and appropriations are authorized effective May 1, 2013. Prior to these transfers and appropriations, the secretary of administration and the commissioner of finance and management

shall make findings that the transfers do not create a projected negative balance in the general fund and reduce the reserve position anticipated for the close of fiscal year 2013.

(1) Transferred and appropriated to the education fund: $2,100,000.

(2) Transferred to the clean energy development fund: $3,000,000.

(3) Appropriated to the Vermont State Colleges, subject to the approval of the secretary of administration to provide funding for a Brattleboro community college facility. To the extent this appropriation is made the bond proceeds dedicated for this purpose in H.785 will be reduced: $1,475,000.

(b) This section is contingent on passage of amendments to 32 V.S.A. § 5402a or 32 V.S.A. § 8661 as part of H.782 of the 2012 legislative session.

Sec D.108.1 FISCAL YEAR 2014 TRANSFERS AND REVERSIONS

(a) It is the intent that in fiscal year 2014 and in future years, the general assembly will make transfers as identified in Sec. D.108(a)(1) and (2) of this act in amounts equal to or greater than in fiscal year 2013.

Sec. D.109 FISCAL YEAR 2013 CASELOAD RESERVE UTILIZATION

(a) The amount of $16,160,000 is unreserved and made available for expenditure in fiscal year 2013 from the human services caseload reserve created by 32 V.S.A. § 308b.

(b) In fiscal year 2013, any remaining balance in the human service caseload reserve shall be transferred to the general fund balance ("rainy day") reserve established in 32 V.S.A. § 308c(a).

* * * GENERAL GOVERNMENT * * *

Sec. E.100 FEDERAL EMERGENCY MANAGEMENT AGENCY REPORTING AND OVERSIGHT

(a) The secretary of administration shall report to the joint fiscal committee at each of its scheduled meetings in fiscal year 2013 on funding received from the Federal Emergency Management Agency (FEMA) Public Assistance Program and associated emergency relief and assistance funds match for the damages due to Tropical Storm Irene. The report shall include:

(1) a projection of the total funding needs for the FEMA Public Assistance Program and to the extent possible, detail about the projected funding by state agency or municipality;

(2) spending authority (appropriated and excess receipts) granted to date for the FEMA Public Assistance Program and the associated emergency relief and assistance funds match; and

(3) actual expenditures to date made from the spending authority granted and to the extent possible, detail about the expended funds by state agency or municipality.

(b) Reports shall be posted on the legislative and administration websites after submission.

Sec. E.100.1 32 V.S.A. § 306a is added to read:

§ 306a. PURPOSE OF THE STATE BUDGET

(a) Purpose of the State Budget. The state budget, consistent with Article 7 of Vermont's constitution, should "be instituted for the common benefit, protection, and security of the people, nation, or community…" The state budget should be designed to address the needs of the people of Vermont in a way that advances human dignity and equity.

(b) Spending and revenue policies will seek to promote economic well being among the people of Vermont, and foster a vibrant economy. Integral to achieving the purpose of the state budget is continuous evaluation of the raising and spending of public funds by systems of outcome measurement based on indicators that measure success in accomplishing the purposes of the state budget.

(c) Spending and revenue policies will reflect the public policy goals established in state law and recognize every person's need for health, housing, dignified work, education, food, social security, and a healthy environment.

(d) As consistent with state law and in conjunction with the federal government, the budget will reflect support for economic development, public safety, transportation and other infrastructure needs.

(e) Revenue measures shall also be based on the principles of sustainability and stability. The Administration shall develop budget and revenue proposals as part of a transparent and accountable process with direct and meaningful participation from Vermont residents.

Sec. E.100.2 PURPOSE OF THE STATE BUDGET

(a) Public participation. The administration will develop a process for public participation in the development of budget goals, as well as general prioritization and evaluation of spending and revenue initiatives. This process shall begin by October 1, 2012.

(b) Current services. The administration shall develop and publish annually for public review as part of the budget submission process a current services budget, providing the public with an estimate of what the current level of services is projected to cost in the next fiscal year. The initial current

services budget shall be submitted with the administration's fiscal year 2014 budget proposal.

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, and $200,000 is for a grant from the department of information and innovation to the secretary of administration's office to support the telecommunications infrastructure.

(b) The commissioner shall work with relevant departments of state government on the server consolidation project, as described in the January 9, 2010 "State of Vermont IT Assessment Recommendations" report by TPI, Inc. Although no appreciable savings were realized in fiscal year 2012, the pursuit of server consolidation should continue with the objective of reducing the cost of providing information technology services.

Sec. E.102 32 V.S.A. § 6(b) is amended to read:

(b) Requests for federal funds shall include a specific request for reimbursement of indirect costs. Awards of statewide indirect costs will be deposited into the general fund except statewide indirect costs will be deposited into the transportation fund for costs recovered by the agency of transportation. The commissioner of finance and management may authorize departments to retain recovered indirect cost receipts.

Sec. E.109 Buildings and general services – engineering

(a) The $2,433,490 interdepartmental transfer in this appropriation shall be from the general bond fund appropriation in the Capital Appropriations Act of the 2012 session.

Sec. E.110 REPEAL

(a) 19 V.S.A. § 41 (funding for rest areas, information centers, and welcome centers from the general fund) is repealed.

Sec. E.124 Legislative council

(a) Notwithstanding any other provision of law, from the fiscal year 2012 funds appropriated to the legislative council and carried forward into fiscal year 2013, the amount of $55,000 shall revert to the general fund.

Sec. E.125 Legislature

(a) Notwithstanding any other provision of law, from the fiscal year 2012 funds appropriated to the legislature and carried forward into fiscal year 2013, the amount of $503,000 shall revert to the general fund.

Sec. E.125.1 4 V.S.A. § 601(c) is amended to read:

(c) ~~The members of the judicial nominating board shall be entitled to compensation of $30.00 a day for the time spent in the performance of their duties, and reimbursement for their actual and necessary expenses incurred in the performance of their duties~~ Legislative members of the board shall be entitled to per diem compensation and reimbursement for expenses in accordance with 2 V.S.A. § 406. Members of the board who are not otherwise compensated by their employer shall be entitled to per diem compensation and reimbursement for expenses in the same manner as board members are compensated under 32 V.S.A. § 1010. All compensation and reimbursement shall be paid from the legislative appropriation.

Sec. E.125.2 REPEAL

(a) 4 V.S.A. § 606 (expenses of board; payment) is repealed.

Sec. E.126 Legislative information technology

(a) Notwithstanding any other provision of law, from the fiscal year 2012 funds appropriated for legislative information technology and carried forward into fiscal year 2013, the amount of $5,000 shall revert to the general fund.

Sec. E.127 Joint fiscal committee

(a) Notwithstanding any other provision of law, from the fiscal year 2012 funds appropriated to the joint fiscal committee and carried forward into fiscal year 2013, the amount of $10,000 shall revert to the general fund.

Sec. E.128 Sergeant at arms

(a) Notwithstanding any other provision of law, from the fiscal year 2012 funds appropriated to the sergeant at arms and carried forward into fiscal year 2013, the amount of $95,000 shall revert to the general fund.

Sec. E.132 27 V.S.A. § 1253(a) is amended to read:

(a) All funds received under this chapter, including the proceeds from the sale of unclaimed property under section 1252 of this title, shall forthwith be received by the treasurer, except that the treasurer shall retain in a separate fund an amount not exceeding $100,000.00 or ~~50~~ 55 percent of the funds received during the previous year, whichever is greater, from which he or she shall make prompt payment of claims duly allowed by him or her as provided in this section. The treasurer shall record the name and last known address of each owner appearing on the holder's reports and the names and last known address of each insured person or annuitant and beneficiary, and with respect to each policy or annuity listed in the report of an insurance company its

number, the name of the company, and the amount due. The record shall be available for public inspection at all reasonable hours.

Sec. E.133 Vermont state retirement system

(a) Notwithstanding 3 V.S.A. § 473(d), in fiscal year 2013, investment fees shall be paid from the corpus of the fund.

Sec. E.134 MUNICIPAL EMPLOYEES RETIREMENT

(a) Notwithstanding the provisions of 24 V.S.A. § 5064(b), for the period July 1, 2012 through June 30, 2013, 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. 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.

(c) The lottery commission shall study the option of allowing the sale of lottery tickets online. The study shall examine how the online system would be administered, the fiscal impact of allowing lottery tickets to be sold online, and any other relevant issues. The commission shall report its findings and any recommendations to the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs by January 15, 2013.

Sec. E.142 Payments in lieu of taxes

(a) This appropriation is for state payments in lieu of property taxes under 32 V.S.A. chapter 123, subchapter 4, 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.142.1 32 V.S.A. § 4967 is amended to read:

§ 4967. TRANSMISSION OF TAXES ~~TO DIRECTOR~~ AND CREDIT TO SPECIAL FUND

(a) All moneys received by supervisors in the collection of taxes or otherwise in the performance of their official duties~~, except fees,~~ shall be paid by them to the ~~director quarterly, on the first Tuesday in February, May, August, and November. Such director shall keep separate accounts of the moneys so received by him or her from the respective supervisors~~ department

of finance and management to be credited to special fund accounts, which are hereby established.

(b) Revenues collected pursuant to this section shall be disbursed based on warrants authorized by the commissioner of finance and management under the authority granted by section 461 of this title, and shall be expended consistent with the budgets adopted pursuant to subsections 4961(b) and (c) of this title.

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.

* * * 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), $725,000 is appropriated in Sec. B.200 of this act.

Sec. E.202 Defender general – public defense

(a) The establishment of one (1) new exempt position – Staff Attorney I – is authorized in fiscal year 2013.

Sec. E.205 State's attorneys

(a) Notwithstanding any provision of law to the contrary, within the appropriations to the state's attorneys contained in this act, the executive director of the department of state's attorneys shall allocate funds so that by August 1, 2012, deputy state's attorneys are at the correct step for length of service.

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 18 V.S.A. § 4201(29) 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. These funds are in addition to funds provided in Sec. 9 of S.226 of the 2012 legislative session for the mobile enforcement team created in Sec. 6 of S.226 of the 2012 legislative session and shall be used in coordination with the mobile enforcement team.

Sec. E.210 Public safety – criminal justice services

(a) Of this appropriation, $126,000 is to support the costs of two (2) civilian computer forensics analyst positions.

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) The amount of $250,000 shall be disbursed to the Vermont Student Assistance Corporation for the national guard educational assistance program established in 16 V.S.A. § 2856. Of this amount, $100,000 shall be general

funds from this appropriation, and $150,000 shall be Next Generation special funds, as appropriated in Sec. B.1100(a)(3)(B) of this act.

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 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 victims' services

(a) Of this appropriation, the amount of $806,195 from the domestic and sexual violence special fund created by 13 V.S.A. § 5360 is appropriated for the Vermont network against domestic and sexual violence. Expenditures from the domestic and sexual violence special fund shall not exceed revenues.

(b) The unexpended amounts derived from the $10 and $20 increases as specified in Sec. E.220(a) of No. 63 of the Acts of 2011 shall be transferred to the domestic and sexual violence special fund created by 13 V.S.A. § 5360.

Sec. E.220.1 13 V.S.A. § 5360 is added to read:

§ 5360. DOMESTIC AND SEXUAL VIOLENCE SPECIAL FUND

A domestic and sexual violence special fund is established, to be managed in accordance with 32 V.S.A. chapter 7, subchapter 5 and administered by the center for crime victims services created in section 5361 of this title. The revenues of the fund shall consist of that portion of the additional surcharge on penalties and fines imposed by section 7282 of this title deposited in the domestic and sexual violence special fund and that portion of the town clerks' fee for issuing and recording civil marriage or civil union licenses in 32 V.S.A. § 1712(1) deposited in the domestic and sexual violence special fund. The fund may be expended by the center for crime victims services for budgeted grants to the Vermont network against domestic and sexual violence and for the criminal justice training council position dedicated to domestic violence training, pursuant to 20 V.S.A. § 2365(c).

Sec. E.220.2 13 V.S.A. § 7282(a) is amended to read:

(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 surcharge of:

* * *

(8)(A) For any offense or violation committed after June 30, 2006, but before July 1, 2008, $26.00, of which $18.75 shall be deposited in the victims' compensation special fund.

(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.

(C) For any offense or violation committed after June 30, 2009, $41.00, of which ~~$33.75~~ $23.75 shall be deposited in the victims' compensation special fund created by section 5359 of this title, and of which $10.00 shall be deposited in the domestic and sexual violence special fund created by section 5360 of this title.

Sec. E.220.3 32 V.S.A. § 1712 is amended to read:

§ 1712. TOWN CLERKS

Town clerks shall receive the following fees in the matter of vital registration:

(1) For issuing and recording a civil marriage or civil union license, $45.00 to be paid by the applicant, $10.00 of which sum shall be retained by the town clerk as a fee, $20.00 of which shall be deposited in the ~~victims' compensation~~ domestic and sexual violence special fund created by 13 V.S.A. § 5360, and $15.00 of which sum shall be paid by the town clerk to the state treasurer in a return filed quarterly upon forms furnished by the state treasurer and specifying all fees received by him or her during the quarter. Such quarterly period shall be as of the first day of January, April, July, and October.

* * *

Sec. E.220.4 20 V.S.A. § 2365(c) is amended to read:

(c) The Vermont police academy shall employ a domestic violence trainer for the sole purpose of training Vermont law enforcement and related practitioners on issues related to domestic violence. Funding for this position shall be transferred by the center for crime victims services from the ~~victims' compensation~~ domestic and sexual violence special fund created by 13 V.S.A. § ~~5359~~ 5360.

Sec. E.222 Agriculture, food and markets – administration

(a) The establishment of two (2) new classified positions – one (1) Program Services Clerk and one (1) Systems Developer I – is authorized in fiscal year 2013.

(b) Notwithstanding any other provision of law, from the fiscal year 2012 funds appropriated to the agency of agriculture, food and markets for the Two Plus Two Program and carried forward into fiscal year 2013, the amount of $25,000 shall revert to the general fund.

Sec. E.223 Agriculture, food and markets – food safety and consumer protection

(a) The establishment of one (1) classified position – Dairy Product Specialist II – is authorized in fiscal year 2013.

Sec. E.224 Agriculture, food and markets – agricultural development

(a) The establishment of one (1) limited service classified position – Senior Agricultural Development Specialist – is authorized in fiscal year 2013.

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 the health care administration division and the insurance division 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).

Sec. E.233 30 V.S.A. § 211(c) is added to read:

(c) An enterprise fund is established in the department of public service to consist of revenues from the resale of power and to support the activities authorized in sections 211, 212, and 212a of this title. Balances shall remain in the fund at the end of each fiscal year, and the fund shall be appropriated and expended in accordance with 32 V.S.A. § 462(b). These monies shall not be available to meet the general obligations of the state.

* * * HUMAN SERVICES * * *

Sec. E.300 Agency of human services – secretary's office

(a) The establishment of seven (7) new classified positions – two (2) Systems Developer II, one (1) Senior Systems Developer, one (1) Enterprise Business Analyst, two (2) Systems Manager – is authorized in fiscal year Developer III, and one (1) Project 2013.

Sec. E 300.1 REIMBURSEMENT RATES FOR SERVICE PROVIDERS

(a) The agency shall provide an inventory of the payment rates for various community service providers in the area of child welfare, including PNMI, child development, substance abuse, and long-term care services. The inventory shall list the types of programs, including residential programs and methods of reimbursement, including those subject to rate setting by provider type, as well as the most recent base year utilized for market or cost-based reimbursement methodologies. A list of rates paid to out-of-state residential providers and the methodology used to determine the rates shall also be included. This inventory shall be reported to the house and senate committees on appropriations by January 1, 2013 and shall include any recommendations to change reimbursement rates, methods, or basis.

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 $28,308,986 is anticipated to be certified as state matching funds under the Global Commitment as follows:

(1) $17,645,850 certified state match available from local education agencies for eligible special education school-based Medicaid services under the Global Commitment. This amount combined with $22,854,150 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) $3,902,237 certified state match available from local education agencies for direct school-based health services, including school nurse services, that increase the access of quality health care to uninsured persons, underinsured persons, and Medicaid beneficiaries.

(3) $2,180,067 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) $2,393,532 certified state match available via the University of Vermont's child health improvement program for quality improvement initiatives for the Medicaid program.

(5) $2,187,300 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 CONTIGUOUS BODY PARTS ULTRASOUND

(a) Beginning July 1, 2012 and thereafter, the department of Vermont health access shall reduce spending on ultrasound services by implementing a payment reduction on contiguous body parts.

Sec. E.301.2 [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 2013, 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 2013 as 100 percent of each program's final per diem rate in effect on June 30, 2012. 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 2013.

(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 to 10 days, final rates for state fiscal year 2013 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, 2012. 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 2013, 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 2013 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 2013:

(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 2013 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 2013, programs must have prior written approval from the PADs before applying to the division for an adjustment to the state fiscal year 2013 per diem rate.

(I) The allowable budget amount for state fiscal year 2013 may be no more than the final approved budget for the rate year which includes June 30, 2012.

(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 2013, 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, 2012.

(II) With prior written approval from the PADs, programs may apply to the division for an adjustment to the allowable budget for costs directly related to the program change.

(III) The division shall divide the final allowable budget amount by the estimated occupancy level at the new licensed capacity to calculate the per diem rate.

Sec. E.306 Department of Vermont health access – administration

(a) The establishment of three (3) new classified positions – Nurse Case Manager – is authorized in fiscal year 2013.

Sec. E.306.1 8 V.S.A. § 4089k is amended to read:

§ 4089k. HEALTH CARE INFORMATION TECHNOLOGY REINVESTMENT FEE

(a)(1) ~~Beginning October 1, 2009 and annually thereafter, each~~ Each health insurer shall pay a fee into the health IT fund established in 32 V.S.A. § 10301 in the amount of 0.199 of one percent of all health insurance claims paid by the health insurer for its Vermont members in the previous fiscal year ending June 30. The annual fee shall be paid in ~~installments~~ one installment ~~–~~due by ~~November 1,~~ January 1~~, April 1, and June 1~~.

* * *

(d)(2) If any health insurer fails to pay the fee established in subsection (a) of this section within 45 days after ~~notice from the secretary of administration of the amount due~~ the installment due date, the secretary of administration~~,~~ or his or her designee~~,~~ shall notify the commissioner of banking, insurance,

securities, and health care administration of the failure to pay. In addition to any other remedy or sanction provided for by law, if the commissioner finds, after notice and an opportunity to be heard, that the health insurer has violated this section or any rule or order adopted or issued pursuant to this section, the commissioner may take any one or more of the following actions:

* * *

Sec. E.306.2 8 V.S.A. § 4089l is amended to read:

§ 4089l. HEALTH CARE CLAIMS ASSESSMENT

(a)(1) ~~Beginning October 1, 2011 and annually thereafter, each~~ Each health insurer shall pay an assessment into the state health care resources fund established in 33 V.S.A. § 1901d in the amount of 0.80 of one percent of all health insurance claims paid by the health insurer for its Vermont members in the previous fiscal year ending June 30. The annual fee shall be paid in ~~installments on November 1,~~ one installment due by January 1~~, April 1, and June 1~~.

* * *

(d) If any health insurer fails to pay the fee established in subsection (a) of this section within 45 days after ~~notice from the secretary of administration of the amount due~~ the installment due date, the secretary of administration or his or her designee shall notify the commissioner of banking, insurance, securities, and health care administration of the failure to pay. In addition to any other remedy or sanction provided for by law, if the commissioner finds, after notice and an opportunity to be heard, that the health insurer has violated this section or any rule or order adopted or issued pursuant to this section, the commissioner may take any one or more of the following actions:

* * *

Sec. E.307 33 V.S.A. § 2073 is amended to read:

§ 2073. VPHARM ASSISTANCE PROGRAM

* * *

(d)(1) An individual shall contribute a co-payment of $1.00 for prescriptions where the cost-sharing amount required by Medicare Part D is ~~$29.99 or~~ less than $30.00, and a co-payment of $2.00 for prescriptions where the cost-sharing amount required by Medicare Part D is $30.00 or more. A pharmacy may not refuse to dispense a prescription to an individual who does not provide the co-payment.

* * *

Sec. E.307.1 33 V.S.A. § 2074(c) is amended to read:

(c) Benefits under VermontRx shall be subject to payment of a premium and co-payment amounts by the recipient in accordance with the provisions of this section.

* * *

(4) A recipient shall contribute a co-payment of $1.00 for prescriptions costing ~~$29.99 or~~ less than $30.00, and a co-payment of $2.00 for prescriptions costing $30.00 or more. A pharmacy may not refuse to dispense a prescription to an individual who does not provide the co-payment.

Sec. E.307.2 VHAP AND MEDICAID CO-PAYS

(a) The following co-payments for individuals enrolled in the VHAP and Medicaid programs are hereby authorized and set by the general assembly, pursuant to 33 V.S.A. § 1901(b), and may be promulgated in rules by the secretary of human services or designee, in accordance with 33 V.S.A. § 1901(a)(1):

(1) co-payments that apply to prescriptions and durable medical equipment/supplies: enrolled individuals shall contribute a co-payment of not more than $1.00 for prescriptions or durable medical equipment/supplies costing less than $30.00, a co-payment of $2.00 for prescriptions or durable medical equipment/supplies costing $30.00 or more but less than $50.00, and a co-payment of $3.00 for prescriptions or durable medical equipment/supplies costing $50.00 or more;

(2) co-payments that apply to hospital outpatient services: not more than $3.00 per hospital visit;

(3) co-payments that apply to hospital emergency room services: for individuals enrolled in VHAP, $25.00 per hospital visit;

(4) co-payments that apply to hospital inpatient stays: for individuals enrolled in Medicaid, the $75.00 co-payment for inpatient hospital stays is eliminated.

Sec. E.307.3 33 V.S.A. § 1910 is amended to read:

§ 1910. LIABILITY OF THIRD PARTIES; LIENS

* * *

(b) The agency shall have a lien against the insurer, to the extent of the amount paid by the agency for past medical expenses, on any recovery from the insurer, whenever:

(1) the agency pays medical expenses or renders medical services on behalf of a recipient who has been injured or has suffered an injury, illness, or disease; and

(2) the recipient asserts a claim against an insurer as a result of the injury, illness, or disease. The recipient's insurer or alleged liable party's insurer, if any, shall take reasonable steps to discover the existence of the agency's medical assistance. Payment to the recipient instead of the agency does not discharge the insurer from payment of the agency's claim.

* * *

Sec. E.307.4 DENTAL COVERAGE FOR PREGNANT AND POST-PARTUM WOMEN

(a) The secretary of human services shall apply to the Centers for Medicare and Medicaid Services for an amendment to the state Medicaid plan pursuant to 42 C.F.R. Section 430.12 to eliminate the adult dental benefit maximum as applied to pregnant women receiving benefits under the Dr. Dynasaur/Medicaid program and to enable pregnant women to receive the same dental benefits that are available for children on Dr. Dynasaur/Medicaid for the duration of the pregnancy and through the end of the calendar month during which the 60th day following the end of pregnancy occurs.

(b) Upon approval of the state plan amendment pursuant to subsection (a) of this section, the secretary of human services shall adopt rules pursuant to 3 V.S.A. chapter 25 to implement the expansion of dental coverage for pregnant women.

Sec. E.307.5 PRIMARY CARE CASE MANAGEMENT REIMBURSEMENT METHODOLOGY

(a) The department of Vermont health access shall conduct an analysis of the impact of revising the primary care case management reimbursement methodology. The analysis shall include the methodologies considered, impact on providers, and delivery system implications. The department shall provide its analysis to the health access oversight committee at its December 2012 meeting.

Sec. E.307.6 33 V.S.A. § 1901 is amended to read:

§ 1901. ADMINISTRATION OF PROGRAM

* * *

(a)(4) A manufacturer of pharmaceuticals purchased by individuals receiving state pharmaceutical assistance in programs administered under this chapter shall pay to the department of Vermont health access, as the secretary's

designee, a rebate on all ~~pharmaceuticals~~ pharmaceutical claims for which state-only funds are expended in an amount ~~at least as favorable as the rebates provided under 42 U.S.C. section 1396r-8 paid to the department in connection with Medicaid and programs funded under the Global Commitment to Health Medicaid Section 1115 waiver~~ that is in proportion to the state share of the total cost of the claim, as calculated annually on an aggregate basis, and based on the full Medicaid rebate amount as provided for in Section 1927 (a) through (c) of the federal Social Security Act, 42 U.S.C. Section 1396r-8.

* * *

Sec. E.307.7 33 V.S.A. § 2073 is amended to read:

§ 2073. VPHARM ASSISTANCE PROGRAM

* * *

(f) A manufacturer of pharmaceuticals purchased by individuals receiving assistance from VPharm established under this section shall pay to DVHA, as required by section 1901 of this title, a rebate on all ~~pharmaceuticals~~ pharmaceutical claims for which state-only funds are expended in an amount ~~at least as favorable as the rebate paid to DVHA in connection with the Medicaid program~~ that is in proportion to the state share of the total cost of the claim, as calculated annually on an aggregate basis, and based on the full Medicaid rebate amount as provided for in Section 1927 (a) through (c) of the federal Social Security Act, 42 U.S.C. Section 1396r-8.

*** * ***

Sec. E.307.8 33 V.S.A. § 2074 is amended to read:

§ 2074. VERMONTRX PROGRAM

* * *

(d) ~~Any manufacturer of pharmaceuticals purchased by individuals receiving assistance from VermontRx established under this section shall pay to DVHA, as required by section 1901 of this title, a rebate on all pharmaceuticals for which state-only funds are expended in an amount at least as favorable as the rebate paid to DVHA in connection with the Medicaid program.~~ [REPEALED]

Sec. E. 307.9 VPHARM REVIEW

(a) The commissioner of Vermont health access shall review the VPHARM program beneficiary premium and co-payment structure as well as the current and anticipated pharmaceutical manufacturing rebate compliance and payments levels. The commissioner shall make recommendations to the house and senate committees on appropriations, the house committee on health care,

and the senate committee on health and welfare by January 15, 2013 regarding changes to the VPHARM program premium or co-payment structure.

Sec. E.307.10 EXPEDITED RULES

(a) Notwithstanding any contrary provision in 3 V.S.A. chapter 25, and in order to implement Sec. E.307.2(a) (VHAP and Medicaid co-pays) of this act no later than July 1, 2012, the agency of human services may adopt expedited rules in accordance with this section. Expedited rules under this section shall have the full force and effect of rules adopted under 3 V.S.A. chapter 25.

(b) Notwithstanding 3 V.S.A. chapter 25 and Sec. F4 of No. 146 of the Acts of the 2009 Adj. Sess. (2010), the agency shall:

(1) Adopt the expedited rule without prefiling or filing in proposed or final proposed form, and adopt the expedited rule after whatever notice and hearing that the agency finds to be practicable under the circumstances. The agency shall make reasonable efforts to ensure that expedited rules are known to persons who may be affected by them. These efforts may occur prior to passage of this act and also shall occur on adoption of the rules by the agency.

(2) File expedited rules adopted under this section with the secretary of state and with the legislative committee on administrative rules. The legislative committee on administrative rules shall distribute copies of expedited rules to the appropriate standing committees.

(3) Ensure that expedited rules adopted under this section shall include as much of the information required for the filing of a proposed rule as is practicable under the circumstances.

(c) On a majority vote of the entire committee, the committee may object under this subsection if an expedited rule is:

(1) beyond the authority of the agency;

(2) contrary to the intent of the legislature; or

(3) arbitrary.

(d) When objection is made under subsection (c) of this section, on majority vote of the entire committee, the committee may file the objection in certified form with the secretary of state. The objection shall contain a concise statement of the committee's reasons for its action. The secretary shall affix to each objection a certification of its filing and as soon as practicable transmit a copy to the agency. After a committee objection is filed with the secretary under this subsection, to the extent that the objection covers a rule or portion of a rule, the burden of proof thereafter shall be on the agency in any action for judicial review or for enforcement of the rule to establish that the part objected

to is within the authority delegated to the agency, is consistent with the intent of the legislature, and is not arbitrary. If the agency fails to meet its burden of proof, the court shall declare the whole or portion of the rule objected to invalid. The failure of the committee to object to a rule is not an implied legislative authorization of its substantive or procedural lawfulness.

Sec. E.307.11 ELIGIBILITY RESTORATION

(a) To the extent allowable under federal law and provided the commissioner determines that an operational approach can be developed, notwithstanding any other provision of law, the commissioner may adjust income disregard amounts applicable to Medicare Savings Plans in order to restore eligibility for those individuals who have lost their eligibility for coverage due to COLA increases in their Social Security benefits effective January 1, 2012. Such restoration should be limited to cases where the commissioner determines a substantial hardship for an individual has been created and potential additional costs would otherwise be incurred by the state.

Sec. E.308 FISCAL YEAR 2013 NURSING HOME RATE SETTING

(a) Beginning July 1, 2012, notwithstanding any other provisions of law, the division of rate setting shall maintain the decrease by one-half in the case-mix weights for the following Vermont RUG-III 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.308.1 DVHA – MEDICAID LONG TERM CARE

(a) The funding for the Choices for Care program in fiscal year 2013 includes the appropriations in this section and anticipates $4,400,000 of fiscal year 2012 unexpended appropriations. The administration anticipates making new investments of $1,100,000. Prior to the implementation of these or alternate investments, the secretary of human services and the commissioner of disabilities, aging, and independent living shall work with providers and stakeholders to assure that the impact of changes in funding and proposed methods of delivery by the providers are clear and practical and ensure that the expected outcomes for clients are achieved.

(b) The agency of human services and department of disabilities, aging, and independent living shall report to the joint fiscal committee any submission made to CMS to change the Choices for Care waiver rate reimbursement structure. Before implementation of any CMS approved

changes to the Choices for Care waiver rate reimbursement structure, notification shall be made to the house and senate committees on appropriations or to the joint fiscal committee if the general assembly is not in session.

Sec. E.308.2 LONG-TERM CARE CONTINUUM OF RESIDENTIAL SERVICES

(a) The agency of human services and department of disabilities, aging, and independent living shall prepare a report in consultation with consumer and provider groups on the continuum of residential options for long-term care services that are currently available to moderate and low income seniors. The report shall identify the appropriate range of residential options that will be needed to meet the needs of moderate and low income seniors over the next 10, 15, and 20 years. The report shall also include the reimbursement rates across the continuum of residential options identified and the potential sources of funding for such options.

Sec. E.309 HEALTH CARE COVERAGE; LEGAL IMMIGRANT CHILDREN AND PREGNANT WOMEN

(a) Beginning July 1, 2012 and thereafter, 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.309.1. Sec. E.309.2 (a) of No. 63 of the Acts of 2011, as amended by Sec. 99 of No. 75 of the Acts of the 2011 Adj. Sess. (2012), is further amended to read:

(a) Beginning July 1, 2012, the commissioner of Vermont health access shall implement interim measures comparable to the family planning option of section 2303 of the Affordable Care Act of 2010 until such time as the state is able to 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 33 V.S.A. § 2004(b) is amended to read:

(b) Fees collected under this section shall fund collection and analysis of information on pharmaceutical marketing activities under 18 V.S.A. §§ 4632 and 4633, analysis of prescription drug data needed by the attorney general's office for enforcement activities, the Vermont prescription monitoring system established in 18 V.S.A. chapter 84A, and the evidence-based education

program established in 18 V.S.A. chapter 91, subchapter 2 ~~of chapter 91 of Title 18~~. The fees shall be collected in the evidence-based education and advertising fund established in section 2004a of this title.

Sec. E.311.1 33 V.S.A. § 2004a(a) is amended to read:

(a) The evidence-based education and advertising fund is established in the treasury as a special fund to be a source of financing for activities relating to fund collection and analysis of information on pharmaceutical marketing activities under 18 V.S.A. §§ 4632 and 4633, analysis of prescription drug data needed by the attorney general's office for enforcement activities, the Vermont prescription monitoring system established in 18 V.S.A. chapter 84A, and for the evidence-based education program established in 18 V.S.A. chapter 91, subchapter 2 ~~of Title 18~~. Monies deposited into the fund shall be used for the purposes described in this section.

Sec. E.311.2 Health – administration and support (FQHC Look-Alike Clinics)

(a) Of these Global Commitment funds, up to $310,200 shall be used to support the costs of developing three federally qualified health center (FQHC) Look-Alike clinics. The Gifford Medical Center in Randolph shall receive up to $100,000, the Five Town Health Alliance in Bristol shall receive up to $110,000, and the Battenkill Valley Health Center in Arlington shall receive up to $100,200 for the purpose of meeting all of the FQHC Program requirements enabling each clinic to submit an application certifying its program to the Health Resources and Services Administration (HRSA) and, if approved, to the Centers for Medicare and Medicaid Services (CMS).

Sec. E.312 Health – public health

(a) AIDS/HIV funding:

(1) In fiscal year 2013 and as provided in this section, the department of health shall provide grants in the amount of $475,000, of which $135,000 is state general funds and $340,000 is AIDS Medication Rebates special funds to the Vermont AIDS service and peer-support organizations for client-based support services. It is the intent of the general assembly that if the AIDS Medication Rebates special 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, $120,768;

(B) HIV/HCV Resource Center, $36,689;

(C) VT CARES, $220,133;

(D) Twin States Network, $45,160;

(E) People with AIDS Coalition, $52,250.

(2) Ryan White Title II funds for AIDS services and the AIDS Medication Assistance Program (AMAP) 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) 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.

(B) As provided 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 2013, the department of health shall provide grants in the amount of $100,000 in general funds to Vermont AIDS service organizations and other Vermont HIV/AIDS prevention providers for community-based HIV prevention programs and services. These funds shall be used for HIV/AIDS prevention purposes, including improving the availability of confidential and anonymous HIV testing; prevention work with at-risk groups such as women, intravenous drug users, and people of color; anti-stigma campaigns; and promotion of needle exchange programs. No more than 15 percent of the funds may be used for the administration of such services by the recipients of these funds. The method by which these prevention funds are distributed shall be determined by mutual agreement of the department of health and the Vermont AIDS service organizations and other Vermont HIV/AIDS prevention providers.

(b) Funding for the tobacco programs in fiscal year 2013 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.

Sec. E.312.1 [DELETED]

Sec. E.312.2 [DELETED]

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) The recovery center network in collaboration with their coordinator shall develop standards for services provided, data collection, outcome measurement, and evaluation for recovery centers to receive grant funding from the state by September 15, 2012. The standards shall be submitted for approval to the department of health – alcohol and drug abuse programs and the department of mental health.

(d) Of the funds appropriated within the agency of human services for inclusion in the "hub and spoke" medical home model for substance abuse, and if approved by CMS, the commissioners of health, Vermont health access, and mental health shall allocate $100,000 to funding recovery centers that meet the standards approved by the departments of health and of mental health.

Sec. E.318 Department for children and families – child development

(a) The commissioner of the department for children and families shall reserve up to one-half of one percent of the child care family assistance program funds to assist child care facilities that may be closing due to financial hardship. The commissioner shall develop guidelines for providing assistance and shall prioritize relief to child care programs in areas of the state with high poverty and low access to high quality child care. If the commissioner determines that the operations of a child care program are not fiscally sustainable he or she may provide assistance to transition children served by the child care operator in an orderly fashion to help secure other child care opportunities for children served by the program in an effort to minimize a disruption of services. The commissioner has the authority to request tax returns and other financial documents to verify the financial hardship and ability to sustain operations. The commissioner shall report to the joint fiscal committee at its November 2012 meeting on the distribution of reserved funds.

Sec. E.318.1 ACCESS TO HIGH-QUALITY EARLY EDUCATION

(a) In consultation with appropriate state agencies, community partners, and stakeholder groups, the building bright futures state council shall develop recommendations to increase access to high quality early care and education for Vermont children as follows:

(1) Pursuant to 16 V.S.A. § 2905, in order to increase access to high quality early care and education for three- and four-year-old children, the council shall develop recommendations designed to:

(A) Promote equitable opportunities throughout the state, including the availability of publicly supported programs to similarly situated families in different communities;

(B) Determine the best way to use community-based child care and education programs and review the interaction between developing publicly funded school-based pre-kindergarten and kindergarten programs and the infrastructure and financial health of existing child care programs in the private and nonprofit sector and how that interaction affects programs serving infants through age two;

(C) The council shall present its recommendations concerning subdivision (1) of this section to the house and senate committees on education on or before January 15, 2013.

(2) The council shall develop recommendations for a long-term financial sustainability plan for funding a comprehensive system of early childhood services that shall include early care and education, prevention and early intervention, nutrition, mental health and physical health and include but be not limited to new ways to leverage federal funds.

(A) The council shall present an initial report concerning subdivision (2) of this section to the house committee on human services, the senate committee on health and welfare, and the house and senate committees on appropriations on or before January 15, 2013.

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.

(d) In fiscal year 2013, the agency of human service shall make its annual report to the general assembly by December, 15, 2012. The report shall specifically:

(1) Provide data on the number of persons and families served in fiscal years 2010, 2011, and 2012 by the general assistance housing assistance program and any other state-funded housing assistance programs.

(2) Provide data on the causes and circumstances that result in individuals or families requiring housing assistance.

(3) Identify the primary drivers of the need for such services and the primary barriers individuals and families have in maintaining safe and stable housing.

(4) Include an inventory of existing programs and program funding available for emergency, low income, and transitional housing.

(5) Include the outcome measures currently used to evaluate the effectiveness and accountability of emergency, low income, and transitional housing and make recommendations for any additional or alternative outcome measures.

(6) Make recommendations regarding reallocation of current funding for these programs if such reallocation would result in better outcomes, particularly regarding eviction prevention and accessing and maintaining safe stable housing for the populations in need or at risk of needing housing assistance and the option of providing direct vendor payments of benefits for habitually homeless individuals.

(7) Identify the outcome-based priority for any additional investment in housing assistance programs.

Sec. E.323 [DELETED]

Sec. E.324 HOME HEATING FUEL ASSISTANCE/LIHEAP

(a) For the purpose of a crisis set-aside, for seasonal home heating fuel assistance through December 31, 2012, 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 2012–2013 crisis set-aside and for seasonal home heating fuel assistance through December 31, 2012 and if LIHEAP funds awarded as of December 31, 2012

for fiscal year 2013 do not exceed $2,550,000, subsequent payments under the home heating fuel assistance program shall not be made prior to January 30, 2013. 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, 2012, 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.326 Department for children and families – OEO – weatherization assistance

(a) Of the special fund appropriation in this section, $750,000 is for the replacement and repair of home heating equipment.

(b) Appropriations from the weatherization trust fund may be limited based on the revenue forecast for the fund from the gross receipts tax as adopted pursuant to 32 V.S.A. § 305a.

Sec. E.329 VERMONT VETERANS' HOME; REGIONAL BED CAPACITY

(a) The agency of human services shall not include the bed count at the Vermont veterans' home when recommending and implementing policies that are based on or intended to impact regional nursing home bed capacity in the state.

Sec. E.338 Corrections – correctional services

(a) The establishment of seventeen (17) new classified positions – sixteen (16) Correctional Officer I and one (1) Corrections Housing Program Coordinator – is authorized in fiscal year 2013. The Correctional Officer I positions will accommodate the conversion of temporary Correctional Officer I positions to full-time classified status.

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 REPEAL

(a) 16 V.S.A. § 2887(c) (allocations of next generation initiative funds to regional technical centers) is repealed.

(b) A three–year continuation is authorized beginning in fiscal year 2013 for three (3) existing limited service workers' compensation investigator positions.

(c) One (1) classified adjudicator position (position # 820176) is authorized to be converted to one (1) permanent workers' compensation investigator position in fiscal year 2013.

Sec. E.401.1 FEDERAL UNEMPLOYMENT INSURANCE TRUST FUND LOAN REPAYMENT

(a) Notwithstanding any provision to the contrary, for the period from July 1, 2012 through June 30, 2015, the state treasurer, with the approval of the governor, is authorized to utilize interfund loans from the general fund for payment into the unemployment compensation fund, which monies shall be identified exclusively for the purposes of the payment of unemployment compensation benefits, whether to repay advances from the federal government or to pay benefits directly. The availability of funds for such loans shall be determined exclusively by the state treasurer, and the amount of funds outstanding under this section on June 30 of any year may not exceed the amount of cash or cash equivalents at fiscal year-end in the general fund less the balance in reserves. The commissioner of labor shall include an accounting of these transactions in the report on the operations of the fund made pursuant to 21 V.S.A. § 1309. Any funds borrowed through an interfund loan pursuant to this section shall be repaid from funds on deposit in the unemployment trust fund or from other funds legally available for such purpose, without interest, and deposited to the credit of the general fund.

(b) For the period from July 1, 2012 through June 30, 2015, the state treasurer, with the approval of the governor, may borrow money for the

purpose of raising funds for payment into the unemployment compensation fund, which monies shall be identified exclusively for the purposes of the payment of unemployment compensation benefits, whether to repay advances from the federal government or to pay benefits directly.

(c) The state treasurer in consultation with the commissioner of labor shall ensure that rights and benefits of claimants are not compromised by subsections (a) and (b) of this section. In addition language changes to maximize federal coverage for short term unemployment compensation shall be addressed.

* * * 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 $3,400,654 shall be used by the department of education in fiscal year 2013 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 $172,611 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.505 Education – adjusted education payment

(a) Notwithstanding any other provision of law, up to $50,000 of the education funds appropriated in this section may be used to reimburse districts

for excess homestead tax amounts collected in previous fiscal years that the department has verified were the result of error in data or calculation. Any sums reimbursed shall be used solely as an additional revenue source to the receiving district for the current or next fiscal year.

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 [DELETED]

Sec. E.514 State teachers' retirement system

(a) The annual contribution to the Vermont state teachers' retirement system shall be $64,932,755, of which $60,182,755 shall be contributed in accordance with 16 V.S.A. § 1944(g)(2) and an additional $4,750,000 in general funds.

(b) In accordance with 16 V.S.A. § 1944(c)(2), of the annual contribution, $10,303,147 is the "normal contribution," and $49,879,608 is the "accrued liability contribution."

(c) A combination of $63,613,130 in general funds and an estimated $1,319,625 of Medicare Part D reimbursement funds is utilized to achieve funding at $4,750,000 above the actuarially recommended level of $60,182,755.

* * * 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.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) Funds available to the Vermont Student Assistance Corporation pursuant to Sec. E.215(a) of this act shall be used for the purposes of 16 V.S.A. § 2856. Any unexpended funds from this allocation shall carry forward for this purpose.

* * * NATURAL RESOURCES * * *

Sec. E.700 3 V.S.A. § 2805 is amended to read:

§ 2805. ENVIRONMENTAL PERMIT FUND

(a) There is hereby established a special fund to be known as the environmental permit fund ~~for the purpose of implementing the programs specified under the provisions of subsections 2822(i) and (j) of this title. Revenues to the fund shall be those~~. Within that fund, there shall be two accounts: the environmental permit account and the air pollution control account. Unless otherwise specified, fees collected in accordance with subsections 2822(i) and (j) of this title, and 10 V.S.A. § 2625 and gifts and appropriations shall be deposited in the environmental permit account. Fees collected in accordance with subsections (j)(1), (k), (l), and (m) shall be deposited in the air pollution control account. The environmental permit fund shall be used to implement the programs specified under section 2822 of this title. The secretary of natural resources shall be responsible for the fund and shall account for the revenues and expenditures of the agency of natural resources. The environmental permit fund shall be subject to the provisions of 32 V.S.A. chapter 7, subchapter 5. The environmental permit fund shall be used to cover a portion of the costs of administering the environmental division established under 4 V.S.A. chapter 27. The amount of $143,000.00 per fiscal year shall be disbursed for this purpose.

(b) Any fee required to be collected under subdivision 2822(j)(1) of this title shall be utilized solely to cover all reasonable (direct or indirect) costs required to support the operating permit program authorized under 10 V.S.A. chapter 23 ~~of Title 10~~. Any fee required to be collected under ~~subsections~~ subsection 2822(k), (l), or (m) of this title for air pollution control permits or registrations or motor vehicle registrations shall be utilized solely to cover all reasonable (direct or indirect) costs required to support the programs authorized under 10 V.S.A. chapter 23 ~~of Title 10~~. Fees collected pursuant to subsections 2822(k), (l), and (m) of this title shall be used by the secretary to fund activities related to the secretary's hazardous or toxic contaminant monitoring programs and motor vehicle-related programs. ~~The environmental permit fund shall be subject to the provisions of subchapter 5 of chapter 7 of Title 32, except that any unencumbered environmental permit fund balance in excess of those fees collected under subdivision 2822(j)(1) and subsections (k), (l), and (m) of this title, and in excess of $350,000.00 from those fees collected from environmental permit fund sources other than subdivision 2822(j)(1) and subsections (k), (l), and (m) at the close of a fiscal year shall revert to the general fund. The environmental permit fund shall be used to cover a portion of the costs of administering the environmental division established under~~

~~chapter 27 of Title 4. The amount of $143,000.00 per fiscal year shall be disbursed for this purpose.~~

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.709 10 V.S.A. § 1174 is amended to read:

§ 1174. ~~APPROPRIATION~~ EXPENDITURE FOR SUPPORT OF THE CONNECTICUT COMMISSION

~~The sum of $1,500.00 annually, or so much thereof as may be necessary, is hereby appropriated out of any fund not otherwise appropriated,~~ The department of environmental conservation shall make an expenditure for the purpose of carrying out the provisions of Article VII of the compact, section 1158 of this title, relating to payment by the state to the Connecticut commission of the proportionate share of the state in the expenses of said commission. This ~~appropriation~~ expenditure is conditioned upon payment by the other compacting states of their proportionate amounts.

Sec. E.709.1 10 V.S.A. § 1175(c) is added to read:

(c) Funds received pursuant to subsection (a) of this section shall be credited to a special fund, established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5, from which payments shall be made in accordance with section 1176 of this title.

* * * COMMERCE AND COMMUNITY DEVELOPMENT * * *

Sec. E.800 Agency of commerce and community development – administration

(a) The establishment of one (1) new classified position – Economic Research Analyst – is authorized in fiscal year 2013 to perform economic analysis including VEGI modeling within the agency of commerce and community development.

Sec. E. 800.1 WINDHAM COUNTY; TROPICAL STORM IRENE RELIEF INITIATIVE

(a) The secretary of administration and the secretary of commerce and community development shall:

(1) Work to include Windham County in the area targeted by the U.S. Department of Housing and Urban Development for 80 percent of the pending community development block grant disaster recovery allocation to Vermont;

(2) Hold at least one public hearing in Windham County regarding unmet housing, economic recovery, and infrastructure needs in the County for inclusion in the agency's disaster action plan for the use of community development block grant disaster recovery funding. Groups and organizations that have not been directly involved with the southeastern Vermont economic development strategy shall be included and allocated adequate presentation time;

(3) Ensure agency participation at a senior level with the southeastern Vermont economic development strategy board;

(4) Provide a single point of contact and serve as a resource for affected communities on tax credits and other funding to assist with recovery;

(5) Coordinate Federal Emergency Management Agency (FEMA) and state assistance to address housing needs, including but not limited to those related to the damage and loss of affordable units at Melrose Terrace and Tripark Mobile Home Park; and work with the Mt. Snow chamber and the Route 30 corridor in tourism and marketing promotion and the Sustainable Valley Group in Bellows Falls.

(b) The secretary of administration and the secretary of commerce and community development shall find $100,000 within funds appropriated to the agency of commerce and community development and its programs or other funds that come available for this purpose to provide grants for Windham County communities and/or regional organizations involved in Tropical Storm Irene recovery. These funds may also be used as matching funds for Windham County match for grants received from the U.S. Economic Development Administration for Tropical Storm Irene recovery activities.

Sec. E.800.2 STUDY; AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT AND INTEGRATED ECONOMIC DEVELOPMENT ASSISTANCE

(a) On or before January 15, 2013, the agency of commerce and community development shall conduct a study and deliver a report of its findings and recommendations to the house and senate committees on appropriations, the house committee on commerce and economic development, and the senate committee on economic development, housing and general affairs, addressing the following:

(1) whether a separate department of economic development should be created within the agency;

(2) how the agency can most effectively build stronger connections and integrated service delivery at the regional level with and through the regional development corporations;

(3) the most effective model for a single portal, through which businesses and entrepreneurs can access all state, regional, and local economic development assistance.

(4) assess the ability of the regional development corporations to be a true partner in meeting the economic development needs of the state and assess the appropriate structure, state funding, and outcome measurement of these organizations.

(b) In conducting the study, the secretary of commerce and community development shall consult with individuals who have private sector marketing and business experience and may contract with a third party with government, economic development, and management expertise. The study shall specifically consider and update the policy and legislative recommendations adopted by the commission on the future of economic development.

Sec. E.800.3 REPEAL

(a) 10 V.S.A. § 2 (unified economic development budget) is repealed.

Sec. E.800.4 STUDY; EXPANSION OF PROPERTY-ASSESSED CLEAN ENERGY PROGRAM TO INCLUDE COMMERCIAL REAL ESTATE

(a) On or before January 15, 2013, the commissioner of public service, in collaboration with the department of financial regulation, the office of the treasurer, Housing Vermont, the Vermont housing and conservation board, the department of economic, housing and community development, the Vermont bankers' association, and other interested private sector stakeholders, shall conduct a study on the feasibility, benefits, and costs of expanding Vermont's property-assessed clean energy program to include commercial real estate, and shall submit its findings and recommendations to the house committee on commerce and economic development, the senate committee on economic development, housing and general affairs, and the house and senate committees on natural resources and energy. The study shall specifically consider appropriate measures to ensure sufficient funding and adequate reserves are available to incorporate commercial real estate into the program.

Sec. E.800.5 10 V.S.A. § 531(d) is amended to read:

(d) In 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) the secretary of commerce and community development shall first consult with the commissioner of labor regarding whether ~~the~~ a 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 shall be used only to supplement training efforts of employers and not to replace or supplant training efforts of employers; and

(3) the secretary shall generate a record of each contact with the commissioner of labor documenting compliance with this subsection.

Sec. E.800.6 WORKFORCE DEVELOPMENT AND TRAINING

(a) Of the amounts appropriated to the agency of commerce and community development, the secretary shall be authorized to use up to $307,000 in his or her discretion to fund workforce development and training performance grants to small businesses that do not otherwise qualify for funding from the Vermont training program.

Sec. E.801 REPEAL

(a) Sec. 10a(b) of No. 52 of the Acts of 2011 (Vermont training program, grant eligibility repeal) is repealed.

Sec. E.803 Community development block grants

(a) Community development block grants shall carry forward until expended.

Sec. E.805 [DELETED]

Sec. E.806 3 V.S.A. § 2473a is amended to read:

§ 2473a. VERMONT LIFE MAGAZINE

* * *

(c) ~~A revolving~~ An enterprise fund for the operation of Vermont Life magazine is created, which shall consist of all revenues derived from the sale of Vermont Life magazine, advertising in Vermont life magazine, the sale of other products under the Vermont life label, digital and other emerging media, advisory services, sponsorships, grants, events, promotions, competitions, partnerships, licensing, fund-raisers, markups on retail sales of other parties' products, other commercial activities that are consistent with Vermont Life values and supportive of the Vermont brand and approved by the secretary with the consultation of the Vermont Life Advisory Board established in

Executive Order #22-2, any interest earned by Vermont Life magazine, and all sums which are from time to time appropriated for the support of Vermont Life magazine and its operations.

(d) All expenses incurred in the production, publication, and sale of Vermont Life magazine, advertising, and other products under the Vermont Life label shall be paid from the ~~revolving~~ enterprise fund.

(e) The receipt and expenditure of moneys from the ~~revolving~~ enterprise fund shall be under the supervision of the business manager and at the direction of the publisher, subject to the provisions of this section. Vermont Life magazine 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 the agency, who shall in turn provide the report to the secretary of administration.

* * * TRANSPORTATION * * *

Sec. E.909 Transportation – central garage

(a) Of this appropriation, $5,888,573 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 19 V.S.A. § 11a is amended to read:

§ 11a. TRANSPORTATION FUNDS APPROPRIATED FOR THE DEPARTMENT OF PUBLIC SAFETY

No transportation funds shall be appropriated for the support of government other than for the agency of transportation, the transportation board, transportation pay act funds, construction of transportation capital facilities used by the agency of transportation, transportation debt service, the department of buildings and general services information centers, and the department of public safety. The amount of transportation funds appropriated to the department of public safety shall~~:~~

~~(1) in fiscal year 2010 not exceed $30,850,000.00;~~

~~(2) in fiscal year 2011 not exceed $28,350,000.00; and~~

~~(3) in fiscal year 2012~~ not exceed $25,250,000.00.

Sec. E.1100 [DELETED]

Sec. F.100 EFFECTIVE DATES

(a) This section and Secs. C.100 (fiscal year 2012 budget adjustment, DVHA-administration), C.101 (fiscal year 2012 budget adjustment, DVHA-Medicaid program-Global Commitment), C.200 (immunization pilot extension), C.201 (potential property valuation loss; current homeowners), C.202 (one-time appropriation for federal funds reduction), C.203 (fiscal year 2012 budget adjustment, human services caseload reserve expenditures), C.204 (allocation of workforce and education training grants), C.205 (fiscal year 2012 budget adjustment, general fund revenue estimate and balance), D.104 (tobacco litigation settlement fund balance), D.107 (transfer of national mortgage foreclosure settlement funds), E.307.10 (expedited rules for VHAP/Medicaid co-pays), E.311 and E.311.1 (Vermont prescription monitoring system), and E.801 (Vermont training program, grant eligibility repeal of repeal) of this act shall take effect upon passage.

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

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Appropriations?, Senators Galbraith, Ashe, Baruth, Benning, Brock, Giard, Hartwell, Illuzzi, MacDonald, Mullin, Pollina, and Starr move to amend the proposal of amendment of the Committee on Appropriations, as follows:

First: By adding a new section to be numbered Sec. C.103 to read as follows:

Sec. C.103. WINDFALL; REPAYMENT; APPROPRIATION

(a) Consistent with the obligations of the department of public service under Title 30 to represent the interests of the people of Vermont and to promote the general good of the state, the commissioner of public service shall reopen the memorandum of understanding entered into on March 26, 2012 with the petitioners in public service board Docket No. 7770 (regarding the acquisition of Central Vermont Public Service Corporation [CVPS] by Gaz Métro and the merger of CVPS with Green Mountain Power Corporation) and negotiate for direct repayment of the full amount of windfall-sharing funds established by the public service board in Docket Nos. 6460/6120 (approximately $21 million) to CVPS ratepayers. The repayment shall be in the form of a credit or refund and shall be distributed to all ratepayers equally, regardless of rate class, shall not be recoverable in rates, and shall be payable within 60 days of board approval of the petition, if so approved.

(b) In fiscal year 2012, the amount of $5,000.00 shall be transferred from the general fund to the department of public service to be used by the

commissioner of public service, in his or her discretion, for the purpose of retaining one or more consultants to facilitate further negotiations.

(c) The public service board may only approve the petition in Docket No. 7770 if the parties have renegotiated a memorandum of understanding consistent with subsection (a) of this section or the petitioners repay or agree to repay the windfall-sharing proceeds due CVPS ratepayers in the manner prescribed in subsection (a) of this section.

Second: By striking out Sec. F.100 in its entirety and inserting in lieu thereof a new F.100 to read as follows:

Sec. F.100 EFFECTIVE DATES

(a) This section and Secs. C.100 (fiscal year 2012 budget adjustment, DVHA-administration), C.101 (fiscal year 2012 budget adjustment, DVHA-Medicaid program-Global Commitment), C.103 (windfall sharing mechanism and state funds) C.200 (immunization pilot extension), C.201 (potential property valuation loss; current homeowners), C.202 (one-time appropriation for federal funds reduction), C.203 (fiscal year 2012 budget adjustment, human services caseload reserve expenditures), C.204 (allocation of workforce and education training grants), C.205 (fiscal year 2012 budget adjustment, general fund revenue estimate and balance), D.104 (tobacco litigation settlement fund balance), D.107 (transfer of national mortgage foreclosure settlement funds), E.307.10 (expedited rules for VHAP/Medicaid co-pays), E.311 and E.311.1 (Vermont prescription monitoring system), and E.801 (Vermont training program, grant eligibility repeal of repeal) of this act shall take effect upon passage.

Thereupon, pending the question, Shall the proposal of amendment of the Committee on Appropriations be amended as recommended by Senators Galbraith, Ashe, Baruth, Benning, Brock, Giard, Hartwell, Illuzzi, MacDonald, Mullin, Pollina, and Starr?, Senator Flory moved to substitute a proposal of amendment for the proposal of amendment as follows:

First: By adding Sec. C.103 to read:

Sec. C.103. WINDFALL; REPAYMENT; APPROPRIATION

(a) Consistent with the obligations of the department of public service under Title 30 to represent the interests of the people of Vermont and to promote the general good of the state, the commissioner of public service shall reopen the memorandum of understanding entered into on March 26, 2012 with the petitioners in public service board Docket No. 7770 (regarding the acquisition of Central Vermont Public Service Corporation [CVPS] by Gaz Métro and the merger of CVPS with Green Mountain Power Corporation) and negotiate for direct repayment of the full amount of windfall-sharing funds

established by the public service board in Docket Nos. 6460/6120 (approximately $21 million) to CVPS ratepayers. The repayment shall be in the form of a credit or refund and shall be distributed to all ratepayers equally, regardless of rate class, shall not be recoverable in rates, and shall be payable within 60 days of board approval of the petition, if so approved.

(b) In fiscal year 2012, the amount of $5,000.00 shall be transferred from the general fund to the department of public service to be used by the commissioner of public service, in his or her discretion, for the purpose of retaining one or more consultants to facilitate further negotiations.

Second: By adding Sec. C.103.1 to read:

Sec. C.103.1. PUBLIC SERVICE BOARD; APPROVALS

The public service board may only approve the petition in Docket No. 7770 if the parties have renegotiated a memorandum of understanding consistent with Sec. C.103(a) of this act or the petitioners repay or agree to repay the windfall-sharing proceeds due CVPS ratepayers in the manner prescribed in Sec. C.103(a) of this act.

Third: By striking out Sec. F.100 in its entirety and inserting in lieu thereof the following:

Sec. F.100 EFFECTIVE DATES

(a) This section and Secs. C.100 (fiscal year 2012 budget adjustment, DVHA - administration), C.101 (fiscal year 2012 budget adjustment, DVHA - Medicaid program - Global Commitment), C.103 and C.103.1 (windfall-sharing mechanism and state funds), C.200 (immunization pilot extension), C.201 (potential property valuation loss; current homeowners), C.202 (one-time appropriation for federal funds reduction), C.203 (fiscal year 2012 budget adjustment, human services caseload reserve expenditures), C.204 (allocation of workforce and education training grants), C.205 (fiscal year 2012 budget adjustment, general fund revenue estimate and balance), D.104 (tobacco litigation settlement fund balance), D.107 (transfer of national mortgage foreclosure settlement funds), E.307.10 (expedited rules for VHAP/Medicaid co-pays), E.311 and E.311.1 (Vermont prescription monitoring system), and E.801 (Vermont training program, grant eligibility repeal of repeal) of this act shall take effect on passage.

Thereupon, pending the question, Shall the proposal of amendment of Senators Galbraith, Ashe, Baruth, Benning, Brock, Giard, Hartwell, Illuzzi, MacDonald, Mullin, Pollina, and Starr? be substituted as moved by Senator Flory?, Senator Sears moved that the bill be committed to the Committee on Judiciary. Senator Sears requested and was granted leave to withdraw the motion.

Thereupon, the pending question, Shall the proposal of amendment of Senators Galbraith, Ashe, Baruth, Benning, Brock, Giard, Hartwell, Illuzzi, MacDonald, Mullin, Pollina, and Starr?, be substituted as proposed by Senator Flory?, was agreed to on a division of the Senate Yeas 15, Nays 14.

Thereupon, Senator Flory requested the question be divided and that the *first* and *third* proposals of amendment be voted on separately.

Thereupon, Senator Sears moved to substitute a proposal of amendment for the proposal of amendment of Senator Galbraith, Ashe, Baruth, Benning, Brock, Giard, Hartwell, Illuzzi, MacDonald, Mullin, Pollina, and Starr, as substituted as follows:

First: By adding Sec. C.103 to read:

Sec. C.103. WINDFALL; REPAYMENT; APPROPRIATION

(a) Consistent with the obligations of the department of public service under Title 30 to represent the interests of the people of Vermont and to promote the general good of the state, the commissioner of public service shall reopen the memorandum of understanding entered into on March 26, 2012 with the petitioners in public service board Docket No. 7770 (regarding the acquisition of Central Vermont Public Service Corporation [CVPS] by Gaz Métro and the merger of CVPS with Green Mountain Power Corporation) and negotiate for direct repayment of the full amount of windfall-sharing funds established by the public service board in Docket Nos. 6460/6120 (approximately $27 million) to CVPS ratepayers. The repayment shall be in the form of a credit or refund and shall be distributed to all ratepayers equally, regardless of rate class, shall not be recoverable in rates, and shall be payable within 60 days of board approval of the petition, if so approved.

(b) In fiscal year 2012, the amount of $5,000.00 shall be transferred from the general fund to the department of public service to be used by the commissioner of public service, in his or her discretion, for the purpose of retaining one or more consultants to facilitate further negotiations.

Second: By adding Sec. C.103.1 to read:

Sec. C.103.1. PUBLIC SERVICE BOARD; APPROVALS

The public service board may only approve the petition in Docket No. 7770 if the parties have renegotiated a memorandum of understanding consistent with Sec. C.103(a) of this act or the petitioners repay or agree to repay the windfall-sharing proceeds due CVPS ratepayers in the manner prescribed in Sec. C.103(a) of this act.

Third: By striking out Sec. F.100 in its entirety and inserting in lieu thereof the following:

Sec. F.100 EFFECTIVE DATES

(a) This section and Secs. C.100 (fiscal year 2012 budget adjustment, DVHA - administration), C.101 (fiscal year 2012 budget adjustment, DVHA - Medicaid program - Global Commitment), C.103 and C.103.1 (windfall-sharing mechanism and state funds), C.200 (immunization pilot extension), C.201 (potential property valuation loss; current homeowners), C.202 (one-time appropriation for federal funds reduction), C.203 (fiscal year 2012 budget adjustment, human services caseload reserve expenditures), C.204 (allocation of workforce and education training grants), C.205 (fiscal year 2012 budget adjustment, general fund revenue estimate and balance), D.104 (tobacco litigation settlement fund balance), D.107 (transfer of national mortgage foreclosure settlement funds), E.307.10 (expedited rules for VHAP/Medicaid co-pays), E.311 and E.311.1 (Vermont prescription monitoring system), and E.801 (Vermont training program, grant eligibility repeal of repeal) of this act shall take effect on passage.

Thereupon, Senator Campbell moved that the Senate adjourn until eight o'clock in the morning on Thursday, April 26, 2012, which was agreed to.

THURSDAY, APRIL 26, 2012

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. 790.

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

To the Committee on Rules.

Joint Resolution Referred

J.R.S. 60.

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

By Senators Campbell, Cummings, Flory, Kitchel, Mazza, Snelling and White,

J.R.S. 60. Joint resolution expressing the General Assembly's expectation that the full range of concerns and issues raised by the general public regarding the merger of Central Vermont Public Service Corporation and Green Mountain Power Corporation will be given full consideration, and that the final agreement must be in the best interests of the ratepayers and people of the State of Vermont.

Whereas, currently before the public service board is a petition proposing to merge Vermont's two largest electric utilities, Central Vermont Public Service Corporation (CVPS) and Green Mountain Power Corporation (GMP), and

Whereas, a merger of this magnitude involves many complexities and considerations and, if approved by the public service board, will be significant for the State of Vermont, and

Whereas, in the merger proceeding, the public service board has received testimony from a number of parties setting forth different positions and the evidentiary record is now closed, and

Whereas, the public service board had previously approved windfall sharing mechanisms for both GMP and CVPS, arising out of a Hydro Quebec power purchase agreement, but left the specific procedure in each case as to how the windfall proceeds would be returned to customers for later resolution at the time of any subsequent acquisition or merger, and

Whereas, on March 26, 2012, the department of public service and GMP entered into a comprehensive memorandum of understanding (MOU) concerning the proposed merger between GMP and CVPS, and several other parties also entered into MOUs regarding issues of concern to those parties, and

Whereas, as part of the March 26th MOU, the department of public service achieved numerous beneficial concessions, in particular with regard to increased public governance of Vermont Electric Power Company (VELCO), so that eight of 13 board seats will represent the public interest compared to the three originally proposed by GMP, and

Whereas, as details about the proposed merger and MOU have become known by the general public, the people of our state have expressed a range of concerns about matters directly and indirectly affecting them, and

Whereas, there is disagreement among the general public as to the best mechanism for returning the $21 million in windfall proceeds to CVPS ratepayers and as to whether the efficiency investments proposed for these proceeds should be recovered in future rates, and

Whereas, there will be significant operational savings as a result of the merger, but there is a concern as to whether these operational savings should be shared between investors and the ratepayers, and if so, how, and

Whereas, the House of Representatives has taken testimony from the utilities, the department of public service, AARP, and other interested persons and has heard opinions regarding the potential value of the merger, as well as its risks and drawbacks, and on the windfall sharing mechanism in particular, and

Whereas, the public service board has now heard evidence and received briefs setting forth the positions of the parties, as well as public comments, and

Whereas, by law, the public service board exercises independent judgment and has not yet ruled on the proposed merger and acquisition, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly expects that the full range of concerns and issues raised by the general public will be given full consideration, and that the proposed merger must be in the best interests of the ratepayers and people of the State of Vermont, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the department of public service, Green Mountain Power Corporation, and Central Vermont Public Service Corporation, and that the department of public service send a copy to all parties in the merger docket.

Thereupon, the President, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Finance.

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:

Keane, Michael of North Bennington - Member of the Vermont Economic Progress Council, - from April 18, 2012, to March 31, 2013.

To the Committee on Finance.

Pinkham, Kreig of Northfield - Member of the Children and Family Council for Prevention Programs, - from April 18, 2012 to February 28, 2015,

To the Committee on Health and Welfare.

Recess

On motion of Senator Campbell the Senate recessed until eight o'clock and forty-five minutes in the forenoon.

Called to Order

The Senate was called to order by the President.

Recess

On motion of Senator McCormack the Senate recessed until nine o'clock and fifteen minutes.

Called to Order

The Senate was called to order by the President.

Consideration Resumed; Consideration Postponed

H. 781.

Consideration was resumed on House bill entitled:

An act relating to making appropriations for the support of government.

Thereupon, pending the question, Shall Senator Galbraith's motion to amend, as substituted by Senator Flory, be further substituted as moved by Senator Sears?, Senator Sears, requested and was granted leave to withdraw his substitute proposal of amendment.

Thereupon, pending the question, Shall the proposal of amendment of the Committee on Appropriations be amended as proposed by Senator Galbraith, as substituted?, On motion of Senator Campbell action on the bill was postponed until later in the legislative day.

House Proposals of Amendment to Senate Proposal of Amendment Concurred In

H. 785.

House proposals of amendment to House bill entitled:

An act relating to capital construction and state bonding budget adjustment.

Were taken up.

The House concurs in the Senate proposal of amendment with further amendment thereto as follows:

First: In Sec. 2, amending Sec. 1 of No 40 of the Acts of 2011, in subdivision (b)(3), by striking "$87,952,312" and inserting in lieu thereof "$87,712,632"

Second: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, by adding subdivision (b)(14) to read:

(14) Newport, Northern State Correctional Facility, maintenance shop: ~~350,000~~ 110,320

* * *

Third: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (c)(8), house committee rooms, by striking "380,960" and inserting in lieu thereof "430,960"

Fourth: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (c)(9)(A), by striking "11,975,000" and inserting in lieu thereof "12,000,000"

Fifth: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (c)(9)(B)(i), by striking "4,975,000" and inserting in lieu thereof "5,000,000"

Sixth: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (f)(1)(B), by inserting "coordinated services delivered;" following "standards;"

Seventh: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (f)(4)(A), by inserting "Stanley," following "condition:" and by striking subdivision (f)(4)(D) in its entirety

Eighth: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in the FY 2012 and FY 2013 totals at the end of the section, by striking "$26,178,802" and inserting in lieu thereof "$25,939,122" and by striking "$29,264,450" and inserting in lieu thereof "$29,364,450" and by striking "$55,443,252" and inserting in lieu thereof "$55,303,572"

Ninth: In Sec. 4, amending Sec. 4 of No. 40 of the Acts of 2011, in subdivision (e)(2), by striking "and 10 V.S.A. chapter nine"

Tenth: By striking Sec. 6a, amending Sec. 8 of No. 40 of the Acts of 2011, reducing state aid for school construction, in its entirety and inserting in lieu thereof "[Deleted.]"

Eleventh: In Sec. 7a, adding a subsection (d) to Sec. 11 of No. 40 of the Act of 2011, by striking (d) and inserting in lieu thereof the following: "(d) If funds are allocated in any Acts of the 2011 Adj. Sess. (2012) other than an act relating to capital construction and state bonding budget adjustment for a new Community College of Vermont facility in Brattleboro and those funds are insufficient for the full cost of construction of the new facility, to the extent the $153,160,000 of general obligation bonds authorized by Sec. 25 of this act

can be reduced by the use of bond premiums, up to $2,000,000 of the authorized amount that is no longer required to fund appropriations of this act as amended by capital budget adjustment shall be used to offset part of the construction cost. It is the intent of the general assembly that in the next biennium, any bond premium received shall be used to reduce state aid for school construction debt and shall be in addition to any regular capital appropriation for this purpose."

Twelfth: In Sec. 8, amending Sec. 12 of No. 40 of the Acts of 2011, in subdivision (b)(1)(A), by striking "1,480,720" and inserting in lieu thereof "1,500,400" and in subdivision (b)(5)(E), by striking the "(E)" and inserting in lieu thereof "(6) the department of forest, parks and recreation"

Thirteenth: In Sec. 8, amending Sec. 12 of No. 40 of the Acts of 2011, in the FY 2013 and Total Appropriation totals at the end of the section, by striking "$10,922,460" and inserting in lieu thereof "$10,942,140" and by striking "$24,444,173" and inserting lieu thereof "$24,463,853"

Fourteenth: By striking Sec. 12a, amending Sec. 21 of No. 40 of the Acts of 2011, Information and Innovation, in its entirety and inserting in lieu thereof "[Deleted.]" and by striking Sec. 12b, amending Sec. 23 of No. 40 of the Acts of 2011, Vermont Interactive Television, in its entirety and inserting in lieu thereof "[Deleted.]"

Fifteenth: In Sec. 13, amending Sec. 24 of No. 40 of the Acts of 2011, in subdivision (42), in the sum, by underlining the "1"

Sixteenth: In Sec. 13, amending Sec 24 of No. 40 of the Acts of 2011, in subdivision (58), by striking "Session" and inserting in lieu thereof "Sess."

Seventeenth: In Sec. 14, amending Sec. 26 of No. 40 of the Acts of 2011, in subsection (a), in the second sentence, by striking "$81,0000" and inserting in lieu thereof "$81,000" and by inserting "for other purposes" following "department"

Eighteenth: By striking Sec. 15a, amending 29 V.S.A. § 152, duties of the commissioner, in its entirety and inserting in lieu thereof "[Deleted.]"

Nineteenth: By striking Sec. 21, amending 29 V.S.A. § 165, in its entirety and inserting in lieu thereof "[Deleted.]"

Twentieth: By striking Sec. 22 in its entirety and inserting in lieu thereof the following:

Sec. 22. 29 V.S.A. § 44 is amended to read:

§ 44. FUNDS TRANSFER FOR ART

* * *

(b) Of the funds transferred under subsection (a) of this section, ~~$7,500.00~~ $5,000.00 shall be available for use by the council for the expenses of administering this chapter.

* * *

Twenty-first: In Sec. 26, Parking in the Capitol Complex, in subsection (a), at the end of the first sentence, following the word "program," by inserting "subject to the collective bargaining rights of executive and judiciary employees. The program may include a pilot program designed to encourage employees of the executive, judiciary, and legislative branches of government working in Montpelier to use alternative means of transportation"

Twenty-second: In Sec. 26a, Civil War Monuments Study, in the second sentence, by striking "its" and inserting in lieu thereof "the"

Twenty-third: In Sec. 27a, adding 24 V.S.A. § 5607, in subsection (a), by deleting "to regional economic development corporations" and, in the last sentence of subsection (a), before the period by inserting "and shall be coordinated with the efforts described in chapter 76a of this title" before the period

Twenty-fourth: In Sec. 27a, adding 24 V.S.A. § 5607, in subsection (b), by striking "secretary of administration" and inserting in lieu thereof "commissioner of economic, housing and community affairs"

Twenty-fifth: In Sec. 28d, amending 6 V.S.A. § 4828, by striking subsection (d) in its entirety and insert in lieu thereof "[Repealed.]

Twenty-sixth: In Sec. 37a, Sustainable Prisons, in the first sentence, by striking "and to provide educational and green job training to inmates" and by striking the second sentence in its entirety and inserting a new second sentence to read:

"On or before January 15, 2013, the commissioners of buildings and general services and of corrections shall report on the feasibility of providing educational and green jobs training as part of this effort."

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

Bill Passed in Concurrence with Proposal of Amendment

H. 485.

House bill entitled:

An act relating to establishing universal recycling of solid waste.

Was taken up.

Thereupon, pending third reading of the bill, Senator Kitchel moved to amend the Senate proposal of amendment in Sec. 12 as follows:

First: In subsection (a) by striking out (4)(A) and inserting in lieu thereof the following:

(A) An assessment of facilities and programs necessary at the state, regional, or local level to achieve the priorities and the goals established in the state solid waste plan, including, after consultation with the secretary of agriculture, food and markets, an estimate of the number and type of composting facilities on farms.

Second: By striking subsection (b) in its entirety and inserting in lieu thereof the following:

(b) In preparing the report required by subsection (a) of this section, the secretary shall consult with interested persons, including the secretary of agriculture, food and markets, manufacturers, recyclers, collectors, retailers, solid waste districts, and environmental groups.

Which was agreed to.

Senator Ashe moved that the Senate proposal of amendment be amended in Sec. 7, 10 V.S.A. § 6605l, in subdivision (a)(2), by striking out "Public land" shall not mean land leased by the state to a person for private use."

Which was agreed to.

Senator Pollina and Ashe moved that the Senate proposal of amendment be amended as follows:

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

Sec. 16a. 10 V.S.A. § 1522 is amended to read:

§ 1522. BEVERAGE CONTAINERS; DEPOSIT

(a) Except with respect to beverage containers which contain liquor, a deposit of not less than five cents shall be paid by the consumer on each beverage container sold at the retail level and refunded to the consumer upon return of the empty beverage container. With respect to beverage containers of volume greater than 50 ml. which contain liquor, a deposit of 15 cents shall be paid by the consumer on each beverage container sold at the retail level and refunded to the consumer upon return of the empty beverage container. The difference between liquor bottle deposits collected and refunds made is hereby retained by the liquor control fund for administration of this subsection.

* * *

(e)(1) Except for the difference between liquor bottle deposits collected and refunds made that are retained by the liquor control fund under subsection (a) of this section, beginning January 1, 2014, the difference between bottle deposits collected and refunds made by a manufacturer are hereby retained by the state for deposit in the clean environment jobs fund under section 1530 of this title.

(2) On or before July 1, 2013, the secretary of natural resources shall adopt by rule requirements for the collection of the difference between bottle deposits collected and refunds made. The rules shall establish requirements for collection that are substantially similar to the requirements in other states for the collection of unclaimed beverage container deposits.

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

Sec. 16b. 10 V.S.A. § 1530 is added to read:

§ 1530. CLEAN ENVIRONMENT JOBS FUND

(a) There is hereby established in the state treasury a special fund to be known as the clean environment jobs fund, to be administered and expended by the secretary of natural resources to fund programs or projects that promote or support the growth of jobs or businesses in the state that are related to or engaged in recycling and solid waste management, provided that expenditures from the fund shall not be used to fund programs or projects associated with the incineration of solid waste.

(b) The secretary may authorize disbursement or expenditures from the fund for loans or grants to Vermont citizens or businesses initiating or expanding a business engaged in recycling or solid waste management, including: collection, transport, and recycling of electronic waste; salvage, recovery, and recycling of building materials; and the collection and disposal of mercury-added products.

(c) There shall be deposited into the fund:

(1) except for deposits retained by the liquor control fund, all abandoned beverage container deposits retained by the state under subsection 1522(e) of this title;

(2) private gifts, bequests, grants, or donations made to the state from any public or private source for the purposes for which the fund was established; and

(3) such sums as may be appropriated by the general assembly.

(d) Interest earned by the fund shall be credited and deposited to the fund. All balances in the fund at the end of the fiscal year shall be carried forward and remain a part of the fund.

Thereupon, Senator Galbraith moved that the question be divided.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as moved by Senators Pollina and Ashe in the *first* instance?, was disagreed to on a roll call, Yeas 12, Nays 18.

Senator Pollina 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, Doyle, Fox, Galbraith, Giard, Kittell, Lyons, MacDonald, Pollina.

Those Senators who voted in the negative were: Benning, Brock, Carris, Cummings, Flory, Hartwell, Illuzzi, Kitchel, Mazza, McCormack, Miller, Mullin, Nitka, Sears, Snelling, Starr, Westman, White.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as moved by Senators Pollina and Ashe in the *second* instance?, Senator Pollina requested and was granted leave to withdraw the *second* proposal of amendment.

Senator White moved that the Senate proposal of amendment be amended as follows:

First: In Sec. 4, 10 V.S.A. § 6605, in subsection (l), by striking out the following: "municipal solid waste" each time it appears in the first and second sentences and inserting in lieu thereof the following: solid waste

Second: In Sec. 8, 10 V.S.A. § 6607a, by striking out subsection (h) in its entirety and inserting in lieu thereof a new subsection (h) to read as follows:

(h) A transporter certified under this section that offers the collection of solid waste may not charge a separate line item fee on a bill to a residential customer for the collection of mandated recyclables, provided that a transporter may charge a fee for all service calls, stops, or collections at a residential property and a transporter may charge a tiered or variable fee based on the size of the collection container provided to a residential customer or the amount of waste collected from a residential customer. A transporter certified under this section may incorporate the cost of the collection of mandated recyclables into the cost of the collection of solid waste and may adjust the charge for the collection of solid waste. A transporter certified under this section that offers

the collection of solid waste may charge a separate fee for the collection of leaf and yard residuals or organic waste from a residential customer.

Which was agreed to.

Senators Ashe and Mazza moved that the Senate proposal of amendment be amended by adding a new section to be numbered Sec. 18a to read as follows:

Sec. 18a. STATE HOUSE RECYCLING PROGRAM

On or before July 1, 2012, the sergeant at arms shall establish a program for the recycling of mandated recyclables, as that term is defined in 10 V.S.A § 6602. Under the program required by this section, when a container or containers are provided in the state house for the collection of solid waste destined for disposal, a container shall be provided for the collection of mandated recyclables. The program required by this section shall provide for the recycling of all mandated recyclables. Bathrooms in the state house shall be exempt from the requirement to provide an equal number of containers for the collection of mandated recyclables.

Which was agreed to.

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

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, *Sears, Snelling, Westman, White.

Those Senators who voted in the negative were: None.

The Senator absent and not voting was: Starr.

*Senator Sears explained his vote as follows:

"I hate making laws we can't enforce, but it is good public policy to recycle."

Bill Passed in Concurrence with Proposal of Amendment

H. 745.

House bill entitled:

An act relating to the Vermont prescription monitoring system.

Was taken up.

Thereupon, pending third reading of the bill, Senator Sears moved to amend the Senate proposal of amendment by adding Secs. 17a-i to read as follows:

Sec. 17a. INTEGRATED TREATMENT CONTINUUM FOR OPIATE DEPENDENCE (HUB AND SPOKE INITIATIVE)

(a) Prescription drug abuse is Vermont's fastest growing drug problem, with treatment demand growing over 500 percent since 2005 for medication-assisted treatment from physicians and methadone programs.

(b) Increased crime is a community by-product of the increase in untreated addiction. Reducing demand for drugs is an essential component of Vermont's strategy to decrease the crime and health-related problems stemming from prescription drug abuse and opiate addiction.

(c) Current capacity for methadone and buprenorphine treatment for opiate addiction is not sufficient to meet the demand. As a component of the development of health homes, availability of these treatments should be expanded to meet the escalating demand.

(d) The integrated treatment continuum for opiate dependence, also known as the hub and spoke model, that is being developed by the agency of human services in collaboration with community providers will create a coordinated, systemic response to the complex issues of opiate addiction and the use of medication-assisted treatment, including counseling and behavioral therapy, will provide a holistic approach to address the component of demand reduction.

Sec. 17b. 13 V.S.A. § 1404 is amended to read:

§ 1404. CONSPIRACY

(a) A person is guilty of conspiracy if, with the purpose that an offense listed in subsection (c) of this section be committed, that person agrees with one or more persons to commit or cause the commission of that offense, and at least two of the co-conspirators are persons who are neither law enforcement officials acting in official capacity nor persons acting in cooperation with a law enforcement official.

(b) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the defendant or by a co-conspirator, other than a law enforcement official acting in an official capacity or a person acting in cooperation with a law enforcement official, and subsequent to the defendant's entrance into the conspiracy. Speech alone may not constitute an overt act.

(c) This section applies only to a conspiracy to commit or cause the commission of one or more of the following offenses:

(1) Murder in the first or second degree.

(2) Arson under sections 501-504 and 506 of this title.

(3) Sexual exploitation of children under sections 7822, 2822, and 2824 of this title.

(4) Receiving stolen property under sections 2561-2564 of this title.

(5) An offense involving the sale, delivery, manufacture, or cultivation of a regulated drug or an offense under ~~section 4237, subdivision 4231(c)(1), or subsection 4233(c) or 4234a(c) of Title 18~~:

(A) 18 V.S.A. § 4230(c), relating to trafficking in marijuana.

(B) 18 V.S.A. § 4231(c), relating to trafficking in cocaine.

(C) 18 V.S.A. § 4233(c), relating to trafficking in heroin.

(D) 18 V.S.A. § 4234(b)(3), relating to unlawful selling or dispensing of a depressant, stimulant, or narcotic drug, other than heroin or cocaine.

(E) 18 V.S.A. § 4234a(c), relating to trafficking in methamphetamine.

Sec. 17c. 13 V.S.A. § 1409 is amended to read:

§ 1409. PENALTIES

The penalty for conspiracy is the same as that authorized for the crime which is the object of the conspiracy~~, except that no term of imprisonment shall exceed five years, and no fine shall exceed $10,000.00~~. A sentence imposed under this section shall be concurrent with any sentence imposed for an offense which was an object of the conspiracy.

Sec. 17d. 13 V.S.A. § 4005 is amended to read:

§ 4005. WHILE COMMITTING A CRIME

~~A~~ Except as otherwise provided in 18 V.S.A. § 4253, a person who carries a dangerous or deadly weapon, openly or concealed, while committing a felony ~~or while committing an offense under section 667 of Title 7, or while committing the crime of smuggling of an alien as defined by the laws of the United States,~~ shall be imprisoned not more than five years or fined not more than $500.00, or both.

Sec. 17e. 18 V.S.A. § 4253 is added to read:

§ 4253. USE OF A FIREARM WHILE SELLING OR DISPENSING A REGULATED DRUG

(a) A person who uses a firearm during and in relation to selling or dispensing a regulated drug in violation of subdivision 4230(b)(3), 4231(b)(3), 4232(b)(3), 4233(b)(3), 4234(b)(3), 4234a(b)(3), 4235(c)(3), or 4235a(b)(3) of this title shall be imprisoned not more than three years or fined not more than $5,000.00, or both, in addition to the penalty for the underlying crime.

(b) A person who uses a firearm during and in relation to trafficking a regulated drug in violation of subsection 4230(c), 4231(c), 4233(c), or 4234a(c) of this title shall be imprisoned not more than five years or fined not more than $10,000.00, or both, in addition to the penalty for the underlying crime.

(c) For purposes of this section, "use of a firearm" shall include the exchange of firearms for drugs, and this section shall apply to the person who trades his or her firearms for drugs and the person who trades his or her drugs for firearms.

Sec. 17f. MOBILE ENFORCEMENT TEAM TO COMBAT GANG ACTIVITY

(a) The Vermont drug task force (task force) was established in 1987 as a multi-jurisdictional, collaborative law enforcement approach to combating drug crime. The task force is composed of state, local, and county officers who are assigned to work undercover as full-time drug investigators. These investigators receive specialized training, equipment, and resources that enable them to conduct covert drug investigations. There are four units of the task force geographically located to cover all areas of the state. The drug investigators of each of the units are supervised by a state police sergeant. State police commanders of the special investigation section are responsible for overall supervision and oversight of the task force.

(b) Working closely with state, local, county, and federal law enforcement agencies, the task force strives to investigate and apprehend those individuals directly involved in the distribution of dangerous drugs and illegal diversion of prescription opiates. The task force focuses on mid- to upper-level dealers, but also targets street level dealers who are negatively impacting Vermont's communities.

(c) To address the growing concern regarding gang involvement in the illegal drug trade as well as other gang-related criminal activity in Vermont's communities, a mobile enforcement team (team) shall be established consistent with the task force model. According to the U.S. Department of Justice, a

gang is defined as a group or association of three or more persons who may have a common identifying sign, symbol, or name and who individually or collectively engage in or have engaged in criminal activity which creates an atmosphere of fear and intimidation.

(d) The team shall be made up of state and local investigators to include uniformed troopers and shall focus on gangs and organized criminal activity to include drug and gun trafficking and associated crimes. The team shall work closely with federal law enforcement agencies, state and federal prosecutors, the Vermont information and analysis center, and the department of corrections in collecting intelligence on gangs and organized criminal groups, to be shared with law enforcement partners throughout Vermont. The team shall not be assigned to a specific geographical area of Vermont but shall act as a rapid response team to specific identified problem areas.

Sec. 17g. GANG ACTIVITY TASK FORCE

(a) The gang activity task force is established for the purpose of raising public awareness about gang activity and organized crime in Vermont and across state and international borders, identifying resources for local, county, and state law enforcement officials, recommending to the public ways to identify and report acts of gang activity and organized crime, and making findings and recommendations regarding those efforts to the general assembly.

(b) The task force shall be composed of the following members:

(1) The commissioner of public safety or his or her designee, who shall serve as chair.

(2) The commissioner of liquor control or his or her designee.

(3) Representatives, appointed by the governor, from the following:

(A) a municipal police department;

(B) a sheriff's department;

(C) the department of corrections;

(D) the department of education;

(E) the business community; and

(F) the health care community.

(4) The United States' attorney for Vermont.

(5) A representative of the Vermont crime victims services.

(6) An attorney appointed by the criminal law section of the Vermont Bar Association.

(7) A state's attorney appointed by the executive committee of the department of state's attorneys and sheriffs.

(8) A senator appointed by the president pro tempore.

(9) A representative appointed by the speaker of the house.

(c) The task force shall perform the following duties:

(1) Identify ways to raise public awareness about gang activity, including the distribution of dangerous drugs and illegal diversion of prescription opiates.

(2) Recommend how the Vermont public, business community, local and state government, and health and education providers can best identify, report, and prevent acts of gang activity in Vermont.

(3) Identify the services needed by victims of gang activity and their families and recommend ways to provide those services.

(d) The task force shall have the assistance and cooperation of all state and local agencies and departments.

(e) For attendance at meetings, 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, plus mileage.

(f) On or before November 15, 2012, the task force shall report to the members of the senate and house committees on judiciary and to the legislative council its recommendations and legislative proposals, if any, relating to its findings.

(g) The task force may meet no more than six times and shall cease to exist on January 15, 2013.

Sec. 17h. ATTORNEY GENERAL REPORT; RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

The attorney general shall examine the issue of gang activity, including the distribution of dangerous drugs and illegal diversion of prescription opiates, and assess whether Vermont would benefit from a state Racketeer Influenced and Corrupt Organizations Act. The attorney general shall consult with the gang activity task force and the defender general in his or her deliberations. The report shall identify existing Vermont and federal law that addresses organized crime and recommendations for enhancing these laws, including any legislation necessary to implement the recommendations. The attorney general shall issue the report to the general assembly no later than January 15, 2013.

Sec. 17i. APPROPRIATION; MOBILE ENFORCEMENT TEAM TO COMBAT GANG ACTIVITY

(a) The amount of $150,000.00 is appropriated from the general fund to the department of public safety to provide funding for the mobile enforcement team established in Sec. 17f of this act.

(b) The commissioner of public safety may, at his or her discretion, utilize grants dedicated to fund the work of the drug task force to support the efforts of the gang task force and mobile enforcement team.

Which was agreed to.

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

House Proposal of Amendment Concurred In

S. 203.

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

Sec. 1. 4 V.S.A. § 466(f) is added to read:

(f) When an obligor is referred to an employment services program, the magistrate may require the program to file periodic written reports with the court regarding the obligor's progress and cooperation with the program requirements. Such reports shall be admissible in an enforcement or contempt proceeding without the appearance of a witness from the program unless there is a dispute with respect to the authenticity of the report or the obligor disputes the facts set forth in the report concerning the obligor's performance and the facts in dispute are relevant to the determination of the issues before the court.

Sec. 2. 15 V.S.A. § 603 is amended to read:

§ 603. CONTEMPT

(a) ~~A person who disobeys a lawful order or decree of a court or judge, made under the provisions of this chapter, may be proceeded against for contempt as provided by 12 V.S.A. § 122. The department for children and families may institute such proceedings in all cases in which a party or dependent children of the parties are the recipients of financial assistance from the department~~ Nonfinancial obligations. If a person disobeys a lawful order of the family division made under the provisions of this chapter and the order

does not relate to payment of a financial obligation, the person may be subject to proceedings for civil contempt as provided by 12 V.S.A. § 122.

(b) ~~For contempt of an order or decree made under the provisions of this chapter, the court may:~~

~~(1) order restitution to the department;~~

~~(2) order payments be made to the department for distribution;~~

~~(3) order a party to serve not more than 30 days of preapproved furlough as provided in 28 V.S.A. § 808(a)(7); or~~

~~(4) make such other orders or conditions as it deems proper~~

Financial obligations. If a person disobeys a lawful order of the family division made under the provisions of this chapter and the order creates a financial obligation, including payment of child support, spousal maintenance, or a lump sum property settlement, the person may be subject to proceedings for civil contempt as provided by 12 V.S.A. § 122 and the provisions set forth herein.

(c) Parties. The office of child support may institute proceedings in all cases in which the office provides services under Title IV-D of the Social Security Act to either or both parties.

(d) Notice of hearing. The person against whom the contempt proceedings are brought shall be served with a notice of a hearing ordering the person to appear at the hearing to show cause why he or she should not be held in contempt. The notice shall inform the person that failure to appear at the hearing may result in the issuance of an arrest warrant directing a law enforcement officer to transport the person to court.

(e) Rebuttable presumption of ability to comply. A person who is subject to a court-ordered financial obligation and who has received notice of such obligation shall be presumed to have the ability to comply with the order. In a contempt proceeding, the noncomplying party may overcome the presumption by demonstrating that, due to circumstances beyond his or her control, he or she did not have the ability to comply with the court-ordered obligation.

(f) Finding of contempt. A person may be held in contempt of court if the court finds all of the following:

(1) The person knew or reasonably should have known that he or she was subject to a court-ordered obligation.

(2) The person has failed to comply with the court order. If the failure to comply involves a failure to pay child support or spousal maintenance, the

person who brings the action has the burden to establish the total amount of the obligation, the amount unpaid, and any unpaid surcharges or penalties.

(3) The person has willfully violated the court order in that he or she had the ability to comply with the order and failed to do so.

(g) Findings of fact. The court shall make findings of fact on the record based on the evidence presented which may include direct or circumstantial evidence.

(h) Order upon finding of contempt. Upon a finding of contempt, the court shall determine appropriate sanctions to obtain compliance with the court order. The court may order any of the following:

(1) The person to perform a work search and report the results of his or her search to the court or to the office of child support, or both.

(2) The person to participate in an employment services program, which may provide referrals for employment, training, counseling, or other services, including those listed in section 658 of this title. Any report provided from such a program shall be presumed to be admissible without the appearance of a witness from the program in accordance with the provisions in 4 V.S.A. § 466(f).

(3) The person to appear before a reparative board. The person shall return to court for further orders if:

(A) the reparative board does not accept the case; or

(B) the person fails to complete the reparative board program to the satisfaction of the board in a time deemed reasonable by the board.

(4) Incarceration of the person unless he or she complies with purge conditions established by the court. A court may order payment of all or a portion of the unpaid financial obligation as a purge condition, providing that the court finds that the person has the present ability to pay the amount ordered and sets a date certain for payment. If the purge conditions are not met by the date established by the court and the date set for payment is within 30 days of finding of ability to pay, the court may issue a mittimus placing the contemnor in the custody of the commissioner of corrections.

(A) As long as the person remains in the custody of the commissioner of corrections, the court shall schedule the case for a review hearing every 15 days.

(B) The commissioner shall immediately release such a person from custody upon the contemnor's compliance with the purge conditions ordered by the court.

(C) The commissioner may, in his or her sole discretion, place the contemnor on home confinement furlough or work crew furlough without prior approval of the court.

(5) Orders and conditions as the court deems appropriate.

(i) Finding of present ability to pay. A finding of present ability to pay a purge condition shall be effective for up to 30 days from the date of the finding. In determining present ability to pay for purposes of imposing necessary and appropriate coercive sanctions to bring the noncomplying person into compliance and purge the contempt, the court may consider:

(1) A person's reasonable ability to use or access available funds or other assets to make all or a portion of the amount due by a date certain set by the court.

(2) A person's reasonable ability to obtain sufficient funds necessary to pay all or a portion of the amount due by a date certain set by the court, as demonstrated by the person's prior payment history and ability to comply with previous contempt orders.

Sec. 3. 15 V.S.A. § 653 is amended to read:

§ 653. DEFINITIONS

As used in this subchapter:

(1) "Available income" means gross income, less:

(A) the amount of spousal support or preexisting child support obligations, including any court-ordered periodic repayment toward arrearages, actually paid;

* * *

(7) "Self-support reserve" means the needs standard established annually ~~by the commissioner for children and families which shall be an amount sufficient to provide a reasonable subsistence compatible with decency and health. The needs standard shall take into account the available income of the parent responsible for payment of child support~~, and calculated at 120 percent of the United States Department of Health and Human Services poverty guideline per year for a single individual.

* * *

Sec. 4. 15 V.S.A. § 658 is amended to read:

§ 658. SUPPORT

* * *

(d) The court or magistrate may order ~~a parent who is in default of a child support order,~~ an obligor or a parent who will become the obligor pending an anticipated child support order to participate in employment, educational, or ~~training related~~ training-related activities if the court finds that participation in such activities would assist in providing support for a child, or in addressing the causes of the default. The court may also order the parent to participate in substance abuse or other counseling if the court finds that such counseling may assist the parent to achieve stable employment. Activities ordered under this section shall ~~not~~ be ~~inconsistent~~ consistent with, and may be more rigorous than, any requirements of a state or federal program in which the parent is participating. For the purpose of this subsection, "employment, educational, or ~~training related~~ training-related activities" shall mean:

(1) unsubsidized employment;

(2) subsidized private sector employment;

(3) subsidized public sector employment;

(4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;

(5) on-the-job training;

(6) job search and job readiness assistance;

(7) community service programs;

(8) vocational educational training (not to exceed 12 months with respect to any individual);

(9) job skills training directly related to employment;

(10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate;

(12) the provision of child care services to an individual who is participating in a community service program~~.~~; and

(13) an employment services program, which may provide referrals for employment, training, counseling, or other services. Any report provided from such a program shall be presumed to be admissible without the appearance of a witness from the program in accordance with the provisions in 4 V.S.A. § 466(f).

* * *

Sec. 5. 15 V.S.A. § 660 is amended to read:

§ 660. MODIFICATION

(a)(1) On motion of either parent ~~or~~, the office of child support, any other person to whom support has previously been granted, or any person previously charged with support, and upon a showing of a real, substantial and unanticipated change of circumstances, the court may annul, vary, or modify a child support order, whether or not the order is based upon a stipulation or agreement. If the child support order has not been modified by the court for at least three years, the court may waive the requirement of a showing of a real, substantial, and unanticipated change of circumstances.

(2) The office of child support may independently file a motion to modify child support or change payee if providing services under Title IV-D of the Social Security Act, if a party is or will be incarcerated for more than 90 days, if the family has reunited or is living together, if the child is no longer living with the payee, or if a party receives means-tested benefits.

(b) A child support order, including an order in effect prior to adoption of the support guideline, which varies more than ten percent from the amounts required to be paid under the support guideline, shall be considered a real, substantial, and unanticipated change of circumstances.

(c) ~~Receipt of workers' compensation, unemployment compensation or disability benefits~~ The following shall be considered a real, substantial, and unanticipated change of circumstances:

(1) Receipt of workers' compensation, disability benefits, or means-tested public assistance benefits.

(2) Unemployment compensation, unless the period of unemployment was considered when the child support order was established.

(3) Incarceration for more than 90 days, unless incarceration is for failure to pay child support.

(d) A motion to modify a support order under subsection (b) or (c) of this section shall be accompanied by an affidavit setting forth calculations demonstrating entitlement to modification and shall be served on other parties and filed with the court. Upon proof of service, and if the calculations demonstrate cause for modification, the ~~clerk of the court~~ magistrate shall enter an order modifying the support award in accordance with the calculations provided, unless within 15 days of service of, or receipt of, the request for modification, either party requests a hearing. The court shall conduct a hearing

within 20 days of the request. No order shall be modified without a hearing if one is requested.

(e) An order may be modified only as to future support installments and installments which accrued subsequent to the date of notice of the motion to the other party or parties. The date the motion for modification is filed shall be deemed to be the date of notice to the opposing party or parties.

(f) Upon motion of the court or upon motion of the office of child support, the court may deem arrears judicially unenforceable in cases where there is no longer a duty of support, provided the court finds all of the following:

(1) The obligor is presently unable to pay through no fault of his or her own.

(2) The obligor currently has no known income or has only nominal assets.

(3) There is no reasonable prospect that the obligor will be able to pay in the foreseeable future.

(g) Upon motion of an obligee or the office of child support, the court may set aside a judgment that arrears are judicially unenforceable based on newly discovered evidence or a showing of a real, substantial, and unanticipated change in circumstances, provided the court finds any of the following:

(1) The obligor is presently able to pay.

(2) The obligor has income or has only nominal assets.

(3) There is a reasonable prospect that the obligor will be able to pay in the foreseeable future.

Sec. 6. 15 V.S.A. § 662 is amended to read:

§ 662. INCOME STATEMENTS

(a) A party to a proceeding under this subchapter shall file an affidavit of income and assets which shall be in a form prescribed by the court administrator. A party shall provide the affidavit of income and assets to the court and the opposing party on or before the date of the case management conference scheduled or, if no conference is scheduled, at least five business days before the date of the first scheduled hearing before the magistrate. Upon request of either party, or the court, the other party shall furnish information documenting the affidavit. The court may require a party who fails to comply with this section to pay an economic penalty to the other party.

(b) If a party fails to provide information as required under subsection (a) of this section, the court shall use the available evidence to estimate the

noncomplying parent's income. Failure to provide the information required under subsection (a) of this section ~~shall~~ may create a presumption that the noncomplying parent's gross income is ~~the greater of:~~

~~(1)~~ 150 percent of the most recently available annual average covered wage for all employment as calculated by the department of labor~~; or~~

~~(2) the gross income indicated by the evidence~~.

(c)(1) Upon a motion filed by either party or the office of child support, the court may relieve a party from a final judgment or child support order upon a showing that the income used in a default child support order was inaccurate by at least 10 percent. A showing that the court used incorrect financial information shall be considered a mistake for the purposes of Rule 60 of the Vermont Rules of Civil Procedure.

(2) The motion in subdivision (1) of this subsection shall be filed within one year of the date the contested order was issued.

Sec. 7. 15 V.S.A. § 668 is amended to read:

§ 668. MODIFICATION OF ORDER

(a) On motion of either parent or any other person to whom custody or parental rights and responsibilities have previously been granted, and upon a showing of real, substantial and unanticipated change of circumstances, the court may annul, vary or modify an order made under this subchapter if it is in the best interests of the child, whether or not the order is based upon a stipulation or agreement.

(b) Whenever a judgment for physical responsibility is modified, the court shall order a child support modification hearing to be set and notice to be given to the parties. Unless good cause is shown to the contrary, the court shall simultaneously issue a temporary order pending the modification hearing, if adjustments to those portions of any existing child support order or wage withholding order that pertain to any child affected by the modification are necessary to assure that support and wages are paid in amounts proportional to the modified allocation of responsibility between the parties.

Sec. 8. 28 V.S.A. § 2a(a) is amended to read:

(a) State policy. It is the policy of this state that principles of restorative justice be included in shaping how the criminal justice system responds to persons charged with or convicted of criminal offenses, and how the state responds to persons who are in contempt of child support orders. The policy goal is a community response to a person's wrongdoing at its earliest onset, and a type and intensity of sanction tailored to each instance of wrongdoing. Policy objectives are to:

(1) Resolve conflicts and disputes by means of a nonadversarial community process.

(2) Repair damage caused by criminal acts to communities in which they occur, and to address wrongs inflicted on individual victims.

(3) Reduce the risk of an offender committing a more serious crime in the future, that would require a more intensive and more costly sanction, such as incarceration.

Sec. 9. 28 V.S.A. § 3 is amended to read:

§ 3. GENERAL DEFINITIONS

Whenever used in this title:

* * *

(8) "Offender" means any person convicted of a crime or offense under the laws of this state, and, for purposes of work crew, a person found in civil contempt under 15 V.S.A. § 603.

* * *

Sec. 10. 28 V.S.A. § 352 is amended to read:

§ 352. SUPERVISED COMMUNITY SENTENCE

(a) At the request of the court, the commissioner of corrections shall prepare a preliminary assessment to determine whether an offender should be considered for a supervised community sentence.

(b) Upon adjudication of guilt, ~~or~~ a finding of violation of probation, or a finding of civil contempt, and only after the filing of a recommendation for supervised community sentence by the commissioner of corrections, the court may impose a sentence of imprisonment and order that all or part of the term of imprisonment be served in the community subject to the provisions of this chapter. Such a sentence shall not limit the court's authority to place a person on probation and to establish conditions of probation.

* * *

Sec. 11. 28 V.S.A. § 910 is amended to read:

§ 910. RESTORATIVE JUSTICE PROGRAM ~~FOR PROBATIONERS~~

This chapter establishes a program of restorative justice for use with offenders required to participate in such a program as a condition of a sentence of probation or as ordered for civil contempt of a child support order under 15 V.S.A. § 603. The program shall be carried out by community reparative boards under the supervision of the commissioner, as provided by this chapter.

Sec. 12. 28 V.S.A. § 910a is amended to read:

§ 910a. REPARATIVE BOARDS; FUNCTIONS

* * *

(d) Each board shall conduct its meetings in a manner that promotes safe interactions among ~~a probationer~~ an offender, victim or victims, and community members, and shall:

(1) In collaboration with the department, municipalities, the courts, and other entities of the criminal justice system, implement the restorative justice program of seeking to obtain ~~probationer~~ offender accountability, repair harm and compensate a victim or victims and the community, increase ~~a probationer's~~ an offender's awareness of the effect of his or her behavior on a victim or victims and the community, and identify ways to help ~~a probationer~~ an offender comply with the law.

(2) Educate the public about, and promote community support for, the restorative justice program.

(e) Each board shall have access to the central file of any ~~probationer~~ offender required to participate with that board in the restorative justice program.

* * *

Sec. 13. EFFECTIVE DATE

This act shall take effect on July 1, 2012

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

Proposal of Amendment; Third Reading Ordered

H. 556.

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

An act relating to creating a private activity bond advisory committee.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 3, in 10 V.S.A. § 219(d), wherever it appears, by striking out the following: "or the governor-elect"

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 Economic Development, Housing and General Affairs.

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. 771.

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

An act relating to making technical corrections and other miscellaneous changes to education law.

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:

* * * Technical Corrections * * *

Sec. 1. 16 V.S.A. § 212 is amended to read:

§ 212. COMMISSIONER'S DUTIES GENERALLY

The commissioner shall execute those policies adopted by the state board in the legal exercise of its powers and shall:

* * *

(12) Distribute at his or her discretion upon request to approved independent schools appropriate forms and materials relating to the ~~Vermont state basic competency program~~ school quality standards for elementary and secondary pupils.

* * *

Sec. 2. 16 V.S.A. § 261a(a) is amended to read:

§ 261a. DUTIES OF SUPERVISORY UNION BOARD

(a) Duties. The board of each supervisory union shall:

* * *

(7) employ a person or persons qualified to provide financial and student data management services for the supervisory union and the member districts;

* * *

Sec. 3. 16 V.S.A. § 429 is amended to read:

§ 429. LOANS

~~The~~ Notwithstanding subsection 4029(b) of this title, a school board may draw orders for loans without interest to the ~~town~~ town's general fund and the ~~board of selectmen~~ town selectboard may draw orders for loans without interest to the ~~town~~ school district fund, the loans to be secured by ~~notes signed by the board of selectmen or the school directors as the case may be and stipulating the terms agreed upon between the board of school directors and the board of selectmen. The notes shall be payable on demand or mature within three months from date of issue~~ a note signed by both the selectboard and the school board that stipulates mutually agreeable terms and conditions. A note shall be payable not more than 90 days after its issuance and shall be payable on demand anytime within the 90-day term. The school board shall report all loans to the department pursuant to subsection 4029(f) of this title. For purposes of this section, "town" and "selectboard" shall have the same meaning as they have in 1 V.S.A. § 139.

Sec. 4. 16 V.S.A. § 821 is amended to read:

§ 821. SCHOOL DISTRICT TO MAINTAIN PUBLIC ELEMENTARY SCHOOLS OR PAY TUITION

(a) Elementary school. Each school district shall ~~provide, furnish, and~~ maintain one or more approved schools within the district in which elementary education for its resident pupils in kindergarten through grade six is provided unless:

(1) ~~The~~ the electorate authorizes the school board to provide for the elementary education of the pupils ~~residing in the district~~ by paying tuition in accordance with law to one or more public elementary schools in one or more school districts~~.~~;

(2) ~~The~~ the school district is organized to provide only high school education for its pupils~~.~~; or

(3) ~~Otherwise provided for by~~ the general assembly provides otherwise.

~~(b) Kindergarten program. Each school district shall provide public kindergarten education within the district. However, a school district may pay tuition for the kindergarten education of its pupils:~~

~~(1) at one or more public schools under subdivision (a)(1) of this section; or~~

~~(2) if the electorate authorizes the school board to pay tuition to one or more approved independent schools or independent schools meeting school~~

~~quality standards, but only if the school district did not operate a kindergarten on September 1, 1984, and has not done so afterward.~~ [Repealed.]

(c) Notwithstanding subsection (a) of this section, without previous authorization by the electorate, a school board ~~without previous authorization by the electorate~~ in a district that operates an elementary school may pay tuition for elementary pupils who reside near a public elementary school in an adjacent district upon request of the pupil's parent or guardian, if in the board's judgment the pupil's education can be more conveniently furnished there due to geographic considerations. Within 30 days of the board's decision, a parent or guardian who is dissatisfied with the decision of the board under this subsection may request a determination by the commissioner, who shall have authority to direct the school board to pay all, some, or none of the pupil's tuition and whose decision shall be final.

(d) Notwithstanding ~~subsection (a)~~ subdivision (a)(1) 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.

Sec. 5. REPEAL

16 V.S.A. §§ 1381–1385 (appointment of medical inspectors; appropriation to state board of education) are repealed.

* * * Joint Contract Schools; Technical Corrections * * *

Sec. 6. 16 V.S.A. § 3447 is amended to read:

§ 3447. SCHOOL BUILDING CONSTRUCTION-STATE BONDS; CITY AS SCHOOL DISTRICT

The state treasurer may issue bonds under 32 V.S.A. chapter 13 ~~of Title 32~~ in such amount as may from time to time be appropriated to assist incorporated school districts, joint contract ~~school districts~~ schools, town school districts, union school districts, regional technical center school districts, and independent schools meeting school quality standards which serve as the public high school for one or more towns or cities, or combination thereof, and which both receive their principal support from public funds and are conducted within the state under the authority and supervision of a board of trustees, not less than two-thirds of whose membership is appointed by the selectboard of a town or by the city council of a city or in part by such selectboard and the remaining part by such council under the conditions and for the purpose set forth in sections 3447-3456 of this title. A city shall be deemed to be an

incorporated school district within the meaning of sections 3447-3456 of this title.

Sec. 7. 16 V.S.A. § 4015 is amended to read:

§ 4015. SMALL SCHOOL SUPPORT

(a) In this section:

* * *

(6) "School district" means a town, city, incorporated, interstate, or union school district or a joint contract school ~~district~~ established under subchapter 1 of chapter 11 of this title.

* * *

Sec. 8. 16 V.S.A. § 572(d) is amended to read:

(d) Unless the school districts ~~which~~ that are parties to the contract have agreed upon a different method of allocating board members that is consistent with law, the allocation of the board members shall be as ~~follows~~ provided in this subsection. The school district ~~having~~ with the largest number of pupils attending the joint, contract, or consolidated school shall have three members on the joint board. Each other school district shall have at least one member on the joint board, and its total membership shall be determined by dividing the number of pupils from the school district with the largest enrollment by three, rounding off the quotient to the nearest whole number, which shall be called the "factor" and by then dividing the pupil enrollment of each of the other school districts by the "factor," rounding off this quotient to the nearest whole number, this number being the number of school directors on the joint board from each of the other school districts. Pupil enrollment for the purpose of determining the number of members on the joint board to which each school district is entitled shall be taken from the school registers on January 1 of the calendar year in which the school year starts. ~~Such~~ The joint board shall annually select from among ~~the~~ its members ~~thereof a chairman~~ a chair and a clerk and shall also select a treasurer from among the treasurers of the contracting districts.

* * * Prekindergarten Rules * * *

Sec. 9. 16 V.S.A. § 829(1) is amended to read:

(1) To ensure that, before a school district begins or expands a prekindergarten education program that intends to enroll students who are included in its average daily membership, the district engage the community in a collaborative process that includes an assessment of the need for the program in the community and an inventory of the existing service providers; provided,

however, if a district needs to expand a prekindergarten education program in order to satisfy federal law relating to the ratio of special needs children to children without special needs and if the law cannot be satisfied by any one or more qualified service providers with which the district may already contract, then the district may expand an existing school-based program without engaging in a community needs assessment.

Sec. 10. PREKINDERGARTEN EDUCATION; RULES

The state board of education shall amend its rules before January 1, 2013 to reflect the requirements of Sec. 10 of this act.

* * * Harassment, Hazing, and Bullying * * *

Sec. 11. REPEAL

16 V.S.A. 565 (harassment and hazing prevention policies) is repealed.

Sec. 12. 16 V.S.A. chapter 9, subchapter 5 is added to read:

Subchapter 5. Harassment, Hazing, and Bullying

§ 570. HARASSMENT, HAZING, AND BULLYING PREVENTION POLICIES

(a) State policy. It is the policy of the state of Vermont that all Vermont educational institutions provide safe, orderly, civil, and positive learning environments. Harassment, hazing, and bullying have no place and will not be tolerated in Vermont schools. No Vermont student should feel threatened or be discriminated against while enrolled in a Vermont school.

(b) Prevention policies. Each school board shall develop, adopt, ensure the enforcement of and make available in the manner described under subdivision 563(1) of this title harassment, hazing, and bullying prevention policies that shall be at least as stringent as model policies developed by the commissioner. Any school board that fails to adopt one or more of these policies shall be presumed to have adopted the most current model policy or policies published by the commissioner.

(c) Notice. Annually, prior to the commencement of curricular and cocurricular activities, the school board shall provide notice of the policy and procedures developed under this subchapter to students, custodial parents or guardians of students, and staff members, including reference to the consequences of misbehavior contained in the plan required by section 1161a of this title. Notice to students shall be in age-appropriate language and should include examples of harassment, hazing, and bullying. At a minimum, this notice shall appear in any publication that sets forth the comprehensive rules, procedures, and standards of conduct for the school. The school board shall

use its discretion in developing and initiating age-appropriate programs to inform students about the substance of the policy and procedures in order to help prevent harassment, hazing, and bullying. School boards are encouraged to foster opportunities for conversations between and among students regarding tolerance and respect.

(d) Duties of the commissioner. The commissioner shall:

(1) develop and, from time to time, update model harassment, hazing, and bullying prevention policies; and

(2) establish an advisory council to review and coordinate school and statewide activities relating to the prevention of and response to harassment, hazing, and bullying. The council shall report annually in January to the state board and the house and senate committees on education. The council shall include:

(A) the executive director of the Vermont Principals' Association or designee;

(B) the executive director of the Vermont School Boards Association or designee;

(C) the executive director of the Vermont Superintendents Association or designee;

(D) the president of the Vermont-National Education Association or designee;

(E) the executive director of the Vermont Human Rights Commission or designee;

(F) the executive director of the Vermont Independent Schools Association or designee; and

(G) other members selected by the commissioner.

(e) Definitions. In this subchapter:

(1) "Educational institution" and "school" mean a public school or an approved or recognized independent school as defined in section 11 of this title.

(2) "Organization," "pledging," and "student" have the same meanings as in subdivisions 140a(2), (3), and (4) of this title.

(3) "Harassment," "hazing," and "bullying" have the same meanings as in subdivisions 11(a)(26), (30), and (32) of this title.

(4) "School board" means the board of directors or other governing body of an educational institution when referring to an independent school.

§ 570a. HARASSMENT

(a) Policies and plan. The harassment prevention policy required by section 570 of this title and its plan for implementation shall include:

(1) A statement that harassment, as defined in subdivision 11(a)(26) of this title, is prohibited and may constitute a violation of the public accommodations act as more fully described in section 14 of this title.

(2) Consequences and appropriate remedial action for staff or students who commit harassment. At all stages of the investigation and determination process, school officials are encouraged to make available to complainants alternative dispute resolution methods, such as mediation, for resolving complaints.

(3) A procedure that directs students, staff, parents, and guardians how to report violations and file complaints.

(4) A description of the circumstances under which harassment may be reported to a law enforcement agency.

(5) A procedure for investigating reports of violations and complaints. The procedure shall provide that, unless special circumstances are present and documented by the school officials, an investigation is initiated no later than one school day from the filing of a complaint and the investigation and determination by school officials are concluded no later than five school days from the filing of the complaint with a person designated to receive complaints under subdivision (7) of this section. All internal reviews of the school's initial determination, including the issuance of a final decision, shall, unless special circumstances are present and documented by the school officials, be completed within 30 days after the review is requested.

(6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to harassment.

(7) Annual designation of two or more people at each school campus to receive complaints and a procedure for publicizing those people's availability.

(8) A procedure for publicizing the availability of the Vermont human rights commission and the federal Department of Education's Office of Civil Rights and other appropriate state and federal agencies to receive complaints of harassment.

(9) A statement that acts of retaliation for the reporting of harassment or for cooperating in an investigation of harassment are unlawful pursuant to 9 V.S.A. § 4503.

(b) Independent review.

(1) A student who desires independent review under this subsection because the student is either dissatisfied with the final determination of the school officials as to whether harassment occurred or believes that, although a final determination was made that harassment occurred, the school's response was inadequate to correct the problem shall make such request in writing to the headmaster or superintendent of schools. Upon such request, the headmaster or superintendent shall initiate an independent review by a neutral person selected from a list developed jointly by the commissioner of education and the human rights commission and maintained by the commissioner. Individuals shall be placed on the list on the basis of their objectivity, knowledge of harassment issues, and relevant experience.

(2) The independent review shall proceed expeditiously and shall consist of an interview of the student and the relevant school officials and review of written materials involving the complaint maintained by the school or others.

(3) Upon the conclusion of the review, the reviewer shall advise the student and the school officials as to the sufficiency of the school's investigation, its determination, the steps taken by the school to correct any harassment found to have occurred, and any future steps the school should take. The reviewer shall advise the student of other remedies that may be available if the student remains dissatisfied and, if appropriate, may recommend mediation or other alternative dispute resolution.

(4) The independent reviewer shall be considered an agent of the school for the purpose of being able to review confidential student records.

(5) The costs of the independent review shall be borne by the public school district or independent school.

(6) Nothing in this subsection shall prohibit the school board from requesting an independent review at any stage of the process.

(7) Evidence of conduct or statements made in connection with an independent review shall not be admissible in any court proceeding. This subdivision shall not require exclusion of any evidence otherwise obtainable from independent sources merely because it is presented in the course of an independent review.

(8) The commissioner may adopt rules implementing this subsection.

§ 570b. HAZING

The hazing prevention policy required by section 570 of this title and its plan for implementation shall include:

(1) A statement that hazing, as defined in subdivision 11(a)(30) of this title, is prohibited and may be subject to civil penalties pursuant to subchapter 9 of chapter 1 of this title.

(2) A procedure that directs students, staff, parents, and guardians how to report violations and file complaints.

(3) A procedure for investigating reports of violations and complaints.

(4) A description of the circumstances under which hazing may be reported to a law enforcement agency.

(5) Appropriate penalties or sanctions or both for organizations that or individuals who engage in hazing and revocation or suspension of an organization's permission to operate or exist within the institution's purview if that organization knowingly permits, authorizes, or condones hazing.

(6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to hazing.

(7) Annual designation of two or more people at each school campus to receive complaints and a procedure for publicizing those people's availability.

§ 570c. BULLYING

The bullying prevention policy required by section 570 of this title and its plan for implementation shall include:

(1) A statement that bullying, as defined in subdivision 11(a)(32) of this title, is prohibited.

(2) A procedure that directs students, staff, parents, and guardians how to report violations and file complaints.

(3) A procedure for investigating reports of violations and complaints.

(4) A description of the circumstances under which bullying may be reported to a law enforcement agency.

(5) Consequences and appropriate remedial action for students who commit bullying.

(6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to bullying.

(7) Annual designation of two or more people at each school campus to receive complaints and a procedure both for publicizing the availability of those people and clarifying that their designation does not preclude a student from bringing a complaint to any adult in the building.

Sec. 13. IMPLEMENTATION

School boards shall adopt and implement bullying prevention policies as required by Sec. 12 of this act no later than January 1, 2013.

* * * Special Education Advisory Council * * *

Sec. 14. 16 V.S.A. § 2945(a) is amended to read:

(a) There is created an advisory council on special education that shall consist of ~~17~~ 19 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~~ Seventeen of the members shall be appointed by the governor with the advice of the commissioner of education. Among the gubernatorial appointees shall be:

* * *

(J) a representative from the state child welfare department responsible for foster care; ~~and~~

(K) special education administrators; and

(L) two at-large members.

(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 and the committee on committees shall appoint the senate member.

Sec. 15. IMPLEMENTATION

The governor shall appoint the two at-large members required by Sec. 14, 16 V.S.A. § 2945(a)(1)(L), of this act on or before July 1, 2012, provided that the initial term of one member shall end on March 31, 2014 and the initial term of the other member shall end on March 31, 2015.

* * * Prekindergarten-16 Council; Afterschool Programs * * *

Sec. 16. 16 V.S.A. § 2905(b) is amended to read:

(b) The council shall be composed of:

* * *

(15) a member of the senate, who shall be selected by the committee on committees and shall serve until the beginning of the biennium immediately after the one in which the member is appointed; ~~and~~

(16) a member of the faculty of the Vermont State Colleges, the University of Vermont, or a Vermont independent college selected by United Professions AFT Vermont, Inc.; and

(17) a representative of after-school, summer, and expanded learning programs selected by the Vermont Center for Afterschool Excellence.

* * * Regional Technical Center School Districts; Unorganized Towns, Grants, and Gores * * *

Sec. 17. 16 V.S.A.§ 1572(b)(1) is amended to read:

(1) The makeup of the governing board. At least 60 percent of the board members shall be elected by direct vote of the voters, or chosen from member school district boards by the member school district boards, or a combination of the two. If the board is to have additional members, who may constitute up to 40 percent of the board, the additional members shall be appointed by the elected and chosen members from member school district boards for the purpose of acquiring expertise in areas they consider desirable. The appointed members may be selected from nominations submitted by the regional workforce investment board or other workforce organizations, or may be chosen without nomination by an organization. Notwithstanding any provision of law to the contrary, a resident of an unorganized town, grant, or gore that sits within the regional technical center school district who is otherwise eligible to vote under 17 V.S.A. § 2121 may vote for the board members and may be elected to or appointed as a member of the governing board;

* * * Audits * * *

Sec. 18. 16 V.S.A. § 261a(a) is amended to read:

§ 261a. DUTIES OF SUPERVISORY UNION BOARD

(a) Duties. The board of each supervisory union shall:

* * *

(10) submit to the ~~town auditors~~ board of each member school district ~~or to the person authorized to perform the duties of an auditor for the school district~~, on or before January 15 of each year, a summary report of financial operations of the supervisory union for the preceding school year, an estimate of its financial operations for the current school year, and a preliminary budget for the supervisory union for the ensuing school year. This requirement shall not apply to a supervisory district. For each school year, the report shall show the actual or estimated amount expended by the supervisory union for special education-related services, including:

(A) ~~A~~ a breakdown of that figure showing the amount paid by each school district within the supervisory union; and

(B) ~~A~~ a summary of the services provided by the supervisory union's use of the expended funds;

* * *

Sec. 19. 16 V.S.A. § 323 is amended to read:

§ 323. AUDIT BY PUBLIC ACCOUNTANT

Annually, the supervisory union board shall employ ~~a~~ one or more public ~~accountant~~ accountants to audit the financial ~~statement~~ statements of the supervisory union and its member districts. The ~~audit~~ audits shall be conducted in accordance with generally accepted government auditing standards, including the issuance of a report of internal controls over financial reporting ~~that shall~~ to be provided to recipients of the financial statements. Any annual report of the supervisory union to member districts shall include notice that ~~an audit has~~ the audits have been performed and the time and place where the full report of the public accountant will be available for inspection and for copying at cost.

Sec. 20. 16 V.S.A. § 425 is amended to read:

§ 425. OTHER TOWN SCHOOL DISTRICT OFFICERS

Unless otherwise voted, the town clerk ~~and town auditors~~ shall by virtue of ~~their offices~~ the office perform the same duties for the town school district in addition to other duties assigned by this title.

Sec. 21. 16 V.S.A. § 491 is amended to read:

§ 491. ELECTION; NOTICE TO CLERK

At each annual meeting, an incorporated school district shall elect from among the legal voters of such district a moderator, collector, and treasurer~~, one or three auditors~~ and may elect a clerk. All school officers shall enter upon their duties on July 1, following their election or appointment~~, and~~. If a clerk is elected or appointed, then the clerk shall~~, within ten days after his election or appointment, give notice thereof to~~ notify the town clerk within ten days of the election or appointment.

Sec. 22. 16 V.S.A. § 492(a) is amended to read:

(a) The powers, duties, and liabilities of the collector, treasurer, ~~auditors~~, prudential committee, and clerk shall be like those of a town collector, treasurer, ~~auditors, and~~ board of school directors, and the school board clerk ~~of same~~, respectively.

Sec. 23. 16 V.S.A. § 563(10) is amended to read:

(10) Shall prepare and distribute to the electorate, not less than ten days prior to the district's annual meeting, a report of the conditions and needs of the district school system, including the superintendent's, supervisory union treasurer's, and school district treasurer's annual report for the previous school year~~,~~ and the balance of any reserve funds established pursuant to 24 V.S.A. § 2804~~, a summary of the town auditor's report as to fiscal years which are audited by town auditors as required by 24 V.S.A. § 1681, a summary of the public accountant's report as to fiscal years which are audited by a public accountant, and a notice of the time and place where the full report of the town auditor or the public accountant will be available for inspection and copying at cost. Each town auditor's and public accountant's report shall comply with 24 V.S.A. § 1683(a)~~. At a school district's annual meeting, the electorate may vote to provide notice of availability of the report required by this subdivision to the electorate in lieu of distributing the report. If the electorate of the school district votes to provide notice of availability, it must specify how notice of availability shall be given, and such notice of availability shall be provided to the electorate at least 30 days before the district's annual or special meeting.

Sec. 24. REPEAL

16 V.S.A. § 563(17) (responsibility of school boards for audits of school district finances) is repealed.

Sec. 25. 16 V.S.A. § 706m is amended to read:

§ 706m. TERMS OF OFFICE~~; ELIMINATION OF OFFICE OF AUDITOR~~

~~(a)~~ The terms of office of directors ~~and auditors~~ shall be three years after the first term and of all other officers shall be one year. ~~At the first annual meeting, one auditor shall be elected for a term of one year, one auditor for a term of two years, and one for a term of three years, or until their successors are chosen and qualified.~~

~~(b) At any annual or special meeting warned for the purpose, the electorate may vote to eliminate the office of auditor and to employ instead a public accountant annually to audit the financial statements of the union school district.~~

Sec. 26. 16 V.S.A. § 706q(a) is amended to read:

(a) The powers, duties, and liabilities of the treasurer, ~~auditor,~~ board of directors, and clerk shall be like those of a treasurer, ~~auditor,~~ board of school directors, and clerk of a town school district.

Sec. 27. 16 V.S.A. § 706q(c) is amended to read:

(c) The board of directors shall prepare an annual report concerning the affairs of the union district and have it printed and distributed to the legal voters of the union at least ten days prior to the annual union district meeting. The report shall be filed with the clerk of the union district, and the town clerk of each member district. It shall include:

(1) A statement of the board concerning the affairs of the union district;

(2) The budget proposed for the next year;

(3) A statement of the superintendent of schools for the union district concerning the affairs of the union;

(4) A treasurer's report;

(5) ~~A summary of an auditor's report prepared pursuant to subchapter 5 of chapter 51 of Title 24. The summary shall include a list of the fiscal years which are audited by the auditors and a notice of the time when and the place where the full report of the auditor will be available for inspection and copying at cost. The union district clerk shall distribute copies of the annual report as provided by 24 V.S.A. § 1173.~~ [Repealed.]

Sec. 28. 17 V.S.A. § 2651b(a) is amended to read:

(a) A town may vote by ballot at an annual meeting to eliminate the office of town auditor. If a town votes to eliminate the office of town auditor, the selectboard shall contract with a public accountant, licensed in this state, to perform an annual financial audit of all funds of the town except the funds audited pursuant to 16 V.S.A. § 323. Unless otherwise provided by law, the selectboard shall provide for all other auditor duties to be performed. A vote to eliminate the office of town auditor shall remain in effect until rescinded by majority vote of the legal voters present and voting, by ballot, at an annual meeting duly warned for that purpose.

Sec. 29. 24 V.S.A. § 1681 is amended to read:

§ 1681. AUDITORS; DUTIES; MEETING

Town auditors shall meet at least ~~twenty-five~~ 25 days before each annual town meeting~~,~~ to examine and adjust the accounts of all town ~~and town school district~~ officers and all other persons authorized by law to draw orders on the town treasurer. Such auditing shall include the account ~~which~~ that the treasurer is required to keep with the collector, the tax accounts of the collector, trust accounts where the town or any town officer, as such officer, is trustee or where the town is sole beneficiary, accounts relating to the town ~~and town school district~~ indebtedness, and accounts of any special funds in the care

of any town ~~or town school district~~ official. Notice of such meeting shall be given by posting or publication ten days in advance of such meeting. ~~However, if the town has not elected to eliminate the office of auditor, and town auditors and the school board concur, the town auditors need not conduct an audit of school district accounts as to school district fiscal years which are audited by a public accountant.~~

Sec. 30. 24 V.S.A. § 1683 is amended to read:

§ 1683. CONTENTS OF REPORT

(a) The report shall show a detailed statement of the financial condition of such town ~~and school district~~ for ~~their~~ its fiscal year, a classified summary of receipts and expenditures, a list of all outstanding orders and payables more than 30 days past due, and show deficit, if any, pursuant to section 1523 of this title and such other information as the municipality shall direct. Individuals who are exempt from penalty, fees and interest by virtue of 32 V.S.A. § 4609 shall not be listed or identified in any such report, provided that they notify or cause to be notified in writing the municipal or district treasurer that they should not be so listed or identified.

(b) The fiscal year of all school districts, charter provisions notwithstanding, shall end on June 30.

(c) The fiscal year of other municipalities shall end on December 31, unless the municipality votes at an annual or special meeting duly warned for that purpose to have a different fiscal year, in which case the fiscal year so voted shall remain in effect until amended.

(d) ~~The annual report of the town auditors or the selectboard, if the town has voted to eliminate the office of auditor, shall include the report and budget of the supervisory union as required by 16 V.S.A. § 261a(10).~~ [Repealed.]

Sec. 31. 24 V.S.A. § 1686 is amended to read:

§ 1686. PENALTY

(a) At any time in their discretion, town auditors may, and if requested by the selectboard, shall, examine and adjust the accounts of any town officer authorized by law to receive money belonging to the town.

(b) If the town has voted to eliminate the office of auditor, the public accountant employed by the selectboard shall perform the duties of the town auditors under subsection (a) of this section upon request of the selectboard.

(c) Any town officer who wilfully refuses or neglects to submit his or her books, accounts, vouchers, or tax bills to the auditors or the public accountant upon request, or to furnish all necessary information in relation thereto, shall

be ineligible to reelection for the year ensuing and be subject to the penalties otherwise prescribed by law.

(d) As used in this section, the term "town officer" shall not include an officer subject to the provisions of 16 V.S.A. § 323.

* * * Definitions * * *

Sec. 32. 16 V.S.A. § 11(a)(7), (10), and (18) are amended to read:

(7) "Public school" means an elementary school or secondary school ~~for which the governing board is publicly elected~~ operated by a school district. A public school may maintain evening or summer schools for its pupils and it shall be considered a public school.

(10) "School district" means town school districts, union school districts, interstate school districts, city school districts, unified union districts, and incorporated school districts, each of which is governed by a publicly elected board.

(18) ~~"Approved public school" means a public school which is approved under section 165 of this title.~~ [Repealed.]

* * * Public High School Choice * * *

Sec. 33. 16 V.S.A. § 822 is amended to read:

§ 822. SCHOOL DISTRICT TO MAINTAIN PUBLIC HIGH SCHOOLS ~~OR PAY TUITION~~; TUITION

(a) Each school district shall ~~provide, furnish, and~~ maintain one or more approved ~~high~~ schools in which it provides high school education ~~is provided~~ for its resident pupils unless:

(1) ~~The~~ the electorate authorizes the school board to ~~close an existing high school and to~~ provide for the high school education of its resident pupils solely by paying tuition ~~in accordance with law. Tuition for its pupils shall be paid~~ pursuant to this chapter to a public high school, an approved independent high school, or an independent school meeting school quality standards, to be selected by the parents or guardians of the pupil, within or ~~without~~ outside the state; or

(2) ~~The~~ the school district is organized to provide only elementary education for its pupils.

(b) ~~For purposes of this section, a school district which provides, furnishes and maintains a program of education for the first eight years of compulsory school attendance shall be obligated to pay tuition for its pupils for at least four additional years.~~ [Repealed.]

(c) ~~The school board may both maintain a high school and furnish high school education by paying~~ ~~tuition to a public school as in the judgment of the board may best serve the interests of the pupils, or~~ A district that maintains a high school may pay tuition pursuant to this chapter to an approved independent school or an independent school meeting school quality standards on behalf of one or more pupils if the school board judges that a pupil has unique educational needs that cannot be served within the district or at ~~a nearby~~ another public school. Its judgment shall be final in regard to the institution the pupils may attend at public cost.

Sec. 34. 16 V.S.A. § 822a is added to read:

§ 822a. PUBLIC HIGH SCHOOL CHOICE

(a) Definitions. In this section:

(1) "High school" means a public school or that portion of a public school that offers grades 7 through 12 or some subset of those grades.

(2) "Student" means a student's parent or guardian if the student is a minor or under guardianship and means a student himself or herself if the student is not a minor.

(b) Limits on transferring students. A sending high school board may limit the number of resident students who transfer to another high school under this section in each year; provided that in no case shall it limit the potential number of new transferring students to fewer than five percent of the resident students enrolled in the sending high school as of October 1 of the academic year in which the calculation is made or 10 students, whichever is fewer; and further provided that in no case shall the total number of transferring students in any year exceed 10 percent of all resident high school students or 40 students, whichever is fewer.

(c) Capacity. On or before February 1 each year, the board of a high school district shall define and announce its capacity to accept students under this section. The commissioner shall develop, review, and update guidelines to assist high school district boards to define capacity limits. Guidelines may include limits based on the capacity of the program, class, grade, school building, measurable adverse financial impact, or other factors, but shall not be based on the need to provide special education services.

(d) Lottery.

(1) Subject to the provisions of subsection (f) of this section, if more than the allowable number of students wish to transfer to a school under this section, then the board of the receiving high school district shall devise a nondiscriminatory lottery system for determining which students may transfer.

(2) Subject to the provisions of subsection (f) of this section, if more than the allowable number of students wish to transfer from a school under this section, then the board of the sending high school district shall devise a nondiscriminatory lottery system for determining which students may transfer; provided, however:

(A) a board shall give preference to the transfer request of a student whose request to transfer from the school was denied in a prior year; and

(B) a board that has established limits under subsection (b) of this section may choose to waive those limits in any year.

(e) Application and notification.

(1) A high school district shall accept applications for enrollment until March 1 of the school year preceding the school year for which the student is applying.

(2) A high school district shall notify each student of acceptance or rejection of the application by April 1 of the school year preceding the school year for which the student is applying.

(3) An accepted student shall notify both the sending and the receiving high schools of his or her decision to enroll or not to enroll in the receiving high school by April 15 of the school year preceding the school year for which the student has applied.

(4) After sending notification of enrollment, a student may enroll in a school other than the receiving high school only if the student, the receiving high school, and the high school in which the student wishes to enroll agree. If the student becomes a resident of a different school district, the student may enroll in the high school maintained by the new district of residence.

(5) If a student who is enrolled in a high school other than in the school district of residence notifies the school district of residence by July 15 of the intent to return to that school for the following school year, the student shall be permitted to return to the high school in the school district of residence without requiring agreement of the receiving district or the sending district.

(f) Continued enrollment. An enrolled nonresident student shall be permitted to remain enrolled in the receiving high school without renewed applications in subsequent years unless:

(1) the student graduates;

(2) the student is no longer a Vermont resident; or

(3) the student is expelled from school in accordance with adopted school policy.

(g) Tuition and other costs.

(1) Unless the sending and receiving schools agree to a different arrangement, no tuition or other cost shall be charged by the receiving district or paid by the sending district for a student transferring to a different high school under this section; provided, however, a sending high school district shall pay special education and technical education costs for resident students pursuant to the provisions of this title.

(2) A student transferring to a different high school under this section shall pay no tuition, fee, or other cost that is not also paid by students residing in the receiving district.

(3) A district of residence shall include within its average daily membership any student who transfers to another high school under this section; a receiving school district shall not include any student who transfers to it under this section.

(h) Special education. If a student who is eligible for and receiving special education services chooses to enroll in a high school other than in the high school district of residence, then the receiving high school shall carry out the individualized education plan, including placement, developed by the sending high school district. If the receiving high school believes that a student not on an individualized education plan may be eligible for special education services or that an existing individualized education plan should be altered, it shall notify the sending high school district. When a sending high school district considers eligibility, development of an individualized education plan, or changes to a plan, it shall give notice of meetings to the receiving high school district and provide an opportunity for representatives of that district to attend the meetings and participate in making decisions.

(i) Suspension and expulsion. A sending high school district is not required to provide services to a resident student during a period of suspension or expulsion imposed by another high school district.

(j) Transportation. Jointly, the superintendent of each supervisory union shall establish and update a statewide clearinghouse providing information to students about transportation options among the high school districts.

(k) Nonapplicability of other laws. The provisions of subsections 824(b) and (c) (amount of tuition), 825(b) and (c) (maximum tuition rate), and 826(a) (notice of tuition change) and section 836 (tuition overcharge and undercharge) of this chapter shall not apply to enrollment in a high school pursuant to this section.

(l) Waiver. If a high school board determines that participation under this section would adversely affect students in its high school, then it may petition

the commissioner for an exemption. The commissioner's decision shall be final.

(m) Report. Annually, on or before January 15, the commissioner shall report to the senate and house committees on education on the implementation of public high school choice as provided in this section, including a quantitative and qualitative evaluation of the program's impact on the quality of educational services available to students and the expansion of educational opportunities.

Sec. 35. 16 V.S.A. § 4001(1) is amended to read:

(1) "Average daily membership" of a school district, or if needed in order to calculate the appropriate homestead tax rate, of the municipality as defined in 32 V.S.A. § 5401(9), in any year means:

(A) The full-time equivalent enrollment of pupils, as defined by the state board by rule, who are legal residents of the district or municipality attending a school owned and operated by the district, attending a public school outside the district under ~~an interdistrict agreement~~ section 822a of this title, or for whom the district pays tuition to one or more approved independent schools or public schools outside the district during the annual census period. The census period consists of the 11th day through the 30th day of the school year in which school is actually in session.

* * *

Sec. 36. REPEAL

16 V.S.A. §§ 1621 and 1622 (public high school choice regions) are repealed.

Sec. 37. REPORT

On or before January 15, 2013, the department of education shall evaluate the funding system set forth in Sec. 34 of this act at 16 V.S.A. § 822a(g) and present to the senate and house committees on education its recommendations for changes, if any.

* * * Effective Dates * * *

Sec. 38. EFFECTIVE DATES

Secs. 18–31 (audits) shall take effect on July 1, 2013. This section and all other sections of this act shall take effect on passage; provided, however, that Secs. 33–37 (school choice) of this act shall apply to enrollment in academic year 2013–2014 and after.

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

Senator Starr, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Education.

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.

Adjournment

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

Called to Order

The Senate was called to order by the President.

Consideration Resumed; Bill Amended; Point of Order; Third Reading Ordered; Rules Suspended Bill Messaged

H. 781.

Consideration was resumed on House bill entitled:

An act relating to making appropriations for the support of government.

Thereupon, pending the question, Shall the proposal of amendment of the Committee on Appropriations be amended as proposed by Senator Galbraith, as substituted, in the *first* and *third* proposals of amendment?, Senators Galbraith, Cummings, Flory, Ashe, Brock, Illuzzi, Mullin, Ayer, Benning, Campbell, Carris, Doyle, Giard, Hartwell, Kitchel, MacDonald, McCormack, Nitka, Pollina, Sears, Starr, Westman, and White move to substitute the proposal of amendment of Senator Galbraith, as substituted, to the proposal of amendment of the Committee on Appropriations as follows:

First: By adding a new section to be numbered Sec. C.103 to read as follows:

Sec. C.103. 30 V.S.A. § 218 is amended to read:

§ 218. JURISDICTION OVER CHARGES AND RATES

(a) When, after opportunity for hearing, the rates, tolls, charges, or schedules are found unjust, unreasonable, insufficient, or unjustly discriminatory, or are found to be preferential or otherwise in violation of a provision of this chapter, the board may order and substitute therefor such rates, tolls, charges, or schedules, and make such changes in any regulations, measurements, practices, or acts of such company relating to its service, and may make such order as will compel the furnishing of such adequate service as shall at such hearing be found by it to be just and reasonable. This section shall

not be construed to require the same rates, tolls or charges from any company subject to supervision under this chapter for like service in different parts of the state, but the board in determining these questions shall investigate local conditions and its final findings and judgment shall take cognizance thereof. This section does not prohibit a telecommunications company from filing tariffs that condition the availability of an intrastate service upon subscription to an interstate or unregulated service from the same or an affiliated company; provided that an incumbent local exchange carrier shall provide a plan to allocate reasonably revenue between the regulated intrastate service and other services. The board shall retain the authority to review the tariff filing to determine whether it is just and reasonable.

* * *

(h) When the public service board has authorized an increase in rates expressly to prevent the bankruptcy or financial instability of a utility, any excess rates incurred above what ordinarily would have been incurred under a traditional cost-of-service methodology shall be returned to ratepayers in the form of a credit or refund, in a manner to be determined by the board, and shall not be recoverable in future rates charged to ratepayers.

Second: In Sec. F.100 by adding a new subsection (b) to read as follows:

(b) Sec. C.103 (repayment to ratepayers) is effective on passage and shall apply to any board orders pertaining to windfall-sharing mechanisms the specific terms of which have not yet been finalized by the board.

Which was agreed to on a roll call, Yeas 27, Nays 3.

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, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, McCormack, Mullin, Nitka, Pollina, Sears, Starr, Westman, White.

Those Senators who voted in the negative were: Mazza, Miller, Snelling.

Thereupon, the question, Shall the proposal of amendment of the Committee on Appropriations be amended as proposed by Senator Galbraith, as substituted?, was agreed to.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Appropriations, as

amended?, Senator Sears moved to amend the proposal of amendment of the Committee on Appropriations, as amended, as follows:

By adding a new section to be numbered E.329.1 to read as follows:

Sec. E.329.1 REPORT ON ADULT PROTECTIVE SERVICES

(a) On or before December 1, 2012, the attorney general and the department of disabilities, aging, and independent living shall jointly provide a report on the status of investigations concerning the abuse, neglect, and exploitation of vulnerable adults and statistics regarding investigation backlog to the senate and house committees on judiciary, the senate committee on health and welfare, and the house committee on human services.

Which was agreed to.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Appropriations, as amended?, Senator Kitchel, on behalf of the Committee on Appropriations, moved to amend the proposal of amendment of the Committee on Appropriations, as amended as follows:

By adding two new sections to be numbered Sec. E.101.1 and Sec. E.101.2 to read as follows:

Sec. E.101.1 3 V.S.A. § 2222 is amended to read:

§ 2222. POWERS AND DUTIES; BUDGET AND REPORT

(a) In addition to the duties expressly set forth elsewhere by law the secretary shall:

* * *

(9) Submit to the general assembly concurrent with the governor's annual budget request required under 32 V.S.A. § 306, a strategic plan for information technology which outlines the significant deviations from the previous year's information technology plan, and which details the plans for information technology activities of state government for the following fiscal year as well as the administration's financing recommendations for these activities. All such plans shall be reviewed and approved by the ~~commissioner of information and innovation~~ state chief information officer prior to being included in the governor's annual budget request. The plan shall identify the proposed sources of funds for each project identified. The plan shall also contain a review of the state's information technology and an identification of priority projects by agency. The plan shall include, for any proposed information technology activity with a cost in excess of $100,000.00:

* * *

(B) the cost savings ~~and/or~~ and any service delivery improvements which will accrue to the public or to state government;

* * *

(10) The secretary shall annually submit to the general assembly a five-year information technology plan which indicates the anticipated information technology activities of the legislative, executive, and judicial branches of state government. For purposes of this section, "information technology activities" shall mean:

* * *

(B) the design, construction, purchase, installation, maintenance, or operation of systems, including ~~both~~ hardware ~~and~~, software, and services which perform or are contracted under Administrative Bulletin 3.5 to perform these activities.

* * *

(g)(1) The secretary of administration shall obtain independent expert review of any recommendation for any information technology activity initiated after July 1, 1996, as information technology activity is defined by subdivision (a)(10) of this section, when its total cost is $500,000.00 or greater or when required by the state chief information officer. Documentation of ~~such~~ this independent review shall be included when plans are submitted for review pursuant to subdivisions (a)(9) and (10) of this section. The independent review shall include:

(A) an acquisition cost assessment;

(B) a technology architecture review;

(C) an implementation plan assessment;

(D) a cost analysis and a model for benefit analysis; and

(E) a procurement negotiation advisory services contract.

(2) The secretary of administration may assess the costs of ~~such reviews~~ any review to the ~~departments~~ entity making the information technology recommendations.

* * *

Sec. E.101.2 22 V.S.A. § 901 is amended to read:

§ 901. DEPARTMENT OF INFORMATION AND INNOVATION

The department of information and innovation, created in 3 V.S.A. § 2283b, shall have all the responsibilities assigned to it by law, including the following:

* * *

(2) to manage ~~GOVnet~~ wide-area network connectivity within state government;

* * *

(4)(A) to review and approve information technology activities ~~in all departments~~ within state government with a cost in excess of $100,000.00, and annually submit to the general assembly a strategic plan and a budget for information technology as required of the secretary of administration by 3 V.S.A. § 2222(a)(9). For purposes of this section, "information technology activities" is defined in 3 V.S.A. § 2222(a)(10);

(B) to provide oversight, monitoring, and control of information technology activities within state government with a cost in excess of $100,000.00. The cost of the oversight, monitoring, and control shall be assessed to the entity requesting the activity;

(C) to review and approve in accordance with agency of administration policies the assignment of appropriate project managers for information technology activities within state government with a cost in excess of $100,000.00; and

(D) to provide standards for the management, organization, and tracking of information technology activities within state government with a cost in excess of $100,000.00;

* * *

(11) to provide technical support and services to the departments of human resources and of finance and management for the statewide central accounting and encumbrance system, the statewide budget development system, the statewide human resources management system, and other agency of administration systems as may be assigned by the secretary;

(12) to review and approve in accordance with agency of administration policies all new information technology position requests and new information technology classifications within state government.

Which was agreed to.

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

Thereupon, the proposal of amendment recommended by the Committee on Appropriations, as amended, was agreed.

Thereupon, pending the question, Shall the bill be read the third time?, Senator McCormack, moved that the Senate proposal of amendment be amended as follows:

By adding a new section to be numbered Sec. 318.2 to read as follows:

Sec. 318.2 CHILD CARE PROVIDER UNIONIZATION AND WORKING GROUP

(a) Registered family day care home providers, licensed family child care home providers and legally exempt child care providers shall have the right to organize, form, join, or assist a union, and once an exclusive representative is selected, to negotiate a legally binding agreement with the state related to child care subsidy reimbursement rates and rules, professional development and training, grievance procedures, and a mechanism for dues collection. Such negotiations shall not constitute an antitrust violation.

(b) The provisions of chapter 19 of title 21 related to election process shall apply to this section.

(c) Child care providers shall not strike or curtail their services in recognition of a picket line of any employee or labor organization, unless otherwise permitted to do so under federal or state law.

(d)(1) There is established a child care working group, chaired by the commissioner of the department of children and families or designee, to make recommendations to the commissioner as to e whether program directors and staff working at licensed child care facilities shall have the right to choose a representative organization for purposes of negotiating with the state about the subjects set forth in subsection (a) of this section.

(2) The working group shall be established no later than July 1, 2012 and shall consist of eleven persons appointed by the Governor, one of which will be the commissioner of the department of children and families or designee, one of which shall be the executive director of the Vermont Labor Relations Board or designee, one of which shall be the executive director of Building Bright Futures or designee, two of which shall be center-based program directors, three of which shall be center-based teachers, one of which shall be a representative of a parent organization, one of which shall be a representative of Voices for Vermont's Children, and one of which shall be a representative of Kids Are Priority One Coalition

(3) The commissioner of the department of children and families shall report the working group's findings arid recommendations to the Governor and the General Assembly on or before November 1, 2012.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as moved by Senator McCormack? Senator Campbell 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 McCormack was *not germane* to the bill and therefore could not be considered by the Senate.

The President *overruled* the point of order and ruled that the proposal of amendment was *germane* in that the proposal of amendment related to the spending of state funds and, although provisions dealt with policy, taken in the entirety, and as currently drafted, the amendment was germane to the appropriations bill.

Thereupon the question, Shall the Senate proposal of amendment be amended as proposed by Senator McCormack?, Senator Snelling moved to substitute a proposal of amendment for the proposal of amendment of Senator McCormack as follows:

By adding a new section to be numbered Sec. E.318.2 to read as follows:

Sec. E.318.2 CHILD CARE IMPROVEMENT WORKING GROUP

(a)(1) By July 1, 2012, the commissioner of the department of children and families shall convene a working group to study the following issues and to report to the general assembly regarding:

(A) How to increase state subsidies for child care services.

(B) How to increase participation by child care providers in the STARS program.

(C) How to improve participation by child care providers in the development of state child care regulations.

(D) An analysis of the number of child care providers receiving state subsidies.

(E) The projected fiscal impact of allowing child care providers to bargain collectively with the state, including the impact of such bargaining on subsidy rates, an analysis of what other states have done regarding child care provider collective bargaining and the fiscal impact of collective bargaining in those states, and an analysis of any legal implications of allowing child care providers to bargain collectively with the state.

(2) The working group may utilize the services of other state agencies and departments, the joint fiscal office, and the office of legislative council in preparing its report and recommendations.

(b) In addition to any other members appointed to the working group by the commissioner, the commissioner shall appoint the following:

(1) Two registered family day care home providers.

(2) Two licensed family child care home providers.

(3) Two legally exempt child care providers.

(4) Two employees of licensed child care centers.

(5) Two employees of nonprofit child care centers.

(6) One representative from the Vermont Business Roundtable.

(c) The working group shall submit its findings and recommendations to the house committees on appropriations, on commerce and economic development, on general, housing and military affairs, and on human services and the senate committees on appropriations, on economic development, housing and general affairs, and on health and welfare by January 15, 2013.

Was agreed to on a roll call, Yeas 16, Nays 15.

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

Roll Call

Those Senators who voted in the affirmative were: Ayer, Benning, Brock, Campbell, Carris, Flory, Hartwell, Illuzzi, Kitchel, Mazza, Miller, Mullin, Nitka, Sears, Snelling.

Those Senators who voted in the negative were: Ashe, Baruth, Cummings, Doyle, Fox, Galbraith, Giard, Kittell, Lyons, MacDonald, McCormack, Pollina, Starr, Westman, White.

There being a tie, the Secretary took the casting vote of the President, who voted "Yea".

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senator McCormack, as substituted?, Senator Kittell moved to amend the proposal of amendment in Sec. E.318.2, CHILD CARE IMPROVEMENT WORKING GROUP, by adding subsection (d) to read:

(d) On July 1, 2013, registered family day care home providers, licensed family child care home providers, and legally exempt child care providers shall have the right to organize, form, join, or assist a union and, once an exclusive representative is selected, to negotiate a legally binding agreement with the state. On July 1, 2013, program directors and staff of licensed child care centers shall have the right to participate in a group that shall select a representative for the purpose of negotiating with the state an agreement to improve the delivery and quality of early education.

Thereupon, Senator Kittell requested and was granted leave to withdraw the proposal of amendment.

Thereupon, the recurring question, Shall the Senate proposal of amendment be amended as proposed by Senator McCormack as substituted?, was decided in the affirmative, Yeas 21, Nays 9.

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

Roll Call

Those Senators who voted in the affirmative were: Ayer, Benning, Brock, Campbell, Carris, Doyle, Flory, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, Mazza, McCormack, Miller, Mullin, Nitka, Sears, Snelling, Westman, White.

Those Senators who voted in the negative were: Ashe, Baruth, Cummings, Fox, Galbraith, Giard, MacDonald, Pollina, Starr.

Senator Kittell, moved that the Senate proposal of amendment be amended as follows:

In Sec. E.318.2, CHILD CARE IMPROVEMENT WORKING GROUP, by adding subsection (d) to read as follows:

(d) On July 1, 2013, registered family day care home providers, licensed family child care home providers, and legally exempt child care providers shall have the right to organize, form, join, or assist a union and, once an exclusive representative is selected, to negotiate a legally binding agreement with the state related to child care subsidy reimbursement rates and rules, professional development and training, grievance procedures, and a mechanism for dues collection. On July 1, 2013, program directors and staff of licensed child care centers shall have the right to participate in a group that shall select a representative for the purpose of negotiating with the state an agreement to improve the delivery and quality of early education.

Which was agreed to on a roll call, Yeas 16, Nays 13.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Cummings, Doyle, Fox, Galbraith, Giard, Kittell, Lyons, MacDonald, McCormack, Pollina, Starr, Westman, White.

Those Senators who voted in the negative were: Benning, Brock, Campbell, Carris, Flory, Hartwell, Illuzzi, Kitchel, Mazza, Miller, Mullin, Nitka, Snelling.

The Senator absent and not voting was: Sears.

Senator Flory, moved that the Senate proposal of amendment be amended as follows: In Sec. D.108.1(a) after the words "in fiscal year 2013" by inserting the following: and in fiscal year 2014 $3,000,000 is reserved for possible transfer to the state insurance liability fund

Which was agreed to.

Senators Benning, Brock, Carris, Galbraith, Hartwell, Kitchel, McCormack and Starr move that the Senate proposal of amendment be amended as follows:

First: By adding two new sections, to be numbered Secs. E.720 and E.720.1, to read as follows:

Sec. E.720. 3 V.S.A. chapter 4 is added to read:

CHAPTER 4. MORATORIUM ON NEW WIND GENERATION

§ 75. MORATORIUM ON NEW WIND GENERATION

Notwithstanding any other provision of law, no agency of the state, including the public service board and the agency of natural resources, shall issue a land use, siting, or environmental permit, certificate, or other approval authorizing the construction or operation of any wind generation plant with a plant capacity greater than 2.2 megawatts. For the purpose of this chapter, "plant" and "plant capacity" are as defined in 30 V.S.A. § 8002.

§ 76. REPEAL

This chapter shall be repealed three years from its effective date.

Sec. E.720.1. REPORT; REVIEW OF NEW WIND GENERATION PLANTS; APPROPRIATION

The secretary of natural resources, in consultation with the commissioner of public service, shall consider whether new wind generation plants with a plant capacity greater than 2.2 megawatts should be reviewed under 30 V.S.A. § 248 (new gas and electric purchases, investments and facilities; certificate of public good), under 10 V.S.A. chapter 151 (Act 250), or under another process for approving such plants that will ensure protection of the state's communities and natural resources, and if so, what the scope and criteria of that other process should be. The secretary of natural resources and the commissioner of public service shall file a report containing their findings and recommendations with the house and senate committees on natural resources and energy no later

than January 15, 2013. For the purpose of this section, the sum of $5,000.00 is appropriated to the agency of natural resources for fiscal year 2013.

Second: In Sec. F.100 (effective dates; implementation), by adding a new subsection (b) to read as follows:

(b) Secs. E.720 (moratorium on new wind generation) and E.720.1 (report; review of new wind generation plants; appropriation) of this act shall take effect on passage.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senators Benning, Brock, Carris, Galbraith, Hartwell, Kitchel, McCormack and Starr?, Senator Benning requested and granted leave to withdraw the proposal of amendment.

Senator Ayer, moved that the Senate proposal of amendment be amended as follows:

In Sec. E.308.1, in subsection (a), preceding "$4,400,000" by inserting at least, preceding "$1,100,000" by inserting at least, and by adding, at the end of the second sentence, before the period the following: and shall present their suggested investments for review and comment by the health access oversight committee

Which was agreed to.

Senator Illuzzi and Galbraith, moved that the Senate proposal of amendment be amended by adding Sec. C. 102 to read as follows:

C. 102. STUDY OF STATE OWNERSHIP INTEREST IN VERMONT'S TRANSMISSION ASSETS

(a) In Docket No. 7770 (regarding the acquisition of Central Vermont Public Service Corporation [CVPS] by Gaz Métro and the merger of CVPS with Green Mountain Power Corporation), the public service board shall not issue a final order until after it has received the study and recommendation required under subsection (b) of this section and, if the study recommends the state acquire an ownership interest in Vermont's high-voltage bulk electric transmission assets, which are currently owned and financed by Vermont Transco, LLC (Transco), then the board shall include in its final order a condition giving the state of Vermont the option to acquire by legislative enactment an ownership interest in those assets at fair market or book value, whichever is less. Notice of intent to exercise the option shall be provided by the General Assembly to Transco or its successor in interest not later than the end of the 72nd biennial session or June 1, 2014, whichever is sooner.

(b) The joint fiscal office shall study whether the state's financial interests would be enhanced by acquiring an ownership interest in Transco, financed in

whole or in part with private activity or general obligation bonds or by acquiring or assuming an equal amount of debt and, if so, make a recommendation on a specific level of ownership. The joint fiscal office may retain the services of a financial advisor to conduct the study and make the recommendation required by this subsection. The joint fiscal office shall submit the study and recommendation to the public service board, the department of public service, and the senate committees on economic development, housing, and general affairs, on finance, and on natural resources and energy, and the house committees on commerce and economic development and on natural resources and energy not later than September 1, 2013.

(c) In fiscal year 2012, the sum of $10,000.00 shall be transferred from the general fund appropriation to the legislature to the joint fiscal office to cover the costs of the study required by this section. Any remaining reasonable costs shall be reimbursed by the petitioners in Docket No. 7770 per order of the public service board.

Which was disagreed to on a roll call Yeas, 8, Nays 20.

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, Baruth, Galbraith, Giard, Illuzzi, McCormack, Pollina, Starr.

Those Senators who voted in the negative were: Ayer, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, Miller, Mullin, Nitka, Snelling, Westman, White.

Those Senators absent and not voting were: Fox, Sears.

****After the vote was closed, Senator Sears upon entering the Chamber addressed the Chair, and on motion of Senator Campbell, his remarks were ordered enter in the Journal, and are as follows:

"Mr. President:

"I would have voted no"

Senators Benning, Brock, Carris, Galbraith, Hartwell, Kitchel, McCormack and Starr, moved that the Senate proposal of amendment be amended as follows:

First: By adding two new sections, to be numbered Secs. E.720 and E.720.1, to read as follows:

Sec. E.720. 3 V.S.A. chapter 4 is added to read:

CHAPTER 4. MORATORIUM ON NEW WIND GENERATION

§ 75. MORATORIUM ON NEW WIND GENERATION

Notwithstanding any other provision of law, no agency of the state, including the public service board and the agency of natural resources, shall issue a land use, siting, or environmental permit, certificate, or other approval authorizing the construction or operation of any wind generation plant with a plant capacity greater than 2.2 megawatts. For the purpose of this chapter, "plant" and "plant capacity" are as defined in 30 V.S.A. § 8002.

§ 76. APPLICABILITY; REPEAL

(a) This chapter shall apply to wind generation plants for which the first application for a permit, certificate or other approval described in section 75 of this title is filed on or after May 1, 2012.

(b) This chapter shall be repealed two years from its effective date.

Sec. E.720.1. REPORT; REVIEW OF NEW WIND GENERATION PLANTS; APPROPRIATION

The secretary of natural resources, in consultation with the commissioner of public service, shall consider whether new wind generation plants with a plant capacity greater than 2.2 megawatts should be reviewed under 30 V.S.A. § 248 (new gas and electric purchases, investments and facilities; certificate of public good), under 10 V.S.A. chapter 151 (Act 250), or under another process for approving such plants that will ensure protection of the state's communities and natural resources, and if so, what the scope and criteria of that other process should be. The secretary of natural resources and the commissioner of public service shall file a report containing their findings and recommendations with the house and senate committees on natural resources and energy no later than January 15, 2013. For the purpose of this section, the sum of $5,000.00 is appropriated to the agency of natural resources from the general fund for fiscal year 2013.

Second: In Sec. F.100 (effective dates; implementation), by adding a new subsection (b) to read as follows:

(b) Secs. E.720 (moratorium on new wind generation) and E.720.1 (report; review of new wind generation plants; appropriation) of this act shall take effect on passage.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as moved by Senators Benning, Brock, Carris, Galbraith, Hartwell, Kitchel, McCormack and Starr? 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 Senators Benning, Brock, Carris, Galbraith, Hartwell, Kitchel, McCormack and Starr was *not germane* to the bill and therefore could not be considered by the Senate.

The President *overruled* the point of order and ruled that the proposals of amendment were *germane* in that they related to the subject matter of the original bill regarding taken in its entirety, as currently drafted, the amendment was germane to the appropriation bill as it spent money and contained policy relating thereto.

Senator Sears, moved to substitute a proposal of amendment for the substitute of Senators Benning, Brock, Carris, Galbraith, Hartwell, Kitchel, McCormack and Starr as follows:

By striking out Sec. B.234.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as moved by Senator Sears? Senator Galbraith raised a *point of order* under Sec. 402 of Mason's Manual of Legislative Procedure on the grounds that substitute offered by Senator Sears was *not germane* to the proposal of amendment under consideration and therefore could not be considered by the Senate.

Thereupon, the President *sustained* the point of order and declared that the proposal of amendment offered by Senator Sears could *not* be considered by the Senate.

Thereupon, the question, Shall the Senate proposal of amendment be amended as proposed by Senators Benning, Brock, Carris, Galbraith, Hartwell, Kitchel, McCormack and Starr?, was disagreed to on a roll call, Yeas 11, Nays 18.

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: Benning, Brock, Campbell, Carris, Galbraith, Hartwell, Illuzzi, Kitchel, McCormack, Nitka, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Baruth, Cummings, Doyle, Flory, Giard, Kittell, Lyons, MacDonald, Mazza, Miller, Mullin, Pollina, Sears, Snelling, Westman, White.

The Senator absent and not voting was: Fox.

Thereupon, third reading of the bill was ordered on a roll call, Yeas 26, Nays 3.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Campbell, Carris, Cummings, Doyle, 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: Benning, Brock, Flory.

The Senator absent and not voting was: Fox.

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

In Sec. E.318.2, CHILD CARE IMPROVEMENT WORKING GROUP, by striking out subsection (d) in its entirety, and inserting in lieu thereof a new subsection (d), to read as follows:

(d) On July 1, 2013, if recommended by the child care improvement working group, registered family day care home providers, licensed family child care home providers, and legally exempt child care providers shall have the right to organize.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as moved by Senator Hartwell? Senator McCormack raised a *point of order* whether the amendment violated the rule against negating a previously taken action pursuant to Senate Rule 61.

Thereupon, the President *overruled* the point of order and ruled that the proposal of amendment offered by Senator Hartwell if adopted would not substantially negate the amendment previously adopted in violation of Senate Rule 61.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senator Hartwell?, Senator Hartwell, 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.

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

Committee Relieved of Further Consideration; Bill Committed

H. 794.

On motion of Senator Kitchel, the Committee on Appropriations was relieved of further consideration of House bill entitled:

An act relating to the management of search and rescue operations,

and the bill was committed to the Committee on Economic Development, Housing and General Affairs.

Adjournment

On motion of Senator Campbell, the Senate adjourned until nine o'clock in the morning on Friday, April 27, 2012.

FRIDAY, APRIL 27, 2012

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Bills Passed in Concurrence with Proposal of Amendment

House bills of the following titles were read the third time and passed in concurrence with proposal of amendment:

H. 556. An act relating to creating a private activity bond advisory committee.

H. 769. An act relating to department of environmental conservation fees.

H. 771. An act relating to making technical corrections and other miscellaneous changes to education law.

Proposals of Amendment; Third Reading Ordered

H. 780.

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

An act relating to compensation for certain state employees.

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:

* * * Exempt Employees in the Executive Branch * * *

Sec. 1. RESTORATION OF SALARY

(a) The amount equal to the three-percent reduction in salaries taken on July 1, 2010 by exempt employees in the executive branch who earned less than $60,000.00 annually may be restored to those salaries in fiscal year 2013.

(b) The amount equal to the five-percent reduction in salaries taken on January 1, 2009 by exempt employees in the executive branch who earned $60,000.00 or more annually may be restored to those salaries in fiscal year 2013.

(c) If the secretary of administration determines that the salary of an exempt employee in the executive branch who earns less than $60,000.00 annually and was hired or promoted after July 1, 2010 reflects a three-percent reduction in pay, the secretary may restore the amount equal to the three-percent reduction to that salary in fiscal year 2013.

(d) If the secretary of administration determines that the salary of an exempt employee in the executive branch who earns $60,000.00 or more annually and was hired or promoted after January 1, 2009 reflects a five-percent reduction in pay, the secretary may restore the amount equal to the five-percent reduction to that salary in fiscal year 2013.

Sec. 2. COST-OF-LIVING ADJUSTMENTS

(a) Exempt employees in the executive branch earning less than $60,000.00 annually may receive a cost-of-living adjustment in fiscal year 2013 of two percent.

(b) Exempt employees in the executive branch earning $60,000.00 or more annually may or may not receive a cost-of-living adjustment in fiscal year 2013.

(c) Exempt employees in the executive branch may receive a cost-of-living adjustment in fiscal year 2014.

Sec. 3. RATE OF ADJUSTMENT

For purposes of determining annual salary adjustments, special salary increases, and bonuses under 32 V.S.A. §§ 1003(b) and 1020(b), the "total rate of adjustment available to classified employees under the collective bargaining agreement" shall be deemed to be 2.85 percent in fiscal year 2013 and 3.7 percent in fiscal year 2014.

* * * Veterans' Home * * *

Sec. 4. 32 V.S.A. § 1003(b)(1) is amended to read:

(1) Heads of the following departments~~, offices~~ and agencies:

	~~Base Salary as of July 8, 2007~~	Base Salary as of July 1, 2012
(A) Administration	~~$90,745~~	$90,745
(B) Agriculture, food and markets	~~90,745~~	90,745
(C) ~~Banking, insurance, securities, and health care administration~~ Financial regulation	~~84,834~~	84,834
(D) Buildings and general services	~~84,834~~	84,834
(E) Children and families	~~84,834~~	84,834
(F) Commerce and community development	~~90,745~~	90,745
(G) Corrections	~~84,834~~	84,834
(H) Defender general	~~76,953~~	76,953
(I) Disabilities, aging, and independent living	~~84,834~~	84,834
(J) Economic, housing, and community development	~~76,953~~	76,953
(K) Education	~~84,834~~	84,834
(L) Environmental conservation	~~84,834~~	84,834
(M) Finance and management	~~84,834~~	84,834
(N) Fish and wildlife	~~76,953~~	76,953
(O) Forests, parks and recreation	~~76,953~~	76,953

(P) Health	~~84,834~~	84,834
(Q) ~~Housing and community affairs~~	~~76,953~~	[Repealed.]
(R) Human resources	~~84,834~~	84,834
(S) Human services	~~90,745~~	90,745
(T) Information and innovation	~~84,834~~	84,834
(U) Labor	~~84,834~~	84,834
(V) Libraries	~~76,953~~	76,953
(W) Liquor control	~~76,953~~	76,953
(X) Lottery	~~76,953~~	76,953
(Y) Mental Health	~~84,834~~	84,834
(Z) Military	~~84,834~~	84,834
(AA) Motor vehicles	~~76,953~~	76,953
(BB) Natural resources	~~90,745~~	90,745
(CC) Natural resources board chairperson	~~76,953~~	76,953
(DD) Public Safety	~~84,834~~	84,834
(EE) Public service	~~84,834~~	84,834
(FF) Taxes	~~84,834~~	84,834
(GG) Tourism and marketing	~~76,953~~	76,953
(HH) Transportation	~~90,745~~	90,745
(II) Vermont health access	~~84,834~~	84,834
(JJ) ~~Veterans~~ Veterans' home	~~76,953~~	84,834

* * * Judicial Branch * * *

Sec. 5. 32 V.S.A. § 1003(c) is amended to read:

(c) The annual salaries of the officers of the judicial branch named below shall be as follows:

	~~Annual Salary as of July 8, 2007~~	Annual Salary as of July 1, 2012	Annual Salary as of July 14, 2013
(1) Chief justice of supreme court	~~$135,421~~	$139,280	$144,434

(2) Each associate justice	~~129,245~~	132,928	137,847
(3) Administrative judge	~~129,245~~	132,928	137,847
(4) Each superior judge	~~122,867~~	126,369	131,045
(5) ~~Each district judge~~	~~122,867~~	[Repealed.]	
(6) Each magistrate	~~92,641~~	95,281	98,807
(7) Each judicial bureau hearing officer	~~92,641~~	95,281	98,807

Sec. 6. 32 V.S.A. § 1141 is amended to read:

§ 1141. ASSISTANT JUDGES

(a)(1) The compensation of each assistant judge of the superior court shall be ~~$142.04~~ $146.09 a day as of ~~July 8, 2007,~~ July 1, 2012 and $151.49 a day as of July 14, 2013 for time spent in the performance of official duties and necessary expenses as allowed to classified state employees. Compensation under this section shall be based on a two-hour minimum and hourly thereafter.

* * *

Sec. 7. 32 V.S.A. § 1142 is amended to read:

§ 1142. PROBATE JUDGES

(a) The annual salaries of the probate judges in the several probate districts, which shall be paid by the state in lieu of all fees or other compensation, shall be as follows:

		Annual Salary as of July 1, 2012	Annual Salary as of July 14, 2013
(1) Addison	~~$48,439~~	$49,820	$51,663
(2) Bennington	~~61,235~~	62,980	65,310
(3) Caledonia	~~42,956~~	44,180	45,815
(4) Chittenden	~~91,395~~	105,104	108,993
(5) Essex	~~12,000~~	12,342	12,799
(6) Franklin	~~48,439~~	49,820	51,663
(7) Grand Isle	~~12,000~~	12,342	12,799
(8) Lamoille	~~33,816~~	34,780	36,067

(9) Orange	~~40,214~~	41,360	42,890
(10) Orleans	~~39,300~~	40,420	41,916
(11) Rutland	~~86,825~~	89,300	92,604
(12) Washington	~~66,718~~	68,619	71,158
(13) Windham	~~53,923~~	55,460	57,512
(14) Windsor	~~73,116~~	75,200	77,982

* * *

(c) ~~A probate judge whose salary is less than 50 percent of the salary of the most highly paid probate judge shall be eligible only for the least expensive medical benefit plan option available to state employees or may apply the state share of the premium for which the judge is eligible toward the purchase of another state or private health insurance plan. A probate judge whose salary is less than 50 percent of the salary of the most highly paid probate judge may participate in other state employee benefit plans~~ All probate judges, regardless of the number of hours worked annually, shall be eligible to participate in all employee benefits that are available to exempt employees of the judicial department.

Sec. 8. COURT ADMINISTRATOR; WEIGHTED CASELOAD STUDY

The court administrator shall conduct a weighted caseload study of the probate division and report its findings to the senate and house committees on government operations by January 31, 2013.

* * * Sheriffs * * *

Sec. 9. 32 V.S.A. § 1182 is amended to read:

§ 1182. SHERIFFS

(a) The annual salaries of the sheriffs of all counties except Chittenden shall be ~~$65,812.00~~ $67,688.00 as of ~~July 8, 2007~~ July 1, 2012 and $70,192.00 as of July 14, 2013. The annual salary of the sheriff of Chittenden County shall be ~~$69,646.00~~ $71,631.00 as of ~~July 8, 2007~~ July 1, 2012 and $74,281.00 as of July 14, 2013.

(b) Compensation under subsection (a) of this section shall be reduced by 10 percent for any sheriff who has not completed the full-time training requirements under 20 V.S.A. § 2358.

* * * State's Attorneys * * *

Sec. 10. 32 V.S.A. § 1183 is amended to read:

§ 1183. STATE'S ATTORNEYS

(a) The annual salaries of state's attorneys shall be:

	~~Annual Salary as of July 8, 2007~~	Annual Salary as of July 1, 2012	Annual Salary as of July 14, 2013
(1) Addison County	~~$89,020~~	$91,557	$94,945
(2) Bennington County	~~89,020~~	91,557	94,945
(3) Caledonia County	~~89,020~~	91,557	94,945
(4) Chittenden County	~~93,069~~	95,721	99,263
(5) Essex County	~~66,766~~	68,669	71,210
(6) Franklin County	~~89,020~~	91,557	94,945
(7) Grand Isle County	~~66,766~~	68,669	71,210
(8) Lamoille County	~~89,020~~	91,557	94,945
(9) Orange County	~~89,020~~	91,557	94,945
(10) Orleans County	~~89,020~~	91,557	94,945
(11) Rutland County	~~89,020~~	91,557	94,945
(12) Washington County	~~89,020~~	91,557	94,945
(13) Windham County	~~89,020~~	91,557	94,945
(14) Windsor County	~~89,020~~	91,557	94,945

(b) In settlement of their accounts the commissioner of finance and management shall allow the state's attorneys the expense of printing briefs in cases in which the state's attorney has represented the state and their necessary and actual expenses under the rules and regulations pertaining to classified state employees.

* * * Appropriations * * *

Sec. 11. PAY ACT FUNDING

The compensation provided in this act shall be funded by appropriations made in H.781 of the 2011–2012 session of the general assembly in Sec. B.1200 for fiscal year 2013 and in Sec. BB.1200 for fiscal year 2014.

Sec. 12. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

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

Senator Illuzzi, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Government Operations with the following amendments thereto:

First: In Sec. 5, 32 V.S.A. § 1003(c), in subdivision (7) (each judicial bureau hearing officer), by striking out "95,281" and inserting in lieu thereof 92,641 and by striking out "98,807" and inserting in lieu thereof 92,641

Second: By striking out Sec. 12 (effective date) and inserting in lieu thereof the following:

* * * Study * * *

Sec. 12. COMMISSIONER OF HUMAN RESOURCES; JUSTICE SYSTEM; PAY PARITY REVIEW

(a) The commissioner of human resources, in consultation with the defender general, state's attorneys, and the court administrator, shall review and compare the annual salaries and professional duties of employees within the justice system, including the judicial bureau hearing officers and magistrates; the attorney general and assistant attorneys general; the defender general and public defenders; and the state's attorneys and deputy state's attorneys. Pursuant to the review and comparison, the commissioner shall specifically determine whether the salaries of the defender general, public defenders, and deputy state's attorneys should be increased relative to other employees within the justice system in light of the following factors: the complexity of their professional duties; the volume of their work, including, among other duties, court caseload; the quality of professional judgment and temperament expected by the public; and the rising cost of legal education and resulting loan debt.

(b) By March 15, 2013, the commissioner shall report his or her findings to the senate and house committees on appropriations and on government operations.

Sec. 13. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

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.

Senator White requested the recommendations of amendment of the Committee on Appropriations to the recommendation of proposal of amendment of the Committee on Government Operations be divided.

Thereupon the question, Shall the proposal of amendment of the Committee on Government Operations be amended as proposed by the Committee on Appropriations in the *first* instance?, was decided in the affirmative.

Thereupon the question, Shall the proposal of amendment of the Committee on Government Operations be amended as proposed by the Committee on Appropriations in the *second* instance?, was decided in the affirmative.

Thereupon, the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Government Operations, as amended?, was agreed to and third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 782.

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

An act relating to miscellaneous tax changes for 2012.

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:

* * * Administrative Provisions * * *

Sec. 1. 10 V.S.A. § 1942(b) is amended to read:

(b) There is assessed against every seller receiving more than $10,000.00 annually for the bulk retail sale of heating oil, kerosene, or other dyed diesel fuel sold in this state and ~~not used to propel a motor vehicle,~~ a licensing fee of one cent per gallon of such heating oil, kerosene, or other dyed diesel fuel. This fee shall be subject to the collection, administration, and enforcement provisions of 32 V.S.A. chapter 233 ~~of Title 32~~, and the fees collected under this subsection by the commissioner of taxes shall be deposited into the petroleum cleanup fund established pursuant to subsection 1941(a) of this title. The secretary, in consultation with the petroleum cleanup fund advisory committee established pursuant to subsection 1941(e) of this title, shall annually report to the legislature on the balance of the heating fuel account of the fund and shall make recommendations, if any, for changes to the program. The secretary shall also determine the unencumbered balance of the heating

fuel account of the fund as of May 15 of each year, and if the balance is equal to or greater than $3,000,000.00, then the licensing fee shall not be assessed in the upcoming fiscal year. The secretary shall promptly notify all sellers assessing this fee of the status of the fee for the upcoming fiscal year. This fee provision shall terminate April 1, 2016.

Sec. 2. PETROLEUM CLEANUP FUND OUTREACH

The secretary of agriculture, food and markets shall publish or broadcast in media designed to reach a farming audience information advising Vermont farmers of the existence of the petroleum cleanup fund under 10 V.S.A. chapter 59 and the terms of available assistance to farmers from that fund. The secretary shall publish or broadcast this information no fewer than four times each year that the fund is in existence.

Sec. 3. 14 V.S.A. § 3502(f) is added to read:

(f) Notwithstanding any other provision of law, a power of attorney appointing a representative to represent a person before the Vermont department of taxes that conforms to the requirements of the United States Internal Revenue Service for a valid power of attorney and declaration of representative pursuant to 25 C.F.R. § 601.503 shall be deemed to be legally executed and shall be of the same force and effect for purposes of representation before the department of taxes as if executed in the manner prescribed in this chapter.

Sec. 4. 32 V.S.A. § 3102(e) is amended to read:

(e) The commissioner may, in his or her discretion and subject to such conditions and requirements as he or she may provide, including any confidentiality requirements of the Internal Revenue Service, disclose a return or return information:

* * *

(14) to the office of the state treasurer, only in the form of mailing labels, with only the last address known to the department of taxes of any person identified to the department by the treasurer by name and Social Security number, for the treasurer's use in notifying owners of unclaimed property; and

(15) to the department of liquor control provided that the information is limited to information concerning the sales and use tax and meals and rooms tax filing history with respect to the most recent five years of a person seeking a liquor license or a renewal of a liquor license.

Sec. 5. 32 V.S.A. § 3102(j) and (k) are added to read:

(j) Tax bills prepared by a municipality under subdivision 5402(b)(1) of this title showing only the amount of total tax due shall not be considered confidential return information under this section. For the purposes of calculating adjustments under chapter 154 of this title, information provided by the commissioner to a municipality under subsection 6066a(a) of this title and information provided by the municipality to a taxpayer under subsection 6066a(f) shall be considered confidential return information under this section.

(k) Notwithstanding subsection (j) of this section, the commissioner or a municipal official acting as his or her agent may provide the information in subsection 6066a(f) of this title to the following people without incurring liability under this section:

(1) an escrow agent, the owner of the property to which the adjustment applies, a town auditor, or a person hired by the town to serve as an auditor;

(2) a lawyer, including a paralegal or assistant of the lawyer, an employee or agent of a financial institution as that term is defined in 8 V.S.A. § 11101, a realtor, or a certified public accountant as that term is defined in 26 V.S.A. § 13(12) who represents that he or she has a need for the information as it pertains to a real estate transaction or to a client or customer relationship; and

(3) any other person as long as the taxpayer has filed a written consent to such disclosure with the municipality.

Sec. 6. 32 V.S.A. § 3206 is added to read:

§ 3206. RECOMMENDATION FOR EXTRAORDINARY RELIEF

(a) The taxpayer advocate may make a written recommendation for extraordinary relief to the commissioner under the provisions of this section. A recommendation for extraordinary relief may be made only in response to a request from a taxpayer and after a thorough investigation of the taxpayer's circumstances by the taxpayer advocate which results in findings by the taxpayer advocate that:

(1) Vermont tax laws apply to the taxpayer's circumstances in a way that is unfair and unforeseen or that results in significant hardship; and

(2) the taxpayer has no available appeal rights or administrative remedies to correct the issue that led to such unfair result or hardship.

(b) For purposes of this section, "extraordinary relief" means a remedy that is within the power of the commissioner to grant under this title, a remedy that compensates for the result of inaccurate classification of property as homestead

or nonresidential pursuant to section 5410 of this title through no fault of the taxpayer, or a remedy that makes changes to a taxpayer's property tax adjustment or renter rebate claim necessary to remedy the problem identified by the taxpayer advocate.

(c) Notwithstanding any other provision of law, if in response to the taxpayer advocate's recommendation, the commissioner determines that the taxpayer should receive a refund or other monetary adjustment, the commissioner shall certify that amount to the commissioner of finance and management who shall issue his or her warrant in favor of the taxpayer for payment by the treasurer from the appropriate fund.

(d) A recommendation for extraordinary relief shall be in writing, shall be addressed to the commissioner, and shall include a description of the problem sought to be remedied along with specific recommendations to the commissioner. The taxpayer advocate's decision to make or not make a recommendation for extraordinary relief shall be final and not subject to review.

(e) The commissioner may choose to act on the recommendation of the taxpayer advocate, not act on the recommendation, or act on part of the taxpayer advocate's recommendation, and the commissioner's decision shall be final and not subject to any further review. Nothing in this section shall be construed to limit any other power or authority granted to the commissioner in this title.

Sec. 7. 32 V.S.A. § 5824 is amended to read:

§ 5824. ADOPTION OF FEDERAL INCOME TAX LAWS

The statutes of the United States relating to the federal income tax, as in effect for taxable year ~~2010~~ 2011, but without regard to federal income tax rates under Section 1 of the Internal Revenue Code, are hereby adopted for the purpose of computing the tax liability under this chapter.

Sec. 8. 32 V.S.A. § 6061(5) is amended to read:

(5) "Modified adjusted gross income" means "federal adjusted gross income":

(A) before the deduction of any trade or business loss, loss from a partnership, loss from a small business or "subchapter S" corporation, loss from a rental property, or capital loss, except that in the case of a business which sells a business property with respect to which it is required, under the Internal Revenue Code, to report a capital gain, a business loss incurred in the same tax year with respect to the same business may be netted against such

capital gain, and except that a business loss incurred in the same tax year with respect to a different business may be netted against any business gain;

Sec. 9. 32 V.S.A. § 6066a(f) is amended to read:

(f) Property tax bills.

(1) For individuals and amounts stated in the notice to towns on July 1, municipalities shall ~~include on the~~ create and send to taxpayers a homestead property tax bill ~~notice to the taxpayer of~~, separate from the bill required under subdivision 5402(b)(1) of this title, providing the total amount allocated to payment of homestead education property tax liabilities and notice of the balance due. Municipalities shall apply the amount allocated under this chapter to current-year property taxes in equal amounts to each of the taxpayers' property tax installments that include education taxes.

* * *

Sec. 10. 32 V.S.A. § 7475 is amended to read:

§ 7475. ADOPTION OF FEDERAL ESTATE AND GIFT TAX LAWS

The laws of the United States, relating to federal estate and gift taxes as in effect on ~~January 1, 2009~~ December 31, 2011, are hereby adopted for the purpose of computing the tax liability under this chapter, except:

(1) the credit for state death taxes shall remain as provided for under Sections 2011 and 2604 of the Internal Revenue Code as in effect on January 1, 2001;

(2) the applicable credit amount shall remain as provided for under Section 2010 of the Internal Revenue Code as in effect on January 1, 2008; and

(3) the deduction for state death taxes under Section 2058 of the Internal Revenue Code shall not apply.

Sec. 11. Sec. 1(c) of No. 71 of the Acts of the 2011 Adj. Sess. (2012) is amended to read:

(c) Use. ~~Residents of the state of Vermont may display an approved commemorative plate on a motor vehicle registered as a pleasure car and on motor trucks registered~~ An approved Vermont Strong commemorative plate may be displayed on a motor vehicle registered in Vermont as a pleasure car or on a motor truck registered in Vermont for less than 26,001 pounds (but excluding vehicles registered under the International Registration Plan) by covering the front registration plate with the commemorative plate any time from the effective date of this act until June 30, 2014. The regular front registration plate shall not be removed. The regular rear registration plate shall be in place and clearly visible at all times.

* * * Compliance Provisions * * *

Sec. 12. 7 V.S.A. § 421(c) is amended to read:

(c) For the purpose of ascertaining the amount of tax, on or before the tenth day of each calendar month, each bottler and wholesaler shall transmit to the commissioner of taxes, upon a form prepared and furnished by the commissioner, a statement or return under oath or affirmation showing the quantity of malt and vinous beverages sold by the bottler or wholesaler during the preceding calendar month, and report any other information requested by the commissioner accompanied by payment of the tax required by this section. The amount of tax computed under subsection (a) of this section shall be rounded to the nearest whole cent. At the same time this form is due, each bottler and wholesaler also shall transmit to the commissioner in electronic format a separate report showing the description, quantity, and price of malt and vinous beverages sold by the bottler or wholesaler to each retail dealer as defined in 7 V.S.A. § 2(18); provided, however, for direct sales to retail dealers by manufacturers or rectifiers of vinous beverages the report required by this subsection may be submitted in a nonelectronic format.

Sec. 13. 32 V.S.A. § 3108 is amended to read:

§ 3108. ESTABLISHMENT OF INTEREST RATE

(a) Not later than December 15 of each year, the commissioner shall establish a rate of interest applicable to ~~unpaid tax liabilities and~~ tax overpayments which shall be equal to the average prime rate charged by banks during the immediately preceding 12 months commencing on October 1 of the prior year, rounded upwards to the nearest ~~whole~~ quarter percent. ~~The~~ An annual rate thus established ~~may~~ shall be converted to a monthly rate which shall be rounded upwards to the nearest tenth of a percent. Not later than December 15 of each year, the commissioner shall establish annual and monthly rates of interest applicable to unpaid tax liabilities, which in each instance shall be equal to the annual and monthly rates established for tax overpayments plus 200 basis points. The ~~rate~~ rates established hereunder shall be effective on January 1 of the immediately following year. For purposes of this section, the term "prime rate charged by banks" shall mean the average predominate prime rate quoted by commercial banks to large businesses as determined by the board of governors of the Federal Reserve ~~System~~ Board.

(b) Whenever the commissioner is authorized or directed to pay interest on an overpayment of any taxes, nevertheless no interest shall be paid on such overpayment:

(1) where the commissioner finds that such overpayment was made with the intention or expectation of receiving a payment of interest thereon and for no other reason;

(2) for any period of time prior to~~:~~ 45 days after the date the return other than a corporate income tax return was due, including any extensions of time thereto~~;~~ or 45 days after the return was filed, whichever is the later date, and with respect to corporate income tax returns, for any period of time prior to 90 days after the date the return was due or 90 days after the return was filed, whichever is the later date;

* * *

* * * Income Tax Provisions * * *

Sec. 14. 32 V.S.A. § 5832(2) is amended to read:

(2)(A) $75.00 for small farm corporations. "Small farm corporation" means any corporation organized for the purpose of farming, which during the taxable year is owned solely by active participants in that farm business and receives less than $100,000.00 gross receipts from that farm operation, exclusive of any income from forest crops; or

(B) An amount determined in accordance with section 5832a of this title for a corporation which qualifies as and has elected to be taxed as a digital business entity for the taxable year; or

(C) ~~$250.00 for all other corporations~~ For C corporations with gross receipts from $0–$2,000,000.00, the greater of the amount determined under subdivision (1) of this section or $250.00; or

(D) For C corporations with gross receipts from $2,000,001.00–$5,000,000.00, the greater of the amount determined under subdivision (1) of this section or $500.00; or

(E) For C corporations with gross receipts greater than $5,000,000.00, the greater of the amount determined under subdivision (1) of this section or $750.00.

Sec. 15. 32 V.S.A. § 5920(g) is added to read:

(g)(1) Subsection (c) of this section shall not apply to a partnership or limited liability company engaged solely in the business of operating one or more federal new market tax credit projects in this state, provided such partnership or limited liability company shall:

(A) notify its nonresident partners or nonresident members of their obligation under subchapter 6 of this chapter to file Vermont personal income

tax returns and under subchapter 2 of this chapter to pay a tax on income earned from such investment;

(B) instruct each nonresident partner or nonresident member to pay such tax; and

(C) in addition to filing copies of all schedules K-1 with its partnership or limited liability company return, file with the commissioner segregated duplicate copies of all nonresident schedules K-1.

(2) For purposes of this subsection, "federal new market tax credit project" means a business that is intended primarily to benefit low income Vermont residents throughout the period of investment and that is subject to the following:

(A) has been determined by the United States Department of the Treasury to be a community development entity;

(B) has been awarded an allocation of federal new market tax credits under 26 U.S.C. § 45D; and

(C) is a partnership or limited liability corporation which is a pass-through of the federal new market tax credit to the nonresident investor.

Sec. 16. 32 V.S.A. § 5930b(c)(9) is amended to read:

(9) Incentive claims must be filed annually no later than the last day of April of each year of the utilization period. For a claim to be considered a timely filing and eligible for an incentive payment, all forms and workbooks must be complete and all underlying documentation, such as that required pursuant to subsection 5842(b) of this title, must be filed with the department of taxes. Incomplete claims may be considered to have been timely filed if a complete claim is filed within the time prescribed by the department of taxes. If a claim is not filed each year of the utilization period, any incentive installment previously paid shall be recaptured in accordance with subsection (d) of this section. The incentive return shall be subject to all provisions of this chapter governing the filing of tax returns. No interest shall be paid by the department of taxes for any reason with respect to incentives allowed under this section.

Sec. 17. 32 V.S.A. § 5930b(e) is amended to read:

(e) Reporting. By ~~May 1, 2008 and by May 1~~ September 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~~ authorized 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~~ and, with respect to each recipient, the date and amount of authorization, the calendar year or years in which the authorization is expected to be exercised, whether the authorization is active, and the date the authorization will expire. 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 following aggregate information: total number of claims and total incentive payments made in the current and prior claim years, the balance of credits not yet allocated, the ~~aggregate~~ number of qualifying new jobs created~~, the aggregate~~ and qualifying payroll of those jobs ~~and the identity of businesses whose applications were approved~~, and qualifying new capital investments. 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. 18. Sec. 3(c) of No. 184 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 2 of No. 52 of the Acts of 2011, 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 July 1, ~~2012~~ 2017, no new Vermont employment growth incentive (VEGI) awards under 32 V.S.A. § 5930b may be made. Any VEGI awards granted prior to July 1, ~~2012~~ 2017 may remain in effect until used.

Sec. 19. 32 V.S.A. § 5930u(g) is amended to read:

(g) In any fiscal year, the allocating agency may award up to $400,000.00 in total first-year credit allocations to all applicants for rental housing projects; and may award up to ~~$100,000.00~~ $300,000.00 per year for owner-occupied unit applicants. In any fiscal year, total first-year allocations plus succeeding-year deemed allocations shall not exceed ~~$2,500.000.00~~ $3,500,000.00.

Sec. 20. 32 V.S.A. § 5930bb(d) is added to read:

(d) Notwithstanding any other provision of this subchapter, qualified applicants may apply to the state board at any time prior to June 30, 2013 to obtain a tax credit not otherwise available under subsections 5930cc(a)–(c) of this title of 10 percent of qualified expenditures resulting from damage caused by a federally declared disaster in Vermont in 2011. The credit shall only be claimed against the taxpayer's state individual income tax under section 5822 of this title. To the extent that any allocated tax credit exceeds the taxpayer's tax liability for the first tax year in which the qualified project is completed, the taxpayer shall receive a refund equal to the unused portion of the tax credit. If within two years after the date of the credit allocation no claim for a tax credit or refund has been filed, the tax credit allocation shall be rescinded and recaptured pursuant to subdivision 5930ee(6) of this title. The total amount of tax credits available under this subsection shall not be less than $500,000.00 and not more than $700,000.00 and shall not be subject to the limitations contained in section 5930ee(2) of this subchapter.

Sec. 21. CREDIT LIMIT FOR FISCAL YEAR 2013

Notwithstanding any other provision of law, for fiscal year 2013 only, the limitation provided in 32 V.S.A. § 5930ee(1) shall be $2,200,000.00 instead of $1,700,000.00.

Sec. 21a. 32 V.S.A. § 9603(23) is amended to read:

(23) Transfers of leasehold or fee interests made to low income individuals by organizations qualifying under Section 501(c)(3) of the Internal Revenue Code of 1986 or from a wholly-owned subsidiary of such an organization when such a transfer is made concurrently with the transfer of an improvement located on the leasehold or fee property, or is a renewal of such a lease where the purpose of the lease is to provide affordable housing, or to ensure the continued affordability of such housing, or both.

* * * Property Tax Adjustment and Renter Rebate Provisions * * *

Sec. 22. 32 V.S.A. § 5410(b) is amended to read:

(b)(1) Annually on or before the due date for filing the Vermont income tax return, without extension, each homestead owner shall, on a form prescribed by the commissioner, which shall be verified under the pains and penalties of perjury, declare his or her homestead, if any, as of, or expected to be as of, April 1 of the year in which the declaration is made ~~for property that was acquired by the declarant or was made the declarant's homestead after April 1 of the previous year. The declaration of homestead shall remain in effect until the earlier of:~~

~~(A) the transfer of title of all or any portion of the homestead; or~~

~~(B) that time that the property or any portion of the property ceases to qualify as a homestead~~.

(2) Within 30 days of the transfer of title of all or any portion of the homestead, or upon any portion of the property ceasing to be a homestead, the declarant shall provide notice to the commissioner on a form to be prescribed by the commissioner.

Sec. 23. 32 V.S.A. § 6061(5)(D) is amended to read:

(D) without the inclusion of adjustments to total income except certain business expenses of reservists, one-half of self-employment tax paid, alimony paid, deductions for tuition and fees, ~~and~~ health insurance costs of self-employed individuals, and health savings account deductions; and

Sec. 24. 32 V.S.A. § 6066a is amended to read:

§ 6066a. DETERMINATION OF PROPERTY TAX ADJUSTMENTS

(a) Annually, the commissioner shall determine the property tax adjustment amount under section 6066 of this title, related to a homestead owned by the claimant. The commissioner shall notify the municipality in which the housesite is located of the amount of the property tax adjustment for the claimant for homestead property tax liabilities, on July 1 for ~~timely filed~~ timely filed claims and on ~~September 15~~ November 1 for late claims filed by ~~September 1~~ October 15. The tax adjustment of a claimant who was assessed property tax by a town which revised the dates of its fiscal year, however, is the excess of the property tax which was assessed in the last 12 months of the revised fiscal year, over the adjusted property tax of the claimant for the revised fiscal year as determined under section 6066 of this title, related to a homestead owned by the claimant.

* * *

(c) The commissioner shall notify the municipality of any claim and refund amounts unresolved by ~~September 15~~ November 1 at the time of final resolution, including adjudication if any; provided, however, that towns will not be notified of any additional adjustment amounts after ~~September 15~~ November 1 of the claim year, and such amounts shall be paid to the claimant by the commissioner.

* * *

(f) Property tax bills.

* * *

(2) For property tax adjustment amounts for which municipalities receive notice on or after ~~September 15~~ November 1, municipalities shall issue a new homestead property tax bill with notice to the taxpayer of the total amount allocated to payment of homestead property tax liabilities and notice of the balance due.

* * *

(g) Annually, on August 1 and on ~~September 15~~ November 1, the commissioner of taxes shall pay to each municipality the amount of property tax adjustment of which the municipality was notified on July 1 for the August 1 transfer, or ~~September 15~~ November 1 for the ~~September 15~~ November 1 transfer, related to municipal property tax on homesteads within that municipality, as determined by the commissioner of taxes.

Sec. 25. 32 V.S.A. § 6074 is amended to read:

§ 6074. AMENDMENT OF CERTAIN CLAIMS

At any time within three years after the date for filing claims under subsection 6068(a) of this chapter, a claimant who filed a claim by ~~September 1~~ October 15 may file to amend that claim to correct the amount of household income reported on that claim.

Sec. 26. 32 V.S.A. § 6068 is amended to read:

(a) A tax adjustment claim or request for allocation of an income tax refund to homestead property tax payment shall be filed with the commissioner on or before the due date for filing the Vermont income tax return, without extension, and shall describe the school district in which the homestead property is located and shall particularly describe the homestead property for which the adjustment or allocation is sought, including the school parcel account number prescribed in subsection 5404(b) of this title. A renter rebate claim shall be filed with the commissioner on or before the due date for filing the Vermont income tax return, without extension.

(b) Late-filing penalties. If the claimant fails to file a timely claim, the amount of the property tax adjustment under this chapter shall be reduced by $15.00, but not below $0.00, which shall be paid to the municipality for the cost of issuing an adjusted homestead property tax bill. No benefit shall be allowed in the calendar year unless the claim is filed with the commissioner on or before ~~September 1~~ October 15.

(c) No request for allocation of an income tax refund or for a renter rebate claim may be made after ~~September 1~~ October 15.

Sec. 27. 32 V.S.A. § 6067 is amended to read:

§ 6067. CREDIT LIMITATIONS

Only one individual per household per taxable year shall be entitled to a benefit under this chapter. An individual who received a homestead exemption or adjustment with respect to property taxes assessed by another state for the taxable year shall not be entitled to receive an adjustment under this chapter. No taxpayer shall receive an adjustment under subsection 6066(b) of this title in excess of $3,000.00. No taxpayer shall receive total adjustments under this chapter in excess of $8,000.00 related to any one property tax year.

Sec. 28. RENTER REBATE CLAIM

The office of legislative council is authorized to change references to "renter credit claim" in 32 V.S.A. chapter 154 to read "renter rebate claim."

Sec. 29. Sec. 51(b) of No. 160 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

(b) ~~The following sections of Title 32 relating to homestead education property tax income sensitivity adjustments are repealed for claims filed on and after January 1, 2013:~~

~~(1) 32 V.S.A. § 6061(5)(E) (requiring adjustment for interest and dividend income for purposes of calculating modified adjusted gross income).~~

~~(2) The amendments in this act to 32 V.S.A. § 6066(a) regarding the equalized value of a housesite in excess of $500,000.00~~ The amendments in this act related to 32 V.S.A. § 6066(a), regarding the equalized value of a housesite in excess of $500,000.00, are repealed on January 1, 2013.

Sec. 30. LANDLORD CERTIFICATES

The commissioner of taxes shall report to the senate committee on finance and the house committee on ways and means no later than January 15, 2013 on how to develop an electronic system for the reporting and issuance of the landlord certificate under 32 V.S.A. § 6069. The commissioner's report shall include recommendations for legislative changes to implement such a system.

* * * Property Tax Provisions * * *

Sec. 31. 27A V.S.A. § 1-105 is amended to read:

§ 1-105. SEPARATE TITLES AND TAXATION

(a) In a condominium or planned community:

(1) if there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate;

(2) if there is any unit owner other than a declarant, each unit shall be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights; provided, however, that if a portion of the common elements is located in a town other than the town in which the unit is located, the town in which the common elements are located may designate that portion of the common elements within its boundaries as a parcel for property tax assessment purposes and may tax each unit owner at an appraisal value pursuant to 32 V.S.A. § 3481.

* * *

Sec. 32. 32 V.S.A. § 3409 is amended to read:

§ 3409. PREPARATION OF PROPERTY MAPS

Consistent with available resources and pursuant to a memorandum of understanding entered into between the commissioner and the Vermont center for geographic information, the center shall provide regional planning commissions, state agencies, and the general public with orthophotographic maps of the state at a scale appropriate for the production and revision of town property maps. Periodically, such ~~maps~~ digital imagery shall be ~~revised and updated to reflect~~ updated to capture land use changes, new settlement patterns and such additional information as may have become available to the director or the center.

(1) The center shall supply to ~~the clerk and to the listers or assessors of~~ each town such ~~maps~~ orthophotographic imagery as ~~have~~ has been prepared by it of the total area of that town. Any map shall be available, without charge, for public inspection in the office of the town clerk to whom the map was supplied.

(2) ~~The state of Vermont shall retain the copyright of any map prepared by the Vermont mapping program, and the center and the Vermont mapping program shall jointly own the copyright to any map prepared on or after the effective date of this act.~~

~~(3) A person who, without the written authorization of the director and the center, copies, reprints, duplicates, sells, or attempts to sell any map prepared under this chapter shall be fined an amount not to exceed $1,000.00.~~

~~(4)~~ At a reasonable charge to be established by the center and the director, the center shall supply to any person or agency other than a town

clerk or lister a copy of any ~~map~~ digital format orthophotographic imagery ~~prepared~~ created under this section.

(3) Hardcopy or nondigital format orthophotographic imagery created under this section shall be available for public review at the state archives.

Sec. 33. 32 V.S.A. § 4301 is amended to read:

§ 4301. BASIS FOR COUNTY TAXES

(a) The equalized municipal property tax grand lists for each town, unorganized town and gore, and the unified towns and gores of Essex County shall be the basis of taxation for county purposes.

(b) Annually, on or before January 1, the director shall provide to each county treasurer the equalized municipal property tax grand list for each town, unorganized town, and gore, and the unified towns and gores of Essex County within the county. "Equalized municipal property tax grand list" in this section shall mean the equalized education property tax grand list as defined in chapter 135 of this title plus inventory, machinery and equipment subject to municipal tax in that municipality at its grand list value.

Sec. 34. 32 V.S.A. chapter 133, subchapter 5 is amended to read:

Subchapter 5. Assessment and Collection in ~~Unified~~ Unorganized Towns and Gores

* * *

Sec. 35. 32 V.S.A. § 5401(13) is amended to read:

(13) "District spending adjustment" means the greater of: one or a fraction in which the numerator is the district's education spending plus excess spending, per equalized pupil, for the school year; and the denominator is the base education amount for the school year, as defined in 16 V.S.A. § 4001. For a district that pays tuition to a public school or an approved independent school, or both, for all of its resident students in any year, and which has decided by a majority vote of its school board to opt into this provision, the district spending adjustment shall be the average of the district spending adjustment calculated under this subdivision for the previous year and for the current year. Any district opting for a two-year average under this subdivision may not opt out of such treatment, and the averaging shall continue until the district no longer qualifies for such treatment.

Sec. 36. FISCAL YEAR 2013 EDUCATION PROPERTY TAX RATE

(a) For fiscal year 2013 only, the education property tax imposed under 32 V.S.A. § 5402(a) shall be reduced from the rates of $1.59 and $1.10 and shall instead be at the following rates:

(1) the tax rate for nonresidential property shall be $1.38 per $100.00; and

(2) the tax rate for homestead property shall be $0.89 multiplied by the district spending adjustment for the municipality per $100.00 of equalized property value as most recently determined under 32 V.S.A. § 5405.

(b) For claims filed in 2013 only, "applicable percentage" in 32 V.S.A. § 6066(a)(2) shall be reduced from 2.0 percent and instead shall be 1.80 percent multiplied by the fiscal year 2013 district spending adjustment for the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than 1.80 percent.

Sec. 37. FISCAL YEAR 2013 BASE EDUCATION AMOUNT

Notwithstanding 16 V.S.A. § 4011(b) or any other provision of law, the base education amount for fiscal year 2013 shall be $8,723.00.

Sec. 38. SUPPLEMENTAL PROPERTY TAX RELIEF

Notwithstanding any other provision of law, on October 1, 2012, the commissioner shall determine the balance in the supplemental property tax relief fund and determine by how much the "applicable percentage" in 32 V.S.A. § 6066(a)(2) could be reduced if the entire balance of the fund was transferred to the education fund for that purpose, while maintaining the existing balance in the education fund. If the "applicable percentage" could be reduced by 0.1 of one percent or more for the upcoming fiscal year, the commissioner shall disregard 32 V.S.A. § 6075(b), and recommend in 32 V.S.A. § 5402(b) that the balance of the property tax relief fund be transferred to the education fund and the applicable percentage be lowered by the amount determined under that subsection, even if that recommendation would take the applicable percentage below 1.8 percent.

Sec. 39. 32 V.S.A. § 5402b(b) is amended to read:

(b) If the commissioner makes a recommendation to the general assembly to adjust the education tax rates under section 5402 of this title, the commissioner shall also recommend a proportional adjustment to the applicable percentage base for homestead income based adjustments under section 6066 of this title, but the applicable percentage base shall not be adjusted below ~~1.8~~ 1.7 percent.

* * * Current Use Provisions * * *

Sec. 40. 32 V.S.A. § 3752(5) is amended to read:

(5) "Development" means, for the purposes of determining whether a land use change tax is to be assessed under section 3757 of this chapter, the

construction of any building, road or other structure, or any mining, excavation or landfill activity. "Development" also means the subdivision of a parcel of land into two or more parcels, regardless of whether a change in use actually occurs, where one or more of the resulting parcels contains less than 25 acres each; but if subdivision is solely the result of a transfer to one or more of a spouse, parent, grandparent, child, grandchild, niece, nephew, or sibling of the transferor, or to the surviving spouse of any of the foregoing, then "development" shall not apply to any portion of the ~~newly created~~ newly created parcel or parcels which qualifies for enrollment and for which, within 30 days following the transfer, each transferee or transferor applies for reenrollment in the use value appraisal program. "Development" also means the cutting of timber on property appraised under this chapter at use value in a manner contrary to a forest or conservation management plan as provided for in subsection 3755(b) of this title during the remaining term of the plan, or contrary to the minimum acceptable standards for forest management if the plan has expired; or a change in the parcel or use of the parcel in violation of the conservation management standards established by the commissioner of forests, parks and recreation. The term "development" shall not include the construction, reconstruction, structural alteration, relocation, or enlargement of any building, road, or other structure for farming, logging, forestry, or conservation purposes, but shall include the subsequent commencement of a use of that building, road, or structure for other than farming, logging, or forestry purposes.

Sec. 41. 32 V.S.A. § 3753(b) is amended to read:

(b) The membership of the board shall consist of:

(1) The following persons or their designees:

* * *

(E) ~~Dean of the college of natural resources, agriculture and life sciences of the University of Vermont.~~ [Deleted.]

* * *

Sec. 42. 32 V.S.A. § 3755(b) is amended to read:

(b) Managed ~~forest land~~ forestland shall be eligible for use value appraisal under this subchapter only if:

(1) the land is subject to a forest management plan, or subject to a conservation management plan in the case of lands certified under 10 V.S.A. § 6306(b), which:

(A) is signed by the owner of ~~a tract~~ the parcel;

(B) ~~which~~ complies with subdivision 3752(9) of this title~~,~~;

(C) is filed with and approved by the department of forests, parks and recreation; and

(D) ~~by October 1, which~~ provides for continued conservation management or forest crop production on the ~~tract~~ parcel for ~~at least~~ ten years. ~~During a period of use value appraisal under this subchapter, a conservation or forest management plan for at least ten years, including the 12-month period beginning April 1 of the year for which use value appraisal is sought, signed by the owner, shall be on file with the department in such a manner and in such form as is prescribed by the department. Upon the~~ An initial forest management plan or conservation management plan must be filed with the department of forests, parks and recreation no later than October 1 and shall be effective for a ten-year period beginning the following April 1. Prior to expiration of a ~~ten year~~ ten-year plan and no later than April 1 of the year in which the plan expires, the owner shall file a new conservation or forest management plan for ~~at least~~ the next succeeding ten years to remain in the program.

* * *

* * * Wastewater permit provisions * * *

Sec. 43. 32 V.S.A. § 3752(5) is amended to read:

(5) "Development" means, for the purposes of determining whether a land use change tax is to be assessed under section 3757 of this chapter, the construction of any building, road or other structure, or any mining, excavation or landfill activity. "Development" also means the subdivision of a parcel of land into two or more parcels, regardless of whether a change in use actually occurs, where one or more of the resulting parcels contains less than 25 acres each; but if subdivision is solely the result of a transfer to one or more of a spouse, parent, grandparent, child, grandchild, niece, nephew, or sibling of the transferor, or to the surviving spouse of any of the foregoing, then "development" shall not apply to any portion of the newly created parcel or parcels which qualifies for enrollment and for which, within 30 days following the transfer, each transferee or transferor applies for reenrollment in the use value appraisal program. "Development" also means the cutting of timber on property appraised under this chapter at use value in a manner contrary to a forest or conservation management plan as provided for in subsection 3755(b) of this title during the remaining term of the plan, or contrary to the minimum acceptable standards for forest management if the plan has expired; or a change in the parcel or use of the parcel in violation of the conservation management standards established by the commissioner of forests, parks and recreation. Enrolled land is also considered "developed" under this section if a

wastewater system permit has been issued for the land pursuant to 10 V.S.A § 1973 and the commissioner of the department of forest, parks, and recreation has certified to the director that (1) the permit is contrary to a forest or conservation management plan or the minimum acceptable standards for forest management; (2) use of the parcel would violate the conservation management standards; or (3) after consulting with the secretary of agriculture, the permit is not part of a farm operation. The commissioner of forests, parks and recreation may develop standards regarding circumstances under which land with wastewater system and potable water permits will not be certified to the director. The term "development" shall not include the construction, reconstruction, structural alteration, relocation, issuance of a wastewater system permit under 10 V.S.A § 1973 or enlargement of any building, road, or other structure for farming, logging, forestry, or conservation purposes, but shall include the subsequent commencement of a use of that building, road, ~~or~~ structure or wastewater system permit for other than farming, logging, or forestry purposes.

Sec. 44. 32 V.S.A. § 3757 is amended to read:

§ 3757. LAND USE CHANGE TAX

(a) Land which has been classified as agricultural land or managed forest land pursuant to this chapter shall be subject to a land use change tax ~~on the earliest of either~~ upon 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.

* * *

(d) The land use change tax shall be due and payable by the owner 30 days after the tax notice is mailed to the taxpayer unless, in the case of land use change tax due with respect to development occurring as a result of the issuance of a wastewater system permit, the landowner enters into a payment agreement with the commissioner of taxes. The tax shall be paid to the commissioner for deposit into the general fund. The commissioner shall issue a form to the assessing officials which shall provide for a description of the land developed, the amount of tax payable, and the fair market value of the land at the time of development or withdrawal from use value appraisal. The owner shall fill out the form and shall sign it under the penalty of perjury. After receipt of payment, the commissioner shall furnish the owner with one copy, shall retain one copy and shall forward one copy to the local assessing officials and one to the register of deeds of the municipality in which the land is located. Thereafter, the land which has been developed shall be appraised and listed at its full fair market value in accordance with the provisions of chapter 121 of this title.

* * *

Sec. 45. 32 V.S.A. § 3758(d) is amended to read:

(d) Any owner who is aggrieved by a decision of the department of forests, parks and recreation concerning the filing of an adverse inspection report or denial of approval of a management plan or certification to the director with respect to land for which a wastewater permit is issued may appeal to the commissioner of the department of forests, parks and recreation. An appeal of this decision of the commissioner may be taken to the superior court in the same manner and under the same procedures as an appeal from a decision of a board of civil authority, as set forth in chapter 131, subchapter 2 ~~of chapter 131~~ of this title.

Sec. 46. REPEAL

Sec. 13h of No. 45 of the Acts of 2011 (tracking wastewater permits) is repealed.

* * * Sales and Use Tax Provisions * * *

Sec. 47. 24 V.S.A. § 138(g) is added to read:

(g) If the legislative body of a municipality by a majority vote recommends, or by petition of ten percent of the voters of a municipality recommends, the voters of a municipality may, at an annual or special meeting warned for that purpose, by a majority vote of those present and voting, rescind any or all of the local option taxes assessed under subsection (b) of this section.

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

(48) Sales of tangible personal property sold by an auctioneer licensed under 26 V.S.A. 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 and provided that the property was obtained by the owner, through purchase or otherwise, for his or her own use.

Sec. 49. 32 V.S.A. § 9771 is amended to read:

§ 9771. IMPOSITION OF SALES TAX

Except as otherwise provided in this chapter, there is imposed a tax on retail sales in the state. The tax shall be paid at the rate of six percent of the sales price charged for but in no case shall any one transaction be taxed under more than one of the following:

* * *

(8) Specified digital products transferred electronically to an end user regardless of whether for permanent use or less than permanent use and regardless of whether or not conditioned upon continued payment from the purchaser.

Sec. 50. 32 V.S.A. § 9817(a) is amended to read:

(a) Any aggrieved taxpayer may, within 30 days after any decision, order, finding, assessment or action of the commissioner made under this chapter, appeal to the Washington superior court or the superior court of the county in which the taxpayer resides or has a place of business. The appellant shall give security, approved by the commissioner, conditioned to pay the tax levied, if it remains unpaid, with interest and costs, as set forth in subsection (c) of this section.

Sec. 51. TEMPORARY MORATORIUM ON ENFORCEMENT OF SALES TAX ON PREWRITTEN SOFTWARE ACCESSED REMOTELY

Notwithstanding the imposition of sales and use tax on prewritten computer software by 32 V.S.A. chapter 233, the department of taxes shall not assess tax on charges for remotely accessed software made after December 31, 2006 and before January 1, 2014, and taxes paid on such charges shall be refunded upon request if within the statute of limitations and documented to the satisfaction of the commissioner. "Charges for remotely accessed software" means charges for the right to access and use prewritten software run on underlying infrastructure that is not managed or controlled by the consumer or a related company. Enforcement of the sales and use tax imposed on the purchase of

specified digital products pursuant to 32 V.S.A. § 9771(8) is not affected by this section.

Sec. 52. STUDY COMMITTEE ON CLOUD COMPUTING

(a) Creation of committee. There is created a cloud computing study committee to examine issues related to the taxation of software as a service.

(b) Membership. The committee shall be composed of five members. Two members of the committee shall be members of the general assembly. The committee on committees of the senate shall appoint one member of the senate and the speaker of the house shall appoint one member of the house. The committee on committees shall appoint a chair of the study committee who shall be a committee member who is also a member of the general assembly. Three members of the committee shall be as follows:

(1) the governor shall appoint a member representing consumers of software and software services;

(2) the secretary of administration or his or her designee;

(3) the commissioner of taxes or his or her designee;

(c) Powers and duties.

(1) The committee established by this section shall study the taxation of software as a service, including the character of sales transactions involving software accessed remotely, the sourcing of such sales, and experience of other jurisdictions in taxing software as a service.

(2) For purposes of its study of these issues, the committee shall have the assistance of the office of legislative council, the joint fiscal office, and the department of taxes.

(d) Report. By January 15, 2013, the committee shall report to the senate committee on finance and the house committee on ways and means on its findings and any recommendations for legislative action.

(e) 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.

Sec. 53. SECONDARY PACKAGING

The commissioner of taxes shall study the taxation and exemption of secondary packaging machinery and no later than January 15, 2013 shall report to the senate committee on finance and the house committee on ways and means on its findings. The commissioner shall specifically examine and report

on the various types of secondary machinery typically used in manufacturing, the use of secondary packaging machinery in Vermont, the different options for exempting secondary packaging machinery that are administratively feasible, and how other states tax or exempt secondary packaging machinery.

Sec. 54. SALES AND USE TAX REBATES FOR MOBILE HOMES

(a) Notwithstanding the provisions of 32 V.S.A. chapters 231 and 233 and 24 V.S.A. § 138, sales and use tax, local option sales tax, or property transfer tax shall not apply to sales to individuals of mobile homes purchased after April 1, 2011 but before July 1, 2012 to replace a mobile home that was damaged or destroyed as a result of flooding and storm damage that occurred as a result of a federally declared disaster in Vermont in 2011.

(b) Any resident of Vermont who purchased a mobile home that meets the criteria under subsection (a) of this section shall be entitled to a reimbursement in the amount of any sales and use tax, local option sales tax, or property transfer tax paid.

(c) The department of taxes may establish standards and procedures necessary to implement this section. The department of taxes shall reimburse taxpayers that qualify under subsection (a) of this section.

* * * Electrical energy generating tax provisions * * *

Sec. 55. REPEAL

32 V.S.A. § 5402a (electric generating plant education property tax) is repealed.

Sec. 56. 32 V.S.A § 8661 is amended to read:

§ 8661. TAX LEVY

(a) There is hereby assessed ~~each year~~ upon electric generating plants constructed in the state subsequent to July 1, 1965, and having a name plate generating capacity of 200,000 kilowatts, or more, a state tax ~~in accordance with the following table:~~ at the rate of $0.0025 per kWh of electrical energy produced.

~~If megawatt hour production is:~~	~~tax is:~~
~~Less than 2,300,000 megawatt hours~~	~~$2.0 million~~
~~2,300,000 to 3,800,000 megawatt hours~~	~~$2.0 million plus $0.40 per megawatt hour over 2,300,000~~
~~3,800,001 to 4,200,000 megawatt hours~~	~~$2.6 million~~

~~Over 4,200,000 megawatt hours~~	~~$2.6 million plus $0.40 per megawatt hour over 4,200,000~~

~~For purposes of this section, "megawatt hour production" means the average of net production for sale in the three most recent preceding calendar years.~~ The tax imposed by this section shall be paid to the commissioner ~~in equal quarterly installments~~ on the electrical energy generated in the prior quarter on or before the 25th day of the calendar month succeeding the quarter ending on the last day of March, June, September, and December by the person or corporation then owning or operating such electric generating plant.

(b) ~~If an entity subject to this tax generates no electricity during the tax year due to termination or expiration of a necessary license, or due to permanent cessation of operations, no tax shall be due for that year.~~

~~(c)~~ A person or corporation failing to make returns or pay the tax imposed by this section within the time required shall be subject to and governed by the provisions of sections 3202~~, 3203, 5868,~~ and ~~5873~~ 3203 of this title.

Sec. 57. TRANSITION

An electric generating plant shall receive a credit against the tax under 32 V.S.A. § 8661 for any sums it has irrevocably paid to the state after March 21, 2012 under agreements for operation under a certificate of public good or pending a public service board proceeding for the issuance of a certificate of public good. Any credit under this section shall be applied to any current liability of the taxpayer, and if the amount of the credit exceeds the amount of the current liability, the credit may be carried forward to the next return period.

* * * Meals and rooms tax provisions * * *

Sec. 58. 32 V.S.A. § 9202(3) is amended to read:

(3) "Hotel" means an establishment which holds itself out to the public by offering sleeping accommodations for a consideration, whether or not the major portion of its operating receipts is derived therefrom and whether or not the sleeping accommodations are offered to the public by the owner or proprietor or lessee, sublessee, mortgagee, licensee, or any other person or the agent of any of the foregoing. The term includes but is not limited to~~,~~ inns, motels, tourist homes and cabins, ski dormitories, ski lodges, lodging homes, rooming houses, furnished-room houses, boarding houses, and private clubs, as well as any building or structure or part thereof to the extent to which any such building or structure or part thereof in fact is held out to the public by offering

sleeping accommodations for a consideration. The term shall not include the following:

(A) a hospital, licensed under 18 V.S.A. chapter 43 ~~of Title 18~~, or a ~~sanatorium, convalescent home,~~ nursing home, ~~or a home for the aged~~ residential care home, assisted living residence, home for the terminally ill, therapeutic community residence as defined pursuant to 33 V.S.A. chapter 71, or independent living facility;

* * *

Sec. 59. 32 V.S.A. § 9202(10)(D)(ii)(IV) is amended to read:

(IV) prepared and served by the employees ~~thereof and served in~~, volunteers, or contractors of any hospital licensed under 18 V.S.A. chapter 43 ~~of Title 18, or sanitorium, convalescent home~~, nursing home ~~or home for the aged~~, residential care home, assisted living residence, home for the terminally ill, therapeutic community residence as defined pursuant to 33 V.S.A. chapter 71, or independent living facility; provided, however, that "contractor" under this subsection excludes:

(aa) persons or entities that lease space from one of these organizations, and

(bb) means provided by a restaurant as defined by subdivision (15) of this section when furnished to residents of a nursing home, residential care home, assisted living residence, home for the terminally ill, therapeutic community residence as defined pursuant to 33 V.S.A. chapter 71, or independent living facility, when not otherwise available generally to residents of the facility;

Sec. 60. 32 V.S.A. § 9202(18) is added to read:

(18) "Independent living facility" means a congregate living environment, however named, for profit or otherwise, that meets the definitions of housing complexes for older persons as enumerated in 9 V.S.A. § 4503(b) and (c), or housing programs designed to meet the needs of individuals with a handicap or disability as defined in 9 V.S.A. § 4501(2) and (3).

Sec. 61. EFFECTIVE DATES

This act shall take effect upon passage, except:

(1) Secs. 1 (conforming petroleum cleanup fee base to fuel gross receipts tax base), 2 (petroleum cleanup fund outreach), 6 (extraordinary relief), 8 (Irene checkoff), 12 (reporting requirements), 20 (downtown tax credit for disaster expenses), 21 (limitation on downtown tax credits for fiscal

year 2013), and 21a (low income property transfer tax exemption) of this act shall take effect on July 1, 2012.

(2) Secs. 7 (link to Internal Revenue Code) of this act shall apply to taxable years beginning on and after January 1, 2011, and Sec. 10 (estate tax link to Internal Revenue Code) shall apply to decedents on or after January 1, 2011.

(3) Sec. 14 (increasing minimum tax on certain C corporations) of this act shall apply to taxable years beginning on and after January 1, 2012.

(4) Secs. 23 (health savings accounts) 24, 25, and 26 (moving final date for filing renter rebate or property tax adjustment claims), and 27 (renter rebate cap) of this act shall take effect on January 1, 2013 and apply to property tax adjustments and renter rebate claims for 2013 and after.

(5) Secs. 36 (education base rates) and 37 (education base amount) shall take effect on passage and apply to education property tax rates and the base education amount for fiscal year 2013.

(6) Secs. 43 through 46 (wastewater permits) shall take effect retroactively on July 1, 2011.

(7) Sec. 48 (auction sale exemption) of this act is effective retroactively to May 24, 2011.

(8) Secs. 55 (repeal), 56 (electrical generation tax), and 57 (transition) shall take effect on July 1, 2012 and apply to power generated after that date.

(9) Secs. 58 (rooms tax definitions), 59 (meals tax definitions), and 60 (definition of independent living facility) shall take effect on passage and apply retroactively to July 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 that the bill be amended as recommended by the Committee on Finance?, Senator Cummings moved to amend the proposal of amendment of the Committee on Finance, as follows:

By adding a new section to be numbered Sec. 60a. to read as follows:

Sec. 60a. 32 V.S.A. § 8557(a) is amended to read:

(a) Sums for the expenses of the operation of training facilities and curriculum of the Vermont fire service training council not to exceed

~~$800,000.00~~ $950,000.00 per year shall be paid to the fire safety special fund created by 20 V.S.A. § 3157 by insurance companies, including surplus lines companies, writing fire, homeowners multiple peril, allied lines, farm owners multiple peril, commercial multiple peril (fire and allied lines), private passenger and commercial auto, and inland marine policies on property and persons situated within the state of Vermont within 30 days after notice from the commissioner of banking, insurance, securities, and health care administration of such estimated expenses. Captive companies shall be excluded from the effect of this section. The commissioner shall annually, on or before July 1, apportion such charges among all such companies and shall assess them for the same on a fair and reasonable basis as a percentage of their gross direct written premiums on such insurance written during the second prior calendar year on property situated in the state. An amount not less than $100,000.00 shall be specifically allocated to the provision of what are now or formerly referred to as Level I, units I, II, and III (basic) courses for entry level firefighters. An amount not less than $150,000.00 shall be specifically allocated to the emergency medical services special fund established under 18 V.S.A. § 908 for the provision of training programs for emergency medical technicians, advanced emergency medical technicians, and paramedics. An entity seeking funds allocated to the emergency medical services fund shall present a plan to the joint fiscal committee which shall review the plan prior to release of any funds.

Which was agreed to.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Finance?, Senator Illuzzi moved to amend the proposal of amendment of the Committee on Finance, as amended, as follows:

First: By adding a new section to be numbered Sec. 54a to read as follows:

Sec. 54a. 32 V.S.A. § 9741(2) is amended to read:

(2) Drugs intended for human use, durable medical equipment, mobility enhancing equipment, and prosthetic devices and supplies, including blood, blood plasma, insulin, and medical oxygen, used in treatment intended to alleviate human suffering or to correct, in whole or in part, human physical disabilities; provided however, that toothbrushes, floss, and similar items of nominal value given by dentists and hygienists to patients during treatment are supplies used in treatment to alleviate human suffering or to correct, in whole or part, human physical disabilities and are exempt under this subdivision.

Second: In Sec. 61(1) before "21a" by striking "and", and after "(low income property transfer tax exemption)" by adding the following: , and 54a (dental equipment)

Which was agreed to on a roll call, Yeas 21, Nays 8.

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: Ayer, Baruth, Benning, Brock, Campbell, Carris, Doyle, Flory, Galbraith, Giard, Illuzzi, Kitchel, Kittell, Lyons, Mazza, Mullin, Sears, Snelling, Starr, Westman, White.

Those Senators who voted in the negative were: Ashe, Cummings, Fox, MacDonald, McCormack, Miller, Nitka, Pollina.

The Senator absent and not voting was: Hartwell.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Finance, as amended?, Senator Illuzzi moved to amend the proposal of amendment of the Committee on Finance, as amended, as follows:

By striking out Secs. 51 (cloud computing moratorium) and 52 (cloud computing study committee) in their entirety and by adding new Secs. 51 and 52 to read as follows:

Sec. 51. SALES TAX ON PREWRITTEN SOFTWARE DOES NOT APPLY TO REMOTELY ACCESSED SOFTWARE

The general assembly finds that assessments for the sale of remotely accessed software were based on a technical bulletin, No. TB-54 (originally issued 9/13/10), issued by the department of taxes. The imposition of sales and use tax on prewritten computer software by 32 V.S.A. chapter 233 shall not be construed to apply to charges for remotely accessed software made after December 31, 2006. Taxes paid on such charges shall be refunded upon request if within the statute of limitations and documented to the satisfaction of the commissioner. "Charges for remotely accessed software" means charges for the right to access and use prewritten software run on underlying infrastructure that is not managed or controlled by the consumer. Enforcement of the sales and use tax imposed on the purchase of specified digital products pursuant to 32 V.S.A. § 9771(8) is not affected by this section.

Sec. 52. [Deleted.]

Thereupon, pending the question, Shall the Senate proposal of amendment as recommended by the Committee on Finance, as amended, be amended as moved by Senator Illuzzi?, Senator Galbraith moved to substitute for the amendment of Senator Illuzzi, as follows:

In Sec. 51 (cloud moratorium) by striking out the date "December 31, 2006" and inserting in lieu thereof the date July 1, 2012

Which was disagreed to on a roll call, Yeas 2, Nays 27.

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: Galbraith, Sears.

Those Senators who voted in the negative were: Ashe, Ayer, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Fox, Giard, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Snelling, Starr, Westman, White.

The Senator absent and not voting was: Hartwell.

Thereupon, the pending question, Shall the Senate amend the Committee on Finance proposal of amendment as moved by Senator Illuzzi?,

Which was agreed to on a roll call, Yeas 15, Nay 14.

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: Benning, Brock, Doyle, Flory, Galbraith, Giard, Illuzzi, Kitchel, Kittell, Mazza, Miller, Mullin, Nitka, Snelling, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Baruth, Campbell, Carris, Cummings, Fox, Lyons, MacDonald, McCormack, Pollina, Sears, Westman, White.

The Senator absent and not voting was: Hartwell.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Finance, as amended?, Senator Kitchel, moved that the bill be committed to the Committee on Appropriations.

Thereupon, pending the question, Senator Campbell moved that the Senate recess until two o'clock and forty-five minutes.

Called to Order

The Senate was called to order by the President.

Consideration Resumed; Bill Amended; Third Reading Ordered

H. 782.

Consideration was resumed on House bill entitled:

An act relating to miscellaneous tax changes for 2012.

Thereupon, pending the question, Shall the bill be committed to the Committee on Appropriations?, Senator Kitchel requested and was granted leave to withdraw the motion.

Thereupon, the pending question, Shall the Senate propose to the House to amend the bill as proposed by the Committee on Finance, as amended?, was agreed to on a roll call, Yeas 28, Nays 1.

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, Benning, Brock, Campbell, Carris, Cummings, Doyle, Fox, *Galbraith, Giard, 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.

The Senator absent and not voting was: Hartwell.

*Senator Galbraith explained his vote as follows:

"I voted for this bill because it contains many excellent provisions. However, I am concerned that the bill gives retroactive tax relief to certain companies who have pending appeals of their past tax assessments. The Tax Department and the Courts should adjudicate taxpayer appeals, not the legislature. It undermines confidence in the fairness of our tax system when well connected companies get the legislature to erase tax liabilities in a process not accessible to ordinary Vermonters."

Senator Illuzzi and Campbell, moved that the Senate proposal of amendment be amended by striking out Sec. 52 in its entirety and inserting in lieu thereof:

Sec. 52. STUDY COMMITTEE ON CLOUD COMPUTING

(a) Creation of committee. There is created a cloud computing study committee to examine issues related to the taxation of software as a service.

(b) Membership. The committee shall be composed of seven members. Four members of the committee shall be members of the general assembly. The committee on committees of the senate shall appoint two members of the senate and the speaker of the house shall appoint two members of the house. The committee on committees shall appoint a chair of the study committee who shall be a committee member who is also a member of the general assembly. Three members of the committee shall be as follows:

(1) the governor shall appoint a member representing consumers of software and software services;

(2) the secretary of administration or his or her designee;

(3) the commissioner of taxes or his or her designee;

(c) Powers and duties.

(1) The committee established by this section shall study the taxation of software as a service, including the character of sales transactions involving software accessed remotely, the sourcing of such sales, and experience of other jurisdictions in taxing software as a service.

(2) For purposes of its study of these issues, the committee shall have the assistance of the office of legislative council, the joint fiscal office, and the department of taxes.

(d) Report. By January 15, 2013, the committee shall report to the senate committee on finance and the house committee on ways and means on its findings and any recommendations for legislative action.

(e) 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.

Which was agreed to.

Senator Galbraith, moved that the Senate proposal of amendment be amended as follows:

First: By adding a new section to be numbered Sec. 46a to read as follows:

Sec. 46a. 32 V.S.A. § 3752(7) is amended to read:

(7) "Farmer" means a person:

(A) who earns at least one-half of the farmer's annual gross income from the business of farming as that term is defined in Regulation 1.175-3 issued under the Internal Revenue Code of 1986; or

(B)(i) who produces farm crops that are processed in a farm facility situated on land enrolled by the farmer in a use value appraisal program or on a housesite adjoining the enrolled land;

(ii) whose gross income from the sale of the processed farm products pursuant to subdivision (i) of this subdivision (B), when added to other gross income from the business of farming as used in subdivision (A) of

this subdivision (7), equals at least one-half of the farmer's annual gross income; and

(iii) who produces on the farm a minimum of 75 percent of the farm crops processed in the farm facility;

(C) The agency of agriculture, food and markets shall assist the director in making determinations of eligibility pursuant to subdivision (B) of this subdivision (7)~~.~~;

(D) who is in the business of breeding horses and earns at least one-half of his or her annual gross income from the business of breeding horses.

Second: By adding a new subdivision (10) in Sec. 61 (effective dates) to read as follows:

(10) Sec. 46a (definition of farmer) shall take effect retroactively on January 1, 2009.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as moved by Senator Galbraith?, Senator Galbraith requested and was granted leave to withdraw the amendment.

Thereupon, third reading of the bill was ordered.

****During debate of the measure, Senator McCormack addressed the Chair and on motion of Senator Westman, his remarks were ordered enter in the Journal, and are as follows:

"Mr. President:

"It's no secret that there has been some ill will between the Legislature and Entergy, and it's important that the state exercise the moral and legislative restraint to not misuse our taxing power to punish. In that regard the Senate know that the Finance Committee took testimony from Joint Fiscal and from the Attorney General's Office and I put the question of whether the generation tax is a legitimate revenue raising measure as opposed to a hostile or punitive measure. We received assurances that the tax is indeed a revenue raising measure and defensible as such. The committee presents it to the Senate purely as a revenue raising measure and a Senate vote to pass it will be done purely as a revenue raising measure."

Rules Suspended; Third Reading Ordered

H. 794.

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

An act relating to the management of search and rescue operations.

Was taken up for immediate consideration.

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

An act relating to the management of search and rescue operations.

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:

(1) Several recent cases involving the search and rescue of persons lost in Vermont's outdoor recreation areas, including the tragic death of Levi Duclos on January 9, 2012 as he was hiking on the Emily Proctor Trail in Ripton, have raised questions concerning whether supervision of backcountry search and rescue operations should be maintained by the department of public safety or shared with or transferred to another governmental entity and whether regional protocols should be put into place to allow for a local or regional response utilizing a combination of qualified professional and qualified volunteer searchers and rescuers.

(2) Under current law and practice, the Vermont state police division of the department of public safety has primary responsibility for finding lost hikers and other missing people in areas of the state which do not have municipal police departments and has the authority to call out qualified professional and qualified volunteer services. This duty was assigned when the Vermont state police was first created in 1946 and has not changed since that time. According to Howard Paul, a public information officer and member of the board of directors of the National Association for Search and Rescue, Vermont is one of only five states that require their state police to find and rescue people who are lost or missing outdoors.

(3) In other states in which a significant amount of outdoor recreational activity occurs, such as New Hampshire and Maine, state fish and game agencies are in charge of finding lost outdoor recreationalists. Most eastern states turn to park rangers and fish and game wardens for search and rescue.

(4) Many states collaborate with nonprofit organizations to aid in search and rescue. For example, the Maine Warden Service is in charge of search and rescue throughout that state, and it relies on the Maine Association for Search and Rescue, which is composed of approximately 15 approved member organizations.

(5) Vermont has an extensive number of first responders and emergency service personnel with specific training and experience conducting outdoor search and rescue operations. The Lincoln Fire Department, for example, has significant search and rescue experience, well-established strategies for conducting such operations, and the ability to have a team on the ground in sometimes 30 minutes or less on nights and weekends. Despite these resources, only four civilian organizations are approved by the department of public safety to provide search and rescue assistance in Vermont.

(6) In light of Vermont's minority status in charging the state police with responsibility for search and rescue of lost hikers and outdoor recreationalists and in light of the department's recent challenges in fulfilling this responsibility, it is an appropriate time to consider whether some other state entity, working with Vermont's extensive volunteer community, should assume responsibility for outdoor search and rescue operations.

Sec. 2. BACKCOUNTRY SEARCH AND RESCUE STUDY COMMITTEE

(a) Creation of committee. There is created a backcountry search and rescue study committee to determine whether the department of public safety or a different state agency should have lead or coauthority for supervising search and rescue operations for missing persons in Vermont's backcountry and outdoor recreational areas and to recommend an appropriate organizational structure to manage Vermont's various search and rescue resources. As used in the section, "backcountry search and rescue" means the search for and provision of aid to people who are lost or stranded in the outdoors on Vermont's land or inland waterways.

(b) Membership. The backcountry search and rescue study committee shall be composed of four members. The members of the committee shall be as follows:

(1) Two members of the house appointed by the speaker.

(2) Two members of the senate appointed by the committee on committees.

(c) For purposes of its study, the committee shall consult with and seek testimony from interested parties, including the following individuals and entities or their designees:

(1) The commissioner of public safety.

(2) The commissioner of fish and wildlife.

(3) The Vermont League of Cities and Towns.

(4) Stowe Mountain Rescue.

(5) Colchester Technical Rescue.

(6) A certified first responder with search and rescue experience.

(7) The Professional Firefighters of Vermont.

(8) A member of a volunteer fire department with search and rescue experience designated by the president of the Vermont State Firefighters Association.

(9) A sheriff designated by the department of sheriffs and state's attorneys.

(d) Powers and duties. The committee shall study whether the department of public safety or a different state agency should be responsible for supervising search and rescue operations for missing persons in Vermont's backcountry and outdoor recreational areas. The committee's study shall include:

(1) reviewing the existing method and responsibility for conducting backcountry search and rescue operations in Vermont and identifying the advantages and disadvantages of the current system;

(2) considering models in other states for supervision of backcountry search and rescue operations, including the New Hampshire approach of providing authority to the New Hampshire fish and game department;

(3) evaluating whether backcountry search and rescue operations would be conducted in a more timely and efficient manner if the authority for conducting such operations were held by one or more state or nongovernmental entities other than the department of public safety or whether there should be a shared or regional approach depending on the location of the search;

(4) considering and evaluating different organizational structures to determine how to most effectively manage Vermont's backcountry search and rescue processes and resources;

(5) considering whether minimum qualifications should be set for participation in backcountry search and rescue operations and whether backcountry search and rescue responders who are not state employees should be provided with insurance coverage;

(6) considering the feasibility of establishing an online database of missing persons that would provide automatic notice to first responders;

(7) developing methods of financing search and rescue operations, including consideration of methods used in other states such as:

(A) establishing an outdoor recreation search and rescue card available for purchase by users of outdoor recreation resources on a voluntary basis to help reimburse the expenses of search and rescue missions;

(B) imposing fees on recreational and outdoor licenses and permits; and

(C) permitting recovery of expenses from any person whose negligent conduct required a search and rescue response and, if so, who should bring such an action and who should be reimbursed; and

(8) proposing any statutory changes that the committee identifies as necessary to improve the conduct and supervision of backcountry search and rescue activities in Vermont.

(e) Report. The committee shall report its findings and recommendations, together with draft legislation if any legislative action is recommended, to the general assembly on or before January 15, 2013.

(f) The legislative council shall provide administrative and drafting support to the committee.

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

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

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

H. 782.

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

An act relating to miscellaneous tax changes for 2012.

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

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

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

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

S. 37.

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

To the Senate and House of Representatives:

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

An act relating to expungement of a nonviolent misdemeanor criminal history record.

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:

Sec. 1. 13 V.S.A. chapter 230 is added to read:

CHAPTER 230. EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY RECORDS

§ 7601. DEFINITIONS

As used in this chapter:

(1) "Court" means the criminal division of the superior court.

(2) "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.

(3) "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.

(4) "Qualifying crime" means:

(A) 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;

(B) a violation of subsection 3701(a) of this title related to criminal mischief; or

(C) a violation of section 2501 of this title related to grand larceny.

§ 7602. EXPUNGEMENT AND SEALING OF RECORD, POSTCONVICTION; PROCEDURE

(a)(1) A person who was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence may file a petition with the court requesting expungement or sealing of the criminal history record related to the conviction. The state's attorney or attorney general shall be the respondent in the matter.

(2) 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.

(b)(1) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if the following conditions are met:

(A) 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, or if the person has successfully completed the terms and conditions of an indeterminate term of probation that commenced at least 10 years previously.

(B) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted for the qualifying crime.

(C) Any restitution ordered by the court has been paid in full.

(D) The court finds that expungement of the criminal history record serves the interest of justice.

(2) The court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if the conditions of subdivisions (1)(A), (B), and (C) of this subsection are met and the court finds that:

(A) sealing the criminal history record better serves the interest of justice than expungement; and

(B) the person committed the qualifying crime after reaching 19 years of age.

(c)(1) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if the following conditions are met:

(A) 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.

(B) 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 crime.

(C) The person has not been convicted of a misdemeanor during the past 15 years.

(D) Any restitution ordered by the court for any crime of which the person has been convicted has been paid in full.

(E) After considering the particular nature of any subsequent offense, the court finds that expungement of the criminal history record for the qualifying crime serves the interest of justice.

(2) The court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if the conditions of subdivisions (1)(A), (B), (C), and (D) of this subsection are met and the court finds that:

(A) sealing the criminal history record better serves the interest of justice than expungement; and

(B) the person committed the qualifying crime after reaching 19 years of age.

§ 7603. EXPUNGEMENT AND SEALING OF RECORD, NO CONVICTION; PROCEDURE

(a) A person who was cited or arrested for a qualifying crime or qualifying crimes arising out of the same incident or occurrence may file a petition with the court requesting expungement or sealing of the criminal history record related to the citation or arrest if one of the following conditions is met:

(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; or

(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. The petitioner and the respondent shall be the only parties in the matter.

(c) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if it finds that expungement of the criminal history record serves the interest of justice.

(d) The court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if:

(1) The court finds that sealing the criminal history record better serves the interest of justice than expungement.

(2) The person committed the qualifying crime after reaching 19 years of age.

§ 7604. NEW CHARGE

If a person is charged with a criminal offense after he or she has filed a petition for expungement pursuant to this chapter, the court shall not act on the petition until disposition of the new charge.

§ 7605. DENIAL OF PETITION

If a petition for expungement is denied by the court pursuant to this chapter, no further petition shall be brought for at least five years.

§ 7606. EFFECT OF EXPUNGEMENT

(a) Upon entry of an expungement order, 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. 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. The court shall provide notice of the expungement to the respondent, Vermont crime information center (VCIC), the arresting agency, and any other entity that may have a record related to the order to expunge. The VCIC shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

(b) 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 criminal history record only with respect to arrests or convictions that have not been expunged.

(c) Nothing in this section shall affect any right of the person whose record has been expunged to rely on it as a bar to any subsequent proceedings for the same offense.

(d)(1) The court may keep a special index of cases that have been expunged together with the expungement order and the certificate issued pursuant to section 7602 or 7603 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.

(2) The special index and related documents specified in subdivision (1) of this subsection shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons.

(3) Inspection of the expungement order and 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.

(4) All other court documents in a case that are subject to an expungement order shall be destroyed.

(5) The court administrator shall establish policies for implementing this subsection.

(e) Upon receiving an inquiry from any person regarding an expunged record, an entity shall respond that "NO RECORD EXISTS."

§ 7607. EFFECT OF SEALING

(a) Upon entry of an order to seal, 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. 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. The court shall provide notice of the sealing to the respondent, Vermont crime information center (VCIC), the arresting agency, and any other entity that may have a record related to the order to seal. The VCIC shall provide notice of the sealing to the Federal Bureau of Investigation's National Crime Information Center.

(b) 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 criminal history record only with respect to arrests or convictions that have not been sealed.

(c) Notwithstanding a sealing order:

(1) 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.

(2) An entity may use the criminal history 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.

(d) 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."

§ 7608. VICTIMS

(a) At the time a petition is filed pursuant to this chapter, 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. The disposition of the petition shall not be unnecessarily delayed pending receipt of a victim's statement. The respondent's inability to locate a victim after a reasonable effort has been made shall not be a bar to granting a petition.

(b) As used in this section, "reasonable effort" means attempting to contact the victim by first class mail at the victim's last known address and by telephone at the victim's last known phone number.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

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

An act relating to expungement and sealing of criminal history records.

ALICE W. NITKA
RICHARD W. SEARS
DIANE B. SNELLING

Committee on the part of the Senate

THOMAS F. KOCH
SUSAN L. WIZOWATY
ELDRED M. FRENCH

Committee on the part of the House

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

Proposal of Amendment; Third Reading Ordered

H. 523.

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

An act relating to revising the state highway condemnation law.

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

Sec. 1. LEGISLATIVE INTENT

(a) The intent of the changes to the definition of necessity made in this act is to state the definition in accordance with State Transportation Board v. May, 137 Vt. 320 (1979), and to reorganize the definition for the sake of clarity. No substantive change is intended.

(b) The standard of review of the agency of transportation's determination of necessity established in 19 V.S.A. § 505(a)(3) of this act is intended to replace the former language of 19 V.S.A. § 507(a) stating that "the exercise of reasonable discretion upon the part of the agency shall not be presumed," as well as to replace the standard of review adopted in Latchis v. State Hwy. Bd., 120 Vt. 120 (1957) and relied upon in subsequent cases.

Sec. 2. 19 V.S.A. chapter 5 is amended to read:

CHAPTER 5. CONDEMNATION FOR STATE HIGHWAY PROJECTS

§ 500. INTENT

The purpose of this chapter is to ensure that a property owner receives fair treatment and just compensation when the owner's property is taken for state

highway projects, and that condemnation proceedings are conducted expeditiously so that highway projects in the public interest are not unnecessarily delayed.

§ 501. DEFINITIONS

The following words and phrases as used in this chapter shall have the following meanings:

(1) "Necessity" ~~shall mean~~ means a reasonable need which considers the greatest public good and the least inconvenience and expense to the condemning party and to the property owner. Necessity shall not be measured merely by expense or convenience to the condemning party. ~~Due~~ Necessity includes a reasonable need for the highway project in general as well as a reasonable need to take a particular property and to take it to the extent proposed. In determining necessity, consideration shall be given to the:

(A) adequacy of other property and locations ~~and to~~;

(B) ~~the~~ quantity, kind, and extent of cultivated and agricultural land which may be taken or rendered unfit for use, immediately and over the long term, by the proposed taking~~. In this matter the court shall view the problem from both a long range agricultural land use viewpoint as well as from the immediate taking of agricultural lands which may be involved. Consideration also shall be given to the~~;

(C) effect upon home and homestead rights and the convenience of the owner of the land; ~~to the~~

(D) effect of the highway upon the scenic and recreational values of the highway; ~~to the~~

(E) need to accommodate present and future utility installations within the highway corridor; ~~to the~~

(F) need to mitigate the environmental impacts of highway construction; and ~~to the~~

(G) effect upon town grand lists and revenues.

(2) Damages resulting from the taking or use of property under the provisions of this chapter shall be the value for the most reasonable use of the property or right in the property, and of the business on the property, and the direct and proximate decrease in the value of the remaining property or right in the property and the business on the property. The added value, if any, to the remaining property or right in the property~~,~~ which accrues directly to the owner of the property as a result of the taking or use, as distinguished from the general public benefit, shall be considered in the determination of damages.

(3) "Interested person" or "person interested in lands" or "property owner" means a person who has a legal interest of record in the property ~~affected~~ taken or proposed to be taken.

§ 502. AUTHORITY; PRECONDEMNATION ~~PROCEDURE~~ HEARING

(a) Authority. The ~~transportation board~~ agency, when in its judgment the interest of the state requires, ~~shall request the agency to~~ may take any ~~land or rights in land, including easements of access, air, view and light, deemed~~ property necessary to lay out, relocate, alter, construct, reconstruct, maintain, repair, widen, grade, or improve any state highway, including affected portions of town highways. ~~All property rights shall be taken in fee simple whenever practicable.~~ In furtherance of these purposes, the agency may enter upon ~~land adjacent to the proposed highway or upon other lands for the purpose of examination and making necessary surveys. However, that~~ lands to conduct necessary examinations and surveys; however, the agency shall do this work ~~shall be done~~ with minimum damage to the land and disturbance to the owners and shall be subject to liability for actual damages. All property taken permanently shall be taken in fee simple whenever practicable. For all state highway projects involving property acquisitions, the agency shall follow the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act ("Act") and its implementing regulations, as may be amended.

(b) The agency, in the construction and maintenance of limited access highway facilities, may also take any land or rights of the landowner in land under 9 V.S.A. chapter 93, subchapter 2, relating to advertising on limited access highways.

(c) Public hearing; notice of hearing.

(1) A public hearing shall be held for the purpose of receiving suggestions and recommendations from the public prior to the agency's initiating proceedings under this chapter for the acquisition of any ~~lands or rights~~ property. The hearing shall be conducted by the agency. ~~Public notice shall be given by printing~~

(2) The agency shall prepare an official notice stating the purpose for which the property is desired and generally describing the highway project.

(3) Not less than 30 days prior to the hearing, the agency shall:

(A) cause the official notice ~~not less than 30 days prior to the hearing~~ to be printed in a newspaper having general circulation in the area affected~~. A~~;

(B) mail a copy of the notice ~~shall be mailed to the board,~~ to the legislative bodies of the municipalities affected~~,~~; and ~~a copy sent~~

(C) ~~by certified~~ mail a copy of the notice to all known owners ~~of lands and rights in land affected by~~ whose property may be taken as a result of the proposed improvement.

~~The notice shall set forth the purpose for which the land or rights are desired and shall generally describe the improvement to be made.~~

(4) ~~The board may designate one or more members to attend the hearing and shall do so if a written request is filed with the board at least 10 days prior to the public hearing.~~ At the hearing, the agency shall set forth the reasons for the selection of the route intended and shall hear and consider all objections, suggestions for changes, and recommendations made by any person interested. ~~If no board member attended the hearing, a written request may be filed with the board within 30 days after the public hearing asking the board to review the project and the record of the hearing. In such event, the board shall complete its review within 30 days after the request.~~ Following the hearing, ~~unless otherwise directed by the board,~~ the agency may proceed to lay out the highway and survey and acquire the land to be taken or affected~~, giving consideration to any objections, suggestions, and recommendations received from the public~~ in accordance with this chapter.

* * *

§ 503. PRECONDEMNATION NECESSITY DETERMINATION; SURVEY AND APPRAISAL; OFFER OF JUST COMPENSATION; NOTICE OF RIGHTS; NEGOTIATION; STIPULATION

(a) ~~When~~ Necessity determination; appraisal.

(1) After conducting the hearing required under section 502 of this chapter and considering the objections, suggestions, and recommendations received from the public, if the agency ~~of transportation desires to acquire land or any rights in land~~ finds the taking of property to be necessary for the purpose of laying out, relocating, altering, constructing, reconstructing, maintaining, repairing, widening, grading, or improving a state highway, it shall cause the ~~land~~ property proposed to be acquired or affected to be surveyed and shall make a written determination of necessity consistent with subdivision 501(1) of this chapter. Prior to initiating negotiations under this section, the agency shall cause property proposed to be taken to be appraised unless:

(A) the property owner offers to donate the property after being fully informed by the agency of the right to receive just compensation for damages and releasing the agency from any obligation to conduct an appraisal; or

(B) the agency determines that an appraisal is unnecessary because the valuation question is uncomplicated and the agency estimates the property to have a low fair market value, in accordance with 49 C.F.R. § 24.102.

(2) The agency shall prepare a waiver valuation if an appraisal is not conducted, pursuant to subdivision (1)(B) of this subsection (a).

(3) The property owner or his or her designee shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(b) Offer of just compensation. Prior to the initiation of negotiations, the agency shall prepare a written offer of just compensation, which shall include a statement of the basis for the offer and a legal description of the property proposed to be acquired.

(c) Negotiation. Prior to instituting condemnation proceedings under section 504 of this chapter, the agency shall make every reasonable effort to acquire property expeditiously by negotiation and shall comply with subsection (d) of this section.

(d) Notice and other documents. The agency shall hand-deliver or send by mail to interested persons a notice of procedures and rights and the offer of just compensation. The notice of procedures and rights shall include an explanation of the proposed state highway project and its purpose, and statements that:

(1) The agency is seeking to acquire the property described in the offer of just compensation for the project.

(2) Agency representatives are available to discuss the offer of just compensation.

(3) The agency does not represent the property owner, and he or she may benefit from the advice of an attorney.

(4) If the agency and the property owner are unable to reach agreement on the agency's legal right to take the property, the agency may file a complaint in superior court to determine this issue. The property owner has the right to challenge the taking by contesting the necessity of the taking, the public purpose of the project, or both, but must contest these issues by filing an answer to the complaint with the court. If the owner does not file a timely answer, the court may enter a default judgment in favor of the agency.

(5) The property owner may enter into an agreement with the agency stipulating to the agency's legal right to take his or her property without waiving the owner's right to contest the amount of the agency's offer of compensation.

(6) If the agency and the property owner agree that a taking is lawful, or if a court issues a judgment authorizing the agency to take the owner's property, title to the property will transfer to the agency only after the agency files documentation of the agreement or judgment with the town clerk, pays or tenders payment to the owner, and sends or delivers to the owner a notice of taking.

(7) To contest the amount of compensation received, the owner must file an action with the transportation board or in superior court within 30 days of the notice of taking, except that the issue of compensation ("damages") must be decided by the superior court if the owner's demand exceeds the agency's offer of just compensation by more than $25,000.00. The owner or the agency may appeal a decision of the board to the superior court, and may appeal a decision of the superior court to the supreme court. Either party is entitled to demand a trial by jury in superior court on the issue of damages.

(8) A copy of an appraisal or an estimated valuation ("waiver valuation") shall be furnished by the agency at the owner's request.

(9) Summarize the property owner's right to relocation assistance, if applicable.

(e) Agreement on taking, damages.

(1) An interested person may enter into an agreement with the agency stipulating to the necessity of the taking and the public purpose of the project, to damages, or to any of these. The agreement shall include:

(A) a statement that the person executing the agreement has examined a survey or appraisal of the property to be taken;

(B) an explanation of the legal and property rights affected;

(C) a statement that the person has received the documents specified in subsection (d) of this section; and

(D) if the agreement concerns only the issues of necessity or public purpose, a statement that the right of the person to object to the amount of compensation offered is not affected by the agreement.

(2) If an interested person executes an agreement stipulating to the necessity of the taking and the public purpose of the project in accordance with subdivision (1) of this subsection, the agency shall prepare, within 10 business days of entering into the agreement, a notice of condemnation and shall file it in accordance with section 506 of this chapter. The notice of condemnation shall include a legal description of the property to be taken.

§ 504. ~~PETITION FOR HEARING TO DETERMINE NECESSITY~~ COMPLAINT; SERVICE; ANSWER

(a) ~~Upon completion of the survey the agency may petition a superior judge, setting forth in the petition that it proposes to acquire certain land, or rights in land, and describing the lands or rights, and the survey shall be attached to the petition and made a part of the petition. The petition shall set forth the purposes for which the land or rights are desired, and shall contain a request that the judge fix a time and place when he or she, or some other superior judge, will hear all parties concerned and determine whether the taking is necessary.~~ Verified complaint. If a property owner has not entered into an agreement stipulating to the necessity of a taking and the public purpose of a highway project, and the agency wishes to proceed with the taking, the agency shall file a verified complaint in the civil division of the superior court in a county where the project is located seeking a judgment of condemnation. The complaint shall name as defendants each interested person who has not stipulated to a proposed taking, and shall include:

(1) statements that the agency has complied with subsection 503(d) of this chapter;

(2) the agency's written determination of necessity;

(3) a general description of the negotiations undertaken; and

(4) a survey of the proposed project, and legal descriptions of the property and of the interests therein proposed to be taken.

(b) Service and notice.

(1) Except as otherwise provided in this section, the agency shall serve the complaint and summons in accordance with the Vermont Rules of Civil Procedure and section 519 of this chapter.

(2) The agency shall publish a notice of the complaint, the substance of the summons, and a description of the project and of the lands to be taken in a newspaper of general circulation in the municipalities where the project is located, once a week on the same day of the week for three consecutive weeks. The agency shall mail a copy of the newspaper notice to the last known address of an interested person not otherwise served, if any address is known. Upon affidavit by the secretary that diligent inquiry has been made to find all interested persons and, if applicable, that service on a known interested person cannot with due diligence be made in or outside the state by another method prescribed in Rule 4 of the Vermont Rules of Civil Procedure, the newspaper publication shall be deemed sufficient service on all unknown interested persons and all known interested persons who cannot otherwise be served.

Service by newspaper publication is complete the day after the third publication.

(3) Unless otherwise served under subdivision (1) of this subsection, the agency shall mail a copy of the complaint to the clerk, legislative body, and board of listers of each municipality in which land is proposed to be taken. The clerk with responsibility over the land records shall record the copy of the complaint (including the survey), and shall enter the names of the property owners named in the complaint in the general index of transactions affecting the title to real estate.

(c) Necessity, public purpose; default. If an interested person does not file a timely answer denying the necessity of a taking or the public purpose of the project, the court may enter a judgment of condemnation by default.

§ 505. HEARING ~~TO DETERMINE~~ ~~NECESSITY~~ ON PROPOSED TAKING; JUDGMENT; APPEAL AND STAY

(a) ~~The superior judge to whom the petition is presented shall fix the time for hearing, which shall not be more than 60 nor less than 40 days from the date he or she signs the order. Likewise, he or she shall fix the place for hearing, which shall be the superior court or any other place within the county in which the land in question is located. If the superior judge to whom the petition is presented cannot hear the petition at the time set he or she shall call upon the administrative judge to assign another superior judge to hear the cause at the time and place assigned in the order.~~ Hearing.

(1) If a timely answer is filed denying the necessity of a taking or the public purpose of the project, the court shall schedule a final hearing to determine the contested issues, which shall be held within 90 days of expiration of the deadline for filing an answer by the last interested person served. Absent good cause shown, the final hearing date shall not be postponed beyond the 90-day period.

(2) At the hearing, the agency shall present evidence on any contested issue.

(3)(A) The court shall presume that the agency's determination of the necessity for and public purpose of a project is correct, unless a party demonstrates bad faith or abuse of discretion on the part of the agency.

(B) The court shall review de novo the agency's determination of the need to take a particular property and to take it to the extent proposed.

(b) ~~If the land proposed to be acquired extends into two or more counties, then a single hearing to determine necessity may be held in one of the counties. In fixing the place for hearing, the superior judge to whom the petition is~~

~~presented shall take into consideration the needs of the parties.~~ Discovery. Absent a showing of unfair prejudice, the right to discovery on the issues of necessity and public purpose shall be limited to the plans, surveys, studies, reports, data, decisions, and analyses relating to approving and designing the highway project.

(c) Judgment. If the court finds a proposed taking lawful, it shall issue a judgment of condemnation describing the property authorized to be taken, declaring the right of the agency to take the property by eminent domain, and declaring that title to the property will be transferred to the agency after the agency, in accordance with section 506 of this chapter, has recorded the judgment, tendered or deposited payment, and notified the owner of the recording and payment. The court may in its judgment modify the extent of a proposed taking.

(d) Litigation expenses. The court shall award the property owner his or her costs and reasonable litigation expenses, including reasonable attorney, appraisal, and engineering fees actually incurred because of the proceeding, if the final judgment of the court is that the agency cannot acquire all of the property proposed to be taken by condemnation, or if the agency abandons the condemnation proceeding other than under a settlement. If the final judgment of the court substantially reduces the scope of the agency's proposed taking, the court shall award the owner a share of his or her costs and reasonable litigation expenses that is proportional to the reduction in the proposed taking.

(e) Appeal, stay. A judgment of condemnation may be appealed or stayed as a final judgment for possession of real estate under the Vermont Rules of Civil Procedure and the Vermont Rules of Appellate Procedure. A judgment that that the agency cannot acquire the property by condemnation likewise may be appealed.

§ 506. ~~SERVICE AND PUBLICATION OF NECESSITY PETITION AND NOTICE OF HEARING; ANSWER~~ RECORDING OF JUDGMENT OR NOTICE OF CONDEMNATION; PAYMENT; VESTING OF TITLE

(a)(1) ~~The agency shall prepare a notice of the necessity hearing. The notice shall include the names of the municipalities in which the lands to be taken or affected are located; the names of all interested persons within the meaning of subdivision 501(2) of this chapter; and a brief statement identifying the proposed project and its location, and the date, time and place of the necessity hearing. The agency shall make service of copies of the petition, the notice of hearing and the survey (for the purposes of this section, "survey" means a plan, profile, or cross-section of the proposed project) as follows:~~

~~(1) Upon interested persons in accordance with the Vermont Rules of Civil Procedure for service of process, except as stated in subsection (b) of this~~

~~section and in section 519 of this title or, with respect to interested parties with no known residence or place of business within the state, by certified mail, return receipt requested. The copy of the survey that is served upon interested persons need include only the particular property in which those persons have an interest.~~

~~(2) One copy each upon the clerk, legislative body, and board of listers of each affected municipality by certified mail. The clerk shall record the notice of hearing in the municipal land records, at the agency's expense, and shall enter the names of the interested persons in the general index of transactions affecting the title to real estate~~. Within 15 business days of the issuance of a judgment of condemnation by the court or of the preparation of a notice of condemnation by the agency in accordance with subdivision 503(e)(2) of this chapter, the agency shall:

(A) record the judgment or notice, including the description of the property taken, in the office of the clerk of the town where the land is situated; and

(B) tender to the property owner, or deposit with the court, the amount of the offer of just compensation prepared under subsection 503(b) of this chapter or any other amount agreed to by the owner.

(2) For the purposes of this chapter, if an interested person has not provided the agency identification information necessary to process payment, or if an interested person refuses an offer of payment, payment shall be deemed to be tendered when the agency makes payment into an escrow account that is accessible by the interested person upon his or her providing any necessary identification information.

(b) ~~The agency also shall publish the notice of hearing in a newspaper of general circulation in the municipalities in which the proposed project lies. Publication shall be made once a week for three consecutive weeks on the same day of the week, the last publication to be not less than five days before the hearing. When service on an interested person cannot with due diligence be made within or outside the state, upon affidavit of the secretary of transportation or the secretary's designee that diligent inquiry has been made to find the interested person, the publication shall be deemed sufficient service on that person. The affidavit shall be accompanied by an affidavit of the person attempting service that the location of the interested person is unknown and that the interested person has no known agent upon whom service can be made~~ Title in the property shall vest in the state, and the agency may proceed with the project, upon the later of:

(1) the agency's complying with the requirements of subsection (a) of this section; and

(2) the agency's mailing or delivering to the owner a notice of taking stating that has complied with the requirements of subsection (a) of this section.

(c) ~~Compliance with these provisions of this title shall constitute sufficient notice to and service upon all interested persons and municipalities~~ Except in the case of agreed compensation, an owner's acceptance and use of a payment under this section does not affect his or her right to contest or appeal damages under sections 511–513 of this chapter, but shall bar the owner's right to contest necessity and public purpose.

(d) ~~No service need be made upon any interested person or municipality that has stipulated to necessity in accordance with section 508 of this chapter~~ Upon the agency's recording of the judgment or notice of condemnation, the clerk with responsibility over land records shall enter the name of each property owner named in the judgment or notice as a grantor in the general index of transactions affecting the title to real estate. The agency shall comply with the provisions of 27 V.S.A. chapter 17 governing the composition and recording of project layout plats.

(e) ~~Unless an answer denying the necessity or propriety of the proposed taking is filed by one or more parties served or appearing in the proceedings on or before the date set in the notice of hearing on the petition, the necessity and propriety shall be deemed to be conceded, and the court shall so find.~~ [Repealed.]

§ 507. ~~HEARING AND ORDER OF NECESSITY~~ CATTLE-PASSES

~~(a) At the time and place appointed for the hearing, the court, consisting of the superior judge signing the order or the other superior judge as may be assigned and, if available within the meaning of 4 V.S.A. § 112, the assistant judges of the county in which the hearing is held shall hear all persons interested and wishing to be heard. If any person owning or having an interest in the land to be taken or affected appears and objects to the necessity of taking the land included within the survey or any part of the survey, then the court shall require the agency of transportation to proceed with the introduction of evidence of the necessity of the taking. The burden of proof of the necessity of the taking shall be upon the agency of transportation and shall be established by a fair preponderance of the evidence, and the exercise of reasonable discretion upon the part of the agency shall not be presumed. The court may cite in additional parties including other property owners whose interest may be concerned or affected and shall cause to be notified, the legislative body of all adjoining cities, towns, villages, or other municipal corporations affected by any taking of land or interest in land based on any ultimate order of the court. The court shall make findings of fact and file them and any party in interest~~

~~may appeal under the Vermont Rules of Appellate Procedure adopted by the supreme court. The court shall, by its order, determine whether the necessity of the state requires the taking of the land and rights as set forth in the petition and may find from the evidence that another route or routes are preferable in which case the agency shall proceed in accordance with section 502 of this title and this section and may modify or alter the proposed taking in such respects as to the court may seem proper.~~

~~(b) By~~ In its order of condemnation, the court may ~~also~~ direct the agency ~~of transportation~~ to install passes under the highway ~~as specified in this chapter~~ for the benefit of ~~the~~ large modern farm properties, the fee title of which is owned by any party to the proceedings, where a reasonable need is shown by the owner. The court may consider evidence relative to present and anticipated future highway traffic volume, future land development in the area, and the amount and type of acreage separated by the highway in determining the need for an underpass of larger dimensions than a standard cattle-pass of reinforced concrete, metal, or other suitable material which provides usable dimensions five feet wide by six feet three inches high. Where a herd of greater than 50 milking cows is consistently maintained on the property, the court may direct that the dimensions of the larger underpass shall be eight feet in width and six feet three inches in height to be constructed of reinforced concrete, and the owner of the farm property shall pay one-fourth of the difference in overall cost between the standard cattle-pass and the larger underpass. Where the owner of the farm property desires an underpass of dimensions greater than eight feet in width and six feet three inches in height, the underpass may be constructed if feasible and in accordance with acceptable design standards, and the total additional costs over the dimensions specified shall be paid by the owner. The provisions of this section shall not be interpreted to prohibit the agency ~~of transportation~~ and the property owner from determining the specifications of a cattle-pass or underpass by mutual agreement at any time, either prior or subsequent to the date of the court's order. The owner of a fee title shall be interpreted to include lessees of so-called lease land.

§ 508. ~~STIPULATION OF NECESSITY~~

~~(a) A person or municipality owning or having an interest in lands or rights to be taken or affected, a municipality in which the land is to be taken or affected, and other interested persons may stipulate as to the necessity of the taking.~~

~~(b) The stipulation shall be an affidavit sworn to before a person authorized to take acknowledgments, and, in the case of a municipality, shall be executed by a majority of its legislative body. The stipulation shall be in a form~~

~~approved by the attorney general and shall include but not be limited to the following:~~

~~(1) a recital that the person or persons executing the stipulation have examined the applicable plan and survey of the lands or rights to be taken;~~

~~(2) an explanation of the legal and property rights affected; and~~

~~(3) that the right of the person to adequate compensation is not affected by executing the stipulation.~~

~~(c) The stipulation shall be invalid unless within two years of the date of the stipulation an order of necessity is granted.~~ [Repealed.]

§ 509. ~~PROCEDURE~~

~~(a) The stipulation shall be filed with the appropriate superior court, together with the petition for an order of necessity. Notice of the hearing on the petition shall be published in accordance with section 506 of this title. Other interested persons who have not stipulated to necessity shall be notified and served in accordance with section 506 of this title. The court may also cite in additional parties in accordance with section 507 of this title.~~

~~(b) If a person claiming to be affected or concerned files a notice of objection to a proposed finding of necessity prior to the date of the hearing, the court shall at the hearing determine if the person has an interest in lands or rights to be taken such as to be entitled to object to the proposed finding of necessity, and, if he is so affected or concerned, whether there is necessity for the taking, in accordance with section 507 of this title. Nothing in this section shall prohibit an interested person from consenting to necessity. The court may continue the hearing to allow proper preparation by the agency of transportation and interested parties.~~

~~(c) If all interested persons and municipalities stipulate as to the necessity of the taking, the court may immediately issue an order of necessity.~~

~~(d) Interested persons or municipalities who do not consent to necessity are entitled to a necessity hearing in accordance with the provisions of this chapter.~~

~~(e) A copy of the order finding necessity shall be mailed to each person and municipality who consented by stipulation to necessity, by certified mail, return receipt requested.~~

~~(f) The stipulation of necessity shall not affect the rights of the person with regard to fixing the amount of compensation to be paid in accordance with sections 511-514 of this title. However, the transportation board may enter into an agreement for purchase of lands or rights affected, provided the~~

~~agreement is conditioned upon the issuance of an order of necessity.~~ [Repealed.]

§ 510. ~~APPEAL FROM ORDER OF NECESSITY~~

~~(a) If the state, municipal corporation or any owner affected by the order of the court is aggrieved by the order, an appeal may be taken to the supreme court. In the event an appeal is taken according to these provisions from an order of necessity, its effect may be stayed by the superior court or the supreme court where the person requesting the stay establishes:~~

~~(1) that he or she has a likelihood of success on the merits;~~

~~(2) that he or she will suffer irreparable harm in the absence of the requested stay;~~

~~(3) that other interested parties will not be substantially harmed if a stay is granted; and~~

~~(4) that the public interest supports a grant of the proposed stay.~~

~~(b) If no stay is granted or, if a stay is granted, upon final disposition of the appeal, a copy of the order of the court shall be recorded within 30 days in the office of the clerk of each town in which the land affected lies.~~

~~(c) Thereafter for a period of one year, the agency of transportation may request the transportation board to institute proceedings for the condemnation of the land included in the survey as finally approved by the court without further hearing or consideration of any question of the necessity of the taking. In no event shall title to or possession of the appealing landowner's property pass to the state until there is a final adjudication of the issue of the necessity and propriety of the proposed taking.~~

~~(d) If the agency of transportation is delayed in requesting the transportation board to institute condemnation proceedings within the one-year period by court actions or federal procedural actions, the time lost pending final determination shall not be counted as part of the one-year necessity period.~~ [Repealed.]

§ 511. ~~HEARING TO DETERMINE AMOUNT OF COMPENSATION~~ DETERMINATION OF DAMAGES

(a) ~~Following a determination of the necessity of the taking as above provided, when an~~ Disputes between a property owner ~~of land or rights~~ and the agency ~~of transportation are unable to agree~~ on the amount of compensation to be paid~~, and if the agency of transportation desires to proceed with the taking, the transportation board~~ as a result of a taking shall be resolved as follows:

(1) If the owner's demand exceeds the agency's offer of just compensation by $25,000.00 or less, the owner may obtain a determination of damages by either:

(A) petitioning the transportation board, or

(B) filing a complaint or, if applicable, a motion to re-open a judgment of condemnation, in superior court.

(2) If the owner's demand exceeds the agency's offer of just compensation by more than $25,000.00, the owner may obtain a determination of damages by filing a complaint or, if applicable, a motion to re-open a judgment of condemnation, in superior court.

(3) A property owner may file a petition, complaint, or motion under subdivisions (1) or (2) of this subsection no later than 30 days after the date of the notice of taking required under subsection 506(b) of this chapter.

(4) A petition improperly filed with the board shall be transferred to the superior court and, upon such transfer, the owner shall be responsible for applicable court filing fees.

(b) The board or the court shall appoint a time and place in ~~the~~ a county where the land is situated for ~~examining the premises and~~ a hearing ~~parties interested~~, giving the parties at least 10 days' written notice ~~in writing to the person owning the land or having an interest in the land. At that time and place, a member or members of the transportation board shall hear any person having an interest in the land and desiring to be heard.~~

~~(b) If the land proposed to be acquired~~ of the hearing. If the property taken extends into two or more counties, the board or court may hold a single hearing in one of the counties to determine ~~compensation~~ damages. In fixing the place for the hearing, the ~~transportation~~ board or court shall ~~take into consideration~~ consider the needs of the parties.

(c) Unless the parties otherwise agree or unless the board or the court determines that it is in the public interest to proceed on the question of damages, any proceedings to determine damages shall be stayed pending the final disposition of any appeal of the questions of necessity or public purpose.

(d) Upon demand, a party is entitled to a jury trial in superior court on the issue of damages.

(e) The board or the court shall first determine the total damages as between the agency and all interested persons claiming an interest in a subject property, and the agency may thereafter withdraw from further proceedings with respect to that property. The board or the court shall then determine any further questions in the matter, including the apportionment of damages among

interested persons. Any board decision on damages shall include findings of fact, and shall be served on the parties immediately after its issuance.

§ 512. ~~ORDER FIXING COMPENSATION~~ PAYMENT FOLLOWING DECISION ON DAMAGES; ~~INVERSE CONDEMNATION; RELOCATION ASSISTANCE~~ CREDIT OF STATE PLEDGED

(a) ~~Within 30 days after the compensation hearing, the board shall by its order fix the compensation to be paid to each person from whom land or rights are taken~~. Within 30 days of ~~the board's order~~ a final decision on damages and the exhaustion or expiration of all appeal rights, the agency shall ~~file and record the order in the office of the clerk of the town where the land is situated, deliver to each person a copy of that portion of the order directly affecting the person, and~~ pay or tender the owner the amount, if any, by which the award to ~~each~~ the person ~~entitled~~ exceeds the amount previously paid or tendered by the agency. ~~A person to whom a compensation award is paid or tendered under this subsection may accept, retain, and dispose of the award to his or her own use without prejudice to the person's right of appeal, as provided in section 513 of this title. Upon the payment or tender of the award as above provided, the agency may proceed with the work for which the land is taken.~~

(b) ~~In the event the plaintiff prevails against the state in an action for inverse condemnation, arising under this title or as a result of the acquisition of real property for a program or project undertaken by a federal agency, or with federal financial assistance, the court shall determine an award or allow to the plaintiff as part of its judgment such sum as will, in the opinion of the court, reimburse the plaintiff for his or her reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees actually incurred because of the proceeding.~~ [Repealed.]

(c) ~~When federal funds are available to provide relocation assistance and payments to persons displaced as a result of federal and federally assisted programs, any state agency may match the federal funds to the extent provided by federal law and grant relocation assistance and payments in the instances and on the conditions set forth by federal law and regulations.~~ [Repealed.]

(d) The credit of the state of Vermont is pledged to the payment of all amounts awarded or allowed under the provisions of the chapter, and these amounts shall be lawful obligations of the state of Vermont.

§ 513. APPEAL ~~FROM ORDER FIXING COMPENSATION~~ OF DAMAGES DECISION; JURY TRIAL

(a) A ~~person or a municipal corporation interested in the lands affected by a relocation who is~~ party dissatisfied with ~~the~~ a decision of the transportation board as to the amount or apportionment of damages awarded ~~for the lands,~~

may appeal to ~~the~~ a superior court where the land is situated within ~~ninety~~ 30 days after the ~~report has been filed~~ date of the decision, and any number of persons aggrieved may join in the appeal.

(b) ~~Any person~~ A party appealing the award of ~~damages made by~~ the ~~transportation~~ board~~, and the agency of transportation, shall be~~ is entitled to a jury trial in the superior court upon demand.

(c) A party aggrieved by a superior court decision on damages under this section or section 511 of this chapter may appeal to the supreme court in accordance with the Vermont Rules of Appellate Procedure.

§ 514. AWARD OF COSTS IN DAMAGES ACTION; LITIGATION EXPENSES IN INVERSE CONDEMNATION ACTION

(a) ~~When the appellant is allowed a sum greater than was awarded by the transportation board, the court shall tax costs against the agency of transportation. When the award fixed by the transportation board is upheld, the court shall tax costs against the appellant. The court shall fix the time for paying the damages awarded.~~ If a damages award by a court is more than the agency's offer of just compensation or offer of judgment, whichever is greater, the court shall award the property owner his or her reasonable costs. If the damages award is less than or equal to the greater of the agency's offer of just compensation or offer of judgment, the court shall award the agency its reasonable costs.

(b) If a court renders judgment in favor of a property owner in an inverse condemnation action or if the agency effects a settlement of an inverse condemnation action, the court shall award the owner his or her reasonable costs and other litigation expenses, including reasonable attorney, appraisal, and engineering fees actually incurred because of the proceeding.

§ 515a. ~~EVIDENCE OF HIGHWAY COMPLETION~~

~~The lack of a certificate of completion of a highway shall not alone constitute conclusive evidence that a highway is not public.~~ [Repealed.]

* * *

§ 517. ~~VESTING OF TITLE~~

~~Title to the lands taken, or other rights acquired, under this chapter, shall vest in the state upon the filing for record with the town clerk of the transportation board's order as provided in section 512 of this chapter, unless previously acquired by deed or other appropriate instrument.~~ [Repealed.]

* * *

§ 519. CONDOMINIUMS; COMMON AREAS AND FACILITIES

(a) For purposes of this section, the terms "apartment owner," "association of owners," "common areas and ~~facilities"~~ facilities," and "declaration" shall have the same meanings as in the Condominium Ownership Act, 27 V.S.A. chapter 15.

(b) Notwithstanding any other provision of law, whenever the agency under this chapter ~~5 of this title~~ proposes to acquire any common areas and facilities of a condominium, the association of owners shall constitute the interested person or persons interested in lands in lieu of the individual apartment owners for purposes of the necessity hearing, the compensation hearing, and any appeals therefrom.

(c) The agency shall serve one copy of the ~~necessity petition~~ complaint and summons upon the association of owners through one of its officers or agents, instead of upon the individual apartment owners.

(d) The agency shall make the compensation check payable to the association of owners, which shall then make proportional payments to the apartment owners as their interests appear in the declaration.

Sec. 3. 19 V.S.A. § 1(12) is amended to read:

(12) "Highways" are only such as are laid out in the manner prescribed by statute; or roads which have been constructed for public travel over land which has been conveyed to and accepted by a municipal corporation or to the state by deed of a fee or easement interest; or roads which have been dedicated to the public use and accepted by the city or town in which such roads are located; or such as may be from time to time laid out by the agency or town. However, the lack of a certificate of completion of a state or town highway shall not alone constitute conclusive evidence that the highway is not public. The term "highway" includes rights-of-way, bridges, drainage structures, signs, guardrails, areas to accommodate utilities authorized by law to locate within highway limits, areas used to mitigate the environmental impacts of highway construction, vegetation, scenic enhancements, and structures. The term "highway" does not include state forest highways, management roads, easements, or rights-of-way owned by or under the control of the agency of natural resources, the department of forests, parks and recreation, the department of fish and wildlife, or the department of environmental conservation.

* * * Conforming Changes * * *

Sec. 4. 5 V.S.A. § 652 is amended to read:

§ 652. ~~PETITION TO~~ SUPERIOR COURT

The secretary of transportation or the legislative body of a municipality, as defined in 24 V.S.A. § 2001, or the committee representing two or more municipalities, when authorized by vote of their legislative bodies, may ~~petition a~~ proceed in superior ~~judge~~ court as provided in 19 V.S.A. chapter 5, except as otherwise provided in this subchapter.

Sec. 5. REPEAL

5 V.S.A. § 654 (answer in airport condemnation proceedings) and 10 V.S.A. § 959 (determination of damages for taking of land for flood control project) are repealed.

Sec. 6. 10 V.S.A. §§ 958 and 960 are amended to read:

§ 958. EMINENT DOMAIN; DETERMINING NECESSITY

(a) The commissioner of the department of environmental conservation may ~~petition~~ file a complaint in the superior court for any county in which a portion of the real estate lies to determine that necessity requires that the state acquire real estate within the state, including real estate held for public use in the name of the state or any municipality, for the purpose of flood control projects.

* * *

(c) The ~~petition~~ complaint, the service thereof and the proceedings in relation thereto, including rights of appeal, shall conform with and be controlled by ~~chapter 5 of~~ Title 19 chapter 5.

§ 960. ENTRY AUTHORIZED

The commissioner of the department of environmental conservation or his or her authorized agents may enter upon any real estate at reasonable times and places for the purpose of making surveys or other investigations under this section, subsection 952(b) and sections 953, ~~957-959~~ 957–958, and 961 of this title. The owners of damaged real estate may recover for damages sustained by reason of the preliminary entry authorized by this section in an action at law against the commissioner.

Sec. 7. 24 V.S.A. § 4012 is amended to read:

§ 4012. EMINENT DOMAIN; EXEMPTION OF PROPERTY FROM EXECUTION

(a) An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes under this chapter after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided for the condemnation of land or rights therein ~~by the state transportation board~~ as set forth in 19 V.S.A. §§ ~~501–514~~ 500–514 and 519 and acts amendatory thereof or supplementary thereto. Property already devoted to a public use may be acquired, provided that no real property belonging to the city, county, state, or any political subdivision thereof may be acquired without its consent.

* * *

Sec. 8. 24 V.S.A. § 5104 is amended to read:

§ 5104. PURPOSES AND POWERS

(a) The authority may purchase, own, operate, or provide for the operation of land transportation facilities, and may contract for transit services, conduct studies, and contract with other governmental agencies, private companies, and individuals.

(b) The authority shall be a body politic and corporate with the powers incident to a municipal corporation under the laws of the state of Vermont consistent with the purposes of the authority, and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of its functions, including~~, but not limited to,~~ the following:

* * *

(11) within its area of operation, to acquire by the exercise of the power of eminent domain any real property which it may have found necessary for its purposes, in the manner provided for the condemnation of land or rights therein as set forth in 19 V.S.A. §§ ~~501–514~~ 500–514 and 519.

* * *

* * * Transition Provision * * *

Sec. 9. TRANSITION

(a) The state highway condemnation procedures of 19 V.S.A. chapter 5 in effect prior to July 1, 2012 shall continue to apply to all superior court and transportation board proceedings brought by the agency prior to July 1, 2012.

(b) With respect to any superior court proceeding brought by the agency on or after July 1, 2012 under 19 V.S.A. chapter 5, as amended by this act, the agency shall be required to demonstrate that it has satisfied the requirements of this act with respect to precondemnation appraisals, offers of just compensation, and negotiations with property owners.

Sec. 10. REPORT

By October 15, 2013, the agency shall submit to the house and senate committees on judiciary and on transportation a report listing:

(1) every acquisition of property, whether by agreement or through condemnation, for which the agency prepared a waiver valuation in fiscal year 2013;

(2) the value of the property estimated in the waiver valuation;

(3) whether an appraisal of the property was obtained by the agency or the property owner and, if so, the appraised value of the property;

(4) the date and the amount of the first offer made to the property owner;

(5) the date and the amount of the final payment to the property owner for the property; and

(6) whether the final payment to the property owner resulted from an agreement prior to the filing of a condemnation action, an agreement following the filing of a condemnation action, or a board or court decision on compensation.

Sec. 11. TRAINING OF TRANSPORTATION BOARD MEMBERS

(a) Within 30 days after the effective date of this act, the executive secretary of the transportation board shall arrange for transportation board members to be trained on:

(1) the methodology of condemnation appraisals;

(2) the law of Vermont, including court decisions, governing the determination of damages resulting from a condemnation for a state highway project; and

(3) provisions of the Uniform Relocation Assistance and Real Property Acquisition Properties Act related to the determination of damages.

(b) Within 30 days of a new member joining the board, the executive secretary of the board shall arrange for the new member to be trained as described in subsection (a) of this section.

* * * Effective Date * * *

Sec. 12. EFFECTIVE DATES

(a) This section, Sec. 9 (transition provision), and Sec. 11 (training of board members) of this act shall take effect on passage.

(b) All other sections shall take effect on July 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, and the proposal of amendment was agreed to, and third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 535.

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

An act relating to racial disparities in the Vermont criminal justice system.

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. DATA COLLECTION AND ANALYSIS; APPROPRIATION

(a) Research regarding sentencing practices routinely concludes that two variables drive sentencing decisions—the seriousness of the offense and the defendant's risk to reoffend. The Vermont Center for Justice Research ("the center") shall examine the effect of these and other variables, including the race of the defendant, on sentencing decisions in Vermont, for a five-year period. The center shall use data from the Federal Bureau of Investigation Interstate Identification Index, the department of motor vehicles, the Vermont criminal information center, the department of corrections, and the Vermont courts to explain if the disparities are based on legal or nonlegal factors. The center's research shall focus on the following:

(1) How do the sentences of people of particular census categories, in the aggregate and by national incident-based reporting system race data fields (NIBRS), which currently include white, black, Asian, Native American or Alaskan Native, and Hispanic, compare to the sentences of white defendants with respect to sentence type, length of sentence, and level of restriction?

(2) How does the actual time spent by people of particular census categories, in the aggregate and by NIBRS race data fields, under department

of corrections' supervision (and the degree of restriction) compare to the time spent by (and the degree of restriction of) white defendants?

(3) If disparate sentencing patterns or disparate service patterns exist for people of particular census categories, in the aggregate and by NIBRS race data fields, what variables included in the study design explain the disparity?

(b) On or before December 15, 2012, results of the study shall be reported to the house and senate committees on judiciary, to the court administrator, and to each organization or entity represented on the governor's criminal justice cabinet.

(c) The human rights commission is authorized to transfer $20,000.00 from its existing budget to the Vermont Center for Justice Research to finance this data collection analysis and report and is authorized to apply for and receive grants for the same purpose.

Sec. 2. 20 V.S.A. § 2366 is added to read:

§ 2366. LAW ENFORCEMENT AGENCIES; BIAS-FREE POLICING POLICY; RACE DATA COLLECTION

(a) No later than January 1, 2013, every state, local, county, and municipal law enforcement agency that employs one or more certified law enforcement officers shall adopt a bias-free policing policy. The policy shall contain the essential elements of such a policy as determined by the Law Enforcement Advisory Board after its review of the current Vermont State Police Policy and the most current model policy issued by the office of the attorney general.

(b) The policy shall encourage ongoing bias-free law enforcement training for state, local, county, and municipal law enforcement agencies.

(c) State, local, county, and municipal law enforcement agencies that employ one or more certified law enforcement officers are encouraged to work with the Vermont association of chiefs of police to extend the collection of roadside-stop race data uniformly throughout state law enforcement agencies, with the goal of obtaining uniform roadside-stop race data for analysis.

Sec. 3. 20 V.S.A. § 2358 is amended to read:

§ 2358. MINIMUM TRAINING STANDARDS

* * *

(e) The criteria for all minimum training standards under this section shall include anti-bias training approved by the Vermont criminal justice training council.

Sec. 4. 24 V.S.A. § 1939 is amended as follows:

§ 1939. LAW ENFORCEMENT ADVISORY BOARD

* * *

(e) The board shall examine how individuals make complaints to law enforcement and suggest, on or before December 15, 2012, to the senate and house committees on judiciary what procedures should exist to file a complaint.

Sec. 5. CRIMINAL JUSTICE AGENCIES; BIAS-FREE CRIMINAL JUSTICE POLICY

The general assembly encourages all criminal justice entities through their professional rules of conduct to ensure that all actions taken are done in a manner that is free of bias.

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

Senator Snelling, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Judiciary.

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; Consideration Postponed

H. 766.

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

An act relating to the national guard.

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. 20 V.S.A. § 946 is added to read:

§ 946. COMMANDING OFFICER'S NONJUDICIAL DISCIPLINE

(a) It is the purpose of this section to rehabilitate a service member who may have violated certain provisions of the Uniform Code of Military Justice that, in the discretion of the commanding officer, are deemed to be de minimus. Any action taken pursuant to this section shall be taken to rehabilitate the member and deter the underlying conduct.

(b) Any field grade or above commander in the national guard not in the service of the United States may, in addition to or in lieu of admonition or reprimand, impose nonjudicial discipline in like manner and to the extent prescribed by Article 15 of the Uniform Code of Military Justice, Manual for Courts-Martial, United States, as shall be currently in use by the armed forces of the United States, except that there shall be no right to demand trial by courts-martial when the commander notifies the accused prior to using the nonjudicial discipline option that the maximum punishment to be considered in the event that the accused is found guilty beyond a reasonable doubt will be the loss of one rank, restriction, loss of pay, or extra duty. The member shall be entitled to the same federal protections and rights in any proceeding under this section as he or she would be under the Uniform Code of Military Justice.

Sec. 2. 20 V.S.A. § 369 is added to read:

§ 369. AWARDS AND MEDALS

Upon the approval of the governor, the adjutant general may, from time to time, create and design such awards and medals to recognize meritorious service or outstanding achievement for members of the Vermont National Guard. The adjutant general will cause to be published a roster of these awards and medals, the criteria and process for awarding them, and a description or specification of the award and medals. All awards and medals will be presented in the name of the state of Vermont and be awarded to a member or retired member of the Vermont National Guard or if the member is deceased to the member's spouse, child, parent, sibling, or grandchild or, if none, to a person designated by the executor of the estate.

Sec. 3. 20 V.S.A. § 603 is amended to read:

§ 603. ARMS AND EQUIPMENT; PAY AND RATIONS

When the national guard, or part thereof, is ordered out under the provisions of section 366, 601, or 602 of this title, the state shall furnish arms and equipment necessary for each officer, warrant officer, and enlisted person; and they shall be entitled to ~~pay and rations~~ pay, subsistence, and quarters allowance equivalent to that paid to members of the armed forces of the United States for officers, warrant officers, and enlisted persons of corresponding grade and time in service as designated in the U.S. pay tables.

Sec. 4. 20 V.S.A. § 608 is added to read:

§ 608. CIVILIAN LEAVE OPTION

If any member of the Vermont national guard is ordered to state active duty by the governor, the service member shall have the right to take leave without pay from his or her civilian employment. No member of the national guard

shall be required to use or exhaust his or her vacation or other accrued leave from his or her civilian employment for a period of active service.

Sec. 5. 20 V.S.A. § 609 is added to read:

§ 609. STAY OF LEGAL PROCEEDINGS BECAUSE OF SERVICE IN NATIONAL GUARD

(a)(1) If a service member of the Vermont National Guard who is ordered to state active duty by the governor is a party to a civil or administrative proceeding in any Vermont court, the proceeding:

(A) may be stayed by the court on its own motion; or

(B) shall be stayed by application of the member or person acting on behalf of the member, unless the court finds that the proceeding would not be materially affected by reason of the member's absence or that the member can participate by telephone or other electronic means.

(2) A motion for a stay under this subsection may be filed or the court may issue such a stay at any time during the period of active service. Any stay issued shall not remain in effect for more than 30 days after the completion of state active duty.

(b) An application for a stay pursuant to subdivision (a)(1)(B) of this section shall include a letter or other communication from the member or a person on his or her behalf setting forth facts stating the manner in which the member's duty requirements materially affect the member's ability to appear and stating a date when the member is expected to be available to appear, together with any information from the member's commanding officer.

(c)(1) This section shall not apply to:

(A) proceedings involving relief from abuse orders under 15 V.S.A. chapter 21, subchapter 1;

(B) proceedings involving orders against stalking or sexual assault under 12 V.S.A. chapter 178;

(C) proceedings involving abuse prevention orders for vulnerable adults under 33 V.S.A. chapter 69, subchapter 1; or

(D) civil operator's license suspension proceedings under 23 V.S.A. § 1205.

(2) If a service member is unable to appear at a hearing due to responsibilities related to state active duty service, the court may issue interim or ex parte orders in proceedings identified in subdivision (A), (B), or (C) of this subsection, and the department of motor vehicles may suspend a civil operator's license. If the court issued any order while the member was on state

active duty, upon the member's return, he or she shall, upon request, be entitled to a hearing and the opportunity to move to strike or modify the order or suspension issued in his or her absence. If the civil operator's license is reinstated, there shall be no reinstatement fee.

Sec. 5a. 12 V.S.A. § 553 is amended to read:

§ 553. MEMBER OF ARMED SERVICES; TOLLING STATUTE OF LIMITATIONS

When an inhabitant of this state is in the military or naval service of the United States, or is a member of the Vermont National Guard and has been ordered to state active duty and, at the time of entering such service or duty, had a cause of action against another person, or another person had a cause of action against him or her, the time spent in such military or naval service out of this state or the time spent in state active duty shall not be taken as part of the time limited for the bringing of an action by or against him or her founded on such causes. The limitation period for a cause of action shall be tolled during the duration of the person's out of state military or naval service, or state active duty service, plus an additional 60 days.

Sec. 6. 21 V.S.A. § 492 is amended to read:

§ 492. RIGHTS AND BENEFITS

* * *

(c)(1) If any member of the Vermont National Guard with civilian employer-sponsored insurance coverage is ordered to state active duty by the governor for up to 30 days, the service member may, at the member's option, continue his or her civilian health insurance under the same terms and conditions as were in effect for the month preceding the member's call to state active duty, including a continuation of the same levels of employer and employee contributions toward premiums and cost-sharing.

(2) If a member of the Vermont National Guard is called to state active duty for more than 30 days, the member may continue his or her civilian health insurance. For a member whose employer chooses not to continue regular contributions toward premiums and cost-sharing during the period of the member's state active duty in excess of 30 days, the state of Vermont shall be responsible for paying the employer's share of the premium and cost-sharing.

(3) The office of the adjutant general shall administer this subsection and may adopt policies, procedures, and guidelines to carry out the purposes of this subsection, including developing employee notice requirements, enforcement provisions, and a process for the state to remit the employer's

share of premiums and cost-sharing to the appropriate entities pursuant to subdivision (2) of this subsection.

Sec. 7. 16 V.S.A. § 2537 is amended to read:

§ 2537. ARMED SERVICES SCHOLARSHIPS

* * *

(b) Definitions:

(1) "Vermont National ~~guard~~ Guard" as used in this section will be deemed to include Vermont army national guard and Vermont air national guard.

(2) "Active duty for ~~national guard~~ Vermont National Guard and for active reserve forces" means full-time duty in the active military service of the United States and includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

(3) "Inactive duty" means training performed by members of a reserve component while not on active duty and includes unit training assemblies, training periods, military flight periods and other equivalent duty and while on state duty on order of the governor or the governor's representative.

(4) "Armed forces of the United States" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(5) "Child" means a natural or adoptive child of a member of the Vermont National Guard or armed forces, and includes a stepchild.

Sec. 8. 16 V.S.A. § 2856 is amended to read:

§ 2856. EDUCATIONAL ASSISTANCE; INTEREST FREE LOANS

(a) An active member of the Vermont ~~army national guard or the air national guard~~ National Guard may be eligible for an interest-free loan in an academic year for financial assistance to pay for tuition and fees for courses taken at a Vermont college, university, regional technical center, or other programs approved pursuant to policies adopted in accordance with subsection (f) of this section. ~~Academic year awards may be up to the in-state tuition rate at the University of Vermont for that year.~~

(b) To be eligible for an educational loan under this section, a person shall:

(1) be an active member in good standing of a ~~federally recognized~~ federally recognized unit of the Vermont ~~army national guard or air national guard~~ National Guard;

(2) have successfully completed basic training or commissioning; and

(3) ~~not hold a baccalaureate degree or higher; and~~

~~(4)~~ be enrolled in a program that leads to a postsecondary degree, diploma or be studying for relevant continuing education purposes.

(c) A loan made under this section shall be interest free and may be partially or completely cancelled and forgiven for a person who:

(1) submits certification that the person has successfully completed the course; and

(2) submits certification that the person has completed two years of national guard service for each full academic year award. Service requirements for less than a full academic year award shall be proportionate to the amount of the award. The board shall determine the amount of loan to be cancelled for each completed year of service. The amount cancelled for each year of service shall not exceed 50 percent of the loan.

(d) The adjutant general shall provide ~~a certificate~~ documentation of eligibility ~~to each person who has been found to be eligible~~ for educational assistance under this section for each academic period. ~~The certificate shall be valid for one academic year.~~

(e) ~~A person shall not be eligible for educational assistance under this section for any courses taken after he or she has been awarded a baccalaureate degree or is no longer an active member in good standing of the Vermont army national guard or the air national guard~~ The loan of a person who loses eligibility under this section while enrolled in a course shall go into repayment pursuant to the terms of the loan, and the person shall be ineligible for further assistance under this section until the loan is repaid in full.

(f) The board, in consultation with the office of the adjutant general, shall adopt ~~rules~~ policies, procedures, and guidelines necessary to implement the provisions of this section, which shall include application requirements, annual loan requirements, loan forgiveness requirements, and annual loan amounts based on available funds. ~~Rules~~ The policies, procedures, and guidelines shall include definitions of "successful completion of a course," "relevant continuing education courses" and what constitutes an "academic year." Rules adopted by the Vermont ~~state colleges~~ State Colleges under section 2183 of this title, prior to its repeal, shall remain valid under this section and shall be administered by the corporation.

(g) [Repealed.]

(h) The availability of loans made under this subchapter is subject to funds appropriated to the Vermont ~~army or air national guard~~ National Guard for that purpose.

and that after passage the title of the bill be amended to read: "An act relating to the rehabilitation of Vermont National Guard members and certain rights and responsibilities of guard members and their employers"

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

Senator Starr, 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 Economic Development, Housing and General Affairs.

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 proposed by the Committee on Economic Development, Housing and General Affairs?, Senator McDonald moved to divide the question.

Thereupon, Senator Mazza moved that action on the bill be postponed to the next legislative day which was agreed to.

Proposal of Amendment; Third Reading Ordered

H. 751.

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

An act relating to jurisdiction of delinquency proceedings.

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

Sec. 1. 33 V.S.A. § 5103 is amended to read:

§ 5103. JURISDICTION

(a) The family division of the superior court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

(b) Orders issued under the authority of the juvenile judicial proceedings chapters shall take precedence over orders in other family division proceedings and any order of another court of this state, to the extent they are inconsistent. This section shall not apply to child support orders in a divorce, parentage, or

relief from abuse proceedings until a child support order has been issued in the juvenile proceeding.

(c)(1) Except as otherwise provided by this title and by subdivision (2) of this subsection, jurisdiction over a child shall not be extended beyond the child's 18th birthday.

(2)(A) Jurisdiction over a child who has been adjudicated delinquent may be extended until six months beyond the child's 18th birthday if the offense for which the child has been adjudicated delinquent is a nonviolent misdemeanor and the child was 17 years old when he or she committed the offense.

(B) In no case shall custody of a child aged 18 years or older be retained by or transferred to the commissioner for children and families.

(C) Jurisdiction over a child in need of care or supervision shall not be extended beyond the child's 18th birthday.

(D) As used in this subdivision, "nonviolent misdemeanor" means a misdemeanor offense which is not a listed crime as defined in 13 V.S.A. § 5301(7), an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64, or an offense involving violation of a protection order in violation of 13 V.S.A. § 1030.

(d) The court may terminate its jurisdiction over a child prior to the child's 18th birthday by order of the court. If the child is not subject to another juvenile proceeding, jurisdiction shall terminate automatically in the following circumstances:

(1) Upon the discharge of a child from juvenile probation, providing the child is not in the legal custody of the commissioner.

(2) Upon an order of the court transferring legal custody to a parent, guardian, or custodian without conditions or protective supervision.

(3) Upon the adoption of a child following a termination of parental rights proceeding.

Sec. 2. 33 V.S.A. § 5201 is amended to read:

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

* * *

(c) Consistent with applicable provisions of Title 4, any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining the age of 14, but not the age of 18, shall originate in ~~district or~~ the criminal division of the superior court, provided that jurisdiction may be transferred in accordance with this chapter.

* * *

Sec. 3. 33 V.S.A. § 5203 is amended to read:

§ 5203. TRANSFER FROM OTHER COURTS

(a) If it appears to a criminal division of the superior court that the defendant was under the age of 16 years at the time the offense charged was alleged to have been committed and the offense charged is not one of those specified in subsection 5204(a) of this title, that court shall forthwith transfer the case to the ~~juvenile~~ family division of the superior court under the authority of this chapter.

(b) If it appears to a criminal division of the superior court that the defendant was over the age of 16 years and under the age of 18 years at the time the offense charged was alleged to have been committed, or that the defendant had attained the age of 14 but not the age of 16 at the time an offense specified in subsection 5204(a) of this title was alleged to have been committed, that court may forthwith transfer the proceeding to the ~~juvenile~~ family division of the superior court under the authority of this chapter, and the minor shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

(c) If it appears to the state's attorney that the defendant was over the age of 16 and under the age of 18 at the time the offense charged was alleged to have been committed and the offense charged is not an offense specified in subsection 5204(a) of this title, the state's attorney may file charges in ~~a juvenile court or~~ the family or criminal division of the superior court. If charges in such a matter are filed in the criminal division of the superior court, the criminal division of the superior court may forthwith transfer the proceeding to the ~~juvenile~~ family division of the superior court under the authority of this chapter, and the person shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

* * *

Sec. 4. 33 V.S.A. § 5204 is amended to read:

§ 5204. TRANSFER FROM JUVENILE COURT

(a) After a petition has been filed alleging delinquency, upon motion of the state's attorney and after hearing, the ~~juvenile~~ family division of the superior court may transfer jurisdiction of the proceeding to the criminal division of the superior court, if the child had attained the age of 16 but not the age of 18 at the time the act was alleged to have occurred and the delinquent act set forth in the petition was not one of those specified in subdivision (1)–(12) of this subsection or if the child had attained the age of 10 but not the age of 14 at the

time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

(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 or 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 (a)(2);

(11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or

(12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

(b) The state's attorney of the county where the juvenile petition is pending may move in the ~~juvenile~~ family division of the superior court for an order transferring jurisdiction under subsection (a) of this section ~~within 10 days of the filing of the petition alleging delinquency~~ at any time prior to adjudication on the merits. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the juvenile court may deny the motion to transfer jurisdiction.

(c) Upon the filing of a motion to transfer jurisdiction under subsection (b) of this section, the juvenile court shall conduct a hearing in accordance with procedures specified in subchapter 2 of this chapter to determine whether:

(1) there is probable cause to believe that the child committed an act listed in subsection (a) of this section; and

(2) public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to juvenile courts and delinquent children.

(d) In making its determination as required under subsection (c) of this section, the court may consider, among other matters:

(1) The maturity of the child as determined by consideration of his or her age, home, environment; emotional, psychological and physical maturity; and relationship with and adjustment to school and the community.

(2) The extent and nature of the child's prior record of delinquency.

(3) The nature of past treatment efforts and the nature of the child's response to them.

(4) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.

(5) The nature of any personal injuries resulting from or intended to be caused by the alleged act.

(6) The prospects for rehabilitation of the child by use of procedures, services, and facilities available through juvenile proceedings.

(7) Whether the protection of the community would be better served by transferring jurisdiction from the ~~juvenile court~~ family division to the criminal division of the superior court.

(e) A transfer under this section shall terminate the jurisdiction of the juvenile court over the child only with respect to those delinquent acts alleged in the petition with respect to which transfer was sought.

(f)(1) The ~~juvenile court~~ family division, following completion of the transfer hearing, shall make ~~written~~ findings and, if the court orders transfer of jurisdiction from the ~~juvenile court~~ family division, shall state the reasons for that order. If the ~~juvenile court~~ family division orders transfer of jurisdiction, the child shall be treated as an adult. The state's attorney shall commence criminal proceedings as in cases commenced against adults.

(2) Notwithstanding subdivision (1) of this subsection, the parties may stipulate to a transfer of jurisdiction from the family division at any time after a motion to transfer is made pursuant to subsection (b) of this section. The court shall not be required to make findings if the parties stipulate to a transfer pursuant to this subdivision. Upon acceptance of the stipulation to transfer jurisdiction, the court shall transfer the proceedings to the criminal division and the child shall be treated as an adult. The state's attorney shall commence criminal proceedings as in cases commenced against adults.

(g) The order granting or denying transfer of jurisdiction shall not constitute a final judgment or order within the meaning of Rules 3 and 4 of the Vermont Rules of Appellate Procedure.

(h) If a person who has not attained the age of 16 at the time of the alleged offense has been prosecuted as an adult and is not convicted of one of the acts

listed in subsection (a) of this section but is convicted only of one or more lesser offenses, jurisdiction shall be transferred to the ~~juvenile~~ family division of the superior court for disposition. A conviction under this subsection shall be considered an adjudication of delinquency and not a conviction of crime, and the entire matter shall be treated as if it had remained in ~~juvenile court~~ the family division throughout. In case of an acquittal for a matter specified in this subsection and in case of a transfer to ~~juvenile court~~ the family division under this subsection, the court shall order the sealing of all applicable files and records of the court, and such order shall be carried out as provided in subsection 5119(e) of this title.

(i) The record of a hearing conducted under subsection (c) of this section and any related files shall be open to inspection only by persons specified in subsections 5117(b) and (c) of this title in accordance with section 5119 of this title and by the attorney for the child.

Sec. 5. 33 V.S.A. § 5232 is amended to read:

§ 5232. DISPOSITION ORDER

* * *

(b) In carrying out the purposes outlined in subsection (a) of this section, the court may:

* * *

(7) Refer a child directly to a youth-appropriate community-based provider that has been approved by the department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subdivision shall not require the court to place the child on probation. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child shall return to the court for disposition.

* * *

Sec. 6. 33 V.S.A. § 4913 is amended to read:

§ 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL ACTION

(a) Any physician, surgeon, osteopath, chiropractor, or physician's assistant licensed, certified, or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, emergency medical personnel as defined in 24 V.S.A.

§ 2651(6), dentist, psychologist, pharmacist, any other health care provider, child care worker, school superintendent, school teacher, student teacher, school librarian, school principal, school guidance counselor, and any other individual who is regularly employed by a school district, or who is contracted and paid by a school district to provide student services for five or more hours per week during the school year, mental health professional, social worker, probation officer, any employee, contractor, and grantee of the agency of human services who have contact with clients, police officer, camp owner, camp administrator, camp counselor, or member of the clergy who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 4914 of this title within 24 hours. As used in this subsection, "camp" includes any residential or nonresidential recreational program.

* * *

Sec. 7. REPORT

(a)(1) A committee is established to study the effectiveness of the juvenile justice system in reducing crime and recidivism. The committee shall study changes to the juvenile justice system that could result in reducing recidivism, including the extension of jurisdiction beyond the age of 18 for the purposes of juvenile probation and the automatic expungement of criminal convictions for nonviolent offenses committed by children under 18.

(2) If funding is available, the study shall include consideration of:

(A) the number of 16- and 17-year-olds adjudicated delinquent in the family division during fiscal year 2009 who have been subsequently convicted of an adult offense within three years of the date of disposition of the delinquency;

(B) the number of 16- and 17-year-olds convicted of an adult offense in the criminal division during fiscal year 2009 who have been subsequently convicted of another adult offense; and

(C) the number of children adjudicated delinquent during fiscal year 2009 who are placed in the custody of the department for children and families at disposition, remain in the department's custody for 30 or more days after disposition, and who within three years of the date of sentencing on the first offense become incarcerated or subject to supervision by the department of corrections as a result of another offense.

(b)(1) The committee shall be composed of the following members:

(A) The commissioner for children and families or designee.

(B) The commissioner of corrections or designee.

(C) The administrative judge or designee.

(D) The executive director of state's attorneys and sheriffs or designee.

(E) The defender general or designee.

(2) The committee shall consult with the joint fiscal office regarding the costs and savings associated with the juvenile justice system and monitor the impact on those costs and savings that result from the extension of jurisdiction authorized in this section.

(c) On or before December 1, 2012, the committee shall report its findings, together with any recommendations for changes in law, to the senate and house committees on judiciary, the house committee on human services, and the senate committee on health and welfare.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 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, and the proposal of amendment was agreed to, and third reading of the bill was ordered.

Committees of Conference Appointed

H. 464.

An act relating to a moratorium on hydraulic fracturing wells for natural gas and oil production.

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

Senator Lyons
Senator Benning
Senator MacDonald

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

H. 496.

An act relating to preserving Vermont's working landscape.

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

Senator Illuzzi
Senator Lyons
Senator Giard

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

H. 559.

An act relating to health care reform implementation.

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

Senator Ayer
Senator Mullin
Senator Carris

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

Senator Campbell Assumes the Chair

In the absence of the President (who was Acting Governor in the absence of the Governor) the President *pro tempore* assumed the Chair.

Rules Suspended; Report of Committee of Conference Accepted and Adopted on the Part of the Senate; Bill Messaged

H. 789.

Appearing on the Calendar for notice, on motion of Senator White, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to reapportioning the final representative districts of the House of Representatives.

Was taken up for immediate consideration.

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

To the Senate and House of Representatives:

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

H. 789. An act relating to reapportioning the final representative districts of the House of Representatives.

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. 17 V.S.A. § 1893, as amended by Sec. 1 of No. 74 of the Acts of the 2011 Adj. Sess. (2012), is amended to read:

§ 1893. INITIAL DIVISION

The state is divided into the following initial districts, each of which shall be entitled to the indicated number of representatives:

District	Towns and Cities	Representatives

* * *

~~BENNINGTON-3~~	~~Arlington, Glastenbury, Sandgate, Shaftsbury, Stratton, Sunderland, and that portion of the town of Rupert encompassed within a boundary beginning at the point where the boundary line of Rupert and the state of New York intersects with VT Route 153; then northeasterly along the southern side of the centerline of VT 153 to the intersection of East Street; then easterly along the southern side of the centerline of East Street to the intersection of Kent Hollow Road; then southerly along the western side of the centerline of Kent Hollow Road to the boundary of the town of Sandgate; then westerly along the Sandgate town line to the boundary of New York; then northerly along the New York state line to the point of beginning~~	~~2~~
BENNINGTON-3	Glastenbury, Shaftsbury, and that portion of the town of Sunderland encompassed within a boundary beginning at the point where the boundary line of Sunderland and Glastenbury intersects with VT Route 7; then northerly along the eastern side of the centerline of VT 7 to the intersection of North Road; then northerly along the eastern side of the centerline of North Road to the intersection of Borough Road; then northerly along the eastern side of the centerline of Borough Road to the intersection of Sunderland Hill Road; then northeasterly along the southern side of the centerline of Sunderland Hill Road to the boundary of the town of Manchester; then easterly along the Manchester town line to the boundary of the town of Winhall; then easterly along the	

	Winhall town line to the boundary of the town of Stratton; then southerly along the Stratton town line to the boundary of Glastenbury; then westerly along the Glastenbury town line to the point of beginning	1
BENNINGTON-4	Arlington, Manchester, Sandgate, and that portion of the town of Sunderland not in BENNINGTON-3	~~1~~2

* * *

CHITTENDEN-4-1	Charlotte and~~, in Hinesburg, the following census block 003507: 1039~~ that portion of the town of Hinesburg encompassed within a boundary beginning at the point where the boundary line of Hinesburg and Charlotte intersects with Drinkwater Road; then easterly along the southern side of the centerline of Drinkwater Road to the intersection of Baldwin Road; then southerly along the western side of the centerline of Baldwin Road to the boundary of the town of Monkton; then westerly along the Monkton town line to the boundary of Charlotte; then northerly along the Charlotte town line to the point of beginning	1
CHITTENDEN-4-2	Hinesburg, except that portion of the town in CHITTENDEN-4-1	1
CHITTENDEN-5	Shelburne and St. George	2
CHITTENDEN-6	Burlington and Winooski	12
CHITTENDEN-7	South Burlington	4
CHITTENDEN-8-1	That portion of the town of Essex not included in CHITTENDEN-8-2 or 8-3	2
CHITTENDEN-8-2	The village of Essex Junction, except ~~the following census block 002601: 1023~~ that portion of the village encompassed within a boundary beginning at the point where Pearl Street intersects with Warner Avenue; then northerly along the western side of the centerline of Warner Avenue to the intersection with Sunderland Brook; then northwesterly along the southern side of the centerline of Sunderland Brook to the intersection with Susie Wilson Road and Pearl Street; then southeasterly along the northern side of the centerline of Pearl Street to the point of beginning	2

CHITTENDEN-8-3	Westford and that portion of the town of Essex encompassed within a boundary beginning at the point where the boundary line of Essex and the town of Colchester intersects with Curve Hill Road; then southeasterly along the northern side of the centerline of Curve Hill Road to the intersection of Lost Nation Road; then southeasterly along the northern side of the centerline of Lost Nation Road to the intersection of Old Stage Road; then northerly along the western side of the centerline of Old Stage Road to the intersection of Towers Road; then southeasterly along the northern side of the centerline of Towers Road to the intersection of ~~Clover Drive; then northeasterly along the western side of the centerline of Clover Drive to the intersection with Alder Brook; then southeasterly along the northern side of the centerline of Alder Brook to the intersection with~~ Brown's River Road; then easterly along the northern side of the centerline of Brown's River Road to the intersection of Weed Road; then easterly along the northern side of the centerline of Weed Road to the intersection of Jericho Road; then easterly along the northern side of the centerline of Jericho Road to the boundary of the town of Jericho; then northeasterly along the Jericho town line to the boundary of Westford; then westerly along the Westford town line to the boundary of Colchester; then southwesterly along the Colchester town line to the point of beginning	1
CHITTENDEN-9	Colchester	4
	* * *	
LAMOILLE-2	Belvidere, Hyde Park, Johnson, and Wolcott~~, and that portion of the town of Eden not in ORLEANS-LAMOILLE~~	2
	* * *	
ORLEANS-2	Coventry, Irasburg, Newport City, ~~and~~ Newport Town, and that portion of the town of Troy encompassed within a boundary beginning at the point where the boundary line of Troy and Newport Town intersects	

	with the Canadian Pacific railway; then northwesterly along the southern side of the centerline of the railway to the intersection of VT Route 105; then northwesterly along the southern side of the centerline of VT 105 to the intersection of East Hill Road; then southerly along the eastern side of the centerline of East Hill Road to the intersection of VT Route 100; then westerly along the southern side of the centerline of VT 100 to the intersection with the Missisquoi River; then southwesterly along the eastern side of the centerline of the Missisquoi River to the boundary of the town of Westfield; then southerly along the Westfield town line to the boundary of the town of Lowell; then easterly along the Lowell town line to the boundary of Newport Town; then northerly along the Newport Town boundary to the point of beginning	2

* * *

ORLEANS-LAMOILLE	Eden, Jay, Lowell, ~~Troy,~~ Westfield, and that portion of the town of ~~Eden that is west of the centerline of Route 100~~ Troy not in ORLEANS-2	1
RUTLAND-BENNINGTON	Middletown Springs, Pawlet, Rupert, Wells, and that portion of the town of Tinmouth~~, that portion of the town of Wells not in RUTLAND-1, and that portion of the town of Rupert not in BENNINGTON-3~~ not in RUTLAND-2	1
RUTLAND-1	Ira~~,~~ and Poultney~~, and that portion of the town of Wells encompassed within a boundary beginning at the point where the boundary line of Wells and Poultney intersects with West Lake Road; then southerly along the eastern and Lake St. Catherine side of the centerline of West Lake Road to the intersection of VT Route 30; then northerly along the western and Lake St. Catherine side of the centerline of VT 30 to the boundary of Poultney; then westerly along the Poultney town line to the point of beginning~~	1
RUTLAND-2	Clarendon, Proctor, Wallingford, ~~and~~ West Rutland, and that portion of the town of Tinmouth encompassed within a boundary beginning at the point where the	

	boundary line of Tinmouth and Danby intersects with East Road; then northerly along the eastern side of the centerline of East Road and then continuing along the eastern side of the centerline of North East Road to the boundary of Clarendon; then easterly along the Clarendon town line to the boundary of Wallingford; then southerly along the Wallingford town line to the boundary of Danby; then westerly along the Danby town line to the point of beginning	2

* * *

WINDHAM-5	Marlboro, Newfane, and ~~that portion of the town of~~ Townshend ~~not in WINDHAM-BENNINGTON~~	1
WINDHAM-6	Halifax, ~~Whitingham, and~~ Wilmington, and that portion of the town of Whitingham not in	
WINDHAM-BENNINGTON		1
WINDHAM-BENNINGTON	Dover, Readsboro, Searsburg, Somerset, Stamford, Wardsboro, and that portion of the town of ~~Townshend~~ Whitingham encompassed within a boundary beginning at the ~~northernmost point where the boundary line of Townshend and the town of Wardsboro intersects with West Hill Road; then northerly along the eastern side and easterly along the southern side of the centerline of West Hill Road to the intersection of State Forest Road; then easterly along the southern side and southerly along the western side of the centerline of State Forest Road to the boundary of the town of Newfane; then westerly along the town line of Newfane to the boundary line of Wardsboro; then northerly along the town line of Wardsboro to the point of beginning~~ point where the boundary line of Whitingham and Readsboro intersects with VT Route 100; then southerly along the Readsboro town line to the boundary of the state of Massachusetts; then easterly along the Massachusetts state line to the intersection of Kentfield Road; then northerly along the western side of the centerline of Kentfield Road to the intersection with the Nog Brook; then northerly along the western side of the centerline of Nog Brook to the intersection with VT	

	100; then southerly along the eastern side and westerly along the southern side of the centerline of VT 100 to the point of beginning	1
WINDHAM-BENNINGTON-WINDSOR	Jamaica, Londonderry, Stratton, Weston, and Winhall	1

* * *

WINDSOR-3-1	Andover, Baltimore, Chester, and that portion of the town of Springfield encompassed within a boundary beginning at the point where the boundary line of Springfield and Chester intersects with Route 10; then easterly along the southern side of the centerline of Route 10 to the intersection of Cemetery Road; then easterly along the southern side of the centerline of Cemetery Road to the intersection of School Street; then southerly on the western side of the centerline of School Street to the intersection of Main Street; then easterly on the southern side of the centerline of Main Street to the intersection of Church Street; then southerly along the western side of the centerline of Church Street to the intersection ~~with Great Brook; then southerly along the western side of the centerline of Great Brook to the intersection with~~ of Spoonerville Road; then southerly along the western side of the centerline of Spoonerville Road to the boundary line of Chester; then northerly along the Chester town line to the point of beginning	1
WINDSOR-3-2	That portion of the town of Springfield not in WINDSOR-3-1	2

* * *

Sec. 2. 17 V.S.A. § 1893a is amended to read:

§ 1893a. SUBDIVISION OF INITIAL DISTRICTS

~~(a)~~ The following initial House districts~~, created and assigned more than two members by section 1893 of this title, as amended by No. 85 of the Acts of 2002,~~ are subdivided into ~~final~~ representative House districts, as designated and defined below, each of which shall be entitled to elect the indicated number of representatives:

~~(1) BENNINGTON-2 is subdivided into the following districts:~~

~~BENNINGTON-2-1. That portion of the town of Bennington not included in BENNINGTON-2-2.~~ ~~2~~

~~BENNINGTON-2-2. That portion of the town of Bennington encompassed by a border beginning at the intersection of VT 7 and the Pownal town line, then northerly on the easterly side of VT 7 to the intersection with Monument Avenue, then northerly along the easterly side of Monument Avenue to the intersection with Dewey Street, then northerly along the easterly side of Dewey Street to the intersection with West Main Street, then southeasterly on the southerly side of West Main Street to the intersection with North Street, then northerly along the easterly side of North Street to the intersection with County Street, then easterly along the southerly side of County Street to the intersection with Park Street, then northerly along the easterly side of Park Street to the intersection with Roaring Branch River, then easterly along the southerly side of the river to the intersection with VT 9, then easterly along VT 9 to the intersection with the Bennington-Woodford town line, then southerly along the westerly side of the Bennington-Woodford town line to the intersection with the Bennington-Pownal town line, then westerly along the northerly side of the Bennington-Pownal town line to the point of beginning.~~ ~~2~~

~~(2) CHITTENDEN-3 is subdivided into the following districts:~~

~~CHITTENDEN-3-1. Consisting of all that portion of the City of Burlington encompassed within a boundary beginning where the northerly property line of Leddy Park intersects the shore of Lake Champlain, then northeasterly along said property line and said property line extended to North Avenue, then southeasterly along North Avenue to the southerly boundary of Farrington's Trailer Park, then northeasterly and northwesterly along the boundary of Farrington's Trailer Park and the back property lines of property fronting Lopes Avenue to the northwest corner of the corner lot at the intersection of Lopes Avenue and Roseade Parkway including all the residences in Farrington's Trailer Park and on Poirier Place, then northeasterly along the back property lines between property fronting on Roseade Parkway and Arlington Court including all the residences on Arlington Court, and turning northwesterly along the back property lines of property fronting Arlington Court to the intersection of the back property lines of property fronting Farrington Parkway, then easterly along the back property lines of property fronting Farrington Parkway to the south, then easterly along Farrington Parkway to the intersection of Farrington Parkway and Ethan Allen Parkway, then northerly along Ethan Allen Parkway to a point where the back property lines of property fronting the north side of Farrington Parkway

~~intersect Ethan Allen Parkway, then westerly along the back property lines of property fronting the north side of Farrington Parkway to include all residences on Farrington Parkway, continuing west across the end of Gosse Court to the southeast corner of the Lyman C. Hunt School property, then northwesterly along the property boundary of the Lyman C. Hunt School property to its northeast corner, then northeasterly along the back property lines of property fronting on Janet Circle to a point where said back property lines intersect the back property lines of property fronting on James A venue, then northwesterly along the back property lines of property fronting on James Avenue and Sandra Circle and continuing northeasterly along the back property lines of property fronting on Sandra Circle to the intersection of the right-of-way of the Winooski Valley Park Way, then northerly in a straight line to the Winooski River, then northerly along the Winooski River to its intersection with Lake Champlain, then southerly along the shore of Lake Champlain back to the point of beginning.~~ ~~2~~

~~CHITTENDEN-3-2. Consisting of all that portion of the City of Burlington encompassed within a boundary beginning where the northerly property line of Leddy Park intersects the shore of Lake Champlain, then northeasterly along said property line and said property line extended to North Avenue, then southeasterly along North Avenue to the southerly boundary of Farrington's Trailer Park, then northeasterly and northwesterly along the boundary of Farrington's Trailer Park and the back property lines of property fronting Lopes Avenue to the northwest corner of the corner lot at the intersection of Lopes Avenue and Roseade Parkway including all the residences on Lopes Avenue and Blondin Circle, then northeasterly along the back property lines between property fronting on Roseade Parkway and Arlington Court including all the residences on Roseade Parkway, and turning northwesterly along the back property lines of property fronting Arlington Court to the intersection of the back property lines of property fronting Farrington Parkway, then easterly along the back property lines of property fronting Farrington Parkway to the south, then easterly along Farrington Parkway to the intersection of Farrington Parkway and Ethan Allen Parkway including all units at 282 Ethan Allen Parkway, then northerly along Ethan Allen Parkway to a point where the back property lines of property fronting the north side of Farrington Parkway intersect Ethan Allen Parkway, then westerly along the back property lines of property fronting the north side of Farrington Parkway, continuing west across the end of Gosse Court to the southeast corner of the Lyman C. Hunt School property, then northwesterly along the property boundary of the Lyman C. Hunt School property to its northeast, then northeasterly along the back property lines of property fronting on Janet Circle to a point where said back property lines intersect the back property lines of property fronting on James Avenue including all residences on Janet Circle,~~

~~then northwesterly along the back property lines of property fronting on James Avenue and Sandra Circle and continuing northeasterly along the back property lines of property fronting on Sandra Circle to the intersection of the right-of-way of the Winooski Valley Park Way including all residences on Sandra Circle, then northerly in a straight line to the Winooski River, then following the Winooski River easterly to the railroad bridge, then westerly along the railroad bridge and continuing along the railroad tracks until it intersects at a point with the straight-line extension of the property boundary between 603 and 617 Riverside Avenue, then southerly along the straight-line extension of the property boundary between 603 and 617 Riverside Avenue, continuing southerly along the property boundary of 603 and 617 Riverside Avenue to its intersection with Riverside Avenue, then westerly along Riverside Avenue to the intersection of Intervale Avenue, then southwesterly along Intervale Avenue to the intersection of Archibald Street, then westerly along Archibald Street to the intersection of Spring Street, then northwesterly along Spring Street to the intersection of Manhattan Drive, then westerly along Manhattan Drive to the intersection of Pitkin Street, then southerly along Pitkin Street to the intersection of Strong Street, then westerly along Strong Street to the intersection of North Avenue, then northwesterly along North Avenue to the intersection of Sunset Court, then southwesterly along Sunset Court to its end to include all residences on the northwesterly side of Sunset Court, continuing southeasterly in a straight-line extension of Sunset Court to its intersection with the railroad tracks, then southerly along the railroad tracks to the intersection of the northern boundary line of the property to the north of the Moran Plant, then westerly along the boundary line to the intersection of the shore of Lake Champlain, then northerly along the shore of Lake Champlain to the point of beginning.~~ ~~1~~

~~CHITTENDEN 3-3. Consisting of that portion of the City of Burlington encompassed within a boundary beginning at the intersection of Maple and Willard Streets, then westerly along Maple Street to the intersection of St. Paul Street, then southerly along St. Paul Street to the intersection of Kilburn Street, then westerly along Kilburn Street to the intersection of Pine Street, then southerly along Pine Street to where the railroad track parallels Pine Street, then northwesterly along the railroad track to the intersection of Maple Street, then westerly along Maple Street to the shore of Lake Champlain, then northerly along the shore of Lake Champlain to the intersection of the northern boundary line of the property to the north of the Moran Plant, then easterly along the boundary line to the intersection of the railroad tracks, then northerly along the railroad tracks to an intersection with a straight-line extension of Sunset Court, then northeasterly along the straight-line extension of Sunset Court and continuing along Sunset Court to its intersection with North Avenue to include all residences on the southeasterly side of Sunset Court, then~~

~~southeasterly along North Avenue to the intersection of Strong Street, then easterly along Strong Street to the intersection of Pitkin Street, then northerly along Pitkin Street to the intersection of Manhattan Drive, then easterly along Manhattan Drive to the intersection of Spring Street, then southeasterly along Spring Street to the intersection of Archibald Street, then easterly along Archibald Street to the intersection of North Union Street, then southwesterly and southerly along North Union Street to the intersection of Pearl Street, then easterly along Pearl Street to the intersection of Willard Street, then southerly along Willard Street to the point of beginning.~~ ~~2~~

~~CHITTENDEN 3-4. Consisting of that portion of the City of Burlington encompassed within a boundary beginning at the intersection of Davis Road and the boundary between the City of Burlington and the City of South Burlington, then southwesterly along Davis Road to the intersection of South Prospect Street, then northerly along South Prospect Street to the intersection of Main Street, then westerly along Main Street to the intersection of Willard Street, then northerly along Willard Street to the intersection of Pearl Street, then westerly along Pearl Street to the intersection of North Union Street, then northerly along North Union Street to the intersection of North Winooski Avenue, then northeasterly along North Winooski Avenue to the intersection of Archibald Street, then westerly along Archibald Street to the intersection of Intervale Avenue, then northeasterly along Intervale Avenue to the intersection of Riverside Avenue, then easterly along Riverside Avenue to the intersect~~

~~ion of North Winooski Avenue, then northerly along the property boundary between 603 and 617 Riverside Avenue to the northeastern corner of 617 Riverside Avenue, then northerly along the straight-line extension of the property boundary between 603 and 617 Riverside Avenue to the intersection of the railroad tracks, then easterly along the railroad tracks to the intersection of Intervale Road, then southerly along Intervale Road, crossing Riverside Avenue, and continuing southerly along North Prospect Street to the intersection of North Street, then easterly along North Street to the intersection of Mansfield Avenue, then southerly along Mansfield Avenue to the intersection of Colchester Avenue, then northeasterly along Colchester Avenue to the intersection of Chase Street, then northeasterly along Chase Street to the intersection of Grove Street, then southeasterly along Grove Street to the intersection of the boundary line between the City of Burlington and the City of South Burlington, then southwesterly along the boundary line to the intersection of Main Street, then northwesterly along Main Street to the intersection with the boundary line, then southerly along the boundary line to the point of beginning.~~ ~~2~~

~~CHITTENDEN 3-5. Consisting of that portion of the City of Burlington encompassed within a boundary beginning from the shore of Lake Champlain~~

~~and the boundary line with the City of South Burlington, then easterly along the boundary line between the City of Burlington and the City of South Burlington to Shelburne Street, then northerly and then easterly along the boundary line with the City of South Burlington, then northerly along the boundary line with the City of South Burlington to the intersection of Davis Road, then southwesterly along Davis Road to the intersection of South Prospect Street, then northerly along South Prospect Street to the intersection of Main Street, then westerly along Main Street to the intersection of Willard Street, then southerly along Willard Street to the intersection of Maple Street, then westerly along Maple Street to the intersection of St. Paul Street, then southerly along St. Paul Street to the intersection of Kilburn Street, then westerly along Kilburn Street to the intersection of Pine Street, then southerly along Pine Street to where the railroad track parallels Pine Street, then northwesterly along the railroad track to the intersection of Maple Street, then westerly along Maple Street to the intersection of the shore of Lake Champlain, then southerly along the shore of Lake Champlain to the point of beginning.~~ ~~2~~

~~CHITTENDEN 3-6. Consisting of all the City of Winooski and that portion of the City of Burlington encompassed within a boundary beginning at the northern terminus of the boundary line between the cities of Burlington and South Burlington located at a point adjacent to the Winooski River west of Interstate 89, then southwesterly along the boundary line to the intersection of the boundary line and Grove Street, then northwesterly along Grove Street to the intersection of Chase Street, then southwesterly along Chase Street to the intersection of Colchester Avenue, then southwesterly along Colchester Avenue to the intersection of Mansfield Avenue, then northerly along Mansfield Avenue to the intersection of North Street, then westerly on North Street to the intersection of North Prospect Street, then northerly along North Prospect Street, crossing Riverside Avenue, and continuing along Intervale Road to the intersection of the railroad tracks, then easterly along the railroad tracks to the Winooski River and the boundary of the City of Burlington and the City of Winooski.~~ ~~2~~

~~CHITTENDEN 3-7. That portion of the City of South Burlington starting at a point on Lake Champlain at the Shelburne-South Burlington boundary and following the Shelburne-South Burlington boundary easterly to Shelburne Road; then northerly following Shelburne Road to Allen Road; then easterly following Allen Road to Spear Street; then northerly on Spear Street to Pheasant Way; then westerly on Pheasant Way to Deerfield Drive; then northerly on Deerfield Drive; then easterly on Deerfield Drive to the intersection with Spear Street; then across Spear Street to Nowland Farm Road to the intersection with Pinnacle Drive; then northerly on Pinnacle Drive; then~~

~~easterly on Pinnacle Drive; then northerly on Pinnacle Drive; then westerly on Pinnacle Drive; then southerly on Pinnacle Drive to the intersection with Olivia Drive; then westerly along Olivia Drive to Spear Street; then northerly on Spear Street to Swift Street; then westerly on Swift Street to Shelburne Road; then westerly along the Burlington-South Burlington boundary to Lake Champlain; then following the shore of Lake Champlain southerly to the point of beginning.~~ ~~1~~

~~CHITTENDEN-3-8. That portion of the City of South Burlington starting at the junction of Dorset Street and the Shelburne-South Burlington boundary and proceeding easterly to the junction of the Shelburne-South Burlington-Williston boundaries; then northerly following the Williston-South Burlington boundary to Williston Road; then continuing westerly to the intersection of Hinesburg Road/Patchen Road; then southerly following Hinesburg Road to Woodcrest Street; then westerly on Woodcrest Street; then northerly on Woodcrest Street; then westerly on Woodcrest Street; then southerly on Woodcrest Street to Dean Street; then easterly on Dean Street to Hinesburg Road; then southerly along Hinesburg Road to Interstate 89; then westerly along Interstate 89 to its intersection with Dorset Street; then southerly to Swift Street; then westerly following Swift Street to Spear Street; then southerly along Spear Street to Olivia Drive; then easterly on Olivia Drive to Pinnacle Drive; then northerly on Pinnacle Drive; then easterly on Pinnacle Drive; then southerly on Pinnacle drive; then westerly on Pinnacle Drive; then southerly on Pinnacle Drive to Nowland Farm Road; then westerly to Spear Street; then across Spear Street to Deerfield Drive; then westerly on Deerfield Drive; then southerly on Deerfield Drive to Pheasant Way; then easterly on Pheasant Way to Spear Street; then southerly along Spear Street to Allen Road; then westerly following Allen Road to the intersection of Shelburne Road; then southerly on Shelburne Road to the Shelburne-South Burlington boundary; then easterly on the Shelburne-South Burlington boundary to the point of beginning at Dorset Street and the Shelburne-South Burlington boundary.~~ ~~1~~

~~CHITTENDEN-3-9. That portion of the City of South Burlington starting at the junction of the Burlington-South Burlington boundary and Williston Road and following that boundary starting northerly following the city boundary to the Winooski River, then following the South Burlington-Winooski River boundary to Muddy Brook, then following the Muddy Brook-South Burlington boundary to Williston Road, then westerly to Hinesburg Road/Patchen Road, then southerly to Woodcrest Street, then westerly on Woodcrest Street, then northerly on Woodcrest Street, then westerly on Woodcrest Street, then southerly on Woodcrest Street to Dean Street, then easterly on Dean Street to Hinesburg Road, then continuing southerly on Hinesburg Road to Potash Brook, then westerly following the centerline of~~

~~Potash Brook to the intersection with Kennedy Drive, then westerly on Kennedy Drive to Dorset Street, then northerly on Dorset Street to Williston Road, then westerly to the point beginning at the junction of the Burlington-South Burlington boundary and Williston Road.~~ ~~1~~

~~CHITTENDEN-3-10. That portion of the City of South Burlington not contained in CHITTENDEN-3-7, 3-8, or 3-9.~~ ~~1~~

~~(3) CHITTENDEN-6 is subdivided into the following districts:~~

~~CHITTENDEN-6-1. That portion of the Town of Essex not included in CHITTENDEN-6-2 or 6-3.~~ ~~2~~

~~CHITTENDEN-6-2. The Village of Essex Junction.~~ ~~2~~

~~CHITTENDEN-6-3. The Town of Westford, plus that portion of the Town of Essex bounded by the centerline of the road from Curve Hill at the Colchester Town line, then to Lost Nation Road, then northerly on Old Stage Road to Towers Road, then continuing easterly to Brown's River Road to Weed Road, then easterly on Jericho Road to the Jericho town line.~~ ~~1~~

~~(4) CHITTENDEN-7 is subdivided into the following districts:~~

~~CHITTENDEN-7-1. That portion of the town of Colchester north of Malletts Creek and west of Interstate 89 to the Milton town line, plus that portion of the town of Colchester east of Interstate 89.~~ ~~2~~

~~CHITTENDEN-7-2. That portion of the town of Colchester not included in CHITTENDEN-7-1.~~ ~~2~~

~~(5) GRAND ISLE-CHITTENDEN-1 is subdivided into the following districts:~~

~~GRAND ISLE-CHITTENDEN-1-1. The towns of Alburg, Grand Isle, Isle La Motte, North Hero and South Hero, plus that portion of the town of Milton bounded by a line beginning at the mouth of the Lamoille River and Lake Champlain, then along the river upstream to the Interstate 89 bridge crossing the Lamoille River, then northerly along Interstate 89 to the Georgia town line, then along the Georgia town line to Lake Champlain, then southerly along the lakeshore to the place of beginning.~~ ~~2~~

~~CHITTENDEN-9. That portion of the town of Milton not included in GRAND ISLE-CHITTENDEN-1.~~ ~~2~~

~~(6) RUTLAND-1 is subdivided into the following districts:~~

~~RUTLAND-1-1. The town of Poultney and that part of the town of Ira encompassed within a boundary beginning in the southwest at the intersection of the town boundaries of Ira, Middletown Springs and Poultney, then northerly along the boundary with Poultney and continuing northerly along the~~

~~boundary with Castleton, then easterly along the boundary with Castleton to the boundary with West Rutland, then southeasterly along the boundary with West Rutland to the ridge line of the mountain range, then southwesterly along the ridge line of the mountain range to the boundary with Middletown Springs, then westerly along the boundary with Middletown Springs to the point of beginning.~~ ~~1~~

~~RUTLAND-1-2. The towns of Clarendon, Proctor, West Rutland and that part of the town of Ira not included in RUTLAND-1-1.~~ ~~2~~

~~(7) RUTLAND-5 is subdivided into the following districts:~~

~~RUTLAND-5-1. That portion of the City of Rutland encompassed within a boundary beginning at the point where the boundary line of Rutland City and Rutland Town intersects with Lincoln Avenue, then southerly along the east side of the centerline of Lincoln Avenue to the intersection of West Street, then easterly along the north side of the centerline of West Street across North Main Street, then easterly along the north side of Terrill Street to the intersection of Lafayette Street, then southerly along the east side of the centerline of Lafayette Street to the intersection of Easterly Avenue, then easterly along the north side of Easterly Avenue to the intersection of Easterly Avenue and Piedmont Drive, then easterly along the north side of the centerline of Piedmont Drive to the intersection of Piedmont Drive and Piedmont Parkway, then easterly along the centerline of Piedmont Parkway to the intersection of Piedmont Parkway and Stratton Road, then southerly along the easterly side of the centerline of Stratton Road to the intersection of Stratton Road and Killington Avenue, then easterly along the north side of the centerline of Killington Avenue, including both sides of Grandview Terrace, to the boundary between Rutland City and Rutland Town, then northerly following the boundary line to its intersection with Gleason Road, then westerly along the south side of the centerline of Gleason Road to Woodstock Avenue, then following the boundary line back to the point of beginning.~~ ~~1~~

~~RUTLAND-5-2. That portion of the City of Rutland encompassed within a boundary beginning at the point where the boundary line of Rutland City and Rutland Town intersects with South Main Street, then northerly along the easterly side of the centerline of South Main Street to the intersection of South Main Street and Strongs Avenue, then northwesterly along the east side of the centerline of Strongs Avenue to the intersection of Strongs Avenue and Prospect Street, then northerly along the east side of the centerline of Prospect Street to the intersection of Prospect Street and Washington Street, then easterly along the south side of the centerline of Washington Street to the intersection of Washington Street and Court Street, then northerly along the east side of the centerline of Court Street to the intersection of Court Street and~~

~~West Street, then easterly along the south side of the centerline of West Street, to the intersection of West Street and South Main Street, then east across South Main Street, to the intersection of South Main Street and Terrill Street, then easterly along the south side of the centerline of Terrill Street to the intersection of Terrill Street and Lafayette Street, then southerly along the west side of the centerline of Lafayette Street to the intersection of Lafayette Street and Easterly Avenue, then easterly along the south side of the centerline of Easterly Avenue to the intersection of Easterly Avenue and Piedmont Drive, then easterly along the south side of the centerline of Piedmont Drive to the intersection of Piedmont Drive and Piedmont Parkway, then easterly along the south side of the centerline of Piedmont Parkway to the intersection of Piedmont Parkway and Stratton Road, then southerly along the west side of the centerline of Stratton Road to the intersection of Stratton Road and Killington Avenue, then easterly along the south side of the centerline of Killington Avenue to the boundary of Rutland City and Rutland Town, then southerly along the city line to the intersection of the city line and South Main Street to the point of beginning.~~ ~~1~~

~~RUTLAND 5-3. That portion of the City of Rutland encompassed within a boundary beginning at the point where the boundary line of Rutland City and Rutland Town intersects with South Main Street, then northerly along the west side of the centerline of South Main Street to the intersection of South Main Street and Strongs Avenue, then northwesterly along the west side of the centerline of Strongs Avenue to the intersection of Strongs Avenue and Prospect Street, then northerly along the west side of the centerline of Prospect Street to the intersection of Prospect Street and Washington Street, then easterly along the north side of the centerline of Washington Street to the intersection of Washington Street and Court Street, then northerly along the west side of the centerline of Court Street to the intersection of Court Street and West Street, then easterly along the north side of the centerline of West Street to the intersection of West Street and Lincoln Avenue, then northerly along the west side of the centerline of Lincoln Avenue to the intersection of Lincoln Avenue and Williams Street, then west along the south side of the centerline of Williams Street to the intersection of Williams Street and Grove Street, then north along the west side of the centerline of Grove Street to the intersection of Grove Street and Maple Street, then west along the south side of the centerline of Maple Street to the intersection of Maple Street and Pine Street, then south along the east side of the centerline of Pine Street to the intersection of Pine Street and Robbins Street, then west along the south side of the centerline of Robbins Street to the intersection of Robbins Street and Baxter Street, then south along the east side of the centerline of Baxter Street to the intersection of Baxter Street and State Street, then west along the south side of the centerline of State Street to the intersection of State Street and~~

~~Cramton Avenue, then south along the east side of the centerline of Cramton Avenue to the intersection of Cramton Avenue and West Street, then westerly along the south side of the centerline of West Street to the intersection of Ripley Road, then southerly along the Rutland City-Rutland Town line to the intersection of the city line and South Main Street, the point of beginning.~~ ~~1~~

~~RUTLAND-5-4. That portion of the City of Rutland not located within the boundaries of RUTLAND-5-1, 5-2 or 5-3.~~ ~~1~~

~~(8) WASHINGTON-3 is subdivided into the following districts:~~

~~WASHINGTON-3-1. That portion of the City of Barre bounded on the north, east and south by Barre Town, and bounded on the west by a line running along the center of Hall Street to the intersection of Elm Street, then along the center of Elm Street to the intersection of North Main Street, then along the center of North Main Street to the intersection of Prospect Street, then along the center of Prospect Street to the intersection of Allen Street, then along the western back lot line of Allen Street to the Barre Town boundary.~~ ~~1~~

~~WASHINGTON-3-2. That portion of the City of Barre bound on the north and south by the Barre Town line, on the east by the boundary with WASHINGTON-3-1, and on the west by the boundary with WASHINGTON-3-3.~~ ~~1~~

~~WASHINGTON-3-3. The town of Berlin and that portion of the City of Barre bound on the west by the Berlin town line, on the north and south by the Barre Town line, and on the east by a boundary running from the Barre Town northern boundary along the center of Beckley Street, then along the center of Third Street to North Main Street, then along the center of North Main Street to the intersection of Berlin Street, then along the center of Berlin Street to Prospect Street, then along the center of Prospect Street to the Barre Town line.~~ ~~1~~

~~(9) WINDHAM-3 is subdivided into the following districts:~~

~~WINDHAM-3-1. That portion of the Town of Brattleboro to the west of a boundary beginning at Upper Dummerston Road at the Dummerston town line, then southeasterly along the centerline of Upper Dummerston Road to Interstate 91, then southerly along the median of Interstate 91 to Williams Street, then easterly along the centerline of Williams Street to where the Whetstone Brook crosses, then southwesterly along the western bank of the Whetstone Brook to Lamson Street and southerly along the centerline of Lamson Street to Chestnut Street, then westerly along the centerline of Chestnut Street to Interstate 91, then southerly along the median of Interstate 91 to the Guilford town line.~~ ~~1~~

~~WINDHAM-3-2. That portion of the Town of Brattleboro to the south of a boundary beginning at the Connecticut River at the Whetstone Brook, westerly along the southern bank of the Whetstone Brook to Elm Street, then northerly along the centerline of Frost Street to Williams Street and following the centerline of Williams Street to West Street, then westerly along the centerline of West Street to Williams Street and westerly along the centerline of Williams Street to where the Whetstone Brook crosses, then southwesterly along the eastern bank of the Whetstone Brook to Lamson Street and southerly along the centerline of Lamson Street to Chestnut Street, then westerly along the centerline of Chestnut Street to Interstate 91, and east of Interstate 91 to the Guilford town line.~~ ~~1~~

~~WINDHAM-3-3. That portion of the Town of Brattleboro not located in WINDHAM-3-1 or 3-2.~~ ~~1~~

~~(10) WINDSOR-1 is subdivided into the following districts:~~

~~WINDSOR-1-1. The towns of Andover, Baltimore, Chester and that portion of the town of Springfield encompassed within a boundary beginning at the Chester-Springfield town lines at Northfield Drive, then easterly along the centerline of Northfield Drive to the intersection with Fairbanks Road, then northerly along the centerline of Fairbanks Road to the intersection with Main Street, North Springfield, then easterly along the centerline of Main Street, North Springfield to the intersection with the County Road, then northeasterly along the centerline of the County Road to the intersection with VT 106, then northwesterly along the centerline of VT 106 to the intersection with the Baltimore Road, then northwesterly along the centerline of the Baltimore Road to the Chester boundary line, then southerly along the Chester boundary line to the point of the beginning.~~ ~~1~~

~~WINDSOR-1-2. That portion of the town of Springfield not part of WINDSOR-1-1.~~ ~~2~~

~~(11) WINDSOR-6 is subdivided into the following districts:~~

~~WINDSOR-6-1. The towns of Barnard and Pomfret and that portion of the town of Hartford lying westerly and northerly of a boundary beginning on the Norwich-Hartford town line at the centerline of Newton Lane, then southerly along the centerline of Newton Lane to its intersection with Jericho Street, then westerly along the centerline of Jericho Street to its intersection with Dothan Road, then southerly along the centerline of Dothan Road to VT 14, then westerly along the centerline of VT 14 to the intersection of the centerline of Runnels Road and VT 14, then at a right angle to a utility pole marked 137T/6 ET&T/3>/136/GMP Corp/156/40030 on the south edge of VT 14, then southerly in a straight line across the White River to the junction of Old River Road and the beginning of Costello Road, then southerly and~~

~~easterly along the center of Costello Road to its end on U.S. Route 4, then westerly along the centerline of U.S. Route 4 to the intersection of Waterman Hill Road, then northerly along the centerline of Waterman Hill Road to the northerly low watermark of the Ottauquechee River, then westerly and southerly along the northerly and westerly low watermark of the Ottauquechee River to the Hartford-Hartland town line, then westerly along the town line to the northerly low watermark of the Ottauquechee River, then along the northerly low watermark of the Ottauquechee River to the Hartford-Pomfret town line.~~ ~~1~~

~~WINDSOR-6-2. That portion of the town of Hartford not located in WINDSOR-6-1.~~ ~~2~~

~~(b) The following initial House districts, created and assigned two members by section 1893 of this title, as amended by No. 85 of the Acts of 2002, are subdivided as recommended by their respective boards of civil authority into final House districts, as designated and defined below, each of which shall be entitled to elect one representative:~~

~~(1) CHITTENDEN-1 is subdivided into the following districts:~~

~~CHITTENDEN-1-1. The town of Hinesburg, except two portions: the first being that portion of the town of Hinesburg in the southwest corner of the town bounded by a line beginning at the intersection of the Monkton town line and Baldwin Road, then northerly along Baldwin Road to its intersection with Drinkwater Road, then westerly along the centerline of Drinkwater Road to the Charlotte town line, and the second being that portion of the town of Hinesburg in the northwest corner of the town bounded by a line beginning at the junction of VT 116 and the St. George town line, then southerly along the centerline of VT 116 to its intersection with Falls Road, then westerly along the centerline of Falls Road to its intersection with O'Neill Road, then westerly along the centerline of O'Neill Road to the Charlotte town border.~~ ~~1~~

~~CHITTENDEN-1-2. The town of Charlotte, plus the two portions of the town of Hinesburg not included in CHITTENDEN-1-1.~~ ~~1~~

~~(2) CHITTENDEN-5 is subdivided into the following districts:~~

~~CHITTENDEN-5-1. That portion of the town of Shelburne bounded by a line beginning on the southwest corner of the Shelburne-Charlotte town line, then following the shore of Lake Champlain to the mouth of Munroe Brook, including all of the Lake that is part of the town of Shelburne, then upstream along the center of Munroe Brook to the intersection with Spear Street, then south along the centerline of Spear Street to the Shelburne-Charlotte town line, then west along the Shelburne-Charlotte town line to the place of beginning.~~ ~~1~~

~~CHITTENDEN-5-2. The town of St. George, plus that portion of Shelburne which is not in CHITTENDEN-5-1.~~ ~~1~~

(a) CHITTENDEN-5 is subdivided into the following districts:

(1) CHITTENDEN-5-1. That portion of the town of Shelburne encompassed within a boundary beginning at the point where the boundary line of Shelburne and the town of Charlotte intersects with the shore of Lake Champlain; then northerly along the shore of Lake Champlain to the mouth of Munroe Brook, including all of the lake that is part of the town of Shelburne; then upstream along the western side of the centerline of Munroe Brook to the intersection with Spear Street; then southerly along the western side of the centerline of Spear Street to the boundary of Charlotte; then westerly along the Charlotte town line to the point of beginning 1

(2) CHITTENDEN-5-2. St. George and that portion of the town of Shelburne not in CHITTENDEN-5-1 1

(b) CHITTENDEN-6 is subdivided into the following districts:

(1) CHITTENDEN-6-1. That portion of the city of Burlington encompassed within a boundary beginning at the point where the northwestern property line of Leddy Park intersects with the shore of Lake Champlain; then northeasterly along the northern side of that property line and continuing from that property line in a straight line to the intersection of North Avenue; then southeasterly along the northeastern side of the centerline of North Avenue to the southern boundary of Farrington's Trailer Park; then northeasterly and then northwesterly along the boundary of Farrington's Trailer Park and the back property lines of property fronting Lopes Avenue to the northwest corner of the corner lot at the intersection of Lopes Avenue and Roseade Parkway, including all of the residences in Farrington's Trailer Park and on Poirier Place; then northeasterly along the back property lines between property fronting on Roseade Parkway and Arlington Court, including all the residences on Arlington Court; then turning northwesterly along the back property lines of property fronting Arlington Court to the intersection of the back property lines of property fronting Farrington Parkway on the southern side; then easterly along those back property lines to Farrington Parkway; then easterly along the northern side of the centerline of Farrington Parkway to the intersection of Ethan Allen Parkway; then northerly along the western side of the centerline of Ethan Allen Parkway to the intersection of VT Route 127; then northwesterly along the southern side of the centerline of VT 127 to the intersection of the boundary of the town of Colchester at the Heineberg Bridge over the Winooski River; then northerly and westerly along the Colchester town line to the intersection with Lake Champlain; then southerly along the shore of Lake Champlain to the point of beginning 2

(2) CHITTENDEN-6-2. That portion of the city of Burlington encompassed within a boundary beginning at the point where the northwestern property line of Leddy Park intersects with the shore of Lake Champlain; then northeasterly along the southern side of that property line and continuing from that property line in a straight line to the intersection of North Avenue; then southeasterly along the southwestern side of the centerline of North Avenue to the southern boundary of Farrington's Trailer Park; then northeasterly and then northwesterly along the boundary of Farrington's Trailer Park and the back property lines of property fronting Lopes Avenue to the northwest corner of the corner lot at the intersection of Lopes Avenue and Roseade Parkway, including all the residences on Lopes Avenue and Blondin Circle; then northeasterly along the back property lines between property fronting on Roseade Parkway and Arlington Court, including all the residences on Roseade Parkway; then turning northwesterly along the back property lines of property fronting Arlington Court to the intersection of the back property lines of property fronting Farrington Parkway on the southern side; then easterly along those back property lines to Farrington Parkway; then easterly along the southern side of the centerline of Farrington Parkway to the intersection of Ethan Allen Parkway, including all units at 282 Ethan Allen Parkway; then northerly along the eastern side of the centerline of Ethan Allen Parkway to the intersection of VT Route 127; then northwesterly along the northern side of the centerline of VT 127 to the intersection of the boundary of the town of Colchester at the Heineberg Bridge over the Winooski River; then easterly and southerly along the Colchester town line and continuing along the boundary of the city of Winooski to the railroad bridge; then westerly along the northern side of the centerline of the railroad bridge and continuing along the northern side of the centerline of the railroad tracks to the intersection of a point representing the centerline of the railroad tracks and a straight line extension of the centerline of Spring Street; then southeasterly along the western side of the centerline of that straight line to the intersection of Spring Street and Manhattan Drive; then westerly along the northern side of the centerline of Manhattan Drive to the intersection of Pitkin Street; then southerly along the western side of the centerline of Pitkin Street to the intersection of North Street; then easterly along the southern side of the centerline of North Street to the intersection of North Champlain Street; then southerly along the western side of the centerline of North Champlain Street to the intersection of Pearl Street; then westerly along the northern side of the centerline of Pearl Street to the intersection of Battery Street; then southerly along the western side of the centerline of Battery Street to the intersection of College Street; then westerly along the northern side of the centerline of College Street to the intersection of the Island Line Trail; then southerly along the western side of the Island Line Trail to a point representing the southern end of the Union Station building;

then northwesterly from that point to a point representing the intersection of a straight line extension of Main Street and the shore of Lake Champlain; then northwesterly along the shore of Lake Champlain to the point of beginning 1

(3) CHITTENDEN-6-3. That portion of the city of Burlington encompassed within a boundary beginning at the point of the intersection of Spring Street and Manhattan Drive; then westerly along the southern side of the centerline of Manhattan Drive to the intersection of Pitkin Street; then southerly along the eastern side of the centerline of Pitkin Street to the intersection of North Street; then easterly along the northern side of the centerline of North Street to the intersection of North Champlain Street; then southerly along the eastern side of the centerline of North Champlain Street to the intersection of Pearl Street; then westerly along the southern side of the centerline of Pearl Street to the intersection of Battery Street; then southerly along the eastern side of the centerline of Battery Street to the intersection of College Street; then westerly along the southern side of the centerline of College Street to the intersection of the Island Line Trail; then southerly along the eastern side of the centerline of the Island Line Trail to the southern end of the Union Station building; then northwesterly from that point to a point representing the intersection of a straight line extension of Main Street and the shore of Lake Champlain; then southerly along the shore of Lake Champlain to a point representing the intersection of the shore of Lake Champlain and a straight line extension of Maple Street; then easterly along the northern side of the centerline of Maple Street to the intersection of South Willard Street; then northerly along the western side of the centerline of South Willard Street to the intersection of Main Street; then westerly along the southern side of the centerline of Main Street to the intersection of South Union Street; then northerly along the western side of the centerline of South Union Street to the intersection of Pearl Street; then continuing on North Union Street to the intersection of North Street; then easterly along the northern side of the centerline of North Street to the intersection of North Willard Street; then northerly along the western side of the centerline of North Willard Street to the intersection of Hyde Street; then northeasterly along the western side of the centerline of Hyde Street to a point representing the intersection of a straight line extension of Hyde Street and the railroad tracks; then westerly along the southern side of the centerline of the railroad tracks to the intersection of a point representing the intersection of the centerline of the railroad tracks and a straight line extension of the centerline of Spring Street; then southeasterly along the eastern side of the centerline of that straight line to the point of beginning 2

(4) CHITTENDEN-6-4. That portion of the city of Burlington encompassed within a boundary beginning at the point of the intersection of North Street and North Union Street; then southerly along the eastern side of the centerline of North Union Street to the intersection of Pearl Street; then easterly along the northern side of the centerline of Pearl Street to the intersection of South Prospect Street; then southerly along the eastern side of the centerline of South Prospect Street to the intersection of Main Street; then easterly along the northern side of the centerline of Main Street to the northeastern boundary of 461 Main Street; then southeasterly along the eastern side of the boundary of 461 Main Street and 475 Main Street, including the property at 475, 479, and 481 Main Street and excluding the property at 461 Main Street and continuing in a straight line to the southwestern corner of the property located at 475 Main Street, including that property; then continuing on to and along the eastern side of the boundary between property located on Robinson Parkway and property located on University Terrace, including the University Terrace properties, to the intersection with University Heights Road; then continuing southerly from the intersection with University Heights Road on the eastern side of the boundary between properties within University Heights and those properties on South Prospect Street and on Henderson Terrace to the intersection of a road running along the southern side of the Gucciardi Recreation and Fitness Center and the Gutterson Fieldhouse and Davis Road; then easterly along the northern side of the centerline of the road on the southern boundary of the center and fieldhouse to the boundary of the city of South Burlington; then northerly and easterly along the South Burlington city line to the intersection with Grove Street, including the residences on the inside and southern side of the circle at 284 Grove Street, also known as Apple Grove, but excluding the residences on the outside and northern side of the circle at 284 Grove Street; then westerly along the southern side and northerly along the western side of the centerline of Grove Street to the intersection of Chase Street; then westerly and southwesterly along the southern side of the centerline of Chase Street to the intersection of Colchester Avenue; then northerly along the western side of the centerline of Colchester Avenue to the intersection of Riverside Avenue; then southerly along the eastern side and westerly along the southern side of the centerline of Riverside Avenue to the intersection of Intervale Road; then northwesterly along the western side of the centerline of Intervale Road to the intersection with the railroad tracks; then westerly along the southern side of the centerline of the railroad tracks to a point representing the intersection of the centerline of the railroad tracks and a straight line extension of the centerline of Hyde Street; then southwesterly along the eastern side of the centerline of that line extension and then Hyde Street to the intersection of North Willard Street; then southerly along the eastern side of the centerline of North Willard Street to the

intersection of North Street; then westerly along the southern side of the centerline of North Street to the point of beginning 2

(5) CHITTENDEN-6-5. That portion of the city of Burlington encompassed within a boundary beginning at the point where the boundary of Burlington and the city of South Burlington intersects with the shore of Lake Champlain; then northerly along the shore of Lake Champlain to the intersection of the shore of the lake with a point representing a straight line extension of Maple Street; then easterly along the southern side of the centerline of Maple Street to the intersection of South Willard Street; then southerly along the western side of the centerline of South Willard Street to the intersection of Cliff Street; then easterly along the southern side of the centerline of Cliff Street to the intersection of South Prospect Street; then southerly along the western side of the centerline of South Prospect Street to the intersection of Davis Road; then easterly along the southern side of the centerline of Davis Road to the intersection of the road running along the southern boundary of the Gucciardi Recreation and Fitness Center and the Gutterson Fieldhouse; then easterly along the southern side of the centerline of the road on the southern boundary of the center and fieldhouse to the boundary of the city of South Burlington; then southerly and westerly along the South Burlington city line to the shore of Lake Champlain and the point of beginning 2

(6) CHITTENDEN-6-6. That portion of the city of Burlington encompassed within a boundary beginning at the point of the intersection of Pearl Street and North Union Street; then easterly along the southern side of the centerline of Pearl Street to the intersection of South Prospect Street; then southerly along the western side of the centerline of South Prospect Street to the intersection of Main Street; then easterly along the southern side of the centerline of Main Street to the northeastern boundary of 461 Main Street; then southeasterly along the western side of the boundary of 461 Main Street and 475 Main Street, excluding the property at 475, 479, and 481 Main Street and including the property at 461 Main Street and continuing in a straight line to the southwestern corner of the property located at 475 Main Street, excluding that property; then continuing on to and along the western side of the boundary between property located on Robinson Parkway and property located on University Terrace, including the Robinson Parkway properties, to the intersection with University Heights Road; then continuing southerly from the intersection with University Heights Road on the western side of the boundary between properties within University Heights and those properties on South Prospect Street and on Henderson Terrace to the intersection of a road running along the southern side of the Gucciardi Recreation and Fitness Center and the Gutterson Fieldhouse and Davis Road; then westerly along the northern side of

the centerline of Davis Road to the intersection of South Prospect Street; then northerly along the eastern side of the centerline of South Prospect Street to the intersection of Cliff Street; then westerly along the northern side of the centerline of Cliff Street to the intersection of South Willard Street; then northerly along the eastern side of the centerline of South Willard Street to the intersection of Main Street; then westerly along the northern side of the centerline of Main Street to the intersection of South Union Street; then northerly along South Union Street to the intersection of Pearl Street; then continuing northerly along the eastern side of the centerline of North Union Street to the point of beginning 1

(7) CHITTENDEN-6-7. The city of Winooski and that portion of the city of Burlington not included in CHITTENDEN-6-1, 6-2, 6-3, 6-4, 6-5, or 6-6 2

(c) CHITTENDEN-7 is subdivided into the following districts:

(1) CHITTENDEN-7-1. That portion of the city of South Burlington encompassed within a boundary beginning at the point where the boundary of South Burlington and the city of Burlington intersects with the shore of Lake Champlain; then southerly along the shore of Lake Champlain, including all of the lake belonging to South Burlington, to the boundary of the town of Shelburne; then easterly along the Shelburne town line to the intersection of Shelburne Road; then northerly along the western side of the centerline of Shelburne Road to the intersection of Allen Road; then easterly along the northern side of the centerline of Allen Road to the intersection of Spear Street; then northerly along the western side of the centerline of Spear Street to the intersection of Nowland Farm Drive; then easterly along the northern side of the centerline of Nowland Farm Drive to the intersection of Dorset Street; then northerly along the western side of the centerline of Dorset Street to the intersection of Swift Street; then westerly along the southern side of the centerline of Swift Street and then continuing along the Burlington city line to the shore of Lake Champlain and the point of beginning 1

(2) CHITTENDEN-7-2. That portion of the city of South Burlington encompassed within a boundary beginning at the point of the intersection of Nowland Farm Drive and Spear Street; then southerly along the eastern side of the centerline of Spear Street to the intersection of Allen Road; then westerly along the southern side of the centerline of Allen Road to the intersection of Shelburne Road; then southerly along the eastern side of the centerline of Shelburne Road to the boundary of the town of Shelburne; then easterly along the Shelburne town line to the boundary of the town of Williston; then northerly along the Williston town line to the intersection of VT Route 2; then westerly along the southern side of the centerline of VT 2 to the intersection of

the back property lines of property fronting Elsom Parkway on the western side of Elsom Parkway; then southerly along those back property lines including all of the properties along Elsom Parkway and continuing in a straight line to the intersection with the Potash Brook; then southwesterly along the southern side of the centerline of the Potash Brook to the intersection with Hinesburg Road; then southeasterly along the eastern side of the centerline of Hinesburg Road to the intersection with Interstate 89; then westerly along the southern side of the centerline of Interstate 89 to the intersection with Dorset Street; then southerly along the eastern side of the centerline of Dorset Street to the intersection of Nowland Farm Drive; then westerly along the southern side of the centerline of Nowland Farm Drive to the point of beginning 1

(3) CHITTENDEN-7-3. That portion of the city of South Burlington encompassed within a boundary beginning at the northwestern-most point where the boundary line of South Burlington and the city of Burlington intersects with Williston Road; then southerly and westerly along the Burlington city line to the intersection with Swift Street; then easterly along the northern side of the centerline of Swift Street to the intersection of Dorset Street; then northerly along the western side of the centerline of Dorset Street to the intersection with Interstate 89; then easterly along the northern side of the centerline of Interstate 89 to the intersection with Hinesburg Road; then northwesterly along the western side of the centerline of Hinesburg Road to the intersection with the Potash Brook; then southwesterly along the southern side of the centerline of the Potash Brook to the intersection with Kennedy Drive; then westerly along the southern side of the centerline of Kennedy Drive to the intersection of Dorset Street; then northerly along the western side of the centerline of Dorset Street to the intersection of Williston Road; then northwesterly along the southern side of the centerline of Williston Road to the point of beginning 1

(4) CHITTENDEN-7-4. That portion of the city of South Burlington not in CHITTENDEN-7-1, 7-2, or 7-3 1

(d) CHITTENDEN-9 is subdivided into the following districts:

(1) CHITTENDEN-9-1. That portion of the town of Colchester north of Malletts Creek and west of Interstate 89 to the Milton town line; plus that portion of the town of Colchester east of Interstate 89, except the portion of that portion of the town encompassed within a boundary beginning at the point where Interstate 89 intersects with VT Route 127; then easterly along the southern side of the centerline of VT 127 to the intersection of the Roosevelt Highway; then southerly along the western side of the centerline of the Roosevelt Highway to the intersection of the Sunderland Brook; then westerly

along the northern side of the centerline of the Sunderland Brook to the intersection with Interstate 89; then northerly along the eastern side of the centerline of Interstate 89 to the point of beginning 2

(2) CHITTENDEN-9-2. That portion of the town of Colchester not in CHITTENDEN-9-1 2

Sec. 3. 17 V.S.A. § 1881 is amended to read:

§ 1881. NUMBER TO BE ELECTED

Senatorial districts and the number of senators to be elected from each are as follows:

(1) Addison senatorial district, composed of the towns of Addison, ~~Brandon,~~ Bridport, Bristol, Buel's Gore, Cornwall, Ferrisburgh, Goshen, Granville, Hancock, Huntington, Leicester, Lincoln, Middlebury, Monkton, New Haven, Orwell, Panton, Ripton, Salisbury, Shoreham, Starksboro, Vergennes, Waltham, ~~Whiting and~~ Weybridge, and Whiting..... two;

(2) Bennington senatorial district, composed of the towns of Arlington, Bennington, Dorset, Glastenbury, Landgrove, Manchester, Peru, Pownal, Readsboro, Rupert, Sandgate, Searsburg, Shaftsbury, Stamford, Sunderland, Wilmington, Winhall, and Woodford..... two;

(3) Caledonia senatorial district, composed of the towns of Barnet, Bradford, Burke, Danville, Fairlee, Groton, Hardwick, Kirby, Lyndon, Newark, Newbury, Orange, Peacham, Ryegate, St. Johnsbury, Sheffield, Stannard, Sutton, Topsham, Walden, Waterford, West Fairlee, and Wheelock..... two;

(4) Chittenden senatorial district, composed of the towns of Bolton, ~~Buel's Gore,~~ Burlington, Charlotte, Essex, Hinesburg, ~~Huntington,~~ Jericho, Milton, Richmond, St. George, Shelburne, South Burlington, Underhill, Westford, Williston, and Winooski..... six;

(5) Essex-Orleans senatorial district, composed of the towns of Albany, Averill, Avery's Gore, Barton, Bloomfield, Brighton, Brownington, Brunswick, Canaan, Charleston, Concord, Coventry, Craftsbury, Derby, East Haven, ~~Eden,~~ Ferdinand, Glover, Granby, Greensboro, Guildhall, Holland, Irasburg, Jay, Lemington, Lewis, Lowell, Lunenburg, Maidstone, Montgomery, Morgan, Newport City, Newport Town, Norton, Richford, Troy, Victory, Warner's Grant, ~~Warren's~~ Warren Gore, Westfield, Westmore, and Wolcott..... two;

(6) Franklin senatorial district, composed of the towns of ~~Alburg~~ Alburgh, Bakersfield, Berkshire, ~~Enosburg~~ Enosburgh, Fairfax, Fairfield,

Fletcher, Franklin, Georgia, Highgate, St. Albans City, St. Albans Town, Sheldon, and Swanton..... two;

(7) Grand Isle senatorial district, composed of the towns of Colchester, Grand Isle, Isle La Motte, North Hero, and South Hero..... one;

(8) Lamoille senatorial district, composed of the towns of Belvidere, Cambridge, Eden, Elmore, Hyde Park, Johnson, Morristown, Stowe, and Waterville..... one;

(9) Orange senatorial district, composed of the towns of Braintree, Brookfield, Chelsea, Corinth, Randolph, Strafford, Thetford, Tunbridge, Vershire, Washington, and Williamstown..... one;

(10) Rutland senatorial district, composed of the towns of Benson, Brandon, Castleton, Chittenden, Clarendon, Danby, Fair Haven, Hubbardton, Ira, Killington, Mendon, Middletown Springs, ~~Mt. Holly,~~ Mt. Tabor, Pawlet, Pittsfield, Pittsford, Poultney, Proctor, Rutland City, Rutland Town, Shrewsbury, Sudbury, Tinmouth, Wallingford, Wells, West Haven, and West Rutland..... three;

(11) Washington senatorial district, composed of the towns of Barre City, Barre Town, Berlin, Cabot, Calais, Duxbury, East Montpelier, Fayston, Marshfield, Middlesex, Montpelier, Moretown, Northfield, Plainfield, Roxbury, Waitsfield, Warren, Waterbury, Woodbury, and Worcester.....three;

(12) Windham senatorial district, composed of the towns of Athens, Brattleboro, Brookline, Dover, Dummerston, Grafton, Guilford, Halifax, Jamaica, ~~Londonderry,~~ Marlboro, Newfane, Putney, Rockingham, Somerset, Stratton, Townshend, Vernon, Wardsboro, Westminster, Whitingham, and Windham..... two;

(13) Windsor senatorial district, composed of the towns of Andover, Baltimore, Barnard, Bethel, Bridgewater, Cavendish, Chester, Hartford, Hartland, Londonderry, Ludlow, Mt. Holly, Norwich, Plymouth, Pomfret, Reading, Rochester, Royalton, Sharon, Springfield, Stockbridge, Weathersfield, Weston, West Windsor, Windsor, and Woodstock..... three.

Sec. 4. TIME FOR FILING PRIMARY PETITIONS AND STATEMENTS OF NOMINATION

Notwithstanding the provisions of 17 V.S.A. § 2356 regarding the earliest date by which primary petitions and statements of nomination from minor party candidates and independent candidates may be filed, for the 2012 elections, primary petitions and statements of nomination shall be filed no sooner than Tuesday, May 29, 2012.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage and shall apply to representative and senatorial districts for the 2012 election cycle and thereafter.

JEANETTE K. WHITE
VINCENT ILLUZZI
RICHARD W. SEARS

Committee on the part of the Senate

DONNA G. SWEANEY
WILLEM W. JEWETT
Committee on the part of the House

Thereupon, Senator Galbraith raised a *point of order* under Mason's Manual of Legislative Procedure Sec. 771.2 regarding Section 4 of the Committee of Conference report in that with the inclusion of the section the Committee of Conference had not confined itself to the differences between the two houses.

The Presiding Officer *sustained* the point of order and ruled that because the Committee of Conference had not confined itself to the differences of opinion between the houses, the report could not be considered by the Senate. Thereupon, Senator Flory moved that the rules be suspended to permit the Senate to consider the Report of Committee of Conference. Which was agreed to on a roll call, Yeas 21, Nays 2 (the 3/4ths required having been attained).

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, Baruth, Benning, Carris, Cummings, Doyle, Flory, Fox, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Nitka, Pollina, Snelling, Starr, Westman, White.

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

Those Senators absent and not voting were: Ayer, Brock, Campbell, Giard, Hartwell, Miller, Mullin.

Thereupon, Senator Sears raised a *point of order* regarding the reference during debate to suits awaiting adjudication.

The Presiding Officer *sustained* the point of order stating under Mason's Manual of Legislative Procedure Sec. 111 it is improper to refer to any matter awaiting adjudication.

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative on roll call, Yeas 23, Nays 1.

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, Carris, Cummings, Doyle, Flory, Giard, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

The Senator who voted in the negative was: Galbraith.

Those Senators absent or not voting were: Brock, Campbell (presiding), Fox, Hartwell, Miller, Mullin.

****During debate of the measure, Senator Doyle addressed the Chair and on motion of Senator Lyons, his remarks were ordered entered in the Journal, and are as follows:

"Mr. President:

"This is my fifth time I have been involved in Senate Reapportionment. Every plan over the years has been a good faith effort. The Senate plan this year is not exception and has followed Constitutional principals."

****During debate of the measure, Senator Illuzzi addressed the Chair and on motion of Senator Sears, his remarks were ordered entered in the Journal, and are as follows:

"Mr. President:

"As a member of the Committee of Conference, and before that the Senate Reapportionment Committee, I would like to explain my reasons for supporting the Senate redistricting plan.

"There was a statement made that this map was developed in the final analysis in response to a threat of litigation. I don't believe there was a threat. There was a comment made that if the deviation was greater than 18%, it might involve a challenge. It was merely a statement that if the deviation went above 18%, there could be a lawsuit, but it was not a threat and it did not guide our work.

"I believe that the final plans developed were in fact based on the best interests of Vermonters, and the Senate plan protects the regional interests of our state.

"Mr. President, may I quote from one of our own Vermont Supreme Court cases? This is from the *Hartland* case in the 90's.

"Early on, the Supreme Court acknowledged the practical impossibility of arranging state legislative districts 'so that each one has an identical number of residents,' and required only 'that a State make an honest and good faith effort to construct districts . . . as nearly of equal population as is practicable."

"In another case from the 70's, *In re Senate Bill 177*, the Court noted that:

"Vermont is a state of small population. In over three quarters of the counties there are towns in which the variation of a single registered voter amounts to a one percent change."

"The rural nature of our state necessarily requires us to establish districts that are rural in nature, and it is often difficult to bring the deviations within ten percent for that reason.

"The courts have held that when reapportioning the state, it is permissible to consider nonnumerical criteria, such as common interests, because it helps assure more effective representation. In the *Hartland* case, the Vermont Supreme Court said:

"The nonnumerical criteria are neither superfluous nor unimportant. They assure our citizens obtain effective representation by being placed in districts comprised of communities with shared interests.

"Our county lines were established over 200 years ago and do not reflect our current patterns of commerce and development. However, the proposed senate districts follow the operation of our law enforcement, transportation, social services, and schools.

"The districts we've proposed in the Senate map will assure effective and strong regional representation.

"For these reasons, I believe the proposed maps comport with federal and state law, will serve Vermonters well over the next decade, and should be adopted by the Senate."

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

Which was agreed to on a roll call, Yeas 23, Nays 1.

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, Carris, Cummings, Doyle, Flory, Giard, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

The Senator who voted in the negative was: *Galbraith.

Those Senators absent or not voting were: Brock, Campbell (presiding), Fox, Hartwell, Miller, Mullin.

*Senator Galbraith explained his vote as follows:

"With a deviation of greater than 18% for both the House and Senate maps, this bill violates the principle of equality of representation. There is no consistently applied state policy to justify the deviations in either map.

"In the colloquy on the conference report, the reporter explained that the conference committee moved Londonderry from the Windham District to the Windsor District in response to the threat of a legal challenge. I think that was inappropriate."

Message from the House No. 61

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. 115. An act relating to ineffective assistance claims against assigned counsel.

And has passed the same in concurrence.

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

H. 627. An act relating to an opioid addiction treatment system.

And has severally concurred therein.

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

H. 559. An act relating to health care reform implementation.

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. Fisher of Lincoln
Rep. Copeland-Hanzas of Bradford
Rep. Dakin

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

H. 781. An act relating to making appropriations for the support of government.

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

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

Rep. Heath of Westford
Rep. Johnson of South Hero
Rep. Crawford

Committee of Conference Appointed

H. 781.

An act relating to making appropriations for the support of government.

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

Senator Kitchel
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.

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 adopted in concurrence:

By Representative Woodward and others,

By Senator Westman,

H.C.R. 370.

House concurrent resolution recognizing the efforts of Community Health Services of Lamoille Valley to create a seamless and more effective health care environment.

By Representative Botzow,

By Senators Hartwell and Sears,

H.C.R. 371.

House concurrent resolution in memory of Donald E. Prouty, Jr., of Pownal.

By Representative Conquest and others,

H.C.R. 372.

House concurrent resolution in memory of former Representative Susan Webb.

By Representative Andrews and others,

By Senators Carris, Flory and Mullin,

H.C.R. 373.

House concurrent resolution designating May 2012 as Vermont Osteoporosis Awareness Month.

By Representative Morrissey and others,

By Senators Hartwell and Sears,

H.C.R. 374.

House concurrent resolution commemorating the 40th anniversary of the Retired Senior Volunteer Program’s establishment in Bennington County.

By Representative Morrissey and others,

By Senators Hartwell and Sears,

H.C.R. 375.

House concurrent resolution congratulating the H.W. Putnam Hose Company # 3 of the Bennington Fire Department on its 125th anniversary.

By Representative French,

By Senator Brock,

H.C.R. 376.

House concurrent resolution honoring Dr. William Pendlebury, cofounder of The Memory Center at Fletcher Allen Health Care.

By Representatives French and Townsend,

H.C.R. 377.

House concurrent resolution honoring the Reverend Kathy Wonson Eddy for her community leadership and spiritual guidance at Bethany Church and in the town of Randolph.

By Representative Taylor and others,

H.C.R. 378.

House concurrent resolution congratulating the Pepin Granite Company, Inc. on its 50th anniversary.

By Representative Klein and others,

H.C.R. 379.

House concurrent resolution congratulating Vermont Energy Investment Corporation on its 25th anniversary.

By Representative Donovan and others,

H.C.R. 380.

House concurrent resolution honoring former Representative William Keogh on his retirement from the Burlington City Council and its presidency.

By Representative Young,

H.C.R. 381.

House concurrent resolution recognizing the ecological importance and scenic beauty of the Lowell Mountain Range.

H.C.R. 382.

By Representative French,

House concurrent resolution in appreciation of Representative Ken Atkins of Winooski for offering M&M's® chocolate candies at roll call votes.

By Representative Savage and others,

By Senators Brock and Kittell,

H.C.R. 383.

House concurrent resolution honoring fish and game warden Sergeant Daniel Swainbank for his career accomplishments.

By Representative Krowinski and others,

H.C.R. 384.

House concurrent resolution honoring Burlington Fletcher Free Library co-director Amber Collins.

By Representative Buxton,

H.C.R. 385.

House concurrent resolution honoring retiring Vermont Law School President, Dean, and Professor of Law Geoffrey B. Shields and his wife, Genie.

By Representative Mook,

H.C.R. 386.

House concurrent resolution honoring and extending best wishes on future endeavors to each of the 2012 retiring faculty members of the Southwest Vermont Supervisory Union.

By Representatives Peltz and Smith,

H.C.R. 387.

House concurrent resolution in memory of former Woodbury town clerk and moderator Morris P. Lilley.

By Representative Dakin,

H.C.R. 388.

House concurrent resolution honoring librarian and Chester community leader Cynthia Collins.

By Representative Campion and others,

H.C.R. 389.

House concurrent resolution in memory of St. Michael's college alumni Michael and Jill Casey.

By Representatives Clark and Lanpher,

H.C.R. 390.

House concurrent resolution honoring the 5th grade civics education initiative at Ferrisburgh Central School.

Adjournment

On motion of Senator Mazza, the Senate adjourned until nine o'clock in the morning.

SATURDAY, APRIL 28, 2012

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

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 63

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

Mr. President:

I am directed to inform the Senate that:

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

H. 782. An act relating to miscellaneous tax changes for 2012.

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. Ancel of Calais
Rep. Branagan of Georgia
Rep. Condon of Colchester

Message from the House No. 64

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

Mr. President:

I am directed to inform the Senate that: