

# Journal of the House

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**Saturday, April 28, 2012**

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

## **Devotional Exercises**

Devotional exercises were conducted by the Speaker.

## **Bill Referred to Committee on Appropriations**

### **S. 226**

House bill, entitled

An act relating to combating illegal diversion of prescription opiates and increasing treatment resources for opiate addiction

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

## **Third Reading; Bills Passed in Concurrence with Proposal of Amendment**

Senate bills of the following titles were severally taken up, read the third time and passed in concurrence with proposal of amendment:

### **S. 214**

Senate bill, entitled

An act relating to customer rights regarding smart meters

### **S. 230**

Senate bill, entitled

An act relating to property and casualty insurers and electronic notices

### **S. 252**

Senate bill, entitled

An act relating to the repeal or revision of reporting requirements

## **Bill Read the Second Time; Consideration Interrupted by Recess**

### **S. 95**

**Rep. Moran of Wardsboro**, for the committee on General, Housing and Military Affairs, to which had been referred Senate bill, entitled

An act relating to exemptions for newspaper deliverers from the unemployment statutes; relieving an employer's experience rating record of charges; studying the receipt of unemployment compensation between academic terms; allowing school employees to be paid wages over the course of a year; and requiring employers to furnish required work apparel

Reported in favor of its passage in concurrence with proposal of amendment as follows:

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

Sec. 1. FINDINGS

The general assembly finds that:

(1) Studies on middle and low income households have found that most indebted families go into debt to pay for basic expenses, such as groceries, utilities, child care, and health care. A study has shown that families with medical debt had 43 percent more credit card debt than those without medical debt.

(2) Employer surveys conducted by the Society of Human Resources Management suggest that over the last 15 years, employers' use of credit reports in the hiring process has increased from a practice used by fewer than one in five employers in 1996 to six of every 10 employers in 2010.

(3) Social science research thus far has shown that information contained in a credit report has no correlation to job performance. The Palmer-Koppes study conducted in 2004 found that those employees who were late on payments were more likely to be associated with a positive job performance.

(4) Further, there is no common standard among employers as to how to interpret credit reports, which reinforces the fact that credit reports do not provide meaningful insight into a candidate's character, responsibility, or prospective job performance.

(5) The Equal Employment Opportunity Commission has stated that: "Inquiry into an applicant's current or past assets, liabilities, or credit rating . . . generally should be avoided because they tend to impact more adversely on minorities and females."

Sec. 2. 21 V.S.A. § 495i is added to read:

§ 495i. EMPLOYMENT BASED ON CREDIT INFORMATION;  
PROHIBITIONS

(a) For purposes of this section:

(1) “Confidential financial information” means sensitive financial information of commercial value that a customer or client of the employer gives explicit authorization for the employer to obtain, process, and store and that the employer entrusts only to managers or employees as a necessary function of their job duties.

(2) “Credit history” means information obtained from a third party, whether or not contained in a credit report, that reflects or pertains to an individual’s prior or current:

(A) borrowing or repaying behavior, including the accumulation, payment, or discharge of financial obligations; or

(B) financial condition or ability to meet financial obligations, including debts owed, payment history, savings or checking account balances, or savings or checking account numbers.

(3) “Credit report” has the same meaning as in 9 V.S.A. § 2480(a).

(b) An employer shall not:

(1) Fail or refuse to hire or recruit; discharge; or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual’s credit report or credit history.

(2) Inquire about an applicant or employee’s credit report or credit history.

(c)(1) An employer is exempt from the provisions of subsection (b) of this section if one or more of the following conditions are met:

(A) The information is required by state or federal law or regulation.

(B) The position of employment involves access to confidential financial information.

(C) The employer is a financial institution as defined in 8 V.S.A. § 11101(32) or a credit union as defined in 8 V.S.A. § 30101(5).

(D) The position of employment is that of a law enforcement officer as defined in 20 V.S.A. § 2358, emergency medical personnel as defined in 24 V.S.A. § 2651(6), or a firefighter as defined in 20 V.S.A. § 3151(3).

(E) The position of employment requires a financial fiduciary responsibility to the employer or a client of the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts.

(F) The employer can demonstrate that the information is a valid and reliable predictor of employee performance in the specific position of employment.

(2) An employer that is exempt from the provisions of subsection (b) of this section may not use an employee's or applicant's credit report or history as the sole factor in decisions regarding employment, compensation, or a term, condition, or privilege of employment.

(d) If an employer seeks to obtain or act upon an employee's or applicant's credit report or credit history pursuant to subsection (c) of this section that contains information about the employee's or applicant's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers, the employer shall:

(1) Obtain the employee's or applicant's written consent each time the employer seeks to obtain the employee's or applicant's credit report.

(2) Disclose in writing to the employee or applicant the employer's reasons for accessing the credit report, and if an adverse employment action is taken based upon the credit report, disclose the reasons for the action in writing. The employee or applicant has the right to contest the accuracy of the credit report or credit history.

(3) Ensure that none of the costs associated with obtaining an employee's or an applicant's credit report or credit history are passed on to the employee or applicant.

(4) Ensure that the information in the employee's or applicant's credit report or credit history is kept confidential and, if the employment is terminated or the applicant is not hired by the employer, provide the employee or applicant with the credit report or have the credit report destroyed in a secure manner which ensures the confidentiality of the information in the report.

(e) An employer shall not discharge or in any other manner discriminate against an employee or applicant who has filed a complaint of unlawful

employment practices in violation of this section or who has cooperated with the attorney general or a state's attorney in an investigation of such practices or who is about to lodge a complaint or cooperate in an investigation or because the employer believes that the employee or applicant may lodge a complaint or cooperate in an investigation.

(f) Notwithstanding subsection (c) of this section, an employer shall not seek or act upon credit reports or credit histories in a manner that results in adverse employment discrimination prohibited by federal or state law, including section 495 of this title and Title VII of the Civil Rights Act of 1964.

(g) This section shall apply only to employers, employees, and applicants for employment and only to employment-related decisions based on a person's credit history or credit report. It shall not affect the rights of any person, including financial lenders or investors, to obtain credit reports pursuant to other law.

Sec. 3. 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. For employees within a bargaining unit organized pursuant to either chapter 22 of this title or 16 V.S.A. chapter 57, the school district shall implement this election in a manner determined through negotiations under those chapters. Negotiations may include the extent to which an employee performing multiple jobs at different rates of pay may have this election accommodated. For employees not within a bargaining unit, the school district

shall determine the manner in which to implement this subdivision.

\* \* \*

Sec. 4. 18 V.S.A. § 8910 is amended to read:

§ 8910. STATE AID; FEES

\* \* \*

(d) On an annual basis, each community mental health agency that receives state funds under this section shall certify to the state that none of the funds will be used to interfere with or restrain the exercise of an employee's rights with respect to unionization and upon request shall provide records to the commissioner which attest to such certification.

Sec. 5. EFFECTIVE DATES

Sec. 3 of this act shall take effect on July 1, 2012 and shall be fully implemented no later than July 1, 2013, or, in a school district whose collective bargaining agreement in effect on July 1, 2012 contains provision for the capacity of its school year employees to have their wages paid in substantially equal amounts each pay period throughout either the school year or calendar year, no later than the expiration date stated in that collective bargaining agreement.

and that after passage the title of the bill be amended to read: "An act relating to employment decisions based on credit information, allowing school employees to be paid wages over the course of a year, and union organizing"

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

Pending the question, Shall the recommendation of proposal of amendment offered by the committee on General, Housing and Military Affairs be agreed to? **Rep. Donahue of Northfield** moved to amend the report of the committee on General, Housing and Military Affairs, as follows:

By striking Sec. 4 in its entirety and inserting a new Sec. 4 to read:

Sec. 4. 21 V.S.A. § 496a is added to read:

§ 496a. STATE FUNDS; UNION ORGANIZING

On an annual basis, an employer that is the recipient of a grant of state funds shall certify to the state that none of the funds will be used to interfere with or restrain the exercise of an employee's rights with respect to unionization and upon request shall provide records to the secretary of administration which attest to such certification.

Thereupon, **Rep. Donahue of Northfield** asked and was granted leave of the House to withdraw her amendment.

Pending the question, Shall the recommendation of proposal of amendment offered by the committee on General, Housing and Military Affairs be agreed to? **Reps. Wilson of Manchester, Grishin of Warren and Olsen of Jamaica** moved to amend the report of the committee on General, Housing and Military Affairs, as follows:

By striking Secs. 3 and 5 in their entirety and inserting a new Sec. 3 to read:  
Sec. 3. 21 V.S.A. § 342 is amended to read:

§ 342. WEEKLY PAYMENT OF WAGES

(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) A school district employee may elect to have a set amount or set percentage of his or her after-tax wages withheld by the school district in an employee-owned bank account each pay period. The percentage or amount withheld shall be determined by the employee and shall be accessible at the discretion of the employee.

\* \* \*

Thereupon, **Rep. Wilson of Manchester** asked and was granted leave of the House to withdraw his amendment.

Pending the question, Shall the recommendation of proposal of amendment offered by the committee on General, Housing and Military Affairs be agreed to? **Rep. Olsen of Jamaica** asked that the question be divided and Sec. 4 be voted on first, Secs. 3 and 5, second, and Secs. 1 and 2, last.

Thereupon, **Rep. Olsen of Jamaica** raised a Point of Order that Sec. 4 was not germane to the original bill, which Point of Order the Speaker ruled not

well taken in that both the bill and Sec. 4 deal with employee/employer relations.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended in Sec. 4? **Rep. Marek of Newfane** demanded the Yeas and Nays, which demand was sustained by the Constitutional number.

Pending the call of the roll, **Rep. Head of South Burlington** moved to substitute an amendment for Sec. 4 as follows:

By striking Sec. 4 in its entirety and inserting a new Sec. 4 to read:

Sec. 4. 21 V.S.A. § 496a is added to read:

§ 496a. STATE FUNDS; UNION ORGANIZING

On an annual basis, an employer that is the recipient of a grant of state funds shall certify to the state that none of the funds will be used to interfere with or restrain the exercise of an employee's rights with respect to unionization and upon request shall provide records to the secretary of administration which attest to such certification.

Which was agreed to.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on General, Housing and Military Affairs in Sec. 4, as amended? **Rep. Fagan of Rutland City** moved to recommit the bill to the committee on General, Housing and Military Affairs.

Pending the question, Shall the bill be recommitted to the Committee on General, Housing and Military Affairs? **Rep. Donovan of Burlington** 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 recommitted to the Committee on General, Housing and Military Affairs? was decided in the negative. Yeas, 24. Nays, 100.

Those who voted in the affirmative are:

Bouchard of Colchester	Fagan of Rutland City	Peaslee of Guildhall
Canfield of Fair Haven	Helm of Fair Haven	Reis of St. Johnsbury
Clark of Vergennes	Higley of Lowell	Scheuermann of Stowe
Crawford of Burke	Kilmartin of Newport City	Strong of Albany
Dickinson of St. Albans	Komline of Dorset	Turner of Milton
Town	Larocque of Barnet	Winters of Williamstown
Donaghy of Poultney	Lawrence of Lyndon	Wright of Burlington
Donahue of Northfield	McAllister of Highgate	
Eckhardt of Chittenden	Olsen of Jamaica	

Those who voted in the negative are:

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Acinapura of Brandon	Grad of Moretown	Moran of Wardsboro
Ancel of Calais	Greshin of Warren	Mrowicki of Putney
Andrews of Rutland City	Haas of Rochester	Munger of South Burlington
Atkins of Winooski	Head of South Burlington	Myers of Essex
Bartholomew of Hartland	Hooper of Montpelier	Nuovo of Middlebury
Bissonnette of Winooski	Howrigan of Fairfield	O'Sullivan of Burlington
Bohi of Hartford	Jerman of Essex	Partridge of Windham
Botzow of Pownal	Jewett of Ripton	Pearson of Burlington *
Branagan of Georgia	Johnson of South Hero	Peltz of Woodbury
Burke of Brattleboro	Keenan of St. Albans City	Poirier of Barre City
Buxton of Tunbridge	Kitzmiller of Montpelier	Potter of Clarendon
Campion of Bennington	Klein of East Montpelier	Pugh of South Burlington
Cheney of Norwich	Koch of Barre Town	Ralston of Middlebury
Christie of Hartford	Krebs of South Hero	Ram of Burlington
Clarkson of Woodstock	Krowinski of Burlington	Russell of Rutland City
Condon of Colchester	Kupersmith of South Burlington	Savage of Swanton
Conquest of Newbury	Lanpher of Vergennes	Shand of Weathersfield
Consejo of Sheldon	Lenes of Shelburne	Sharpe of Bristol
Copeland-Hanzas of Bradford	Lewis of Berlin	Shaw of Pittsford
Corcoran of Bennington	Lewis of Derby	Smith of New Haven
Courcelle of Rutland City	Lippert of Hinesburg	South of St. Johnsbury
Dakin of Chester	Lorber of Burlington	Stevens of Waterbury
Davis of Washington	Macaig of Williston	Stuart of Brattleboro
Deen of Westminster	Malcolm of Pawlet	Sweaney of Windsor
Donovan of Burlington	Manwaring of Wilmington	Taylor of Barre City
Edwards of Brattleboro	Marcotte of Coventry	Townsend of Randolph
Ellis of Waterbury	Marek of Newfane	Trieber of Rockingham
Emmons of Springfield	Martin of Springfield	Waite-Simpson of Essex
Evans of Essex	Martin of Wolcott	Webb of Shelburne
Fisher of Lincoln	Masland of Thetford	Wilson of Manchester
Frank of Underhill	McFaun of Barre Town	Wizowaty of Burlington
French of Shrewsbury	Miller of Shaftsbury	Yantachka of Charlotte
French of Randolph	Mook of Bennington	Young of Glover
		Zagar of Barnard

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

Aswad of Burlington	Hebert of Vernon	Perley of Enosburgh
Batchelor of Derby	Howard of Cambridge	Smith of Morristown
Brennan of Colchester	Hubert of Milton	Spengler of Colchester
Browning of Arlington	Johnson of Canaan	Stevens of Shoreham
Burditt of West Rutland	McCullough of Williston	Till of Jericho
Degree of St. Albans City	McNeil of Rutland Town	Toll of Danville
Devereux of Mount Holly	Morrissey of Bennington	Woodward of Johnson
Gilbert of Fairfax	O'Brien of Richmond	
Heath of Westford	Pearce of Richford	

**Rep. Pearson of Burlington** explained his vote as follows:

“Mr. Speaker:

How ironic to have blatantly anti-union motions brought forward on a Saturday. After all, it was unions that gave us the very concept of our treasured weekends.”

Pending the call of the roll, **Rep. Pugh of South Burlington**, moved to amend the proposal of amendment, as amended, as offered by Rep. Head of South Burlington as follows:

By inserting "either to promote or" after the words "funds will be used"

Thereupon, **Rep. Pugh of South Burlington** asked and was granted leave of the House to withdraw her amendment.

#### **Recess**

At twelve o'clock and fifteen minutes in the afternoon, the Speaker declared a recess until twelve o'clock and forty-five minutes in the afternoon.

At twelve o'clock and fifty-five minutes in the afternoon, the Speaker called the House to order.

#### **Consideration Resumed; Consideration Interrupted to Consider H. 769**

#### **S. 95**

Consideration resumed on Senate bill, entitled

An act relating to exemptions for newspaper deliverers from the unemployment statutes; relieving an employer's experience rating record of charges; studying the receipt of unemployment compensation between academic terms; allowing school employees to be paid wages over the course of a year; and requiring employers to furnish required work apparel

Pending the call of the roll, **Rep. Olsen of Jamaica** moved to amend Sec. 4 of the report of the committee on General, Housing and Military Affairs, as amended as follows:

By striking the words “on an annual basis” and inserting in lieu thereof at the request of an aggrieved employee

#### **Message from the Senate No. 59**

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

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I am directed to inform the House that:

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

**H. 475.** An act relating to net metering and definitions of capacity.

**H. 506.** An act relating to vinous beverages.

**H. 523.** An act relating to revising the state highway condemnation law.

**H. 535.** An act relating to racial disparities in the Vermont criminal justice system.

**H. 556.** An act relating to creating a private activity bond advisory committee.

**H. 751.** An act relating to jurisdiction of delinquency proceedings.

**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.

**H. 780.** An act relating to compensation for certain state employees.

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

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

**H. 37.** An act relating to telemedicine.

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

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

**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 concurred therein.

The Senate has considered bills originating in the House 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.

And has passed the same in concurrence.

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

**S. 223.** An act relating to health insurance coverage for early childhood developmental disorders, including autism spectrum disorders.

And has concurred therein.

The Senate has on its part adopted joint resolution of the following title:

**J.R.S. 58.** Joint resolution relating to respectful language in the Vermont Statutes Annotated.

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

**Rules Suspended; to Interrupt the Orders of the Day**

**H. 769**

House bill, entitled

An act relating to department of environmental conservation fees;

**Rep. Turner of Milton** moved to suspend the rules to interrupt the orders of the day to consider H. 769, which was agreed to.

**Senate Proposal of Amendment Not Concurred in;  
Committee of Conference Requested and Appointed;  
Rules Suspended and Bill was Ordered Messaged to the Senate Forthwith**

**H. 769**

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

An act relating to department of environmental conservation fees

First: In Sec. 1, 3 V.S.A. § 2822(j)(1)(B) by striking out “, 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 and inserting a new Sec. 3 to read:

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:

(5) Current tank technology and its impact on safety and the rate of current tank fees.

Fourth: By striking Sec. 8 and inserting a new Sec. 8 to read:

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 \$0.01 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 Secs. 9 and 11 in their entirety

Sixth: By adding Secs. 12, 13, 14, 15, 16, 17, and 18 to read:

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

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. Sharpe of Bristol** 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. Sharpe of Bristol**  
**Rep. Clarkson of Woodstock**  
**Rep. Masland of Thetford**

On motion of **Rep. Savage of Swanton**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

#### **Message from the Senate No. 60**

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

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

**H. 773.** An act relating to veterans' tax exemption.

And has passed the same in concurrence.

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

**H. 778.** An act relating to structured settlements.

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

Pursuant to the request of the House for a Committee of Conference on the disagreeing votes of the two Houses on House bill entitled:

**H. 782.** An act relating to miscellaneous tax changes for 2012.

The President announced the appointment as members of such Committee on the part of the Senate:

Senator Cummings  
Senator MacDonald  
Senator Westman

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Pursuant to the request of the Senate for Committees of Conference on the disagreeing votes of the two Houses on the following Senate bills the President announced the appointment as members of such Committees on the part of the Senate:

**S. 189.** An act relating to expanding confidentiality of cases accepted by the court diversion project.

Senator Nitka  
Senator Sears  
Senator Snelling

**S. 244.** An act relating to referral to court diversion for driving with a suspended license.

Senator Sears  
Senator Nitka  
Senator Flory

**S. 245.** An act relating to requiring cardiovascular care instruction in public and independent schools.

Senator Doyle  
Senator Lyons  
Senator Baruth

**S. 251.** An act relating to miscellaneous amendments to laws pertaining to motor vehicles.

Senator Hartwell  
Senator Westman  
Senator Mazza.

#### **Message from the Senate No. 61**

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

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

**H. 745.** An act relating to the Vermont prescription monitoring system.

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

Pursuant to the request of the House for a Committee of Conference on the disagreeing votes of the two Houses on the following House bill the President announced the appointment as members of such Committee on the part of the Senate:

**H. 769.** An act relating to department of environmental conservation fees.

Senator Ashe  
 Senator McCormack  
 Senator Brock.

**Consideration Resumed; Proposal of Amendment Agreed to  
 and Third Reading Ordered**

**S. 95**

Consideration resumed on Senate bill, entitled

An act relating to exemptions for newspaper deliverers from the unemployment statutes; relieving an employer's experience rating record of charges; studying the receipt of unemployment compensation between academic terms; allowing school employees to be paid wages over the course of a year; and requiring employers to furnish required work apparel

Pending the question, Shall the House amend Sec. 4 of the report of the committee on General, Housing and Military Affairs, as amended as recommended by Rep. Olsen of Jamaica? **Rep. Lewis of Derby** moved to postpone action until Monday, April 30, 2012, which was disagreed to.

The recurring question, Shall the House amend Sec. 4 of the report of the committee on General, Housing and Military Affairs, as amended, as recommended by Rep. Olsen of Jamaica? was disagreed to.

Thereupon, the Clerk proceeded to call the roll and the question, Shall the House propose to the Senate to amend the bill as recommended by the Committee on General, Housing and Military Affairs, as amended, in Section 4 only? was decided in the affirmative. Yeas, 80. Nays, 35.

Those who voted in the affirmative are:

Andrews of Rutland City *	Burke of Brattleboro	Copeland-Hanzas of
Atkins of Winooski	Buxton of Tunbridge	Bradford
Bartholomew of Hartland	Campion of Bennington	Corcoran of Bennington
Bissonnette of Winooski	Cheney of Norwich	Courcelle of Rutland City
Bohi of Hartford	Christie of Hartford	Dakin of Chester
Botzow of Pownal	Clarkson of Woodstock	Davis of Washington

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Deen of Westminster	Kupersmith of South Burlington	Potter of Clarendon
Donovan of Burlington	Lanpher of Vergennes	Pugh of South Burlington
Edwards of Brattleboro	Lenes of Shelburne	Ralston of Middlebury
Ellis of Waterbury	Lippert of Hinesburg	Russell of Rutland City
Emmons of Springfield	Lorber of Burlington	Shand of Weathersfield
Evans of Essex	Macaig of Williston	Sharpe of Bristol
Fisher of Lincoln	Malcolm of Pawlet	South of St. Johnsbury
Frank of Underhill	Manwaring of Wilmington	Stevens of Waterbury
French of Shrewsbury	Marek of Newfane	Stuart of Brattleboro
French of Randolph	Martin of Wolcott	Sweaney of Windsor
Grad of Moretown	Masland of Thetford	Taylor of Barre City
Haas of Rochester	McFaun of Barre Town	Trieber of Rockingham
Head of South Burlington	Miller of Shaftsbury	Waite-Simpson of Essex
Hooper of Montpelier	Mook of Bennington	Webb of Shelburne
Howrigan of Fairfield	Moran of Wardsboro	Wilson of Manchester
Jerman of Essex	Mrowicki of Putney	Wizowaty of Burlington
Jewett of Ripton	Nuovo of Middlebury	Wright of Burlington
Johnson of South Hero	O'Sullivan of Burlington	Yantachka of Charlotte
Keenan of St. Albans City	Partridge of Windham	Young of Glover
Kitzmiller of Montpelier	Pearson of Burlington	Zagar of Barnard
Klein of East Montpelier	Poirier of Barre City	
Krowinski of Burlington		

Those who voted in the negative are:

Acinapura of Brandon	Eckhardt of Chittenden	Lewis of Derby
Bouchard of Colchester	Fagan of Rutland City	Marcotte of Coventry
Branagan of Georgia	Greshin of Warren	Myers of Essex
Canfield of Fair Haven	Helm of Fair Haven	Olsen of Jamaica
Clark of Vergennes	Higley of Lowell	Reis of St. Johnsbury
Condon of Colchester	Kilmartin of Newport City	Savage of Swanton
Consejo of Sheldon	Koch of Barre Town *	Scheuermann of Stowe
Crawford of Burke	Komline of Dorset	Shaw of Pittsford
Dickinson of St. Albans Town	Krebs of South Hero	Smith of New Haven
Donaghy of Poultney	Larocque of Barnet	Strong of Albany
Donahue of Northfield *	Lawrence of Lyndon	Townsend of Randolph
	Lewis of Berlin	Winters of Williamstown

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

Ancel of Calais	Heath of Westford	Munger of South Burlington
Aswad of Burlington	Hebert of Vernon	O'Brien of Richmond
Batchelor of Derby	Howard of Cambridge	Pearce of Richford
Brennan of Colchester	Hubert of Milton	Peaslee of Guildhall
Browning of Arlington	Johnson of Canaan	Peltz of Woodbury
Burditt of West Rutland	Martin of Springfield	Perley of Enosburgh
Conquest of Newbury	McAllister of Highgate	Ram of Burlington
Degree of St. Albans City	McCullough of Williston	Smith of Morristown
Devereux of Mount Holly	McNeil of Rutland Town	Spengler of Colchester
Gilbert of Fairfax	Morrissey of Bennington	Stevens of Shoreham

Till of Jericho  
Toll of Danville

Turner of Milton  
Woodward of Johnson

**Rep. Andrews of Rutland City** explained her vote as follows:

“Mr. Speaker:

I have listened to questions raised in this discussion and hope to get answers to some of them before 3<sup>rd</sup> reading. I vote ‘yes’ because I support the idea of shining this small light of accountability and responsibility on the use of taxpayer dollars and I hope my questions will be answered satisfactorily so we can ensure this level of prudent accountability.”

**Rep. Donahue of Northfield** explained her vote as follows:

“Mr. Speaker:

Reactionary law that impugned the activities of a group of agencies based upon alleged illegal activities by one in that group was objectionable. But it is unfathomable to unnecessarily place all employers in the state that receive state funds under this shadow and under this burden by requiring them to certify they are not breaking the law and, upon request, to provide records to prove it. I withdrew my proposal of this language precisely because of becoming educated by the committee that the activities in question are, in fact, already illegal.”

**Rep. Kilmartin of Newport City** explained his vote as follows:

“Mr. Speaker:

No. This is blatantly unconstitutional and offends provisions of both the Constitution of the United States and Vermont on two rights: the right against self-incrimination afforded to all persons and associations, the presumption of innocence. We have wasted enormous time and energy in trampling on the blood and treasure of our forebears who sacrificed much to guarantee these two sacred rights.”

**Rep. Koch of Barre Town** explained his vote as follows:

“Mr. Speaker:

I’d just like to point out that we just spent, by my calculations, a little over three hours on a Saturday on one paragraph that now requires some people to certify to the Secretary of Administration that they are complying with the law, which is something the Auditor of Accounts already checks anyway.”

**Rep. Marek of Newfane** explained his vote as follows:

“Mr. Speaker:

I fail to understand why anyone would oppose requiring employers receiving state funds to simply certify that they are not using our state funds for breaking the law.”

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the Committee on General, Housing and Military Affairs, as amended, in Sections 3 and 5 only? **Rep. Fagan of Rutland City** 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 House propose to the Senate to amend the bill as recommended by the Committee on General, Housing and Military Affairs, as amended, in Sections 3 and 5 only? was decided in the affirmative. Yeas, 94. Nays, 19.

Those who voted in the affirmative are:

Ancel of Calais	Haas of Rochester	Masland of Thetford
Atkins of Winooski	Head of South Burlington	McFaun of Barre Town
Bartholomew of Hartland	Heath of Westford	Miller of Shaftsbury
Bissonnette of Winooski	Hooper of Montpelier	Moran of Wardsboro
Bohi of Hartford	Howrigan of Fairfield	Mrowicki of Putney
Botzow of Pownal	Jerman of Essex	Myers of Essex
Burke of Brattleboro	Jewett of Ripton	Nuovo of Middlebury
Buxton of Tunbridge	Johnson of South Hero	O'Sullivan of Burlington
Cheney of Norwich	Keenan of St. Albans City	Partridge of Windham
Christie of Hartford	Kilmartin of Newport City	Pearson of Burlington
Clarkson of Woodstock	Kitzmiller of Montpelier	Poirier of Barre City
Consejo of Sheldon	Klein of East Montpelier	Potter of Clarendon
Copeland-Hanzas of Bradford	Koch of Barre Town	Pugh of South Burlington
Courcelle of Rutland City	Krebs of South Hero	Ralston of Middlebury
Crawford of Burke	Krowinski of Burlington	Ram of Burlington
Dakin of Chester	Kupersmith of South Burlington	Reis of St. Johnsbury
Davis of Washington	Lanpher of Vergennes	Russell of Rutland City
Deen of Westminster	Lenes of Shelburne	Savage of Swanton
Donahue of Northfield	Leriche of Hardwick	Shand of Weathersfield
Donovan of Burlington	Lewis of Berlin	Sharpe of Bristol
Edwards of Brattleboro	Lewis of Derby	Shaw of Pittsford
Ellis of Waterbury	Lippert of Hinesburg	South of St. Johnsbury
Emmons of Springfield	Lorber of Burlington	Stevens of Waterbury
Evans of Essex	Macaig of Williston	Strong of Albany
Fisher of Lincoln	Manwaring of Wilmington	Stuart of Brattleboro
Frank of Underhill	Marcotte of Coventry	Sweaney of Windsor
French of Shrewsbury	Marek of Newfane	Taylor of Barre City
French of Randolph	Martin of Springfield	Townsend of Randolph
Grad of Moretown	Martin of Wolcott	Trieber of Rockingham
		Waite-Simpson of Essex

Webb of Shelburne  
Wizowaty of Burlington

Wright of Burlington  
Yantachka of Charlotte

Young of Glover  
Zagar of Barnard

Those who voted in the negative are:

Acinapura of Brandon  
Bouchard of Colchester  
Branagan of Georgia  
Campion of Bennington  
Canfield of Fair Haven  
Conquest of Newbury  
Corcoran of Bennington

Dickinson of St. Albans  
Town  
Eckhardt of Chittenden  
Fagan of Rutland City  
Greshin of Warren  
Higley of Lowell  
Lawrence of Lyndon

Malcolm of Pawlet  
Olsen of Jamaica  
Scheuermann of Stowe  
Smith of New Haven  
Wilson of Manchester  
Winters of Williamstown

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

Andrews of Rutland City  
Aswad of Burlington  
Batchelor of Derby  
Brennan of Colchester  
Browning of Arlington  
Burditt of West Rutland  
Clark of Vergennes  
Condon of Colchester  
Degree of St. Albans City  
Devereux of Mount Holly  
Donaghy of Poultney  
Gilbert of Fairfax

Hebert of Vernon  
Helm of Fair Haven  
Howard of Cambridge  
Hubert of Milton  
Johnson of Canaan  
Komline of Dorset  
Larocque of Barnet  
McAllister of Highgate  
McCullough of Williston  
McNeil of Rutland Town  
Mook of Bennington  
Morrissey of Bennington

Munger of South Burlington  
O'Brien of Richmond  
Pearce of Richford  
Peaslee of Guildhall  
Peltz of Woodbury  
Perley of Enosburgh  
Spengler of Colchester  
Stevens of Shoreham  
Till of Jericho  
Toll of Danville  
Turner of Milton  
Woodward of Johnson

Thereupon, the proposal of amendment on Sec.1 and Sec. 2 agreed to and third reading was ordered.

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

#### **S. 99**

**Rep. Stevens of Waterbury**, for the committee on General, Housing and Military Affairs, to which had been referred Senate bill, entitled

An act relating to supporting mobile home ownership, strengthening mobile home parks and preserving affordable housing

Reported in favor of its passage in concurrence with proposal of amendment as follows:

By striking 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) Given the economic costs endured by mobile home owners, it is appropriate at this time to consider increasing the affordable housing tax credit and exempting 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.

(4) 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.

(5) 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

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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, return receipt requested, 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.

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(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) No additional notice pursuant to subsection (a) of this section shall be required if the sale is in compliance with either of the following:~~

~~(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 the price for which the park was offered for sale pursuant to subsection (a) of this section.~~

~~(B) Substantially higher than 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 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 the date of the notice. Requirement for new notice of intent to sell.~~

(1) Subject to subdivision (2) of this subsection, a notice of intent to sell issued pursuant to subsection (a) of this section shall be valid:

(A) for a period of one year from the expiration of the 45-day period following the date of the notice; or

(B) if the park owner 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 within one year from the expiration of the 45-day period following the date of the notice until the completion of the sale of the park under the agreement or the expiration of the agreement, whichever is sooner.

(2) During the period in which a notice of intent to sell is valid, a park owner shall provide a new notice of intent to sell, consistent with the requirements of subsection (a) of this section, prior to making an offer to sell the park or accepting an offer to purchase the park that is either more than five percent below the price for which the park was initially offered for sale or less 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.

\* \* \*

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§ 6245. ILLEGAL EVICTIONS

(a) No park owner may ~~wilfully~~ 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.

\* \* \*

Sec. 3. 10 V.S.A. § 6249 is amended to read:

§ 6249. SALE OF ABANDONED MOBILE HOME

\* \* \*

(c) When a verified complaint is filed under this section, the clerk of the superior court shall set a hearing on the complaint before a superior judge. The hearing shall be held at least ~~30~~ 15 days but no later than ~~45~~ 30 days after the filing of the complaint.

(d) Within ~~40~~ five days after filing the verified complaint, the park owner 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 last resident of the mobile home at the resident's last known mailing address; to each person identified in the verified complaint; and to the town clerk of the town in which the mobile home is located.

(e) The park owner shall publish the verified complaint and order for hearing in a newspaper of general circulation in the town where the mobile home is located. The notice shall be published ~~twice, at least ten days apart, with the second notice to be published~~ no later than five calendar days before the date of hearing.

\* \* \*

(h) If the court finds that the park owner has complied with subsection (g) of this section, the court shall enter an order approving the sale of the mobile home at a public auction to be held within ~~30~~ 15 days of the date of the order. The mobile home park owner shall send the order by first class mail to the mobile home owner and 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 be published in a newspaper of general circulation in the town where the mobile home is located and sent by first class mail to the mobile home owner, the mobile home park owner and all lien holders of record. The notice of sale shall be published ~~three times, at least~~

~~five days apart with the last publication being~~ no later than five calendar days before the date of sale.

(3) That the terms of sale provide for conveyance of the mobile home, together with any security deposit held by the park owner, by uniform mobile home bill of sale 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, 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.

(5) The successful bidder shall make full payment at the auction if the bid does not exceed \$2,000.00. If the bid exceeds \$2,000.00, the successful bidder 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 park owner, shall remove the mobile home from the park within five working days after the auction unless the park owner permits removal of the mobile home at a later date.

(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 park owner 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 ~~12~~ 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 ~~15th~~ eighth day after the sale, the proceeds shall be distributed as follows:

\* \* \*

\* \* \* 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, and as funding from FEMA and other sources allows 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) 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.

(5) Address and propose recommendations on the most effective mechanisms for ensuring adequate maintenance, repair, and safety of private roads and of public spaces within a mobile home park.

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.

Sec. 6. 9 V.S.A. § 4503 is amended to read:

§ 4503. UNFAIR HOUSING PRACTICES

(a) It shall be unlawful for any person:

\* \* \*

(11) To fail to comply with provisions or rules pertaining to covered multifamily dwellings, as defined in ~~21 V.S.A. § 271~~, pursuant to ~~chapter 4 of Title 21~~ 20 V.S.A. § 2900(4) and pursuant to 20 V.S.A. chapter 174.

(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 because of the receipt of public assistance, except as otherwise provided by law.

\* \* \*

Sec. 7. 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. 8. 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. 9 of this act to limit the administrative control of federal rental subsidies to state of Vermont public bodies.

Sec. 9. 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. 10. 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 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:

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(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. 11. 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) Fourteen calendar days have expired following the execution of a writ of possession pursuant to 10 V.S.A. chapter 153, 11 V.S.A. chapter 14, or 12 V.S.A. chapter 169.

Sec. 12. 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.

Sec. 13. 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.

Sec. 14. 26 V.S.A. § 894 is amended to read:

§ 894. ENERGIZING INSTALLATIONS; REENERGIZING AFTER EMERGENCY DISCONNECTION

(a) A new electrical installation in or on a complex structure; or an electrical installation used for the testing or construction of a complex structure shall not be connected or caused to be connected, to a source of electrical energy unless prior to ~~such~~ connection, either a temporary or a permanent energizing permit is issued for that installation by the commissioner or an electrical inspector.

(b) An existing electrical installation in any structure, including a single-family owner-occupied freestanding residence, that was disconnected as the result of an emergency that affects the internal electrical circuits shall not be reconnected to a source of electrical energy until the electrical installation has been inspected and determined to be safe by a licensed journeyman or licensed master electrician.

(c) This section shall not be construed to limit or interfere with a contractor's right to receive payment for electrical work for which a certificate of completion has been granted.

Sec. 15. 26 V.S.A. § 904(a) is amended to read:

(a) To be eligible for licensure as a type-S journeyman an applicant shall:

(1) complete an accredited training and experience program recognized by the board; or

(2) have had training and experience, within or without this state, acceptable to the board; and

(3) pass an examination to the satisfaction of the board in one or more of the following fields:

(A) Automatic gas or oil heating;

(B) Outdoor advertising;

(C) Refrigeration or air conditioning;

(D) Appliance and motor repairs;

(E) Well pumps;

(F) Farm equipment;

(G) Renewable energy systems for one- and two-family dwellings;

(H) Any miscellaneous specified area of specialized competence.

Sec. 16. 26 V.S.A. § 910 is amended to read:

#### § 910. LICENSE NOT REQUIRED

A license shall not be required for the following types of work:

(1) Any electrical work, including construction, installation, operation, maintenance, and repair of electrical installations in, on, or about equipment or premises, which are owned or leased by the operator of any industrial or manufacturing plant, if the work is done under the supervision of an electrical engineer or master electrician in the employ of the operator;

(2) Installation in laboratories of exposed electrical wiring for experimental purposes only;

(3) Any electrical work by ~~an~~ the owner ~~or his or her regular employees~~ and any unpaid assistants in the ~~owner's~~ owner-occupied, freestanding single unit residence, ~~in~~ and outbuildings accessory to ~~such~~ the freestanding single unit residence or any structure on owner-occupied farms;

(4) Electrical installations performed as a part of a training project of a vocational school or other educational institution. However, the installation shall be inspected if the building in which the installation is made, is to be used as a "complex structure";

(5) Electrical work performed by an electrician's helper under the direct supervision of a person who holds an appropriate license issued under this chapter;

~~(6) Any electrical work in a building used for dwelling or residential purposes which contains no more than two dwelling units.~~

~~(7)~~ Installation of solar electric modules and racking on complex structures to the point of connection to field-fabricated wiring and erection of net metered wind turbines.

#### Sec. 17. EFFECTIVE DATE; TRANSITIONAL PROVISIONS

(a) This act shall take effect on passage.

(b) In order to provide time for the electrical licensing board to develop and conduct a test for a type-S journeyman's license for renewable energy installation and for renewable energy installers to complete the licensing requirements, a license shall not be required for renewable energy installations until 12 months after the electrical licensing board adopts the test and licensing procedure.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment agreed to and third reading ordered.

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

#### **S. 152**

**Rep. Botzow of Pownal**, for the committee on Commerce and Economic Development, to which had been referred Senate bill, entitled

An act relating to the definition of line of duty in the workers' compensation statutes

Reported in favor of its passage in concurrence with proposal of amendment as follows:

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

Sec. 1. 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 which have been earned within three months prior to the death of the decedent, not to exceed \$300.00 to each claimant of the decedent;

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

\* \* \*

Sec. 2. 21 V.S.A. § 342 is amended to read:

§ 342. WEEKLY PAYMENT OF WAGES

(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) 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. Notice and opportunity for hearing under this section shall be in accordance with 3 V.S.A. chapter 25.

\* \* \*

Sec. 3. 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. 4. 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. 5. 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 does not properly classify 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. If the posted statement is displayed outside it 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. 6. 21 V.S.A. § 603 is amended to read:

§ 603. WITNESSES, OATHS, BOOKS, PAPERS, RECORDS

(a) So far as it is necessary in his or her examinations, or investigations and in the determination of matters within his or her jurisdiction, the commissioner shall have power to subpoena witnesses, administer oaths, and to demand the production of books, papers, records, and documents for his or her examination. Additionally, the commissioner or designee may, upon presenting appropriate credentials, at reasonable times and without disrupting critical business operations 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 this chapter. The employer shall make the employees available to the department on the day of inspection by the commissioner. The commissioner or designee shall inform the employer of his or her right to refuse entry. If entry is refused, the commissioner may apply to the civil division of the superior court for an order to enforce the rights given the commissioner under this section.

\* \* \*

Sec. 7. 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. An employer that fails to comply with a stop-work order may be enjoined from employing individuals in employment as defined in this chapter, upon complaint of the commissioner in the civil division of the superior court. 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 commissioner determines that 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~~ The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.

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\* \* \*

Sec. 7a. 8 V.S.A. § 3661 is amended to read:

§ 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND PENALTIES

\* \* \*

(c) An employer who makes a false statement or representation that results in a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner, may be assessed an administrative penalty of not more than \$20,000.00 in addition to any other appropriate penalty. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have made a false statement or misrepresentation, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. ~~Either the secretary or the commissioner, as appropriate, shall be consulted in any appeal relating to prohibiting the employer from contracting with the state or its subdivisions.~~ The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.

\* \* \*

Sec. 7b. 21 V.S.A. § 1314a is amended to read:

§ 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION; PENALTIES

\* \* \*

(f)(1) Any employing unit or employer that fails to:

(A) File any report required by this section shall be subject to a penalty of \$100.00 for each report not received by the prescribed due dates.

(B) Properly classify an individual regarding the status of employment is subject to a penalty of not more than \$5,000.00 for each improperly classified employee. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have failed to properly classify, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. ~~Either the secretary or the commissioner, as appropriate, shall be consulted in any appeal relating~~

to prohibiting the employer from contracting with the state or its subdivisions. The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.

\* \* \*

Sec. 8. 21 V.S.A. § 708 is amended to read:

§ 708. PENALTY FOR FALSE REPRESENTATION

(a) Action by the commissioner of labor. A person who ~~willfully~~ purposefully makes a false statement or representation, ~~for the purpose of obtaining to obtain~~ any benefit or payment under the provisions of this chapter, either for herself or himself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$20,000.00, and shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the commissioner after a determination by the commissioner that the person has ~~willfully~~ made a false statement or representation of a material fact. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have made a false statement or misrepresentation of a material fact, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, ~~as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any contest relating to the prohibition of the employer from contracting with the state or its subdivisions. The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.~~

(b) ~~When~~ In addition to penalties assessed pursuant to subsection (a) of this section, when the department of labor has sufficient reason to believe that an employer has made a false statement or representation for the purpose of obtaining a lower workers' compensation premium, the department shall refer the alleged violation to the commissioner of banking, insurance, securities, and health care administration for the commissioner's consideration of enforcement pursuant to 8 V.S.A. § 3661(c).

\* \* \*

Sec. 9. 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, or designee, 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~~ 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. 10. 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 economic and labor market information division, the workforce development council, the unemployment insurance and wages division, 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. 11. 21 V.S.A. § 1307 is amended to read:

§ 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

The commissioner of labor shall administer this chapter. The commissioner may employ such persons, make such expenditures, require such reports, make such investigations and take such other action as he or she considers necessary or suitable to that end. In the discharge of his or her duties imposed by this chapter, the commissioner may administer oaths, take depositions, certify to official acts and subpoena witnesses and compel the production of books, papers, correspondence, memoranda, and other records necessary and material to the administration of this chapter. Additionally, the commissioner or designee may, upon presenting appropriate credentials, at reasonable times and without disrupting critical business operations 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 this chapter. The employer shall make the employees available to the department on the day of inspection by the commissioner. The commissioner or designee shall inform the employer of his or her right to refuse entry. If entry is refused, the commissioner may apply to the civil division of the superior court for an order to enforce the rights given the commissioner under this section.

Sec. 12. 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.

\* \* \*

Sec. 13. 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 an employer with experience-rating records and an employer who

makes payments in lieu of tax contributions to the unemployment compensation trust fund and that meets 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 prior to applying for the STC plan paid more in unemployment benefits to its employees than it has contributed to its unemployment insurance account. In the event that an employer has been a negative balance employer for three consecutive years, the employer shall be ineligible for participation unless the commissioner grants a waiver based upon extenuating economic conditions or other good cause.

(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. 14. 21 V.S.A. § 1452 is amended to read:

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§ 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~~ outlines to the commissioner the extent to which fringe benefits, including health insurance, of employees participating in the plan may be reduced, which shall be factored into the evaluation of the business plan for resolving the conditions that led to the need for the STC plan;
- (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 notify the department within 24 hours after any layoff of an employee, at which time the commissioner shall have the right to terminate the STC plan;
- (7) the identified workweek reduction is applied consistently throughout the duration of the plan unless otherwise approved by the department;
- ~~(6)~~(8) the plan applies to at least 10 percent of the employees in the affected unit, and when ~~applicable~~ determined to be applicable by the commissioner 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 the approval and proper implementation of the plan.

Sec. 15. 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. 16. 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 or terminated 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 that results in an employee receiving benefits in excess of 26 times the amount of regular unemployment benefits payable to such individual for a week of total unemployment.

Sec. 17. 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 who 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.

Sec. 18. 33 V.S.A. § 4110 is amended to read:

§ 4110. EMPLOYER OBLIGATIONS

\* \* \*

(c) As used in this section:

(1) "Employee" ~~means~~:

(A) means 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~~ 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.

Sec. 18a. COMPLIANCE WITH UNITED STATES DEPARTMENT OF LABOR

In the event that the United States secretary of labor determines that any provision of the short-time compensation program (21 V.S.A. chapter 19, subchapter 3) is not in conformance with 26 U.S.C. § 3306(v) as added by the federal Layoff Prevention Act of 2012, the provision shall be unenforceable.

Sec. 19. 21 V.S.A. § 1340a is added to read:

§ 1340a. SELF-EMPLOYMENT ASSISTANCE PROGRAM

(a) The commissioner may establish a pilot project for a self-employment assistance project based on the criteria outlined in this section for a period of up to two years, provided that it conforms to state and federal unemployment law. The commissioner may terminate the pilot program with approval of the secretary of administration and notice to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs in the event that it presents unintended adverse consequences to the unemployment trust fund. The commissioner may allow up to 20 participants per year, and each individual may participate for up to 26 weeks as determined by the commissioner.

(b) For purposes of this section:

(1) "Full-time basis" means that the individual is devoting such amount of time as is determined by the commissioner to be necessary to establish a business which will serve as a full-time occupation for that individual.

(2) “Regular benefits” has the same meaning as in subdivision 1421(5) of this title.

(3) “Self-employment assistance activities” means activities approved by the commissioner in which an individual participates for the purpose of establishing a business and becoming self-employed, including entrepreneurial training, business counseling, and technical assistance.

(4) “Self-employment assistance allowance” means an allowance payable in lieu of regular benefits from the unemployment compensation fund to an individual who meets the requirements of this section until such time as the employee’s net income is determined by the commissioner, in consultation with the business advisor, to be at least 150 percent of his or her regular weekly benefit for a period of six consecutive weeks.

(5) “Self-employment assistance program” means a program under which an individual who meets the requirements of subsection (e) of this section is eligible to receive an allowance in lieu of regular benefits for the purpose of assisting that individual in establishing a business and becoming self-employed.

(c) The weekly amount of the self-employment assistance allowance payable to an individual shall be equal to the weekly benefit amount for regular benefits otherwise payable under this title.

(d) The maximum amount of the self-employment assistance allowances paid under this section may not exceed the maximum amount of benefits established under section 1340 of this title with respect to any benefit year.

(e)(1) An individual may receive a self-employment assistance allowance if that individual:

(A) is eligible to receive regular benefits or would be eligible to receive regular benefits except for the requirements described in subdivisions (A) and (B) of subdivision (2) of this subsection;

(B) is identified by a worker profiling system as an individual likely to exhaust regular benefits;

(C) has been accepted into a program approved by the commissioner that will provide self-employment assistance activities, including regular counseling and direction from a business advisor;

(D) is actively engaged in a full-time basis in activities, which may include training, related to establishing a business and becoming self-employed; and

(E) has filed a weekly claim for the self-employment assistance allowance and provided the information the commissioner prescribes.

(2) A self-employment allowance shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits under this chapter, except:

(A) the requirements of section 1343 of this title, relating to availability for work, efforts to secure work, and refusal to accept work, are not applicable to the individual;

(B) the individual is not considered to be self-employed pursuant to subdivision 1301(24) of this title;

(C) an individual who meets the requirements of this section shall be considered to be unemployed under section 1338 of this title; and

(D) an individual who fails to participate in self-employment assistance activities or who fails to engage actively on a full-time basis in activities, including training, relating to the establishment of a business and becoming self-employed shall be disqualified from receiving an allowance for the week the failure occurs.

(f) The commissioner may approve not more than 20 persons each year during this pilot project to participate in this program and shall ensure that the aggregate number of individuals receiving a self-employment assistance allowance at any time does not exceed five percent of the number of individuals receiving regular benefits at that time.

(g) The self-employment assistance allowance shall not be charged to an employer in accordance with section 1325 of this title.

(h) The commissioner may adopt rules to implement this section.

(i) If the commissioner establishes a pilot project for self-employment assistance, the commissioner shall report on the progress of the project to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs by January 15 of the year following the start of the project.

Sec. 20. 21 V.S.A. § 601 is amended to read:

#### § 601. DEFINITIONS

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

\* \* \*

(12) "Public employment" means the following:

\* \* \*

(K) other municipal workers, including volunteer firefighters and rescue and ambulance ~~squads~~ services while acting ~~in the line of duty~~ in any capacity under the direction and control of the fire department or rescue or ambulance service, after the governing officials of such municipal body so vote;

\* \* \*

(L) members of any regularly organized private volunteer fire department while acting ~~in the line of duty~~ any capacity under the direction and control of the fire department after election by the organization to have its members covered by this chapter;

(M) members of any regularly organized private volunteer rescue or ambulance ~~squad~~ service while acting ~~in the line of duty~~ any capacity under the direction and control of the rescue or ambulance service after election by the organization to have its members covered by this chapter;

\* \* \*

Sec. 21. 21 V.S.A. chapter 23 is added to read:

#### CHAPTER 23. SOLE CONTRACTOR AUTHORIZATION PROCESS

##### § 1801. PURPOSE

(a) An individual who seeks to work as the sole operator of his or her own business and who can meet the standards and criteria set forth in this chapter may voluntarily request an authorization by the department of labor allowing him or her to operate independently and without the benefits and protections afforded employees under chapters 9 and 17 of this title when working within the scope of the sole contractor authorization.

(b) The sole contractor authorization is limited to activities that are within the scope of the certification applied for by the individual. If an authorized sole contractor engages in activities outside the scope of the authorization, the sole contractor shall be presumed to be the statutory employee of the hiring entity.

(c) This chapter is not intended to change the existing laws governing employees and employers. The chapter applies only to individuals that have received a sole contractor authorization.

(d) Nothing in this chapter shall prohibit an individual from working as an independent contractor without the sole contractor authorization, provided the individual meets the test for an independent contractor under law.

#### § 1802. DEFINITIONS

For purposes of this chapter:

- (1) "Commissioner" means the commissioner of labor or designee.
- (2) "Department" means the department of labor.
- (3) "Hiring entity" means any person hiring an authorized sole contractor to perform work.
- (4) "Sole contractor" means an individual who is approved by the authorization process established in section 1806 of this chapter. A sole contractor may be an individual, a single-member limited liability company, or a single shareholder corporation.
- (5) "Sole contractor authorization review board" means the board established pursuant to this chapter that is responsible for reviewing applications from individuals seeking sole contractor status.

#### § 1803. SOLE CONTRACTOR CRITERIA

(a) The authorization review board shall determine if an individual is eligible for sole contractor status. An individual operating an existing business or starting a new business and seeking authorization shall provide the board with information demonstrating that he or she meets the sole contractor criteria. The applicant shall provide:

- (1) A sworn statement from the individual seeking authorization affirming that he or she has not been coerced into falsely claiming to be a sole contractor.
- (2) Possession of a federal employer identification number (FEIN) that is used for federal tax reporting purposes.
- (3) Possession of a Social Security number or a work visa.
- (4) Proof of registration with the Vermont secretary of state, either as a single individual with a trade name or as a single member LLC or single shareholder corporation.
- (5) An affidavit attesting that he or she is and will be free to control and direct his or her work, hours of work, and the means and manner of the performance of such work, subject only to the broad framework of the project goals and completion date.

(6) An affidavit attesting that he or she has no employees or assistants and will not have any employees or assistants as a sole contractor, whether paid or unpaid, and does not engage in any joint ventures or associations with other sole contractors to perform work.

(7) Demonstrates that he or she is in good standing regarding any outstanding child support or taxes.

(b) The applicant shall provide additional information reasonably required by the panel demonstrating that he or she meets the sole contractor criteria, which may include:

(1) A demonstrated history of having his or her own business, including evidence of tax returns, recurring business expenditures such as equipment purchases, shop rent, or charge accounts for supplies which establish that he or she is customarily engaged in an established trade or business.

(2) Proof that he or she works for multiple employers in the course of his or her business.

(3) Proof of past work, including written contracts or agreements, invoices, or competitive bids, on a per-job basis.

(4) Proof that he or she is fully and solely responsible for the work produced, possesses his or her own tools, equipment, and instruments of trade, and normally provides materials and supplies necessary to complete the work.

#### § 1804. PRESUMPTION OF STATUS

(a) An individual who is authorized pursuant to this chapter shall not be presumed to be an employee when operating under the provisions of this chapter, and the entity hiring the sole contractor shall not be considered the statutory employer of the sole contractor. Notwithstanding this presumption, if the sole contractor is working for the employer or a subcontractor in a capacity that does not qualify as an individual sole contractor, then all statutory provisions relating to unemployment, workers' compensation, wage and hour provisions, and employment practices shall apply.

(b) A hiring entity shall not hire multiple sole authorized contractors to do the same work on a project or at a job site.

#### § 1805. COMPOSITION OF BOARD

An authorization review board is hereby established consisting of 11 members, five of whom shall represent labor to be appointed by the governor, five of whom shall represent business to be appointed by the governor, and one who shall be an employee of the department appointed by the commissioner.

Nominations for members for the review board shall be solicited from organizations representing employer organizations, trade associations, and employee organizations and from the commissioner of labor, as well as from a public notice conducted by the department of labor. The review board members appointed by the governor shall be appointed for a term of two years, with no member serving more than three consecutive terms.

§ 1806. BOARD REVIEW PROCESS

(a) Representatives from the board shall meet weekly in three-member panels at the direction of the commissioner, consisting of one member each representing labor and business and the department representative. The members of the panels shall rotate weekly.

(b) The board shall meet to review pending applications and may schedule in-person reviews with individuals seeking authorization. The board shall review documentation and information and take testimony from the applicants. The board's decision to grant authorization shall be based on the criteria established in this chapter. If additional information is necessary to render a decision, the applicant will be given sufficient time to submit such information. Once the board determines that it has sufficient information, it shall make a recommendation to the commissioner. The commissioner shall review the recommendation and make a decision within ten days. If additional information is needed, the commissioner may remand for additional information, which shall be provided to the commissioner within 14 days. The commissioner shall issue a decision based on the additional information within five days of its receipt. The failure to render a decision within the prescribed time limits shall not result in an individual receiving authorization.

§ 1807. APPEAL

An applicant may appeal a decision of the commissioner to the supreme court within 30 days of the date of the decision.

§ 1808. INFORMATION AND EDUCATION

(a) The commissioner of labor in consultation with the authorization review board shall conduct a comprehensive information and education campaign regarding the provisions of this chapter for a period of not less than 12 months upon instituting this authorization process and shall continue to provide regular information to the labor and business communities about the authorization program and the issues of misclassification and miscoding.

(b) The commissioner shall create and maintain an on-line sole contractor registry listing the names of currently authorized sole contractors and the names of individuals that had previously been certified.

(c) The department shall provide all employers notice and information of the provisions relating to sole contractor authorization and hiring. The department shall establish a simple method for employers utilizing sole contractors to acknowledge receipt of the information, including by electronic means. An employer shall not hire a sole contractor until acknowledging receipt of the information with the department. An employer hiring a sole contractor shall make the acknowledgment annually.

#### § 1809. INVESTIGATION AND ENFORCEMENT

(a) The commissioner is authorized to investigate and enforce the provisions of this chapter, including whether a sole contractor or a hiring entity is in compliance with the provisions of this title, including workers' compensation, unemployment insurance compensation, wage and hour laws, and employment practices.

(b) Upon request, a sole contractor shall provide the department with books, records, or other documentation or evidence establishing his or her qualifications to be a sole contractor and evidence that all work performed as a sole contractor is performed in accordance with this chapter.

(c) Any person or entity found to have engaged in misrepresentation or fraudulent activities in relation to this chapter shall be listed on the department's website and debarment list.

#### § 1810. PENALTIES

(a) A person who purposefully makes a false statement or representation to obtain or assist another to obtain sole contractor status may, after notice and opportunity for hearing, be assessed an administrative penalty of up to \$5,000.00 and may lose the authorization for up to two years.

(b) A sole contractor who violates the terms and conditions of his or her authorization may, after notice and opportunity for hearing, be assessed an administrative penalty of up to \$5,000.00 and may lose the authorization for up to one year.

(c) Any person or entity who coerces an employee or prospective employee into becoming a sole contractor for the purpose of avoiding its obligations under this title or Title 32 may, after notice and opportunity for hearing, be assessed an administrative penalty of up to \$5,000.00.

(d) An administrative penalty issued pursuant to this section may be in addition to other penalties authorized by chapters 9 and 17 of this title.

(e) Administrative hearings shall be conducted in accordance with the Administrative Procedure Act, 3 V.S.A. § 801 et seq. Appeals from penalty assessment determinations shall be to the Vermont supreme court.

#### § 1811. FEES AND COSTS

(a) The application fee for a sole contractor authorization shall be \$100.00, which shall be deposited into the sole contractor registry special fund. The authorization shall be valid for two years and may be renewed for subsequent two-year periods upon reapplication and payment of the fee. The department shall utilize the funds to administer the sole contractor program, including for the purpose of providing a per diem and mileage reimbursement for review board members.

(b) The commissioner is authorized to hire and employ one limited service position for a term of three years for program administration. The program shall be funded by the fees collected pursuant to this chapter and supplemented by the general fund when fees do not cover the full costs of the position and program administration.

(c) There is created a sole contractor registry special fund pursuant to 32 V.S.A. chapter 7, subchapter 5, to be expended by the commissioner consistent with the provisions of this section.

#### § 1812. RULEMAKING

The commissioner may adopt rules to implement the provisions of this chapter.

Sec. 22. 31 V.S.A. § 722 is amended to read:

#### § 722. CERTIFICATE OF OPERATION

(a) An amusement ride may not be operated in this state unless the secretary of state has issued a certificate of operation to the owner or operator.

(b) The secretary of state shall issue a "certificate of operation" no later than 15 days before the amusement ride is first operated in the state, if the owner or operator submits all the following:

(1) Certificate of insurance in the amount of not less than \$1,000,000.00 which insures both the owner and the operator against liability for injury to persons and property arising out of the use or operation of the amusement ride.

(2) Payment of a fee in the amount of \$100.00.

(3) Documentation that the owner has complied with 21 V.S.A. § 687. Upon receiving the documentation, the secretary of state shall forward a copy of the documentation to the department of labor.

(c) The certificate of operation shall be valid for one year from the date of issue, provided that the owner remains in compliance with the requirements of subsection (b) of this section.

(d) A copy of the certificate of operation shall be posted on or near each amusement ride covered by the certificate and shall be in full public view at all times during the operation of the ride.

#### Sec. 23. INTERAGENCY AND DEPARTMENTAL TASK FORCE

(a) The agency of administration shall create an interagency and departmental task force to coordinate efforts to combat misclassification of workers and to ensure enforcement of all related laws and regulations. The task force shall be overseen by the department of labor and include the secretaries, commissioners, or designees of the following:

(1) The agency of administration.

(2) The agency of transportation.

(3) The department of buildings and general services.

(4) The department of labor.

(5) The department of financial regulation.

(6) The agency of human services.

(7) The department of taxes.

(8) The office of attorney general.

(9) The department of liquor control.

(10) Any other state licensing agency as determined by the commissioner of labor.

(b) The task force shall meet at least six times per year.

(c) The agency of administration shall enter into a memorandum of understanding with all state agencies to facilitate the coordination and investigation of misclassification and miscoding of workers, including, unless prohibited by state or federal law, the sharing of information concerning the names of businesses found to have misclassified or miscoded workers, the relevant investigation materials, and the number of investigations of misclassification and miscoding.

(d) The department of labor shall pursue entering into a common interest agreement with the United States Department of Labor and the Internal Revenue Service, and any willing states or federal agencies regarding the sharing of information regarding misclassification and miscoding of workers. The department shall notify the chairs of the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs before entering into a common interest agreement. The department shall consider whether the common interest agreement would result in the disclosure of an individual's personal information, or disclose information in violation of state or federal law.

(e) The department of labor shall report to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs on the progress of the interagency and departmental task force, the memorandum of understanding, the status of the common interest agreement, and any other information regarding misclassification and miscoding annually by January 15 in 2013, 2014, and 2015.

#### Sec. 24. WORKERS' COMPENSATION PREMIUMS

(a) The department of financial regulation in consultation with the department of labor shall study the issue of workers' compensation premiums increasing as a result of an employee completing a job-related safety course. The department of financial regulation shall investigate how workers' compensation premiums can be decreased or kept at a steady rate for employees who receive job safety training.

(b) The department of financial regulation shall report its findings and any recommendations to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs no later than January 15, 2013.

#### Sec. 25. REPORT

The commissioner of labor shall report to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs regarding the implementation and operation of the sole contractor authorization process. The report shall be made on or before January 15, 2013.

#### Sec. 26. SHORT-TIME COMPENSATION FUNDING

The commissioner of labor is hereby authorized to pursue federal funding for Vermont's short-time compensation program, if after an analysis of the

eligibility requirements for receiving such funding, he or she concludes that doing so would be in the best interest of the state of Vermont.

Sec. 26a. 21 V.S.A. § 601 is amended to read:

§ 601. DEFINITIONS

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

\* \* \*

(14) “Worker” and “employee” means an individual who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. Any reference to a worker who has died as the result of a work injury shall include a reference to the worker’s dependents, and any reference to a worker who is a minor or incompetent shall include a reference to the minor’s committee, guardian, or next friend. The term “worker” or “employee” does not include:

\* \* \*

(I) An individual who receives foster care payments excluded from the definition of gross income under Section 131 of Title 26 of the Internal Revenue Code.

\* \* \*

Sec. 26b. STUDY

The commissioner of labor and the secretary of human services shall determine the instances in which arrangements made or paid for directly or indirectly by the agency of human services to recipients constitute employment. The commissioner and the secretary shall also assess whether contracts entered into by the agency comply with employment law including workers’ compensation requirements. The commissioner and the secretary shall report their findings and, to the extent that the agency is required or may elect to provide workers’ compensation and unemployment compensation, shall provide an analysis of the financial costs concerning the provision of workers’ compensation and unemployment compensation as well as an analysis of how the compensation could be administered. The report shall be made to the house committees on appropriations, on commerce and economic development, 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.

Sec. 27. APPROPRIATION

The amount of \$40,000.00 is appropriated in fiscal year 2013 from the general fund to the department of labor to partially fund the one limited service position created in 21 V.S.A. § 1811 to administer the sole contractor authorization program.

Sec. 28. EFFECTIVE DATE

Sec. 12 (relating to nondisclosure or misrepresentation in order to receive unemployment benefits) of this act shall take effect on July 1, 2013. Sec. 18 (relating to employer obligations) of this act shall take effect on October 1, 2012.

and that after passage the title of the bill be amended to read: "An act relating to workers' compensation and unemployment compensation," and that when so amended the bill ought to pass.

**Rep. Sharpe of Bristol**, for the committee on Ways and Means, recommended that the bill ought to pass in concurrence with proposal of amendment as recommended by the committee on Commerce and Economic Development.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the report of the committees on Commerce and Economic Development and Ways and Means agreed to and third reading ordered.

**Third Reading; Bill Passed in Concurrence  
With Proposal of Amendment**

**S. 113**

Senate bill, entitled

An act relating to prevention, identification, and reporting of child abuse and neglect at independent schools

Was taken up and pending third reading of the bill, **Rep. Fisher of Lincoln** moved to amend the House proposal of amendment as follows:

In Sec. 2, 33 V.S.A. § 4913(a), after the first sentence, by inserting a new sentence to read: "Notwithstanding 12 V.S.A. § 1614, an individual providing information or instruction to students as part of comprehensive health education under 16 V.S.A. § 131(11) who, as a direct result of interaction with or observation of a student in that context, has reasonable cause to believe that a 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."

Which was agreed to.

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

**Proposal of Amendment Agreed to, Bill Read Third Time and Passed**

**S. 138**

Senate bill, entitled

An act relating to calculation of criminal sentences and record keeping for search warrants

Was taken up and pending third reading of the bill, **Rep. Donahue of Northfield** moved to propose to the Senate to amend the bill as follows:

In Sec. 7, in subdivision (c)(2)(B), after “confidential” by adding “and the societal benefit and promotion of due process and the rule of law which are served by permitting public inspection of criminal investigation records” before the period

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

**Proposal of Amendment Agreed to; Third Reading Ordered**

**J.R.S. 54**

**Rep. Macaig of Williston**, for the committee on Corrections and Institutions, to which had been referred Senate bill, entitled

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

Reported in favor of its passage in concurrence with proposal of amendment as follows:

By striking all after the title and by inserting in lieu thereof the following:

*Whereas*, pursuant to 10 V.S.A. § 2606(b), the general assembly may adopt a resolution authorizing the commissioner of forests, parks and recreation to exchange or lease certain lands that are under the jurisdiction of the commissioner, and

*Whereas*, the general assembly has reviewed the proposed transactions and considers them to be in the best interest of the state, *now therefore be it*

***Resolved by the Senate and House of Representatives:***

That the General Assembly authorizes the commissioner of forests, parks and recreation to:

First: Enter into an exchange of a portion of Alburgh Dunes State Park in the Town of Alburgh with the South Alburgh Cemetery Association, Inc. for up to 44 +/- acres to be added to Alburgh Dunes State Park in the town of Alburgh that is of equivalent or greater value to the state. Any exchange of state park land with the South Alburgh Cemetery Association, Inc. shall be contingent on the following: (1) an archeological assessment shall be conducted on the state park land parcel to be exchanged and shall include an investigation to determine if there are any human remains or other archeological artifacts on the parcel; (2) the commissioner of forests, parks and recreation shall consult with the commissioner of economic, housing and community development to determine if the archeological assessment meets the legal criteria to be funded by the unmarked burial sites special fund established in 18 V.S.A. § 5212b and, if it does meet the legal criteria, to also determine if sufficient money is available in the fund for this purpose; (3) the land exchange shall have the support of the selectboard of the town of Alburgh; (4) an independent appraiser shall determine the value of the parcels for exchange; (5) The Nature Conservancy and the Vermont Housing and Conservation Board as coholders shall approve the land exchange; (6) the South Alburgh Cemetery Association, Inc. shall be responsible for any and all costs associated with the exchange, including appraisal, survey, permitting, and legal costs except for any costs that may be paid for from the unmarked burial sites special fund; (7) the parcel conveyed to the state in exchange for the state parcel conveyed to the South Alburgh Cemetery Association, Inc. shall be placed under the control and jurisdiction of the department of forests, parks and recreation; and (8) the conservation easement shall be amended to reflect this land exchange.

Second: Enter into an exchange of a portion of Coolidge State Forest in the town of Plymouth to Markowski Excavation for a 78-acre parcel of land to be added to Arthur Davis Wildlife Management Area, also in the town of Plymouth. Any exchange of state forestland with Markowski Excavation shall not exempt Markowski Excavation from satisfying any permit requirements, and the exchange shall be contingent on the following: (1) Markowski Excavation shall receive the initial approval of the town of Plymouth; (2) the department of forests, parks and recreation and Markowski Excavation shall enter into an agreement for the department to obtain crushed stone from Markowski Excavation, at a discount or no cost, for an agreed-upon time period and, if there is a cost to the state, the crushed stone shall be purchased with funds appropriated for such purposes by the general assembly; (3) Markowski Excavation shall provide a permanent easement to the state across its already owned parcel, and the state shall retain a permanent access

easement across the parcel of land to be conveyed to Markowski Excavation; (4) the parcel conveyed to Markowski Excavation shall be configured to provide the minimum acreage that the agency of natural resources deems necessary for Markowski Excavation's purpose and shall not include any land that, in the opinion of the agency of natural resources, is an important wildlife habitat or is a parcel of land that contains an ecological or other significant natural resource or represents a significant outdoor recreation value; (5) the value of the exchange parcel shall be determined by an independent appraiser; (6) any and all associated costs of the exchange, including appraisals, survey, permitting, and legal work shall be borne by Markowski Excavation. In the event that the 78-acre parcel within Arthur Davis Wildlife Management Area is unavailable for exchange purposes, the commissioner is authorized to sell a portion of Coolidge State Forest to Markowski Excavation at its appraised value, subject to the above conditions, and may negotiate for other consideration that would benefit the state. Notwithstanding the provisions of 29 V.S.A. § 104, the net proceeds from any sale of state forestland shall be deposited with the state treasurer to be held in the department of forests, parks and recreation's land acquisitions account and used by the department for land acquisition.

Third: Amend the lease with Camp Downer, Inc. at Downer State Forest in Sharon to provide for two additional ten-year renewal periods.

and after adoption of the resolution the title shall be amended to read: "Joint resolution approving land exchanges in Alburgh and Plymouth and a lease with Camp Downer, Inc."

The resolution, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment offered by the committee on Corrections and Institutions agreed to and third reading ordered.

### **Senate Proposal of Amendment Concurred in**

#### **H. 412**

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

An act relating to harassment and bullying in educational settings

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.

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

An act relating to harassment in educational settings.

Which proposal of amendment was considered and concurred in.

**Senate Proposal of Amendment Concurred in**

**H. 467**

The Senate proposed to the House to amend 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

In Sec. 1, 12 V.S.A. § 5792(4), after "skiing" by adding , snowboarding

Which proposal of amendment was considered and concurred in.

**Action on Bill Postponed**

**H. 730**

House bill, entitled

An act relating to miscellaneous consumer protection laws

Was taken up and pending the question, Shall the House concur in the Senate proposal of amendment? on motion of **Rep. Russell of Rutland City**, action on the bill was postponed until the next legislative day.

**Action on Bill Postponed**

**H.R. 21**

House resolution, entitled

House resolution urging the U.S. Department of Health and Human Services to reconsider its lifetime deferral on blood donation from men who have sex with other men

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Was taken up and pending the question, Shall the House adopt the resolution? on motion of **Rep. Donahue of Northfield**, action on the bill was postponed until Tuesday, May 1, 2011.

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

**S. 152**

Senate bill, entitled

An act relating to the definition of line of duty in the workers' compensation statutes

On motion of **Rep. Savage of Swanton**, the rules were suspended and the bill placed on all remaining stages of passage in concurrence with proposal of amendment. The bill was read the third time and passed in concurrence with proposal of amendment.

**Rules Suspended; Bills Messaged to Senate Forthwith**

On motion of **Rep. Savage of Swanton**, the rules were suspended and the following bills were ordered messaged to the Senate forthwith:

**S. 113**

Senate bill, entitled

An act relating to prevention, identification, and reporting of child abuse and neglect at independent schools

**S. 138**

Senate bill, entitled

An act relating to calculation of criminal sentences and record keeping for search warrants

**S. 152**

Senate bill, entitled

An act relating to the definition of line of duty in the workers' compensation statutes

**S. 214**

Senate bill, entitled

An act relating to customer rights regarding smart meters

**S. 230**

Senate bill, entitled

An act relating to property and casualty insurers and electronic notices

**S. 252**

Senate bill, entitled

An act relating to the repeal or revision of reporting requirements

**Committee of Conference Appointed****S. 251**

Pursuant to the request of the Senate for a Committee of Conference on the disagreeing votes of the two Houses on Senate bill, entitled

An act relating to miscellaneous amendments to laws pertaining to motor vehicles

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

**Rep. Lanpher of Vergennes**  
**Rep. Bissonette of Winooski**  
**Rep. Bohi of Hartford**

**Committee of Conference Appointed****S. 245**

Pursuant to the request of the Senate for a Committee of Conference on the disagreeing votes of the two Houses on Senate bill, entitled

An act relating to requiring cardiovascular care instruction in public and independent schools

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

**Rep. Donovan of Burlington**  
**Rep. Christie of Hartford**  
**Rep. Champion of Bennington**

**Adjournment**

At four o'clock and five minutes in the afternoon, on motion of **Rep. Savage of Swanton**, the House adjourned until Monday, April 30, 2012, at ten o'clock in the forenoon.

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**Concurrent Resolutions Adopted**

The following concurrent resolutions, having been placed on the Consent Calendar on the preceding legislative day, and no member having requested floor consideration as provided by Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence.

**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;

**H.C.R. 371**

House concurrent resolution in memory of Donald E. Prouty, Jr., of Pownal;

**H.C.R. 372**

House concurrent resolution in memory of former Representative Susan Webb;

**H.C.R. 373**

House concurrent resolution designating May 2012 as Vermont Osteoporosis Awareness Month;

**H.C.R. 374**

House concurrent resolution commemorating the 40th anniversary of the Retired Senior Volunteer Program's establishment in Bennington County;

**H.C.R. 375**

House concurrent resolution congratulating the H.W. Putnam Hose Company # 3 of the Bennington Fire Department on its 125th anniversary;

**H.C.R. 376**

House concurrent resolution honoring Dr. William Pendlebury, cofounder of The Memory Center at Fletcher Allen Health Care;

**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;

**H.C.R. 378**

House concurrent resolution congratulating the Pepin Granite Company, Inc. on its 50th anniversary;

**H.C.R. 379**

House concurrent resolution congratulating Vermont Energy Investment Corporation on its 25th anniversary;

**H.C.R. 380**

House concurrent resolution honoring former Representative William Keogh on his retirement from the Burlington City Council and its presidency;

**H.C.R. 381**

House concurrent resolution recognizing the ecological importance and scenic beauty of the Lowell Mountain Range;

**H.C.R. 382**

House concurrent resolution in appreciation of Representative Ken Atkins of Winooski for offering M&M's<sup>®</sup> chocolate candies at roll call votes;

**H.C.R. 383**

House concurrent resolution honoring fish and game warden Sergeant Daniel Swainbank for his career accomplishments;

**H.C.R. 384**

House concurrent resolution honoring Burlington Fletcher Free Library co-director Amber Collins;

**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;

**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;

**H.C.R. 387**

House concurrent resolution in memory of former Woodbury town clerk and moderator Morris P. Lilley;

**H.C.R. 388**

House concurrent resolution honoring librarian and Chester community leader Cynthia Collins;

**H.C.R. 389**

House concurrent resolution in memory of St. Michael's college alumni Michael and Jill Casey;

**H.C.R. 390**

House concurrent resolution honoring the 5th grade civics education initiative at Ferrisburgh Central School;

[The full text of the concurrent resolutions appeared in the House Calendar Addendum on the preceding legislative day and will appear in the Public Acts and Resolves of the 2012, seventy-second Adjourned session.]