

(1) requirements for the mitigation of an undue adverse effect on drinking water supplies, farming, public water systems, or any other affected use when the secretary determines such an undue adverse effect is likely to occur due to a proposed withdrawal;

(2) requirements for the renewal of permits issued under this section.

(k) Nothing contained in this subchapter shall be construed to alter or modify a right under a deed or contract to access groundwater in this state.

§ 1419. CIRCUMVENTION

The secretary may require a person to report under section 1417 of this title or obtain a permit under section 1418 of this title when the secretary, in his or her discretion, determines that a withdrawal, subdivision of land, transfer of property, or other action is intended to circumvent the requirements of this subchapter.

Sec. 3. 10 V.S.A. § 1410 is amended to read:

§ 1410. GROUNDWATER; RIGHT OF ACTION

* * *

(b) Definitions. As used in this section:

(1) "Groundwater" means water below the land surface.

(2) "Surface water" means any water on the land surface.

(3) "Person" means any individual, partnership, company, corporation, association, unincorporated association, joint venture, trust, municipality, the state of Vermont, or any agency, department, or subdivision of the state, federal agency, or any other legal or commercial entity.

* * *

(g) For the purposes of this section, a person who obtains and complies with a withdrawal permit issued pursuant to the requirements of section 1418 of this title shall be presumed to be engaged in a reasonable use of groundwater and not to cause unreasonable harm under subsection (b) of this section.

Sec. 4. 6 V.S.A. § 4851 is amended to read:

§ 4851. PERMIT REQUIREMENTS FOR LARGE FARM OPERATIONS

* * *

(g) A farm that is permitted under this section and that withdraws more than 57,600 gallons of groundwater per day averaged over any 30

consecutive-day period, shall annually report estimated water use to the secretary of agriculture, food and markets. The secretary of agriculture, food and markets shall share information reported under this subsection with the agency of natural resources.

Sec. 5. 10 V.S.A. § 1675(g) is amended to read:

~~(g)(1) Effective July 1, 2006, a public water system applying for a permit under this section for the bottling of more than 50,000 gallons of drinking water a day from a single source for public distribution and sale shall, in addition to complying with the requirements of this chapter and any rules adopted thereunder, submit to the Vermont state geologist and the department of environmental conservation a geologic cross section and groundwater contour map of an area, the size of which shall be in conformance with appendix A, part 3, subsection 3.3.5.2 of the Vermont water supply rule, surrounding the proposed source.~~

~~(2) The requirements of subdivision (1) of this subsection shall apply to a public water system permitted under this section when the system proposes to expand the bottling of drinking water from a single source such that the total gallons of water bottled from the single source would exceed 50,000 gallons a day. Beginning July 1, 2010, the secretary shall not issue a source permit for a bottled drinking water supply unless, in addition to all other requirements for a source permit:~~

~~(1) the permit application contains the information required by subdivisions 1418(d)(4)–(7) of this title;~~

~~(2) the secretary finds that considerations in subdivisions 1418(e)(1)–(3) and (6)–(8) of this title have been satisfied;~~

~~(3) the permit contains the permit conditions required by subsection (f) of this section; and~~

~~(4) the permit applicant complies with the notice requirements of subsection 1418(c) of this title.~~

~~(h) A public water system permitted after the effective date of this act that bottles drinking water for public distribution and sale shall obtain from the secretary a source water permit under subsection 1672(b) of this title upon renewal of its operating permit under this section and every 10 years thereafter.~~

Sec. 6. 10 V.S.A. § 6001d is added to read:

§ 6001d. LARGE VOLUME GROUNDWATER WITHDRAWAL

In addition to all other applicable law, any withdrawal of more than 340,000 gallons of groundwater per day from any well or spring on a single tract of

land or at a place of business, independent of the acreage of the tract of land or place of business, shall be a development under this chapter if the withdrawal requires a permit under section 1418 of this title or is by a bottled water facility regulated under chapter 56 of this title.

Sec. 7. 6 V.S.A. § 2674 is amended to read:

§ 2674. RECORDS AND REPORTS--HANDLERS

(a) On or before March 1 of each year all handlers shall send the secretary a full and accurate report of the amount of business done during the preceding year, together with such other statistical information as he may require.

(b) A milk handler that is licensed under this chapter and that withdraws more than 57,600 gallons of groundwater per day averaged over any 30 consecutive-day period shall annually report estimated water use to the secretary of agriculture, food and markets. The secretary of agriculture, food and markets shall share information reported under this section with the agency of natural resources.

Sec. 8. EFFECTIVE DATE

This act shall take effect upon passage.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Fish, Wildlife and Water Resources? **Rep. Helm of Castleton** moved to amend the report of the committee on Fish, Wildlife and Water Resources as follows:

By adding a new Sec. 7a to read:

Sec. 7a. 10 V.S.A. § 1973(j) is added to read:

(j) Notwithstanding any provision of law to the contrary, any retail sales establishment may place up to three picnic tables outdoors within the bounds of its property without being required to obtain a state permit, or permit amendment, under this chapter.

Rep. Deen of Westminster raised a Point of Order that the proposal of amendment is not germane to the bill, which Point of Order the Speaker ruled well taken.

Thereupon, **Rep. Helm of Castleton** moved to suspend the rules to permit consideration of a non-germane question, which was disagreed to on a Division vote. Yeas, 36. Nays, 49.

Thereupon, the pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Fish, Wildlife and Water Resources? was agreed to.

Pending the question, Shall the bill be read a third time? **Rep. Deen of Westminster** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be read a third time? was decided in the affirmative. Yeas, 125. Nays, 12.

Those who voted in the affirmative are:

Acinapura of Brandon
Adams of Hartland
Ainsworth of Royalton
Allard of St. Albans Town
Ancel of Calais
Anderson of Montpelier
Andrews of Rutland City
Atkins of Winooski
Audette of S. Burlington
Barnard of Richmond
Bissonnette of Winooski
Bostic of St. Johnsbury
Botzow of Pownal
Bray of New Haven
Browning of Arlington
Bren of Mendon
Cheney of Norwich
Clarkson of Woodstock
Clerkin of Hartford
Condon of Colchester
Consejo of Sheldon
Copeland-Hanzas of Bradford
Corcoran of Bennington
Courcelle of Rutland City
Crawford of Burke
Davis of Washington
Deen of Westminster
Devereux of Mount Holly
Donaghy of Poultney
Donahue of Northfield
Donovan of Burlington
Dostis of Waterbury
Edwards of Brattleboro
Emmons of Springfield
Errecart of Shelburne
Evans of Essex
Fallar of Tinmouth

Fisher of Lincoln
Fitzgerald of St. Albans City
Flory of Pittsford
Frank of Underhill
French of Randolph
Gervais of Enosburg
Gilbert of Fairfax
Godin of Milton
Grad of Moretown
Grenier of St. Johnsbury
Haas of Rochester
Head of S. Burlington
Heath of Westford
Hosford of Waitsfield
Howard of Rutland City
Howrigan of Fairfield
Hube of Londonderry
Hunt of Essex
Hutchinson of Randolph
Jerman of Essex
Jewett of Ripton
Johnson of South Hero
Johnson of Canaan
Keenan of St. Albans City
Keogh of Burlington
Kitzmiller of Montpelier
Klein of East Montpelier
Komline of Dorset
Kupersmith of S. Burlington
Larson of Burlington
Lawrence of Lyndon
Lenes of Shelburne
Leriche of Hardwick
Lewis of Derby
Livingston of Manchester
Lorber of Burlington
Maier of Middlebury
Malcolm of Pawlet

Manwaring of Wilmington
Marcotte of Coventry
Marek of Newfane
Martin, C. of Springfield
Martin of Wolcott
Masland of Thetford
McCormack of Rutland City
McCullough of Williston
McDonald of Berlin
McFaun of Barre Town
Milkey of Brattleboro
Miller of Shaftsbury
Minter of Waterbury
Mitchell of Barnard
Monti of Barre City
Mook of Bennington
Moran of Wardsboro
Morley of Barton
Morrissey of Bennington
Mrowicki of Putney
Myers of Essex
Nease of Johnson
Nuovo of Middlebury
Obuchowski of Rockingham
O'Donnell of Vernon
Ojibway of Hartford
Orr of Charlotte
Otterman of Topsham
Oxholm of Vergennes
Partridge of Windham
Pearson of Burlington
Pellett of Chester
Peterson of Williston
Potter of Clarendon
Pugh of S. Burlington
Randall of Troy
Rodgers of Glover
Scheuermann of Stowe

Sharpe of Bristol
Smith of Morristown
Spengler of Colchester
Stevens of Shoreham

Sweaney of Windsor
Valliere of Barre City
Westman of Cambridge
Wheeler of Derby

Winters of Williamstown
Wright of Burlington
Zenie of Colchester
Zuckerman of Burlington

Those who voted in the negative are:

Baker of West Rutland
Branagan of Georgia
Canfield of Fair Haven
Krawczyk of Bennington

Larocque of Barnet
Larrabee of Danville
LaVoie of Swanton
McAllister of Highgate

McNeil of Rutland Town
Peaslee of Guildhall
Trombley of Grand Isle
Turner of Milton

Those members absent with leave of the House and not voting are:

Aswad of Burlington
Brennan of Colchester
Clark of Vergennes
Helm of Castleton

Kilmartin of Newport City
Koch of Barre Town
Lippert of Hinesburg
Peltz of Woodbury

Perry of Richford
Pillsbury of Brattleboro
Shand of Weathersfield
Weston of Burlington

Bill Read Second Time; Third Reading Ordered

H. 896

House bill entitled

An act relating to balancing the transportation budget and repairing deteriorating roads;

Was taken up, read the second time and third reading ordered.

Senate Proposal of Amendment Not Concurred in; Committee of Conference Requested and Appointed

H. 11

The Senate proposed to the House to amend House bill, entitled

An act relating to the commissioner of health;

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

Sec. 1. 18 V.S.A. § 104 is amended to read:

§ 104. COMMISSIONER OF HEALTH; DUTIES

(a) The secretary shall appoint a commissioner of health, as provided in 3 V.S.A. § 3051, who shall be either a physician licensed to practice medicine and surgery in this state or a health care professional who has at least a master's degree in public health or a related health care field and who, in addition, has had ~~educational~~ and practical experience in the field of public health.

(b) The commissioner may delegate such powers and assign such duties to members of the department as may be deemed appropriate and necessary for the proper execution of the provisions of this title. If the commissioner is not a physician licensed to practice medicine and surgery in this state, the commissioner shall fill an existing exempt position within the department by appointing a chief medical officer who shall be a physician licensed to practice medicine and surgery in this state and who shall report to the commissioner.

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. Donahue of Northfield** moved that the House refuse to concur and ask for a Committee of Conference, which was agreed to, and the Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Donahue of Northfield

Rep. McAllister of Highgate

Rep. Andrews of Rutland City

**Senate Proposal of Amendment Concurred in
With a Further Amendment Thereto**

H. 94

The Senate proposed to the House to amend House bill, entitled

An act relating to retail sales and taxing of specialty beers;

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

Sec. 1. 7 V.S.A. § 2(11), (14) and (20) are amended to read:

(11) ~~"Hotels": a first class hotel as determined by the liquor control board~~ Specialty beer" means a malt beverage that contains ~~more than eight~~ percent alcohol and not more than 16 percent alcohol by volume at 60 degrees Fahrenheit.

(14) "Malt beverages": all fermented beverages of any name or description manufactured for sale from malt, wholly or in part, or from any substitute ~~therefor~~ therefore, known as beer, porter, ale, and stout, containing not less than one percent nor more than ~~eight~~ 16 percent of alcohol by volume at 60 degrees ~~fahrenheit~~ Fahrenheit. However, if such a beverage has an alcohol content of more than six percent ~~and not more than eight percent~~ and has a terminal specific gravity of less than 1.009, it shall be deemed to be a spirit and not a malt beverage. The holder of the certificate of approval or the manufacturer shall certify to the liquor control board the terminal specific

gravity of the beverage when the alcohol content is more than six percent ~~and not more than eight percent.~~

(20) "Spirits": beverages for sale containing more than one percent of alcohol obtained by distillation, by chemical synthesis, or through concentration by freezing; and vinous beverages containing more than 16 percent of alcohol; and all vermouths of any alcohol content; malt beverages containing more than ~~eight~~ 16 percent of alcohol or more than six percent of alcohol if the terminal specific gravity thereof is less than 1.009; in each case measured by volume at 60 degrees ~~fahrenheit~~ Fahrenheit.

Sec. 2. 7 V.S.A. § 421(a) is amended to read:

§ 421. TAX ON MALT AND VINOUS BEVERAGES

(a) Every bottler and wholesaler shall pay to the commissioner of taxes the sum of 26 and one-half cents per gallon for every gallon or its equivalent of malt beverage containing not more than six percent of alcohol by volume at 60 degrees fahrenheit sold by them to retailers in the state and the sum of 55 cents per gallon for each gallon of malt beverage containing more than six percent ~~and not more than eight percent~~ of alcohol by volume at 60 degrees fahrenheit and each gallon of vinous beverages sold by them to retailers in the state and shall also pay to the liquor control board all fees for bottler's and wholesaler's licenses.

Sec. 3. STUDY OF FLAVORED MALT BEVERAGES; DEPARTMENT OF LIQUOR CONTROL

(a) The department of liquor control shall study and identify best practices for the marketing, sale, and taxation of flavored malt beverages, commonly called "alcopops," malt based beverages containing other ingredients such as flavored distilled spirits, and "alcohol energy drinks," which are malt beverages continuing other ingredients such as caffeine. The department shall consider the following:

(1) Whether these beverages should be considered spirits, malt beverages, or a completely separate category of alcoholic beverages.

(2) Whether these beverages and other flavored malt beverages should be distributed by wholesalers or the department.

(3) The impact and future implications of these beverages in regard to controlling underage drinking and other public health and safety concerns.

(4) Whether these beverages should be taxed at the lower malt beverage rate, the higher spirits rate, or a different tax rate.

(5) Legislative and regulatory activities undertaken by other states in regard to these beverages.

(b) The department shall complete the study and issue a written report of its findings, conclusions, and recommendations on or before January 1, 2009. The report shall be provided to the house committees on general, housing and military affairs, and on ways and means and the senate committees on economic development, housing and general affairs and on finance.

Pending the question, Shall the House concur in the Senate proposal of amendment? **Rep. Wright of Burlington** moved that the House concur in the Senate proposal of amendment with a further amendment thereto as follows:

By striking Sec. 3 and inserting in lieu thereof the following:

Sec. 3. STUDY OF FLAVORED MALT BEVERAGES; DEPARTMENT OF LIQUOR CONTROL

(a) The department of liquor control shall study and identify best practices for the marketing, sale, and taxation of malt-based beverages containing other ingredients such as flavored distilled spirits, and "alcohol energy drinks," which are malt beverages containing other ingredients such as caffeine.

(b) The department shall complete the study and issue a written report of its findings, conclusions, and recommendations on or before January 15, 2009. The report shall be provided to the house committees on general, housing and military affairs, and on ways and means and the senate committees on economic development, housing and general affairs and on finance.

Which was agreed to.

**Senate Proposal of Amendment Not Concurred in;
Committee of Conference Requested and Appointed**

H. 290

The Senate proposed to the House to amend House bill, entitled

An act relating to underground utility damage prevention system;

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

Sec. 1. 30 V.S.A. § 7001(4) is amended and (11), (12), (13), and (14) are added to read:

(4) "Excavation activities" means activities involving the removal of earth, rock or other materials in the ground, disturbing the subsurface of the earth, or the demolition of any structure, by the discharge of explosives or the

use of powered or mechanized equipment, including but not limited to digging, trenching, blasting, boring, drilling, hammering, post driving, wrecking, razing, or tunneling, within 100 feet of an underground utility facility. Excavation activities shall not include the tilling of the soil for agricultural purposes, routine gardening outside easement areas and public rights-of-way, activities relating to routine public highway maintenance, or the use of hand tools by a company, or the company's agent or a contractor working under the agent's direction, to locate or service the company's facilities, provided the company has a written damage prevention program.

(11) "Powered or mechanized equipment" means equipment that is powered or energized by any motor, engine, or hydraulic or pneumatic device and that is used for excavation or demolition work.

(12) "Hand tools" means tools powered solely by human energy.

(13) "Verified" means the location and depth has been physically determined.

(14) "Damage prevention program" means a program established to ensure employees involved in excavation activities are aware of and utilize appropriate and safe excavating practices.

Sec. 2. 30 V.S.A. § 7004(e) is added to read:

(e) Notice of excavation activities shall be valid for an excavation site until one of the following occurs:

(1) The excavation is not completed within 30 days of the notification;

(2) The markings become faded, illegible, or destroyed; or

(3) The company installs new underground facilities in a marked area still under excavation.

Sec. 3. 30 V.S.A. § 7006b is amended to read:

§ 7006b. EXCAVATION AREA PRECAUTIONS

Any person engaged in excavating activities in the approximate location of underground utility facilities marked pursuant to section 7006 of this title shall take reasonable precautions to avoid damage to underground utility facilities, including but not limited to any substantial weakening of the structural or lateral support of such facilities or penetration, severance or destruction of such facilities. When excavation activities involve horizontal or directional boring, the person engaged in excavation activities shall expose underground facilities to verify their location and depth, in a safe manner, at each location where the work ~~crosses~~ will cross a facility and at reasonable intervals when

paralleling an underground facility. Powered or mechanized equipment may only be used within the approximate location where the facilities have been verified.

Sec. 4. 30 V.S.A. § 7008 is amended to read:

§ 7008. PENALTIES

(a) Vermont Digsafe Program. Any person who violates any provisions of sections 7004, 7006a, 7006b, or 7007 of this title shall be subject to a civil penalty of up to \$1,000.00, in addition to any other remedies or penalties provided by law or any liability for actual damages. Notices of probable violation shall be issued within 12 months from the date the department receives the underground facility damage report, unless an ongoing investigation requires an extension of time.

(b) Any company which does not mark the location of its underground facilities as required by section 7006 or 7006a of this title shall be subject to a civil penalty of up to \$1,000.00. Notices of probable violation shall be issued within 12 months from the date the department receives the underground facility damage report, unless an ongoing investigation requires an extension of time.

* * *

(c) Any person who violates any provisions of sections 7004 through 7007 of this title as to an underground gas distribution or transmission facility shall also be subject to the civil penalties described in section 2816 of this title. However, a person who has been assessed a civil penalty pursuant to section 2816 of this title shall not be subject to the payment of an assessed penalty under the provisions of this section for the same violation.

Sec. 5. 30 V.S.A. § 2816(a) is amended to read:

(a) Gas Pipeline Safety Program. Any person who violates any statute, rule, regulation or order of the public service board relating to safety standards or safety practices applicable to transportation of gas through gas pipeline facilities subject to the jurisdiction of the public service board is subject to a civil penalty of not more than ~~\$10,000.00~~ \$100,000.00 for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed ~~\$500,000.00~~ \$1,000,000.00 for any related series of violations. The penalty may be imposed by the board after notice to the offending person of the alleged violations and opportunity for hearing.

Sec. 6. REPEAL

30 V.S.A. § 7004(d)(2) is repealed January 1, 2010.

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

**AN ACT RELATING TO THE VERMONT DIG SAFE PROGRAM AND
THE FEDERAL GAS PIPELINE SAFETY PROGRAM.**

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. Kitzmiller of Montpelier** moved that the House refuse to concur and ask for a Committee of Conference, which was agreed to, and the Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Livingston of Manchester

Rep. Consejo of Sheldon

Rep. Shand of Weathersfield

Senate Proposal of Amendment Concurred in

H. 306

The Senate proposed to the House to amend House bill, entitled

An act relating to telemarketing;

First: By adding two new sections to be numbered Secs. 1 and 2 to read as follows:

Sec. 1. FINDINGS AND PURPOSE

(a) Findings.

(1) Title 9 V.S.A. section 2464, which is part of the Consumer Fraud Act, was enacted in 1997 in response to complaints about certain telemarketing practices. Specifically, a fraudulent telemarketer, often based in another country, would charge a Vermonter's bank account. The only piece of information needed to do this was the code number at the bottom of the consumer's check, known as a "MICR" code. Armed with that information, the telemarketer would hire a U.S.-based third-party processor to (a) print up unsigned checks, called "demand drafts," to deposit into the telemarketer's own bank account; or (b) electronically withdraw funds from the consumer's account, using an "automated clearing house" or "ACH" debit.

(2) Although such debits are often used, they are usually not reported because many consumers do not know that their bank accounts can be charged without their permission. One court action brought by the Attorney General's Office (along with several other states and the Federal Trade Commission) against a third-party processor began with a single complaint from an elderly consumer's daughter who found an unauthorized charge on her mother's bank statement, which in turn led to the discovery of a handful of other related complaints and over 100 times that number of Vermont victims.

(3) Fraudulent telemarketers obtain bank account numbers by tricking consumers, by promising goods and services that they do not deliver, and by buying lists of past victims' account information.

(4) Existing law provides protections for Vermont consumers against this type of fraud. If a telemarketer wishes to charge a Vermonter's bank account using a demand draft, the telemarketer must first obtain written permission. If the telemarketer wishes to charge the consumer's account with an ACH debit, the telemarketer can only do so based on an inbound call from the consumer, or based on a prior business relationship with the consumer, but in either event, the telemarketer must also confirm the consumer's consent, typically with a digital voice recording. Third-party processors hired by telemarketers must follow the same standards.

(5) Nonetheless, there are two gaps in existing law. The first is that when telemarketers confirm a consumer's consent to an ACH debit, they usually do so by recording just a short "verification" portion of their telemarketing call, which has little information on it and often does not reveal what the consumer is consenting to; recording the entire call instead would resolve this problem. The second gap is that there may be a delay of years before a fraudulent telemarketer's debits to Vermonters' bank accounts are discovered, so it is important for state investigators to be able to check telemarketing and processor records going back more than the two years that they are now required to be kept.

Sec. 2. 9 V.S.A. § 2464(a)(4) is amended to read:

(4) "Telemarketer" means any person who initiates telephone calls to, or who receives telephone calls from, a consumer in connection with a plan, program, or campaign to market goods or services. The term "telemarketer" does not include:

* * *

(C) Any person who initiates telephone calls to or who receives telephone calls from a consumer in connection with collection of an amount due for goods or services previously provided to the consumer.

(D) Any company registered with and regulated by the public service board.

(E) Any other category of persons that the attorney general may exempt by rule consistent with the purposes of this section.

And by renumbering the remaining sections of the bill to be numerically correct.

Second: In renumbered Sec. 3, 9 V.S.A. § 2464(a)(1)(B), at the end after the period by adding Isolated and inadvertent failure to comply with this

record-keeping requirement shall not give rise to liability under this subsection, provided that the telemarketer has in place reasonable procedures designed to comply with this requirement.

Third: In renumbered Sec. 5, in 9 V.S.A. § 2464(e), by striking out the following: "federally-insured" and inserting in lieu thereof the following: federally insured and by striking out subdivision (1) in its entirety and inserting in lieu thereof a new subdivision (1) to read as follows:

(1) fail to obtain, before processing the transaction, any prior written authorization required by subdivision (b)(2) of this section or any tape recording or copy of a written confirmation required by subdivision (b)(3) of this section as part of the consumer's express oral authorization; or

Which proposal of amendment was considered and concurred in.

Senate Proposal of Amendment Concurred in

H. 330

The Senate proposed to the House to amend House bill, entitled

An act relating to repeal of the law relating to municipal trailer park ordinances;

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

Sec. 1. REPEAL

(a) As of July 1, 2008, subchapter 9 of chapter 61 of Title 24, relating to municipal ordinances for trailer parks, is repealed.

(b) A municipal ordinance adopted under subchapter 9 of chapter 61 of Title 24 prior to July 1, 2008 shall remain in effect until July 1, 2010, unless repealed by the municipality prior to that date.

Which proposal of amendment was considered and concurred in.

Senate Proposal of Amendment Not Concurred in; Committee of Conference Requested and Appointed

H. 432

The Senate proposed to the House to amend House bill, entitled

An act establishing Juneteenth National Freedom Day;

In Sec. 1, subdivision (4), by striking out the words "designation as a state holiday" and inserting in lieu thereof the words to be designated as a day of commemoration

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. Pearson of Burlington** moved that the House refuse to concur and ask for a Committee of Conference, which was agreed to, and the Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Pearson of Burlington

Rep. Jerman of Essex

Rep. Grad of Moretown

**Senate Proposal of Amendment Not Concurred in;
Committee of Conference Requested and Appointed**

H. 711

The Senate proposed to the House to amend House bill, entitled

An act relating to agricultural, forestry, and horticultural education;

First: In Sec. 3, subsection (a), by striking out the words "and the department of education shall jointly perform" and inserting in lieu thereof the following: , the department of education, the Vermont technical college, and the Vermont youth conservation corps jointly shall perform, in consultation with the department of corrections,

Second: In Sec. 3, subsection (a), after the word "provide" by inserting the words recommendations for

Third: In Sec. 3, subsection (b), subdivision (5), by striking out words "The need for a statewide specialist to provide" and inserting in lieu thereof the words Options for providing statewide leadership on

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

Sec. 4. 16 V.S.A. §§ 912 and 913 are added to read:

§ 912. PUPIL'S RIGHT OF REFUSAL; ANIMAL DISSECTION

(a) Any student in a public or independent elementary or secondary school may refuse to dissect, vivisect, incubate, capture, or otherwise harm or destroy an animal or any part of an animal, or to observe any of these activities, as part of a course of instruction.

(b) Not less than three weeks prior to a course exercise involving the use or dissection of an animal, a school shall notify each student enrolled in the course and his or her parent or guardian of the student's right to refuse to participate in or observe the exercise.

(c) A student who chooses to refrain from participating in or observing a portion of a course pursuant to this section shall be assigned an alternative

education project to learn the material required by the course. If course assessments require harmful or destructive use of animals, the student shall be offered an alternative assessment by which to demonstrate mastery of the material. A student may refuse to participate in any alternative education project or alternative assessment that involves or necessitates the harmful use of an animal or animal parts. A student shall not be discriminated against based upon his or her decision to exercise the right afforded by this section.

(d) As used in this section, the word "animal" means any living organism of the kingdom animalia and includes an animal's cadaver or the severed parts of any animal's cadaver.

§ 913. ANIMAL USE IN SCIENCE CLASSES AND SCIENCE FAIRS

(a) In public and independent elementary and secondary schools, live vertebrate animals shall not:

(1) Be experimentally medicated in a manner causing painful reactions or inducing painful or lethal pathological conditions.

(2) Be injured in any other manner, including anesthetization and electric shock.

(b) Live animals on school premises shall be housed and cared for in a humane and safe manner.

And by renumbering the remaining section to be numerically correct.

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. Godin of Milton** moved that the House refuse to concur and ask for a Committee of Conference, which was agreed to, and the Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Godin of Milton

Rep. Stevens of Shoreham

Rep. Peltz of Woodbury

**Senate Proposal of Amendment Not Concurred in;
Committee of Conference Requested and Appointed**

H. 515

The Senate proposed to the House to amend House bill, entitled

An act relating to the collection and disposal of mercury-added thermostats;

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

Sec. 1. FINDINGS

The general assembly finds:

(1) According to a 2004 study by the U.S. Environmental Protection Agency, titled "International Mercury Market Study and the Role and Impact of U.S. Environmental Policy," more than 10 percent of the estimated mercury reservoir in the United States is in thermostats.

(2) In 2000, thermostat manufacturers General Electric, Honeywell, and White Rodgers established the Thermostat Recycling Corporation (TRC) that runs the program for collecting mercury-containing thermostat discarded in Vermont. Under the TRC program, thermostat wholesalers volunteer to place bins where heating, ventilation, and air-conditioning (HVAC) contractors can discard thermostats.

(3) The manufacturers of mercury-containing thermostats, with the cooperation of the agency of natural resources, should be encouraged to submit a single unified plan for the collection of mercury-containing thermostats, the cost of which should be appropriately apportioned between participating manufacturers.

Sec. 2. 10 V.S.A. § 7102 is amended to read:

§ 7102. DEFINITIONS

As used in this chapter:

* * *

(6)(A) "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that (i) produces a mercury-added product, or (ii) serves as an importer or domestic distributor of a mercury-added product produced outside the United States.

(B) This definition shall not apply to retailers for whom importing is not their primary business.

(C) In the case of a multi-component mercury-added product, the manufacturer is the last manufacturer to produce or assemble the product.

(D) In the case of mercury-containing thermostats, the manufacturer is the original equipment manufacturer.

* * *

(16) "Mercury-containing thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. "Mercury-containing thermostat" includes thermostats used to sense and

control room temperature in residential, commercial, industrial, and other buildings but does not include a thermostat used to sense and control temperature as part of a manufacturing process.

(17) "Person" means any individual, corporation, partnership, cooperative, association, firm, sole proprietorship, governmental agency, or other entity.

(18) "Thermostat retailer" means a person who sells thermostats of any kind directly to homeowners or other nonprofessionals through any selling or distribution mechanism, including but not limited to sales using the internet or catalogues. A retailer may also be a wholesaler if it meets the definition of wholesaler.

(19) "Thermostat wholesaler" means a person that is engaged in the distribution and wholesale sale of heating, ventilation, and air-conditioning components to contractors who install heating, ventilation, and air-conditioning components.

Sec. 3. 10 V.S.A. § 7107 is amended to read:

§ 7107. DISCARDED MERCURY-ADDED PRODUCTS

(a) Management of discarded mercury-added products. After July 1, 2007, discarded mercury-added products, except for mercury-added button cell batteries, products containing mercury-added button cell batteries as their only mercury-added components, and photographic film shall be managed as provided in this section.

(1) Disposal ban. No person shall knowingly dispose of mercury-added products in a solid waste landfill or combustor.

(2) Source separation. Except as otherwise provided by this section, every person who discards solid waste shall separate mercury-added products from that solid waste for management as hazardous waste or universal hazardous waste, according to all applicable state and federal regulations. Any contractor who replaces or removes mercury-added products shall assure that any discarded mercury-added product is subject to proper separation and management as a hazardous waste or universal hazardous waste. Any contractor who replaces a mercury-containing thermostat from a building shall deliver the mercury-containing thermostat to an appropriate collection location for recycling.

* * *

(d) Removal of mercury-added components. The agency shall conduct a study and make recommendations for requirements to remove effectively and

feasibly mercury-added components in products prior to disposal or recycling processes. This report shall identify removal and collection systems at public and private solid waste management facilities and salvage businesses, manufacturer-sponsored or operated collection and take-back programs; and other feasible programs. The agency will identify costs mechanisms for financing such programs. The study shall address removal and collection of mercury-added components in automobiles and the collection of switches, relays, and gauges in home appliances, heating devices, and other equipment. The agency shall report to the general assembly no later than January 15, 2006. ~~The agency shall conduct a study, and in consultation with the advisory committee on mercury pollution, make recommendations on methods to increase recycling of mercury thermostats. The study shall identify incentive-based programs and other feasible programs, including costs and mechanisms for financing such programs. The agency shall report to the general assembly no later than January 15, 2008.~~

* * *

Sec. 4. 10 V.S.A. § 7116 is added to read:

§ 7116. MERCURY-CONTAINING THERMOSTATS

(a) Manufacturer responsibility. Each thermostat manufacturer that has offered for final sale, sold at final sale, or has distributed mercury containing thermostats in Vermont shall, individually or collectively:

(1) Not later than October 1, 2008 submit a plan to the agency for approval that describes a collection and financial incentive program for mercury thermostats. The program contained in this plan shall ensure that the following take place:

(A) that an effective education and outreach program shall be developed and shall be directed toward wholesalers, retailers, contractors, and homeowners. There shall be no cost to thermostat wholesalers or thermostat retailers for education and outreach materials.

(B) that handling and recycling of mercury-containing thermostats are accomplished in a manner that is consistent with the provisions of the universal waste rules adopted by the secretary.

(C) that containers for mercury-containing thermostat collection are provided to all thermostat wholesalers. The cost to thermostat wholesalers shall be limited to an initial, reasonable one-time fee per container as specified in the plan.

(D) that collection systems are provided to all collection points registered pursuant to subdivision (d)(3) of this section. Collection systems

can include individual product mail back or multiple collection containers. The cost to registered collection points shall be limited to an initial, reasonable one-time fee per container as specified in the plan.

(E) that a financial incentive is established with a minimum value of \$5.00 for the return of each mercury-containing thermostat to a thermostat wholesaler by a contractor or service technician. The financial incentive shall be in the form of cash or coupons that are redeemable by the contractor or service technician.

(F) that a financial incentive is established with a minimum value of \$5.00 to homeowners or non-professionals for the return of each mercury-containing thermostat to a collection point registered with the agency. The financial incentive shall be in the form of cash or in the form of a coupon that can be redeemed for cash from the manufacturer or can be redeemed for a credit toward purchase of general merchandise in the retail location where the thermostat was returned.

(G) mechanisms to protect against the fraudulent return of thermostats are established.

(2) No later than April 1, 2009, implement a mercury thermostat collection plan approved by the secretary under subsection (d)(1) of this section.

(3) Beginning in 2010, submit an annual report to the secretary by April 1 of each year that includes, at a minimum, all of the following:

(A) The number of mercury-containing thermostats collected and recycled by that manufacturer pursuant to this section during the previous calendar year.

(B) The estimated total amount of mercury contained in the thermostat components collected by that manufacturer pursuant to this section.

(C) An evaluation of the effectiveness of the manufacturer's collection program and the financial incentive.

(D) An accounting of the administrative costs incurred in the course of administering the collection and recycling program and the financial incentive plan.

(b) Thermostat wholesaler and thermostat retailer responsibilities.

(1) By April 1, 2009, a thermostat wholesaler shall not offer for final sale, sell at final sale, or distribute thermostats unless the wholesaler:

(A) acts as a collection site for thermostats that contain mercury.

(B) promotes and utilizes the collection containers provided by thermostat manufacturers to facilitate a contractor collection program as established by subsection (a) of this section, and all other tasks as needed to establish and maintain a cost-effective manufacturer collection and financial incentive program.

(2) By April 1, 2009, a thermostat retailer shall not offer for final sale, sell, or distribute thermostats in the state unless the thermostat retailer participates in an education and outreach program to educate consumers on the collection program for mercury thermostats.

(c) Sales prohibition. Beginning April 1, 2009, the following sales prohibitions shall apply to manufacturers, thermostat wholesalers, and thermostat retailers:

(1) A manufacturer not in compliance with this section is prohibited from offering any thermostat for final sale in the state, selling any thermostat at final sale in the state, or distributing any thermostat in the state. A manufacturer not in compliance with this section shall provide the necessary support to thermostat wholesalers and thermostat retailers to ensure the manufacturer's thermostats are not offered for final sale, sold at final sale, or distributed in this state.

(2) A thermostat wholesaler or thermostat retailer shall not offer for final sale, sell at final sale, or distribute in this state any thermostat of a manufacturer that is not in compliance with this section.

(d) Agency responsibilities.

(1) Within 60 days of receipt of a complete application from a manufacturer, the agency shall review and may grant, deny, or approve with modifications a manufacturer plan required by subdivision (a)(1) of this section. The agency shall not approve a plan unless all elements of subdivision (a)(1) are adequately addressed. In reviewing a plan, the agency may consider consistency of the plan with collection and financial incentive requirements in other states and consider consistency between manufacturer collection programs. In reviewing plans, the agency shall ensure that education and outreach programs are uniform and consistent to ensure ease of implementation by thermostat wholesalers and thermostat retailers.

(2) The agency shall establish a process under which a plan submitted by a manufacturer is, prior to plan approval, available for public review and comment for 30 days. The agency shall consult with interested persons, including representatives from thermostat manufacturers, environmental groups, thermostat wholesalers, thermostat retailers, service contractors, municipalities, and solid waste districts.

(3) Registered collection points. The agency shall maintain and post on the agency of natural resources' website a list of municipalities, solid waste districts, and thermostat retailers who wish to register as collection points for mercury thermostats.

(4) Education and outreach. In conjunction with the educational and outreach programs implemented by manufacturers, the agency shall conduct an education and outreach program directed toward wholesalers, retailers, contractors, and homeowners to promote the collection of discarded mercury-containing thermostats.

(5) Report. By January 15, 2010, and annually thereafter, the agency shall submit a report on the collection and recycling of mercury-containing thermostats in the state to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy. The report due in 2010 must include a description and discussion of the financial incentive plan established under this section and recommendations for any statutory changes concerning the collection and recycling of mercury-containing thermostats. Subsequent reports must include an evaluation of the effectiveness of the thermostat collection and recycling programs established under this section, information on actual collection rates, and recommendations for any statutory changes concerning the collection and recycling of mercury-containing thermostats. These reporting requirements may be combined with other reports on mercury that the agency is required to provide to the general assembly.

(e) Rate of collection. By July 1, 2010, the agency shall estimate the number of out-of-service thermostats generated in Vermont on an annual basis, in consultation with interested persons, including representatives from thermostat manufacturers, thermostat wholesalers, thermostat retailers, service contractors, environmental groups, municipalities, and solid waste districts. Beginning July 1, 2011, should collection efforts fail to result in the collection and recycling of at least 50 percent of the out-of-service mercury-containing thermostats in the state, the agency shall, in consultation with interested persons, require modifications to manufacturers' collection plans in an attempt to improve collection rates in accordance with these goals.

Sec. 5. MERCURY ADVISORY COMMITTEE REPORT ON TOXIC SUBSTANCES

(a) On or before January 15, 2009, the mercury advisory committee shall report to the senate and house committees on natural resources and energy and the house committee on fish, wildlife and water resources and the senate committee on health and welfare regarding whether the jurisdiction of the

mercury advisory committee should be expanded to include review of additional toxic substances. In preparing the report, the committee may consult with interested parties. The report shall include:

(1) A summary of existing Vermont programs and entities that identify or address the use of and risks posed by harmful toxic substances.

(2) A summary of how other states identify and minimize the risk posed by harmful toxic substances.

(3) A recommendation as to whether the jurisdiction of the mercury advisory committee or any other existing Vermont program or state agency should be expanded to include review of additional toxic substances.

(4) If a recommendation under subdivision (3) of this subsection is made to expand the jurisdiction of the mercury advisory committee or the jurisdiction of any other Vermont program or state agency, the report shall include each of the following::

(A) A recommendation of the toxic substances or categories of toxic substances that should be added to the jurisdiction of the mercury advisory committee or, if relevant, the jurisdiction of any other Vermont program or state agency, including an explanation of the criteria employed to review and identify such substances;

(B) Recommended statutory changes to the mercury advisory committee's statutory charge under 10 V.S.A. § 7113 or recommended statutory changes to the statutory charge of any other Vermont program or state agency, including an analysis of the impact of such expansion relative to the ability of the committee, program, or state agency to meet its current responsibilities;

(C) A recommendation for how to improve the toxic use reduction and hazardous waste reduction programs established under 10 V.S.A. chapter 159;

(D) A recommended date to which the repeal of the mercury advisory committee should be extended; and

(E) The estimated cost, if any, of expanding the jurisdiction of the mercury advisory committee or expanding the jurisdiction of another Vermont program or state agency, including identification of additional resources that would be required for implementing the expanded jurisdiction.

(b) For the purposes of this section, the mercury advisory committee shall consist of the members set forth in 10 V.S.A. § 7113(a), the attorney general of Vermont or his or her designee, the department of health state toxicologist, an

employee of the department of environmental conservation designated by the secretary of the agency of natural resources, and a member of a consumer interest group to be appointed by the governor.

Sec. 6. SUNSET

Subdivisions 7116(a)(3) (reporting requirement for manufacturers of mercury-containing thermostats) and (d)(4) (agency of natural resources reporting requirement regarding mercury-containing thermostats) of Title 10 shall be repealed on April 2, 2015.

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. McCullough of Williston** moved that the House refuse to concur and ask for a Committee of Conference, which was agreed to, and the Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. McCullough of Williston

Rep. Randall of Troy

Rep. Martin of Springfield

**Senate Proposal of Amendment Not Concurred in;
Committee of Conference Requested and Appointed**

H. 617

The Senate proposed to the House to amend House bill, entitled

An act relating to guardianships;

First: In Sec. 1, 14 V.S.A. § 3071(b), after "3069" by striking out "and 3070" and inserting in lieu thereof ~~and 3070~~

Second: In Sec. 1, 14 V.S.A. § 3072(a), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

(2) No individual may be appointed or serve as guardian for a person under or in need of guardianship if the individual operates a boarding home, residential care home, assisted living residence, nursing home, group home, developmental home, correctional facility, psychiatric unit at a designated hospital, or other similar facility in which the person under or in need of guardianship resides or is receiving care.

Third: In Sec. 1, 14 V.S.A. § 3072(b), by striking out subdivisions (1) and (2) in their entirety and inserting in lieu thereof new subdivisions (1) and (2) to read as follows:

(1) ~~the preference of the ward~~ the nomination of a guardian in an advance directive, trust or in a will;

(2) any current or past expressed preferences of the respondent;

Fourth: In Sec.1, 14 V.S.A. § 3075(e), by striking out "3069(b)(2)" and inserting in lieu thereof 3069(c)(2)

Fifth: In Sec. 1, 14 V.S.A. § 3075, by striking out subsections (g), (h), and (i) in their entirety and inserting in lieu thereof new subsections (g) and (h) to read as follows:

(g)(1) The guardian shall obtain prior written approval by the probate court following notice and hearing:

(A) if the person under guardianship objects to the guardian's decision, on constitutional grounds or otherwise;

(B) if the court orders prior approval for a specific surgery, procedure, or treatment, either in its initial order pursuant to subdivision 3069(c)(2) of this title or anytime after appointment of a guardian;

(C) except as provided in subdivision (2) of this subsection, and unless the guardian is acting pursuant to an advance directive, before withholding or withdrawing life-sustaining treatment other than antibiotics; or

(D) unless the guardian is acting pursuant to an advance directive, before consenting to a do-not-resuscitate order unless a clinician as defined in subdivision 9701(5) of Title 18 certifies that the person under guardianship is likely to experience cardiopulmonary arrest before court approval can be obtained. In such circumstances, the guardian shall immediately notify the court by telephone of the need for a decision, shall obtain the clinician's certification prior to consenting to the do-not-resuscitate order and shall file the clinician's certification with the court after consent has been given.

(2) The requirements of subdivision (1)(C) of this subsection shall not apply if obtaining a court order would be impracticable due to the need for a decision before court approval can be obtained. In such circumstances, the guardian shall immediately notify the court by telephone of the need for a decision, and shall notify the court of any decision made.

(h) The procedures in chapter 181 of Title 18 shall be the exclusive mechanism:

(1) For admission to inpatient psychiatric care when the person under guardianship objects to the guardian's decision on constitutional grounds or otherwise.

(2) To obtain approval for administration of nonemergency involuntary psychiatric medication to a person under guardianship.

Sixth: In Sec. 1, 14 V.S.A. § 3077(a), after "~~Any~~" by adding A

Seventh: By striking out Sec. 3 (Guardianship Task Force) in its entirety.

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. Jewett of Ripton** moved that the House refuse to concur and ask for a Committee of Conference, which was agreed to, and the Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Jewett of Ripton

Rep. Gervais of Enosburg

Rep. Flory of Pittsford

Senate Proposal of Amendment Concurred in

H. 777

The Senate proposed to the House to amend House bill, entitled
An act relating to the certificate of need program;

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

Sec. 1. 18 V.S.A. § 9432(4) is amended to read:

(4) "Capital expenditure" means an expenditure for the plant or equipment which is not properly chargeable as an expense of operation and maintenance and includes acquisition by purchase, donation, leasehold expenditure, or operating lease which is treated as capital expense in accordance to the accounting standards established for lease expenditures by the Financial Accounting Standards Board, calculated over the length of the lease for plant or equipment, and includes assets having an expected life of at least three years. A capital expenditure includes the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment.

Sec. 2. 18 V.S.A. § 9439(b) is amended to read:

(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(e)(2) 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(b)(4)~~ 9440(c)(8) as to the original application, whichever is shorter.

Sec. 3. 18 V.S.A. § 9440(c)(6) is amended to read:

(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 shall establish by rule, the application will be deemed inactive unless the applicant ~~has, within said six months, filed an adequate, as determined by the commissioner, amended letter of intent~~ requests in writing that the application be reactivated and the commissioner 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 shall establish by rule, the application will become invalid unless the applicant requests, and the commissioner grants, an extension.

Sec. 4. 18 V.S.A. § 9440(c)(9) is amended to read:

(9) The health care ombudsman's office established under ~~section 4089;~~ subchapter 1A of chapter 107 of Title 8 or, in the case of nursing homes, the long-term care ombudsman's office established under section 7502 of Title 33, 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.

Sec. 5. 18 V.S.A. § 9440(d)(4) and (7) are amended to read:

(4) A review shall be completed and the commissioner shall make a final decision within 120 days after the date of notification under subdivision ~~(b)(4)(c)(4)~~ of this section. Whenever it is not practicable to complete a review within 120 days, the commissioner may extend the review period up to an additional 30 days. Any review period may be extended with the written consent of the applicant and all other applicants in the case of a review cycle process.

(7) Notice of the final decision shall be sent to the applicant, competing applicants, and interested parties. ~~This notice~~ The final decision shall ~~make~~ include written findings and conclusions stating the basis of the decision.

Sec. 5a. 18 V.S.A. § 9440(e) is amended to read:

(e) The commissioner shall adopt rules governing procedures for the expeditious processing of applications for replacement, repair, rebuilding, or reequipping of any part of a health care facility or health maintenance organization destroyed or damaged as the result of fire, storm, flood, act of God, or civil disturbance, or any other circumstances beyond the control of the applicant, and of applications where the health care facility is affected by bankruptcy proceedings, where the commissioner finds that the circumstances require action in less time than normally required for review. If the nature of the emergency requires it, an application under this subsection may be reviewed by the commissioner only, without notice and opportunity for public hearing or intervention by any party.

Sec. 5b. 18 V.S.A. § 9440(g) is added to read:

(g) If the commissioner 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 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 may impose as a condition of approval of the application that a violation be corrected or remediated before the certificate may take effect.

Sec. 5c. 18 V.S.A. § 9445(d) is added to read:

(d) The commissioner 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. 5d. 18 V.S.A. § 9440(c)(5) is amended to read:

(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. 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 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 may formally declare the application uncontested and may issue a certificate of need without further process, or with such abbreviated process as the commissioner 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 after notice and an opportunity to be heard may issue a certificate of need with such abbreviated process as the commissioner deems appropriate, notwithstanding the contested nature of the application.

Sec. 5e. 18 V.S.A. § 9440(e) is amended to read:

(e) The commissioner shall adopt rules governing procedures for the expeditious processing of applications for replacement, repair, rebuilding, or reequipping of any part of a health care facility or health maintenance organization destroyed or damaged as the result of fire, storm, flood, act of God, or civil disturbance, or any other circumstances beyond the control of the applicant, ~~and of applications where the health care facility is affected by bankruptcy proceedings,~~ where the commissioner finds that the circumstances require action in less time than normally required for review. If the nature of the emergency requires it, an application under this subsection may be reviewed by the commissioner only, without notice and opportunity for public hearing or intervention by any party.

Sec. 6. 18 V.S.A. § 9444 is amended to read:

§ 9444. REVOCATION OF CERTIFICATES; MATERIAL CHANGE

The commissioner may revoke a certificate of need for substantial noncompliance with the scope of the project as designated in the application, or for failure to comply with the conditions set forth in the certificate of need granted by the commissioner. In the event that after a project has been approved, its proponent wishes to materially change the scope or cost of the approved project, all such changes are subject to review under this subchapter. If a change itself would be considered a new health care project as defined in ~~subsection 9434(a)~~ section 9434 of this title, it shall be considered as material. If the change itself would not be considered a new health care project as defined in ~~subsection 9434(a)~~ section 9434 of this title, the commissioner may decide not to review the change and shall notify the applicant and all parties of such decision. Where the commissioner decides not to review a change, such change will be deemed to have been granted a certificate of need.

Sec. 7. 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, ~~shall~~ may be subject to the following administrative sanctions by the commissioner, after notice and an opportunity to be heard:

(1) ~~The state shall not issue a~~ commissioner 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 ~~in violation of this subchapter and without a certificate of need or certificate of exemption issued pursuant thereto for a specified period of time, or that remedial conditions be attached to the issuance of such licenses or certificates.~~

(2) ~~The state shall not furnish from any reimbursement program~~ commissioner 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, nor shall any entity chartered under the laws of this state or any person doing business in the state provide reimbursement for any new health care project offered or developed in contravention of the requirements of this subchapter 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.

(3)(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 commissioner and health care providers or 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, 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.

~~(b)~~(c) After notice and an opportunity for hearing, the commissioner may impose on a person who knowingly violates a provision of this subchapter, or a rule or order adopted pursuant to this subchapter or section 15 of Title 8, 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 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 under this subdivision may appeal the commissioner's decision to the supreme court.

Sec. 8. 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 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 shall consider and weigh relevant factors including:

(i) the financial implications of the project on hospitals and other clinical settings, including the impact on their services, expenditures, and charges;

(ii) whether the impact on services, expenditures and charges is outweighed by the benefit of the project to the public; and

Sec. 9. EMERGENCY RULES; EFFECTIVE DATE; PROSPECTIVE REPEAL

(a) The commissioner may adopt emergency rules to carry out the purposes of Sec. 5a of this act.

(b) This act shall take effect on July 1, 2008, except that Sec. 5a of this act shall take effect on passage, and Sec. 5e of this act shall take effect on July 1, 2009.

(c) Subsection (a) of this section shall be repealed on June 30, 2009.

Which proposal of amendment was considered and concurred in.

**Senate Proposal of Amendment Not Concurred in;
Committee of Conference Requested and Appointed**

H. 806

The Senate proposed to the House to amend House bill, entitled

An act relating to public water systems;

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

Sec. 1. 10 V.S.A. § 1675a is added to read:

§ 1675a. PERMITTING EXEMPTION

(a) The requirements of this chapter and the rules adopted under this chapter, except the construction permitting requirements, shall not apply to a public water system that:

(1) Consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(2) Obtains all of its water from, but is not owned or operated by, a public water system to which this chapter applies;

(3) Does not engage in the sale of water to any person. For purposes of this section and subdivision 203(3) of title 30, a "sale" of water does not occur when:

(A) the rate charged to the consumer by the receiving water system is the same as the rate charged by the public water system for supplying water to the receiving water system; and

(B) the receiving water system follows the uniform water and sewer disconnect requirements of chapter 129 of title 24, except that section 5147 of title 24 shall not apply and appeals shall be governed by the Vermont rules of civil procedure; and

(4) Is not a carrier which conveys passengers in interstate commerce;

(5) Serves less than 500 persons; and

(6) Is served by a public water system that certifies to the secretary that:

(A) The receiving public water system is responsible for the repair and maintenance of their own water system unless otherwise agreed to by the wholesale system; and

(B) The public water system supplying water to the receiving water system is responsible for:

(i) including the receiving public water system in its water quality sampling plans;

(ii) providing consumer confidence reports to the receiving system's users; and

(iii) issuing public notice to the receiving system's users if a violation of a drinking water contaminant standard exists or if the secretary determines that a condition exists that may present a risk to public health.

(b) The water system supplying water to the receiving water system is responsible for the requirements contained in subdivision (a)(6)(B) of this section until 180 days after the water system supplying water to the receiving water system files a notice with the secretary of natural resources and the receiving system of its intent to withdraw from any obligation made under subdivision (a)(6)(B) of this section.

(c) Notwithstanding the exemption contained in subsection (a) of this section, the secretary of natural resources may take any reasonable steps that are necessary to abate a public health threat at a public water system that is otherwise exempt

Sec. 2. 30 V.S.A. § 203(3) is amended to read:

(3) A company other than a municipality or a water system exempted under the provisions of section 1675a of title 10 engaged in the collecting, sale and distribution of water for domestic, industrial, business or fire protection purposes;

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. Randall of Troy** moved that the House refuse to concur and ask for a Committee of Conference, which was agreed to, and the Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Randall of Troy

Rep. Lewis of Derby

Rep. McCullough of Williston

Senate Proposal of Amendment Concurred in**H. 867**

The Senate proposed to the House to amend House bill, entitled

An act relating to health insurance plan coverage for athletic trainer services;

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

Sec. 1. 8 V.S.A. § 4088f is added to read:

**§ 4088f. COVERAGE FOR COVERED SERVICES PROVIDED BY
ATHLETIC TRAINERS**

(a) To the extent a health insurance plan provides coverage for a particular type of health service or for any particular medical condition that is within the scope of practice of athletic trainers, a licensed athletic trainer who acts within the scope of practice authorized by law shall not be denied reimbursement by the health insurer for those covered services if the health insurer would reimburse another health care provider for those services. A health insurer may require that the athletic trainer services be provided by a licensed athletic trainer under contract with the insurer. Services provided by athletic trainers may be subject to reasonable deductibles, co-payment and co-insurance amounts, fee or benefit limits, practice parameters, and utilization review consistent with applicable rules adopted by the department of banking, insurance, securities, and health care administration; provided that the amounts, limits, and review shall not function to direct treatment in a manner unfairly discriminative against athletic trainer care, and collectively shall be no more restrictive than those applicable under the same policy for care or services provided by other health care providers but allowing for the management of the benefit consistent with variations in practice patterns and treatment modalities among different types of health care providers. Nothing in this section shall be construed as impeding or preventing either the provision or coverage of health care services by licensed athletic trainers within the lawful scope of athletic trainer practice.

(b) As used in this section, "health insurance plan" means an individual or group health insurance policy, a hospital or medical service corporation or health maintenance organization subscriber contract, or another health benefit plan offered, issued, or renewed for a person in this state by a health insurer, as defined in subdivision 9402(7) of Title 18. The term shall not include benefit plans providing coverage for specific disease or other limited benefit coverage.

Sec. 2. 26 V.S.A. § 2086 is added to read:

§ 2086. PATIENT CARE MANAGEMENT

(a) A physical therapist shall be professionally responsible and legally liable for all aspects of the physical therapy care of each of his or her patients. The director of the office of professional regulation shall identify by rule physical therapy services that only a physical therapist may perform. At a minimum, a physical therapist shall provide:

(1) the initial examination and documentation for each of his or her patients;

(2) periodic reexamination and documentation of each of his or her patients;

(3) the documented discharge of the patient, including the response to therapeutic intervention at the time of discharge.

(b) A physical therapist shall ensure the qualifications of all physical therapist assistants and physical therapy aides under his or her direction or supervision.

(c) For each of his or her patients on each date of treatment, a physical therapist shall provide all of the therapeutic intervention that requires the expertise of a physical therapist and shall determine the use of physical therapist assistants or physical therapy aides who provide for the delivery of care that is safe, effective, and efficient, provided the assigned acts, tasks, or procedures do not exceed the person's education or training and provided:

(1) A physical therapist assistant shall work under a physical therapist's supervision. A physical therapist assistant may document care pursuant to the existing treatment plan from the supervising physical therapist.

(2) A physical therapist may use physical therapy aides for designated routine tasks. A physical therapy aide shall work under the on-site supervision of a physical therapist who is continuously on site and present at the facility, who is immediately available to assist the person being supervised in the services being performed, and who maintains continued involvement in appropriate aspects of each treatment session in which a component of treatment is assigned. This supervision by the physical therapist may extend to off-site supervision of the aide only when the physical therapy aide is accompanying and working directly with a physical therapist assistant with a specific patient or when performing nonpatient-related tasks.

(d) A physical therapist's responsibility for patient care management shall include accurate documentation of and billing for the services provided.

(e) A physical therapist shall be responsible for communicating the status of a patient's progress and other relevant information to the patient's referring health care professional unless the patient declines to authorize release of the patient's physical therapy records.

Sec. 3. REPEAL

(a) 26 V.S.A. § 2081a(1) (definition of assistive personnel) shall be repealed on July 1, 2009.

(b) 26 V.S.A. § 2085 (legal liability for physical therapists) shall be repealed on July 1, 2009.

Sec. 4. EFFECTIVE DATE: APPLICABILITY

(a) Sec. 1 of this act shall take effect on July 1, 2008 and shall apply to all health benefit plans offered, issued, or renewed on or after October 1, 2008.

(b) Sec. 2 of this act shall take effect on July 1, 2009.

Which proposal of amendment was considered and concurred in.

Senate Proposal of Amendment to House Proposal of Amendment Concurred in

S. 240

The Senate concurred in the House proposal of amendment on House bill, entitled

An act relating to repealing the sunset of the law enforcement exemption to the social security breach notice act;

With the following amendment thereto:

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

Sec. 1. EXTENSION OF SUNSET OF LAW ENFORCEMENT EXEMPTION TO SECURITY BREACH NOTICE ACT

Sec. 5 of No. 162 of the Acts of the 2005 Adj. Sess. (2006) is amended to read:

Sec. 5. SUNSET

9 V.S.A. § 2435(h) (exemption for law enforcement agencies from security breach notice act) shall be repealed June 30, ~~2008~~ 2012.

The Senate further proposes that after passage, the title of the bill be amended to read: