

1 S.220

2 Introduced by Senator Mullin

3 Referred to Committee on Finance

4 Date: January 7, 2014

5 Subject: Employer's liability and workers' compensation; conservation and
6 development; travel and recreation policy; banking and insurance

7 Statement of purpose of bill as introduced: This bill proposes to amend the
8 workers' compensation law, establish a registry of sole contractors, increase
9 the funds available to the Department of Tourism and Marketing for
10 advertising, and regulate legacy insurance transfers.

An act relating to furthering economic development

11 ~~An act relating to amending the workers' compensation law, establishing a~~
12 ~~registry of sole contractors, increasing the funds available to the Department~~
13 ~~of Tourism and Marketing for advertising, and regulating legacy insurance~~
14 ~~transfers~~

15 It is hereby enacted by the General Assembly of the State of Vermont:

16 ~~Sec. 1. FINDINGS AND PURPOSE~~

17 ~~The General Assembly finds:~~

18 ~~(1) The creation of jobs and increasing investment in Vermont through~~
19 ~~encouraging entrepreneurs, fostering the growth of new small businesses, and~~
20 ~~facilitating the recruitment and expansion of existing businesses is of the~~
21 ~~highest importance.~~

1 ~~(2) Ensuring that Vermont's workers' compensation laws reflect the~~
2 importance of entrepreneurs and independent contractors and establishing a
3 registry of sole contractors will help achieve these goals.

4 (3) Vermont's economy remains heavily reliant on four-season tourism.
5 Vermont enjoys the advantage of being within a day's drive of 80 million
6 people in the surrounding metropolitan markets. However, Vermont is in
7 competition with neighboring states and provinces for this market. As a result,
8 Vermont must increase its advertising to continue to attract tourists and
9 continue to sustain and grow tourism-dependent businesses and jobs.

10 (4) By regulating legacy insurance transfers, Vermont will be able to
11 recruit and expand businesses, which will lead to the retention and creation of
12 new jobs.

13 Sec. 2. 21 V.S.A. § 601 is amended to read:

14 § 601. DEFINITIONS

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

17 * * *

18 (14) "Worker" and "employee" ~~means~~ mean an individual who has
19 entered into the employment of, or works under contract of service or
20 apprenticeship with, an employer. Any reference to a worker who has died as
21 the result of a work injury shall include a reference to the worker's dependents,

1 ~~and any reference to a worker who is a minor or incompetent shall include a~~

2 reference to the minor's committee, guardian, or next friend. The term

3 "worker" or "employee" does not include:

4 * * *

5 (G) An individual who performs services as a real estate broker or
6 real estate salesperson, provided:

7 (i) the individual is licensed to broker or sell real estate pursuant
8 to 26 V.S.A. chapter 41;

9 (ii) all the individual's compensation from performing real estate
10 broker or sales services is based on commissions from sales production or
11 results and is not based on time worked or an hourly wage;

12 (iii) the services are performed pursuant to a written agreement or
13 contract between the individual and the real estate sales or broker business or
14 another person with whom the individual is affiliated or associated and the
15 written agreement or contract explicitly states that the individual is not
16 considered to be an employee under this chapter and is not eligible for
17 coverage under this chapter; and

18 (iv) the individual is not treated as an employee for the purposes
19 of federal income and employment taxation with regard to the real estate
20 broker or sales services performed.

1 ~~(II) An independent contractor if it can be demonstrated that the~~
2 ~~independent contractor meets all of the following conditions:~~
3 ~~(i) maintains a separate business with a separate office, equipment,~~
4 ~~materials, or other facilities and has continuing recurring business liabilities or~~
5 ~~obligations;~~
6 ~~(ii) holds or has applied for a federal employer identification~~
7 ~~number with the Internal Revenue Service or has filed business or~~
8 ~~self-employment income tax returns with the federal Internal Revenue Service~~
9 ~~based on that work or service in the previous year;~~
10 ~~(iii) operates under a written contract that specifies that the~~
11 ~~independent contractor complies with all of the following:~~
12 ~~(I) will perform specific services or work for specific amounts~~
13 ~~of money, and the independent contractor controls the means of performing the~~
14 ~~services or work;~~
15 ~~(II) incurs the main expenses related to the service or work that~~
16 ~~the independent contractor performs under contract;~~
17 ~~(III) is responsible for the satisfactory completion of work or~~
18 ~~services that he or she contracts to perform and is liable for a failure to~~
19 ~~complete the work or service;~~

1 ~~(IV) receives compensation for work or service performed~~
2 under a written contract on a commission or per-job competitive bid basis and
3 not on any other basis;

4 (V) may realize a profit or suffer a loss under contracts to
5 perform work or service; and

6 (iv) voluntarily elected the status of independent contractor.

7 ~~(H)(I)~~ With the approval of the Commissioner, a corporation or a
8 limited liability company (L.L.C.) may elect to file exclusions from the
9 provisions of this chapter. A corporation or an L.L.C. may elect to exclude up
10 to four executive officers or managers or members from coverage requirements
11 under this chapter. If all officers of the corporation or all managers or
12 members of an L.L.C. make such election, receive approval, and the business
13 has no employees, the corporation or L.L.C. shall not be required to purchase
14 workers' compensation coverage. If after election, the officer, manager, or
15 member suffers a personal injury and files a claim under this chapter, the
16 employer shall have all the defenses available in a personal injury claim.
17 However, this election shall not prevent any other individual, other than the
18 individual excluded under this section, found to be an employee of the
19 corporation or L.L.C. to recover workers' compensation from either the
20 corporation, L.L.C., or the statutory employer.

21 * * *

1 ~~Sec. 3. 21 V.S.A. § 708 is amended to read:~~

2 § 708. PENALTY FOR FALSE REPRESENTATION

3 * * *

4 (c) Any penalty assessed or order issued under this chapter or 8 V.S.A.
5 § 3661 shall continue in effect against any successor employer that has one or
6 more of the same principals or corporate officers as the employer against
7 which the penalties were assessed or order issued and is engaged in the same
8 or similar business.

9 (d) Coercing an individual to sign a statement of independent contractor
10 status or to obtain other documents of such status is false representation.

11 (e) Notwithstanding the assessment of an administrative penalty under this
12 section, a person may be prosecuted under 13 V.S.A. § 2024.

13 Sec. 4. 21 V.S.A. § 1301 is amended to read:

14 § 1301. DEFINITIONS

15 The following words and phrases, as used in this chapter, shall have the
16 following meanings unless the context clearly requires otherwise:

17 * * *

18 (6)(A)(i) "Employment," subject to the other provisions of this
19 subdivision (6), means service within the jurisdiction of this ~~state~~ State,
20 performed prior to January 1, 1978, which was employment as defined in this
21 subdivision prior to such date and, subject to the other provisions of this

1 ~~subdivision, service performed after December 31, 1977, by an employee, as~~
2 defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act,
3 including service in interstate commerce, performed for wages or under any
4 contract of hire, written or oral, expressed or implied. Services partly within
5 and partly without this state State may by election as ~~hereinbefore~~ provided be
6 treated as if wholly within the jurisdiction of this state State. ~~And whenever~~
7 Whenever an employing unit ~~shall have~~ has elected to come under the
8 provisions of a similar act of a state where a part of the services of an
9 employee are performed, the ~~commissioner~~ Commissioner, ~~upon his or her~~
10 after approval of said the election, ~~as to any such employee,~~ may treat the
11 services ~~covered by said approved election~~ the employing unit as having been
12 performed wholly without the jurisdiction of this state State.

13 * * *

14 (B) Services performed by an individual for wages shall be deemed
15 to be employment subject to this chapter unless ~~and until it is shown to the~~
16 ~~satisfaction of the commissioner that:~~

17 (i) ~~Such individual has been and will continue to be free from~~
18 ~~control or direction over the performance of such services, both under his or~~
19 ~~her contract of service and in fact; and~~

20 (ii) ~~Such service is either outside the usual course of the business~~
21 ~~for which such service is performed, or that such service is performed outside~~

1 ~~of all the places of business of the enterprise for which such service is~~

2 performed; and

3 (iii) ~~Such individual is customarily engaged in an independently~~
4 ~~established trade, occupation, profession or business they are specifically~~
5 ~~excluded under this chapter.~~

6 (C) The term "employment" ~~shall~~ does not include:

7 * * *

8 (xxii) Service performed by an independent contractor if the
9 employer can demonstrate that the independent contractor meets all of the
10 following conditions:

11 (I) maintains a separate business with his or her own office,
12 equipment, materials, or other facilities and has continuing or recurring
13 liabilities or obligations;

14 (II) holds or has applied for a federal employer identification
15 number with the federal Internal Revenue Service or has filed business or
16 self-employment income tax returns with the federal Internal Revenue Service
17 based on that work or service in the previous year;

18 (III) operates under a written contract which specifies that the
19 independent contractor:

- 1 ~~(aa) will perform specific services or work for specific~~
2 amounts of money and under which the independent contractor controls the
3 means of performing the service or work;
- 4 (bb) incurs the main expenses related to the service or work
5 that he or she performs under contract;
- 6 (cc) is responsible for the satisfactory completion of work or
7 service that he or she contracts to perform and is liable for a failure to complete
8 the work or service;
- 9 (dd) receives compensation for work or service performed
10 under a written contract on a commission or per-job competitive bid basis and
11 not on any other basis; and
- 12 (ee) may realize a profit or suffer a loss under contracts to
13 perform work or service.
- 14 (IV) voluntarily elected the status of independent contractor.

15 * * *

16 Sec. 5. 21 V.S.A. § 1369 is amended to read:

17 § 1369. FALSE STATEMENTS TO AVOID UNEMPLOYMENT

18 PROGRAM OBLIGATIONS

19 A person who ~~wilfully~~ willfully makes a material false statement or
20 representation to avoid becoming or remaining subject to this chapter, or to
21 avoid or reduce a contribution or other payment required of an employer under

1 ~~this chapter for either herself or himself or for any other person, after notice~~
2 and opportunity for hearing, may be assessed an administrative penalty of not
3 more than \$5,000.00. Coercing an individual to sign a statement of
4 independent contractor status or to obtain other documents of such status is
5 false representation.

6 Sec. 6. 21 V.S.A. chapter 23 is added to read:

7 CHAPTER 23. SOLE CONTRACTOR AUTHORIZATION PROCESS

8 § 1801. PURPOSE

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

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

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

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

7 § 1802. DEFINITIONS

8 As used in this chapter:

9 (1) “Commissioner” means the Commissioner of Labor or designee.

10 (2) “Department” means the Department of Labor.

11 (3) “Hiring entity” means any person hiring an authorized sole
12 contractor to perform work.

13 (4) “Sole contractor” means an individual who is approved by the
14 authorization process established in section 1806 of this chapter. A sole
15 contractor may be an individual, a single-member limited liability company, or
16 a single shareholder corporation.

17 (5) “Sole Contractor Authorization Review Board” means the board
18 established pursuant to this chapter that is responsible for reviewing
19 applications from individuals seeking sole contractor status.

~~§ 1803. SOLE CONTRACTOR CRITERIA~~

~~(a) The Sole Contractor Authorization Review Board (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) a federal employer identification number (FEIN) that is used for federal tax reporting purposes;~~

~~(3) 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~~

1 ~~paid or unpaid, and does not engage in any joint ventures or associations with~~
2 other sole contractors to perform work; and

3 (7) an affidavit attesting that he or she is in good standing regarding any
4 outstanding child support or taxes.

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

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

12 (2) proof that he or she works for multiple employers in the course of
13 his or her business;

14 (3) proof of past work, including written contracts or agreements,
15 invoices, or competitive bids, on a per-job basis; and

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

19 § 1804. PRESUMPTION OF STATUS

20 (a) An individual who is authorized pursuant to this chapter shall not be
21 presumed to be an employee when operating under the provisions of this

1 ~~chapter, and the entity hiring the sole contractor shall not be considered the~~
2 statutory employer of the sole contractor. Notwithstanding this presumption, if
3 the sole contractor is working for the employer or a subcontractor in a capacity
4 that does not qualify as an individual sole contractor, then all statutory
5 provisions relating to unemployment, workers' compensation, wage and hour
6 provisions, and employment practices shall apply.

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

9 § 1805. COMPOSITION OF BOARD

10 A Sole Contractor Authorization Review Board is hereby established
11 consisting of 11 members, five of whom shall represent labor to be appointed
12 by the Governor, five of whom shall represent business to be appointed by the
13 Governor, and one who shall be an employee of the Department appointed by
14 the Commissioner. Nominations for members for the Board shall be solicited
15 from organizations representing employer organizations, trade associations,
16 and employee organizations and from the Commissioner of Labor, as well as
17 from a public notice conducted by the Department of Labor. The Board
18 members appointed by the Governor shall be appointed for a term of
19 two years, with no member serving more than three consecutive terms.

1 ~~§ 1806. BOARD REVIEW PROCESS~~

2 ~~(a) Representatives from the Board shall meet weekly in three-member~~
3 ~~panels at the direction of the Commissioner, consisting of one member each~~
4 ~~representing labor and business and the Department representative. The~~
5 ~~members of the panels shall rotate weekly.~~

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

1 § 1807. APPEAL

2 An applicant may appeal a decision of the Commissioner to the Supreme
3 Court within 30 days of the date of the decision.

4 § 1808. INFORMATION AND EDUCATION

5 (a) The Commissioner of Labor in consultation with the Board shall
6 conduct a comprehensive information and education campaign regarding the
7 provisions of this chapter for a period of not less than 12 months upon
8 instituting this authorization process and shall continue to provide regular
9 information to the labor and business communities about the authorization
10 program and the issues of misclassification and miscoding.

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

14 (c) The Department shall provide all employers notice and information of
15 the provisions relating to sole contractor authorization and hiring. The
16 Department shall establish a simple method for employers using sole
17 contractors to acknowledge receipt of the information, including by electronic
18 means. An employer shall not hire a sole contractor until acknowledging
19 receipt of the information with the Department. An employer hiring a sole
20 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

1 ~~administrative penalty of up to \$5,000.00 and may lose the authorization for up~~
2 ~~to one year.~~

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

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

9 (e) Administrative hearings shall be conducted in accordance with the
10 Administrative Procedure Act, 3 V.S.A. chapter 25. Appeals from penalty
11 assessment determinations shall be to the Vermont Supreme Court.

12 § 1811. FEES AND COSTS

13 (a) The application fee for a sole contractor authorization shall be \$100.00,
14 which shall be deposited into the Sole Contractor Registry Special Fund. The
15 authorization shall be valid for two years and may be renewed for subsequent
16 two-year periods upon reapplication and payment of the fee. The Department
17 shall use the funds to administer the sole contractor program, including for the
18 purpose of providing a per diem and mileage reimbursement for Board
19 members.

20 (b) The Commissioner is authorized to hire and employ one limited service
21 position for a term of three years for program administration. The program

1 ~~shall be funded by the fees collected pursuant to this chapter and supplemented~~
2 by the General Fund when fees do not cover the full costs of the position and
3 program administration.

4 (c) There is created a Sole Contractor Registry Special Fund pursuant to
5 32 V.S.A. chapter 7, subchapter 5, to be expended by the Commissioner
6 consistent with the provisions of this section.

7 § 1812. RULEMAKING

8 The Commissioner may adopt rules to implement the provisions of this
9 chapter.

10 Sec. 7. 10 V.S.A. § 668 is added to read:

11 § 668. TOURISM FUNDING

12 (a) In addition to any other funds appropriated to the Department of
13 Tourism and Marketing, in each fiscal year, the General Assembly shall
14 appropriate to the Department of Tourism and Marketing 75 percent of the
15 amount by which the total meals and rooms tax revenue collected in the
16 immediately preceding fiscal year exceeds the total meals and rooms tax
17 revenue collected in the fiscal year two years preceding the current fiscal year.

18 (b) The additional amount appropriated in a fiscal year pursuant to this
19 section shall not exceed \$2,000,000.00.

1 ~~Sec. 8. 8 V.S.A. chapter 147 is added to read:~~

2 CHAPTER 147. LEGACY INSURANCE TRANSFERS

3 § 7111. DEFINITIONS

4 As used in this chapter:

5 (1) “Assuming company” means a Vermont-domiciled company
6 established specifically to acquire a closed block under a legacy insurance
7 transfer plan approved by the Commissioner.

8 (2) “Closed block” means a block, line, or group of commercial
9 nonadmitted insurance policies or reinsurance agreements, or both:

10 (A) which a transferring insurer has ceased to offer, write, or sell to
11 new applicants;

12 (B) for which all policy periods have been fully expired for not less
13 than 60 months;

14 (C) for which active premiums are no longer being paid; and

15 (D) which are not workers’ compensation, health, life, or any other
16 personal line of insurance.

17 (3) “Comment period” means the 60-day period starting on the date
18 notice is issued by an assuming company under subsection 7112(h) of this
19 chapter. For good cause, the comment period may be extended by the
20 Commissioner up to an additional 30 days.

21 (4) “Commissioner” means the Commissioner of Financial Regulation.

1 ~~(5) "Controlling party" means a person having "control" of an assuming~~
2 ~~company or transferring insurer. "Control" shall have the same meaning as in~~
3 ~~section 3681 of this title.~~

4 (6) "Department" means the Department of Financial Regulation.

5 (7) "Domicile regulator" means the primary insurance regulatory
6 authority of the domicile jurisdiction of a transferring insurer.

7 (8) "Inward reinsurance agreement" means a contract of reinsurance
8 between a transferring insurer and another insurance company with respect to
9 which a transferring insurer is a party as the reinsurer.

10 (9) "Inward reinsurance counterparty" means an insurance company,
11 other than the transferring insurer, that is a party to an inward reinsurance
12 agreement.

13 (10) "Legacy insurance transfer" means the transfer of a closed block in
14 accordance with the requirements of this chapter.

15 (11) "Legacy insurance transfer plan" or "plan" means a plan that sets
16 forth all provisions and includes all documentation regarding a legacy
17 insurance transfer required under subsection 7112(b) of this chapter.

18 (12) "Nonadmitted insurance" means any property and casualty
19 insurance permitted to be placed directly or through a surplus lines broker with
20 a nonadmitted insurer eligible to accept such insurance.

1 ~~(13) “Nonadmitted insurer” means, with respect to a state, an insurer not~~
2 licensed to engage in the business of insurance in such state. The term does
3 not include a risk retention group or a captive insurance company.

4 (14) “Outward reinsurance agreement” means a contract of reinsurance
5 between a transferring insurer and another insurance company with respect to
6 which a transferring insurer is a party as the reinsured.

7 (15) “Outward reinsurance counterparty” means an insurance company,
8 other than the transferring insurer, that is a party to an outward reinsurance
9 agreement.

10 (16) “Party” means:

11 (A) the assuming company;

12 (B) the transferring insurer;

13 (C) with respect to any policy to be transferred under a plan, each
14 policyholder;

15 (D) with respect to any inward reinsurance agreement to be
16 transferred under a plan, each inward reinsurance counterparty; and

17 (E) any other person the Commissioner approves as a party with
18 respect to such proceeding.

19 (17) “Plan summary” means a written statement of the key terms and
20 provisions of a plan as required under subdivision 7112(b)(19) of this chapter.

1 ~~(18) "Policy" means a contract of property and casualty insurance that is~~
2 ~~not a contract of reinsurance or a personal lines insurance policy.~~

3 (19) "Policyholder" means the person identified as the policyholder or
4 first named in a policy.

5 (20) "Reinsurance agreement" means an inward reinsurance agreement
6 or an outward reinsurance agreement.

7 (21) "Reinsurance agreement counterparty" means an inward
8 reinsurance agreement counterparty or an outward reinsurance counterparty.

9 (22) "Transferring insurer" means a nonadmitted insurer that is
10 transferring a closed block to an assuming company under a legacy insurance
11 transfer plan.

12 § 7112. APPLICATION; FEE; PLAN

13 (a) An assuming company shall file a plan with the Commissioner and, at
14 the time of filing, shall pay to the Commissioner the fee described in
15 subdivision 7116(a)(1) of this chapter.

16 (b) A plan shall include the following:

17 (1) A list of all policies and inward reinsurance agreements in the closed
18 block to be transferred under the plan.

19 (2) A list of all outward reinsurance agreements attaching to the closed
20 block.

1 ~~(3) A list of all policyholders and inward reinsurance counterparties to~~
2 ~~policies and inward reinsurance agreements in the closed block to be~~
3 ~~transferred under the plan.~~

4 (4) The identities of the transferring insurer and the assuming company
5 and their respective controlling parties, if any.

6 (5) Certificates issued by the domicile regulator of the transferring
7 insurer and, if applicable, by any controlling party that is a regulated insurance
8 company attesting to the good standing of the transferring insurer and the
9 controlling party under the insurance regulatory laws of the jurisdiction of their
10 respective domiciles; or, if any such certificate is not obtainable under the laws
11 or practices of a domicile regulator, a certificate of an officer of the
12 transferring insurer or the controlling party, as applicable, attesting to the
13 foregoing.

14 (6) A letter of no objection, or the equivalent, from the domicile
15 regulator of the transferring insurer confirming that the regulator has no
16 objection to the transfer of the closed block under the plan; or, if any such
17 certificate is not obtainable under the laws or practices of a domicile regulator,
18 a certificate of an officer of the transferring insurer or the controlling party, as
19 applicable, attesting to the foregoing.

20 (7) A statement describing the terms and conditions, if any, of any
21 policy or inward reinsurance agreement in the closed block prohibiting

1 ~~assignment and assumption of the rights, liabilities, and obligations of the~~
2 transferring insurer without the prior written consent of the respective
3 policyholder or inward reinsurance counterparty.

4 (8) The most recent audited financial statements and annual reports of
5 the transferring insurer filed with its domicile regulator and such other
6 financial information as the Commissioner may reasonably require with
7 respect to a controlling party, if any.

8 (9) An actuarial study or opinion in a form satisfactory to the
9 Commissioner that quantifies the liabilities to be transferred to the assuming
10 company under the policies or inward reinsurance agreements in the closed
11 block.

12 (10) A statement of outward reinsurance agreement assets attaching to
13 the closed block.

14 (11) Three years of pro-forma financial statements demonstrating the
15 solvency of the assuming company.

16 (12) Officer's certificates of the transferring insurer and the assuming
17 company attesting that each has obtained all required internal approvals and
18 authorizations regarding the plan and has completed all necessary and
19 appropriate actions relating thereto.

1 ~~(13) The form of notice to be provided under the plan to any~~
2 ~~policyholder or inward reinsurance counterparty in the closed block and how~~
3 ~~such notice shall be provided.~~

4 ~~(14) The form of notice to be provided under the plan to any outward~~
5 ~~reinsurance counterparty attaching to the closed block and how such notice~~
6 ~~shall be provided.~~

7 ~~(15) A statement describing any pending dispute between the~~
8 ~~transferring insurer and any policyholder or inward reinsurance counterparty or~~
9 ~~any disputed claim by a third party with respect to any policy or inward~~
10 ~~reinsurance agreement in the closed block.~~

11 ~~(16) A statement describing the assuming company's proposed~~
12 ~~investment policies, officers, directors, key employees, and other arrangements~~
13 ~~regarding matters such as:~~

14 ~~(A) any contemplated third-party claims management and~~
15 ~~administration arrangements;~~

16 ~~(B) operations, management, and solvency relating to the closed~~
17 ~~block; and~~

18 ~~(C) a detailed plan for annual or other periodic financial reporting to~~
19 ~~the Commissioner, including an annual financial audit with actuarial opinion.~~

20 ~~(17) A statement from the assuming company consenting to the~~
21 ~~jurisdiction of the Commissioner with regard to ongoing oversight of~~

1 ~~operations, management, and solvency relating to the closed block, including~~
2 the authority of the Commissioner to conduct examinations under section 7117
3 of this chapter and to set reasonable standards for oversight of the assuming
4 company, including:

5 (A) material transactions with affiliates;

6 (B) adequacy of surplus; and

7 (C) dividends and other distributions, including limitations on
8 extraordinary dividends.

9 (18) A statement from the assuming company submitting to the
10 jurisdiction and authority of the Commissioner of Financial Regulation, or the
11 equivalent regulatory authority, in states in which policyholders or reinsurance
12 counterparties reside, for the purposes of implementing each such state's
13 Unfair Claims Settlement Practices Act, or its equivalent, if any, in such state's
14 market conduct statutory framework. Notwithstanding any provision to the
15 contrary in such act, the submission under this subdivision shall not confer a
16 private cause of action upon any policyholder or reinsurance counterparty
17 against the assuming company, even if the applicable Unfair Claims Settlement
18 Practices Act, or equivalent, purports to provide a private cause of action.

19 (19) A plan summary which includes all information regarding the plan
20 as reasonably required by the Commissioner.

1 ~~(20) The statement described in subsection (c) of this section regarding~~
2 the information and documents submitted as part of or with respect to a plan
3 which are confidential.

4 (21) Any other information the Commissioner may reasonably require
5 with respect to the plan in the exercise of his or her discretion.

6 (c) The plan shall include a statement of the information and
7 documentation included in the plan that the assuming company or the
8 transferring insurer may request be given confidential treatment, which in all
9 cases shall include all information identifying policyholders and reinsurance
10 counterparties and which may include any information that qualifies as a trade
11 secret or other confidential research, development, or commercial information
12 of the transferring insurer or the assuming company. The Commissioner,
13 subject to the exercise of his or her reasonable discretion, shall determine
14 whether the information designated in such statement qualifies for confidential
15 treatment and therefore shall be exempt from public inspection and copying
16 under the Public Records Act. Any information qualifying for confidential
17 treatment shall not be subject to subpoena and shall not be made public by the
18 Commissioner or by any other person; provided, however, the Commissioner
19 may in his or her discretion grant access to such information to public officers
20 having jurisdiction over the regulation of insurance in any other state or
21 country, to public officers of a foreign or alien financial regulatory authority.

1 ~~or to state or federal law enforcement officers pursuant to a validly issued~~
2 subpoena or search warrant; provided that such officers receiving the
3 information agree in writing to hold it in a manner consistent with this section.

4 (d) Within 10 business days of the date the application is filed and the fee
5 payable under subsection (a) of this section is paid in full, the Commissioner
6 shall notify the assuming company whether the plan is complete. In his or her
7 discretion, the Commissioner may extend the 10-business-day application
8 review period for an additional 10 business days. With the written consent of
9 the assuming company, the application review period may be extended beyond
10 20 business days.

11 (e) Upon submission of a plan, the assuming company shall have a
12 continuing obligation to notify the Commissioner promptly and in a full and
13 accurate manner of any material change to information in the plan.

14 (f) If the Commissioner notifies the assuming company that the plan is not
15 complete, the Commissioner shall specify any modifications, supplements, or
16 amendments to the plan that are required, and any additional information or
17 documentation with respect to the plan that must be provided to the
18 Commissioner before the Commissioner issues the notice under subsection (d)
19 of this section.

1 ~~(g) If the Commissioner notifies the assuming company that the plan is~~
2 ~~complete, the Commissioner shall set a date, time, and place for a hearing on~~
3 ~~the plan as required under subsection (m) of this section.~~

4 ~~(h) Within 30 days of the date the Commissioner notifies the assuming~~
5 ~~company under subsection (g) of this section that the plan is complete, the~~
6 ~~assuming company shall cause notice to be provided, in the form and manner~~
7 ~~specified in the plan, to all policyholders and reinsurance counterparties listed~~
8 ~~in the plan. The notice shall:~~

9 ~~(1) comply with the plan and the provisions of 3 V.S.A. § 809(b);~~

10 ~~(2) include the plan summary;~~

11 ~~(3) describe the effect of the plan and the transfer on each policyholder~~
12 ~~and reinsurance counterparty and on his or her respective policy or reinsurance~~
13 ~~agreement, as applicable;~~

14 ~~(4) state the right of each policyholder or inward reinsurance~~
15 ~~counterparty to:~~

16 ~~(A) accept or object to the plan, together with a description of the~~
17 ~~means by which a policyholder or inward reinsurance counterparty may~~
18 ~~expressly accept or object to the plan and the effect of such acceptance or~~
19 ~~objection;~~

20 ~~(B) file written comments on the plan with the Commissioner, and~~

21 ~~(C) appear and present evidence on the plan at the hearing;~~

1 ~~(5) describe the terms and conditions under which a policyholder or~~
2 inward reinsurance counterparty shall be deemed to have accepted the plan;
3 ~~(6) specify the date, time, and place of the hearing on the plan;~~
4 ~~(7) include all other information reasonably required by the~~
5 Commissioner; and
6 ~~(8) be published in two newspapers of general nationwide circulation on~~
7 two separate occasions, as determined by the Commissioner.
8 (i) During the comment period:
9 (1) Any party may file written comments on the plan with the
10 Commissioner.
11 (2) Any policyholder or inward reinsurance counterparty may, by
12 delivery of such notice in accordance with the terms and conditions of the plan
13 and prior to the expiration of the comment period, provide an express written
14 notice that he or she accepts or objects to the plan.
15 (3) The assuming company shall file with the Commissioner such
16 additional documentation and information regarding the plan as the
17 Commissioner may reasonably require.
18 (j) In the event that, prior to the expiration of the comment period, any
19 policyholder or inward reinsurance counterparty provides express written
20 notice that he or she objects to the plan and specifies the policy or agreement
21 with respect to which such objection is made, the assuming company shall, not

1 ~~later than 15 days after the end of the comment period, submit to the~~

2 Commissioner either:

3 (1) an amended list of policies and reinsurance agreements in the plan,
4 excluding such policyholder or inward reinsurance counterparty and its
5 respective policy or inward reinsurance agreement from the plan; or

6 (2) an express written notice from such policyholder or inward
7 reinsurance counterparty accepting the plan and consenting to the transfer
8 having the full force and effect of a statutory novation of its respective policy
9 or reinsurance agreement, as applicable, and withdrawing and rescinding its
10 prior notice of objection.

11 (k) Except as provided in subsection 7114(f) of this chapter, any
12 policyholder or inward reinsurance counterparty that, prior to the expiration of
13 the comment period, has not provided express written notice objecting to the
14 plan shall be deemed to have accepted the plan, and the transfer shall have the
15 full force and effect of a statutory novation of his or her respective policy or
16 inward reinsurance agreement, as applicable.

17 (l) Notwithstanding any provision of this chapter to the contrary, if a policy
18 or inward reinsurance agreement contains a provision prohibiting the transfer
19 of the policy or inward reinsurance agreement without the consent of the
20 policyholder or inward reinsurance counterparty, then such policy or inward
21 reinsurance agreement shall not be transferred under this chapter unless the

1 ~~applicable policyholder or inward reinsurance counterparty provides written~~
2 consent to the proposed transfer.

3 (m) The hearing on the plan shall be held on or before 60 days after the end
4 of the comment period. In his or her discretion, the Commissioner may
5 postpone the hearing for an additional 10 days. With the written consent of the
6 assuming company, the hearing may be postponed beyond 70 days. Each party
7 participating in the hearing shall bear his or her own costs and attorney's fees.

8 § 7113. PLAN REVIEW

9 (a) The Commissioner may retain an actuary to conduct an actuarial study
10 quantifying the liabilities under insurance policies and reinsurance agreements
11 to be transferred to the assuming company under the plan and is authorized to
12 retain any other legal, financial, and examination services from outside the
13 Department necessary to assist in plan review.

14 (b) In reviewing the plan, the Commissioner shall take into account all
15 written comments filed with respect to the plan, all evidence taken at the
16 hearing, and any other factors the Commissioner reasonably deems relevant
17 with respect to the plan. In all cases, the Commissioner shall make findings
18 with respect to each of the following:

19 (1) the solvency of the assuming company before and after the
20 implementation of the proposed plan;

1 ~~(2) the adequacy of the assuming company's proposals described in the~~
2 statement required under subdivision 7112(b)(16) of this chapter;

3 ~~(3) the adequacy of the assuming company's consent to jurisdiction~~
4 required under subdivision 7112(b)(17) of this chapter;

5 ~~(4) the ability of the assuming company to comply with all requirements~~
6 of the policies and inward reinsurance agreements, including the capacity of
7 the assuming company regarding the administration of claims in process on or
8 after the effective date of the transfer;

9 ~~(5) whether any outward reinsurance agreement relating to any policy or~~
10 policies in the closed block will be adversely affected by the transfer;

11 ~~(6) whether the plan materially adversely affects the interests of any~~
12 party or outward reinsurance counterparty, including the interests of any
13 policyholder or inward reinsurance counterparty who has accepted or been
14 deemed to have accepted the plan;

15 ~~(7) whether policyholders or inward reinsurance counterparties, together~~
16 with their respective insurance policies and inward reinsurance agreements,
17 have been excluded from the plan as required under subsections 7112(j) and (l)
18 of this chapter; and

19 ~~(8) the fairness of the plan to all parties.~~

1 § 7114. ORDER

2 (a) Within 30 days of the date the hearing is held on the plan, the
3 Commissioner shall issue an order setting forth the amount of fees payable by
4 the assuming company under subdivision 7116(a)(2) of this chapter, payable
5 on or before 14 days after the date of such order. Upon receipt of such
6 payment, the Commissioner shall within five days issue an order approving or
7 disapproving the plan in whole or in part. Whenever it is not practicable to
8 issue an order within 30 days, the Commissioner may extend such time up to
9 an additional 30 days. If the order approves the plan, the order shall:

10 (1) include the terms and conditions of the Commissioner's oversight
11 with regard to ongoing oversight of the operations, management, and solvency
12 relating to the closed block and any specific standards that the assuming
13 company will be required to comply with, including standards relating to:

14 (A) material transactions with affiliates;

15 (B) adequacy of surplus; and

16 (C) dividends and other distributions, including limitations on
17 dividends;

18 (2) set forth the tax payable by the assuming company under subsection
19 7116(b) of this chapter, which tax shall be payable on or before 14 days after
20 the date of such order; and

1 ~~(3) not be effective until such time as the costs and transfer tax~~

2 described in this subsection have been paid in full.

3 (b) The Commissioner shall not approve a plan unless the Commissioner
4 finds that the assuming company has:

5 (1) sufficient assets to meet its liabilities;

6 (2) sufficient procedures in place for the handling of claims;

7 (3) consented to sufficient regulatory oversight by the Department; and

8 (4) excluded from the plan any policy or agreement required to be

9 excluded under subsections 7112(j) and (l) of this chapter.

10 (c) An order issued under subsection (a) of this section approving the plan
11 shall have the full force and effect of a statutory novation with respect to all
12 policyholders and reinsurance counterparties and their respective policies and
13 reinsurance agreements under the plan and shall provide that the transferring
14 insurer shall have no further rights, obligations, or liabilities with respect to
15 such policies and reinsurance agreements, and that the assuming company shall
16 have all such rights, obligations, and liabilities as if it, instead of the
17 transferring insurer, were the original party to such policies and reinsurance
18 agreements.

19 (d) The Commissioner may issue any other orders he or she reasonably
20 deems necessary to implement fully an order issued under subsection (a) of
21 this section.

1 ~~(e) No order issued under subsection (a) or (d) of this section shall be~~
2 ~~construed to modify or amend the terms of a policy or reinsurance agreement,~~
3 ~~other than with respect to matters specifically subject to modification or~~
4 ~~amendment under this chapter.~~

5 ~~(f) If a policyholder or inward reinsurance counterparty provides express~~
6 ~~written notice that he or she objects to the plan after the comment period has~~
7 ~~expired, and provides evidence reasonably satisfactory to the Commissioner~~
8 ~~that he or she was not provided notice of the plan in the form and manner~~
9 ~~previously approved by the Commissioner, or if an outward reinsurance~~
10 ~~counterparty or other party provides express written notice that he or she~~
11 ~~objects to a plan, the Commissioner may not approve the plan with respect to~~
12 ~~such party unless the Commissioner determines that the plan:~~

13 ~~(1) does not materially adversely affect the objecting party; and~~

14 ~~(2) otherwise complies with the requirements of this chapter.~~

15 ~~(g) At any time before the Commissioner issues the order described in~~
16 ~~subsection (a) of this section, the assuming company may file an amendment to~~
17 ~~the plan, subject to the Commissioner's approval.~~

18 ~~(h) At any time before the Commissioner issues the order described in~~
19 ~~subsection (a) of this section, the assuming company may withdraw the plan~~
20 ~~without prejudice. Upon such withdrawal, however, the Commissioner shall~~
21 ~~issue an order setting forth the amount of fees payable by the assuming~~

1 ~~company under subdivision 7116(a)(2) of this chapter, payable on or before~~
2 14 days after the date of such order.

3 § 7115. JURISDICTION; APPEALS

4 (a) The Commissioner shall have exclusive regulatory jurisdiction with
5 respect to the review and approval or denial of any plan.

6 (b) Any party aggrieved by a final order of the Commissioner may appeal
7 that order to the Vermont Supreme Court under 3 V.S.A. § 815.

8 § 7116. FEE; COSTS; TRANSFER TAX

9 (a) To cover the costs of processing and reviewing a plan under this
10 chapter, the assuming company shall pay to the Commissioner the following
11 nonrefundable fees at the times set forth in subsections 7112(a) and 7114(a) of
12 this chapter:

13 (1) an administrative fee in the amount of \$30,000.00; and

14 (2) the reasonable costs of persons retained by the Commissioner under
15 subsection 7113(a) of this chapter.

16 (b) When a plan is approved, the assuming company shall pay the
17 Commissioner a transfer tax equal to the sum of:

18 (1) one percent of the first \$100,000,000.00 of the gross liabilities
19 transferred, including direct and assumed unpaid claims, losses, and loss
20 adjustment expenses with no reductions for amounts ceded; and

1 ~~(2) 0.5 percent of the gross liabilities transferred that exceed~~
2 \$100,000,000.00, including direct and assumed unpaid claims, losses, and loss
3 adjustment expenses with no reductions for amounts ceded.

4 (c) All fees and payments received by the Department under subsection (a)
5 of this section and 10 percent of the transfer tax under subsection (b) of this
6 section shall be credited to the Insurance Regulatory and Supervision Fund
7 under section 80 of this title. The remaining 90 percent of the transfer tax shall
8 be deposited directly into the General Fund.

9 § 7117. EXAMINATIONS

10 (a) The Commissioner has the authority to order any assuming company to
11 produce any records, books, and papers in the possession of the assuming
12 company or its affiliates necessary to ascertain the financial condition or
13 legality of conduct of the assuming company.

14 (b) The Commissioner shall exercise his or her authority under subsection
15 (a) of this section only if he or she has reason to believe the interests of the
16 assuming company's policyholders may be adversely affected under the plan.

17 (c) The Commissioner may retain, at the assuming company's expense,
18 attorneys, actuaries, accountants, and other experts not otherwise a part of the
19 Commissioner's staff reasonably necessary to assist with an examination under
20 this section. Any persons so retained shall be under the direction and control
21 of the Commissioner and shall act in a purely advisory capacity.

1 ~~(d) Each assuming company that produces records, books, and papers for~~
2 ~~examination under this section shall pay the expense of such examination.~~

3 § 7118. APPLICABLE LAWS

4 (a) Chapter 157 (transfer and novation of insurance contracts) of this title
5 shall not apply to any legacy insurance transfer under this chapter.

6 (b) In the event of any conflict between a provision of this chapter and any
7 other provision of this title, such provision of this chapter shall control.

8 (c) A proposed legacy insurance transfer shall be a “contested case” under
9 3 V.S.A. chapter 25, except that a “party” shall be limited as defined in
10 subdivision 7111(15) of this chapter.

11 § 7119. ASSUMING COMPANY; BOARD; PRINCIPAL PLACE OF
12 BUSINESS; REGISTERED AGENT

13 No assuming company shall be a party to a legacy insurance transfer under
14 this chapter unless:

15 (1) its board of directors or committee of managers holds at least one
16 meeting each year in this State;

17 (2) it maintains its principal place of business in this State; and

18 (3) it appoints a registered agent to accept service of process and to
19 otherwise act on its behalf in this State; provided that whenever such registered
20 agent cannot with reasonable diligence be found at the registered office of the

1 ~~assuming company, the Secretary of State shall be an agent of such assuming~~
2 company upon whom any process, notice, or demand may be served.

3 § 7120. POSTING OF PLANS ON WEBSITE

4 The Commissioner shall require that all plans filed with the Department are
5 posted on the Department's website, along with any other notice or other
6 information the Commissioner deems appropriate, excluding any information
7 designated as confidential under subsection 7112(c) of this chapter.

8 § 7121. REGULATION OF ASSUMING COMPANIES AND SERVICE

9 PROVIDERS

10 (a) An assuming company shall be subject to all rules adopted by the
11 Commissioner under this chapter and also shall be subject to:

12 (1) chapter 145 (supervision, rehabilitation, and liquidation of insurers)
13 of this title;

14 (2) the market conduct and unfair trade practices provisions of
15 chapter 129 (insurance trade practices) of this title, as deemed applicable by
16 the Commissioner; and

17 (3) in addition to the initial transfer tax required under subsection
18 7116(b) of this chapter, an annual renewal fee of \$300.00.

19 (b) An assuming company shall not be subject to the requirements of
20 chapter 101, subchapter 9 (property and casualty insurance guaranty
21 association) of this title.

1 ~~(e) The Commissioner may adopt rules regarding the provision of services~~
2 ~~to an assuming company by persons other than any director, officer, or~~
3 ~~employee of the assuming company with respect to the administration of~~
4 ~~policies and reinsurance agreements assumed by the assuming company under~~
5 ~~a legacy insurance transfer, including licensing or other requirements.~~

6 ~~(d) The Commissioner may adopt any other rules necessary or appropriate~~
7 ~~to carry out the provisions of this chapter.~~

8 Sec. 9. EFFECTIVE DATE

9 ~~This act shall take effect on July 1, 2014.~~

~~*** One-Stop Shop Business Portal ***~~

~~Sec. 1. ONE STOP SHOP WEB PORTAL~~

~~(a) In order to simplify the process for business creation and growth, the~~
~~Office of the Secretary of State, Department of Taxes, Department of Labor,~~
~~the Vermont Attorney General, the Agency of Commerce and Community~~
~~Development, and the Agency of Administration have formed a Business Portal~~
~~Committee to create an online "one-stop shop" for business registration,~~
~~business entity creation, and registration compliance.~~

~~(b) On or before January 15, 2015, the Business Portal Committee shall~~
~~report to the Senate Committee on Economic Development, Housing and~~
~~General Affairs and the House Committee on Commerce and Economic~~
~~Development to inform the committees of the status of the project and a~~
~~timeline for its completion.~~

~~*** Vermont Entrepreneurial Lending Program;
Vermont Entrepreneurial Investment Tax Credit ***~~

~~Sec. 2. 10 V.S.A. chapter 12 is amended to read:~~

~~CHAPTER 12. VERMONT ECONOMIC DEVELOPMENT
AUTHORITY~~

~~***~~

~~Subchapter 12. Technology Loan Vermont Entrepreneurial Lending
Program~~

~~§ 280aa. FINDINGS AND PURPOSE~~

~~(a)(1) Technology-based companies Vermont-based seed, start-up, and early growth-stage businesses are a vital source of innovation, employment, and economic growth in Vermont. The continued development and success of this increasingly important sector of Vermont's economy these businesses is dependent upon the availability of flexible, risk-based capital.~~

~~(2) Because the primary assets of technology-based companies sometimes seed, start-up, and early growth-stage businesses often consist almost entirely of intellectual property or insufficient tangible assets to support conventional lending, such these companies frequently do not have access to conventional means of raising capital, such as asset-based bank financing.~~

~~(b) To support the growth of technology-based companies seed, start-up, and early growth-stage businesses and the resultant creation of high-wage employment in Vermont, a technology loan program is established under this subchapter the General Assembly hereby creates in this subchapter the Vermont Entrepreneurial Lending Program to support the growth and development of seed, start-up, and early growth-stage businesses.~~

~~§ 280bb. TECHNOLOGY LOAN VERMONT ENTREPRENEURIAL LENDING PROGRAM~~

~~(a) There is created a technology (TECH) loan program the Vermont Entrepreneurial Lending Program to be administered by the Vermont economic development authority Economic Development Authority. The program Program shall seek to meet the working capital and capital-asset financing needs of technology-based companies start-up, early stage, and early growth-stage businesses in Vermont. The Program shall specifically seek to fulfill capital requirement needs that are unmet in Vermont, including:~~

~~(1) loans up to \$100,000.00 for manufacturing businesses with innovative products that typically reflect long-term growth;~~

~~(2) loans from \$250,000.00 through \$1,000,000.00 to early growth-stage companies who do not meet the current underwriting criteria of other public and private lending institutions; and~~

~~(3) loans to businesses that are unable to access adequate capital resources because the primary assets of these businesses are typically intellectual property or similar nontangible assets.~~

~~(b) The economic development authority Authority shall establish such adopt regulations, policies, and procedures for the program Program as are necessary to carry out the purposes of this subchapter. The authority's lending criteria shall include consideration of in-state competition and whether a company has made reasonable efforts to secure capital in the~~

~~private sector increase the amount of investment funds available to Vermont businesses whose capital requirements are not being met by conventional lending sources.~~

~~(c) When considering entrepreneurial lending through the Program, the Authority shall give additional consideration and weight to an application of a business whose business model and practices will have a demonstrable effect in achieving other public policy goals of the State, including:~~

~~(1) The business will create jobs in strategic sectors such as the knowledge-based economy, renewable energy, advanced manufacturing, wood products manufacturing, and value-added agricultural processing.~~

~~(2) The business is located in a designated downtown, village center, growth center, or other significant geographic location recognized by the State.~~

~~(3) The business adopts energy and thermal efficiency practices in its operations or otherwise operates in a way that reflects a commitment to green energy principles.~~

~~(4) The business will create jobs that pay a livable wage and significant benefits to Vermont employees.~~

~~(d) The Authority shall include provisions in the terms of an entrepreneurial loan made under the Program to ensure that an entrepreneurial loan recipient shall maintain operations within the State for a minimum of five years from the date on which the recipient receives the entrepreneurial loan funds from the Authority.~~

~~***~~

~~Sec. 3. VERMONT ENTREPRENEURIAL LENDING PROGRAM; LOAN LOSS RESERVE FUNDS; CAPITALIZATION; PRIVATE CAPITAL; APPROPRIATION~~

~~(a) The Vermont Economic Development Authority shall capitalize loan loss reserves for the Vermont Entrepreneurial Lending Program created in 10 V.S.A. § 280bb with up to \$1,000,000.00 from Authority funds or eligible federal funds currently administered by the Authority.~~

~~(b) The Vermont Economic Development Authority shall use the funds allocated to the Program, as referenced in subsection (a) of this section, solely for the purpose of establishing and maintaining loan loss reserves to guarantee entrepreneurial loans.~~

~~Sec. 4. 32 V.S.A. § 5930zz is added to read:~~

~~§ 5930zz. VERMONT ENTREPRENEURIAL INVESTMENT TAX
CREDITS~~

~~(a) A person may receive a credit against his or her income tax imposed by this chapter in an amount equal to 35 percent of his or her direct investment in a Vermont-domiciled business that had gross revenues in the preceding 12 months of less than \$3,000,000.00.~~

~~(b) A person who owns or controls 50.1 percent or more of the business and members of his or her immediate family or household are not eligible for the credit under this section.~~

~~(c)(1) A person may claim no more than 25 percent of the amount of a credit under this section in a single tax year and may not use the credit to reduce the amount of tax due under this chapter by more than 50 percent of the person's liability in a taxable year.~~

~~(2) A person may carry forward any unused portion of a credit for five additional years beyond the year in which an eligible investment was made.~~

~~(d) A person who makes a direct investment and thereby qualifies for a credit pursuant to this section shall not have a right to receive a return of the person's investment for a period of five years; provided, however, that the investor may have the right to receive stock options, warrants, or other forms of return that are not in the nature of return of principal.~~

~~(e) A person that receives an investment that qualifies for a credit pursuant to this section shall annually report to the Department of Taxes the total number and amounts of investments received, the number of employees, the number of jobs created and retained, annual payroll, total sales revenue in the 12 months preceding the date of the report, and any additional information required by the Department.~~

~~(f) The total value of credits awarded pursuant to this section shall not exceed \$6,000,000.00.~~

Sec. 4. [DELETED]

* * * Electricity Rates for Businesses * * *

Sec. 5. COMMISSIONER OF PUBLIC SERVICE STUDY; BUSINESS
ELECTRICITY RATES

~~(a) The Commissioner of Public Service, in consultation with the Public Service Board and the Secretary of Commerce and Community Development, shall conduct a study of how best to advance the public good through consideration of the competitiveness of Vermont's energy-intensive businesses~~

~~with regard to electricity costs. As used in this section, "energy intensive business" or "business" means a manufacturer, a business that uses 1,000 MWh or more of electricity per year, or a business that meets another energy threshold deemed more appropriate by the Commissioner.~~

~~(b) In conducting the study required by this section, the Commissioner shall consider:~~

~~(1) how best to incorporate into rate design proceedings the impact of electricity costs on business competitiveness and the identification of the costs of service incurred by businesses;~~

~~(2) with regard to the energy efficiency programs established under 30 V.S.A. § 209, potential changes to their delivery, funding, financing, and participation requirements;~~

~~(3) the history and outcome of any evaluations of the Energy Savings Account or Customer Credit programs, as well as best practices for customer self-directed energy efficiency programs;~~

~~(4) the history and outcome of any evaluations of retail choice programs or policies, as they relate to business competitiveness, that have been undertaken in Vermont and in other jurisdictions;~~

~~(5) any other programs or policies the Commissioner deems relevant; and~~

~~(6) whether and to what extent any programs or policies considered by the Commissioner under this section would impose cost shifts onto other customers, result in stranded costs (costs that cannot be recovered by a regulated utility due to a change in regulatory structure or policy), or conflict with renewable energy requirements in Vermont and, if so, whether such programs or policies would nonetheless promote the public good.~~

~~(c) In conducting the study required by this section, the Commissioner shall provide the following persons and entities an opportunity for written and oral comments:~~

~~(1) consumer and business advocacy groups;~~

~~(2) regional development corporations; and~~

~~(3) any other person or entity as determined by the Commissioner.~~

~~(d) On or before December 15, 2014, the Commissioner shall provide a status report to the General Assembly of his or her findings ~~and recommendations~~ regarding regulatory or statutory changes that would reduce electric energy costs for Vermont businesses and promote the public good. On~~

~~or before December 15, 2015, the Commissioner shall provide a final report to the General Assembly of such findings and recommendations.~~

~~*** Domestic Export Program ***~~

~~Sec. 6. DOMESTIC MARKET ACCESS PROGRAM FOR VERMONT AGRICULTURE AND FOREST PRODUCTS~~

~~(a) The Secretary of Agriculture, Food and Markets, in collaboration with the Agency of Commerce and Community Development and the Chief Marketing Officer, shall create a Domestic Export Program Pilot Project within the "Made in Vermont" designation program, the purpose of which shall be to:~~

~~(1) connect Vermont producers with brokers, buyers, and distributors in other U.S. state and regional markets;~~

~~(2) provide technical and marketing assistance to Vermont producers to convert these connections into increased sales and sustainable commercial relationships; and~~

~~(3) provide matching grants of up to \$2,000.00 per business per year to attend trade shows and similar events to expand producers' market presence in other U.S. states.~~

~~(b) There is appropriated in Fiscal Year 2015 from the General Fund to the Agency of Agriculture, Food and Markets the amount of \$75,000.00 to implement the provisions of this section.~~

~~Sec. 6. DOMESTIC MARKET ACCESS PROGRAM FOR VERMONT AGRICULTURE AND FOREST PRODUCTS~~

~~The Secretary of Agriculture, Food and Markets, in collaboration with the Agency of Commerce and Community Development and the Chief Marketing Officer, may create a Domestic Export Program Pilot Project within the "Made in Vermont" designation program, the purpose of which shall be to connect Vermont producers with brokers, buyers, and distributors in other U.S. state and regional markets, and to provide technical and marketing assistance to Vermont producers to convert these connections into increased sales and sustainable commercial relationships.~~

~~*** Cloud Tax ***~~

~~Sec. 7. SALES TAX ON PREWRITTEN SOFTWARE DOES NOT APPLY TO REMOTELY ACCESSED SOFTWARE~~

~~(a) The imposition of sales and use tax on prewritten computer software by 32 V.S.A. chapter 233 shall not apply to charges for remotely accessed software made after December 31, 2006.~~

~~(b) In this section, "charges for remotely accessed software" means charges for the right to access and use prewritten software run on underlying infrastructure that is not managed or controlled by the consumer. The term "charges for remotely accessed software" does not include charges for the right to access and use prewritten software that is also commercially available in a tangible form.~~

~~(c) Enforcement of the sales and use tax imposed on the purchase of specified digital products pursuant to 32 V.S.A. § 9771(8) is not affected by this section.~~

Sec. 7. [DELETED]

** * * Criminal Penalties for Computer Crimes * * **

Sec. 8. 13 V.S.A. chapter 87 is amended to read:

CHAPTER 87. COMPUTER CRIMES

** * **

§ 4104. ALTERATION, DAMAGE, OR INTERFERENCE

(a) A person shall not intentionally and without lawful authority, alter, damage, or interfere with the operation of any computer, computer system, computer network, computer software, computer program, or data contained in such computer, computer system, computer program, or computer network.

(b) Penalties. A person convicted of violating this section shall be:

(1) if the damage or loss does not exceed \$500.00 for a first offense, imprisoned not more than one year or fined not more than ~~\$500.00~~ \$5,000.00, or both;

(2) if the damage or loss does not exceed \$500.00 for a second or subsequent offense, imprisoned not more than two years or fined not more than ~~\$1,000.00~~ \$10,000.00, or both; or

(3) if the damage or loss exceeds \$500.00, imprisoned not more than 10 years or fined not more than ~~\$10,000.00~~ \$100,000.00, or both.

§ 4105. THEFT OR DESTRUCTION

(a)(1) A person shall not intentionally and without claim of right deprive the owner of possession, take, transfer, copy, conceal, or retain possession of, or intentionally and without lawful authority, destroy any computer system, computer network, computer software, computer program, or data contained in such computer, computer system, computer program, or computer network.

(2) Copying a commercially available computer program or computer software is not a crime under this section, provided that the computer program

~~and computer software has a retail value of \$500.00 or less and is not copied for resale.~~

~~(b) Penalties. A person convicted of violating this section shall be:~~

~~(1) if the damage or loss does not exceed \$500.00 for a first offense, imprisoned not more than one year or fined not more than ~~\$500.00~~ \$5,000.00, or both;~~

~~(2) if the damage or loss does not exceed \$500.00 for a second or subsequent offense, imprisoned not more than two years or fined not more than ~~\$1,000.00~~ \$10,000.00, or both; or~~

~~(3) if the damage or loss exceeds \$500.00, imprisoned not more than 10 years or fined not more than ~~\$10,000.00~~ \$100,000.00, or both.~~

~~§ 4106. CIVIL LIABILITY~~

~~A person damaged as a result of a violation of this chapter may bring a civil action against the violator for damages, costs, and fees, including reasonable attorney's fees, and such other relief as the court deems appropriate.~~

~~***~~

~~*** Statute of Limitations to Commence Action
for Misappropriation of Trade Secrets ***~~

~~Sec. 9. 12 V.S.A. § 523 is amended to read:~~

~~§ 523. TRADE SECRETS~~

~~An action for misappropriation of trade secrets under 9 V.S.A. chapter 143 of Title 9 shall be commenced within ~~three~~ five years after the cause of action accrues, and not after. The cause of action shall be deemed to accrue as of the date the misappropriation was discovered or reasonably should have been discovered.~~

~~*** Protection of Trade Secrets ***~~

~~Sec. 10. 9 V.S.A. chapter 143 is amended to read:~~

~~CHAPTER 143. TRADE SECRETS~~

~~§ 4601. DEFINITIONS~~

~~As used in this chapter:~~

~~(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.~~

~~(2) "Misappropriation" means:~~

~~(A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or~~

~~(B) disclosure or use of a trade secret of another without express or implied consent by a person who:~~

~~(i) used improper means to acquire knowledge of the trade secret; or~~

~~(ii) at the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was:~~

~~(I) derived from or through a person who had utilized improper means to acquire it;~~

~~(II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or~~

~~(III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or~~

~~(iii) before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.~~

~~(3) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:~~

~~(A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and~~

~~(B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.~~

~~§ 4602. INJUNCTIVE RELIEF~~

~~(a) ~~Actual~~ A court may enjoin actual or threatened misappropriation ~~may be enjoined~~ of a trade secret. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.~~

~~(b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include ~~but are not limited to~~, a material and prejudicial change of position prior to~~

~~acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.~~

~~(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.~~

~~§ 4603. DAMAGES~~

~~(a)(1) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation.~~

~~(2) Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss.~~

~~(3) In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.~~

~~(4) A court shall award a successful complainant his or her costs and fees, including reasonable attorney's fees, arising from a misappropriation of the complainant's trade secret.~~

~~(b) If malicious misappropriation exists, the court may award punitive damages.~~

~~§ 4605. PRESERVATION OF SECRECY~~

~~In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.~~

~~§ 4607. EFFECT ON OTHER LAW~~

~~(a) Except as provided in subsection (b) of this section, this chapter displaces conflicting tort, restitutionary, and any other law of this ~~state~~ State providing civil remedies for misappropriation of a trade secret.~~

~~(b) This chapter does not affect:~~

~~(1) contractual remedies, whether or not based upon misappropriation of a trade secret;~~

~~(2) other civil remedies that are not based upon misappropriation of a trade secret; or~~

~~(3) criminal remedies, whether or not based upon misappropriation of a trade secret.~~

~~***~~

~~*** Technology Businesses and Government
Contracting ***~~

~~Sec. 11. 3 V.S.A. § 346 is added to read:~~

~~§ 346. STATE CONTRACTING; INTELLECTUAL PROPERTY,
SOFTWARE DESIGN, AND INFORMATION TECHNOLOGY~~

~~(a) The Secretary of Administration shall include in Administrative Bulletin 3.5 a policy direction applicable to State procurement contracts that include services for the development of software applications, computer coding, or other intellectual property, which would allow the State of Vermont to grant permission to the contractor to use the intellectual property created under the contract for the contractor's commercial purposes.~~

~~(b) The Secretary may recommend contract provisions that authorize the State to negotiate with a contractor to secure license terms and license fees, royalty rights, or other payment mechanism for the contractor's commercial use of intellectual property developed under a State contract.~~

~~(c) If the Secretary authorizes a contractor to own intellectual property developed under a State contract, the Secretary shall recommend language to ensure the State retains a perpetual, irrevocable, royalty-free, and fully paid right to continue to use the intellectual property.~~

~~*** Study; Commercial Lenders ***~~

~~Sec. 12. STUDY; DEPARTMENT OF FINANCIAL REGULATION;
LICENSED LENDER REQUIREMENTS; COMMERCIAL
LENDERS~~

~~On or before January 15, 2015, the Department of Financial Regulation shall evaluate and report to the House Committee on Commerce and Economic Development and to the Senate Committees on Finance and on Economic Development, Housing and General Affairs any statutory and regulatory changes to the State's licensed lender requirements that are necessary to open private capital markets and remove unnecessary barriers to business investment in Vermont.~~

~~*** Tourism Funding; Study ***~~

~~Sec. 13. TOURISM FUNDING; PILOT PROJECT STUDY~~

~~On or before January 15, 2015, the Secretary of Commerce and Community Development shall submit to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs a report that analyzes the results of the performance-based funding pilot project for the Department of Tourism and Marketing and recommends appropriate legislative or administrative changes to the funding mechanism for tourism and marketing programs.~~

~~*** Land Use; Housing; Industrial Development ***~~

~~Sec. 14. 10 V.S.A. § 238 is added to read:~~

~~§ 238. AVAILABILITY OF LOANS AND ASSISTANCE FOR INDUSTRIAL PARKS~~

~~Notwithstanding any provision of this chapter to the contrary, the developer of a project in an industrial park permitted under chapter 151 of this title shall have access to the loans and assistance available to a local development corporation from the Vermont Economic Development Authority for the creation or improvement of industrial parks under this subchapter.~~

~~Sec. 15. 3 V.S.A. § 2875 is added to read.~~

~~§ 2875. ASSISTANCE FROM THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT~~

~~The developer of a project in an industrial park permitted under 10 V.S.A. chapter 151 shall have access to:~~

~~(1) site planning assistance from the Department of Housing and Community Development in an amount up to 25 percent of the project cost; and~~

~~(2) financing of up to 25 percent of site acquisition and infrastructure development costs from the Department of Housing and Community Development through grants, loans, or other mechanisms as determined by the Commissioner of Housing and Community Development in the Commissioner's discretion.~~

~~Sec. 15. [DELETED]~~

~~Sec. 16. 10 V.S.A. § 6001(35) is added to read.~~

~~(35) "Industrial park" means an area of land permitted under this chapter that is planned, designed, and zoned as a location for one or more industrial buildings, that includes adequate access roads, utilities, water,~~

~~sewer, and other services necessary for the uses of the industrial buildings, and includes no retail use except that which is incidental to an industrial use or office use, except that which is incidental or secondary to an industrial use.~~

Sec. 16. 10 V.S.A. § 6001(35) is added to read:

~~(35) "Industrial park" means an area of land permitted under this chapter that is planned, designed, and zoned as a location for one or more industrial buildings, that includes adequate access roads, utilities, water, sewer, and other services necessary for the uses of the industrial buildings, and includes no retail use except that which is incidental to an industrial use, and no office use except that which is incidental or secondary to an industrial use.~~

Sec. 17. REVIEW OF MASTER PLAN POLICY

~~On or before January 1, 2015, the Natural Resources Board shall review its master plan policy and commence the policy's adoption as a rule. The proposed rule shall include provisions for efficient master plan permitting and master plan permit amendments for industrial parks. The Board shall consult with affected parties when developing the proposed rule.~~

~~*** Primary Agricultural Soils; Industrial Parks ***~~

Sec. 18. 10 V.S.A. § 6093(a)(4) is amended to read:

~~(4) Industrial parks.~~

~~(A) Notwithstanding any provision of this chapter to the contrary, a conversion of primary agricultural soils located in an industrial park—as defined in subdivision 212(7) of this title and permitted under this chapter and in existence as of January 1, 2006, shall be allowed to pay a mitigation fee computed according to the provisions of subdivision (1) of this subsection, except that it shall be entitled to a ratio of 1:1, protected acres to acres of affected primary agricultural soil. If an industrial park is developed to the fullest extent before any expansion, this ratio shall apply to any contiguous expansion of such an industrial park that totals no more than 25 percent of the area of the park or no more than 10 acres, whichever is larger; provided any expansion based on percentage does not exceed 50 acres. Any expansion larger than that described in this subdivision shall be subject to the mitigation provisions of this subsection at ratios that depend upon the location of the expansion.~~

~~(B) In any application to a district commission for expansion of District Commission to amend a permit for an existing industrial park, compact development patterns shall be encouraged that assure the most efficient and full use of land and the realization of maximum economic development potential through appropriate densities, taking into account any~~

~~long-term needs for project expansion within the industrial park shall be allowed consistent with all applicable criteria of subsection 6086(a) of this title. Industrial park expansions and industrial park infill shall not be subject to requirements established in subdivision 6086(a)(9)(B)(iii) of this title, nor to requirements established in subdivision 6086(a)(9)(C)(iii).~~

~~(B) In any application to a district commission for expansion of District Commission to amend a permit for an existing industrial park, compact development patterns shall be encouraged that assure the most efficient and full use of land and the realization of maximum economic development potential through appropriate densities shall be allowed consistent with all applicable criteria of subsection 6086(a) of this title. Industrial park expansions and industrial park infill shall not be subject to requirements established in subdivision 6086(a)(9)(B)(iii) of this title, nor to requirements established in subdivision 6086(a)(9)(C)(iii).~~

~~*** Affordable Housing ***~~

~~Sec. 19. 10 V.S.A. § 6001 is amended to read:~~

~~§ 6001. DEFINITIONS~~

~~In this chapter:~~

~~***~~

~~(3)(A) "Development" means each of the following:~~

~~***~~

~~(iv) The construction of housing projects such as cooperatives, condominiums, or dwellings, or construction or maintenance of mobile homes or trailer mobile home parks, with 10 or more units, constructed or maintained on a tract or tracts of land, owned or controlled by a person, within a radius of five miles of any point on any involved land, and within any continuous period of five years. However:~~

~~(I) A priority housing project shall constitute a development under this subdivision (iv) only if the number of housing units in the project is:~~

~~(aa) 275 or more, in a municipality with a population of 15,000 or more;~~

~~(bb) 150 or more, in a municipality with a population of 10,000 or more but less than 15,000;~~

~~(cc) 75 or more, in a municipality with a population of 6,000 or more but less than 10,000.~~

~~(dd) 50 or more, in a municipality with a population of 3,000 or more but less than 6,000;~~

~~(ee) 25 or more, in a municipality with a population of less than 3,000; and~~

~~(ff) notwithstanding subdivisions (aa) through (ee) of this subdivision (iv)(I), 10 or more if the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the State or National Register of Historic Places. However, demolition shall not be considered to create jurisdiction under this subdivision if the Division for Historic Preservation has determined the proposed demolition will have no adverse effect; no adverse effect provided that specified conditions are met; or will have an adverse effect but that adverse effect will be adequately mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document.~~

~~(II) The determination of jurisdiction over a priority housing project shall count only the housing units included in that discrete project.~~

~~(III) Housing units in a priority housing project shall not count toward determining jurisdiction over any other project.~~

~~* * *~~

~~(B)(i) Smart Growth Jurisdictional Thresholds. Notwithstanding the provisions of subdivision (3)(A) of this section, if a project consists exclusively of mixed income housing or mixed use, or any combination thereof, and is located entirely within a growth center designated pursuant to 24 V.S.A. 2793e or, entirely within a downtown development district designated pursuant to 24 V.S.A. § 2793, "development" means:~~

~~(I) Construction of mixed income housing with 200 or more housing units or a mixed use project with 200 or more housing units, in a municipality with a population of 15,000 or more.~~

~~(II) Construction of mixed income housing with 100 or more housing units or a mixed use project with 100 or more housing units, in a municipality with a population of 10,000 or more but less than 15,000.~~

~~(III) Construction of mixed income housing with 50 or more housing units or a mixed use project with 50 or more housing units, in a municipality with a population of 6,000 or more and less than 10,000.~~

~~(IV) Construction of mixed income housing with 30 or more housing units or a mixed use project with 30 or more housing units, in a municipality with a population of 3,000 or more but less than 6,000.~~

~~(V) Construction of mixed income housing with 25 or more housing units or a mixed use project with 25 or more housing units, in a municipality with a population of less than 3,000.~~

~~(VI) Historic Buildings. Construction of 10 or more units of mixed income housing or a mixed use project with 10 or more housing units where if the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the State or National Register of Historic Places. However, demolition shall not be considered to create jurisdiction under this subdivision if the Division for Historic Preservation has determined the proposed demolition will have: no adverse effect; no adverse effect provided that specified conditions are met; or, will have an adverse effect, but that adverse effect will be adequately mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document.~~

~~(ii) Mixed Income Housing Jurisdictional Thresholds. Notwithstanding the provisions of subdivision (3)(A) of this section, if a project consists exclusively of mixed income housing and is located entirely within a Vermont neighborhood designated pursuant to 24 V.S.A. § 2793d or a neighborhood development area as defined in 24 V.S.A. § 2791(16); "development" means:~~

~~(I) Construction of mixed income housing with 200 or more housing units, in a municipality with a population of 15,000 or more.~~

~~(II) Construction of mixed income housing with 100 or more housing units, in a municipality with a population of 10,000 or more but less than 15,000.~~

~~(III) Construction of mixed income housing with 50 or more housing units, in a municipality with a population of 6,000 or more and less than 10,000.~~

~~(IV) Construction of mixed income housing with 30 or more housing units, in a municipality with a population of 3,000 or more but less than 6,000.~~

~~(V) Construction of mixed income housing with 25 or more housing units, in a municipality with a population of less than 3,000.~~

~~(VI) Historic Buildings. Construction of 10 or more units of mixed income housing where the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the State or National Register of Historic Places. However, demolition shall not be considered to create jurisdiction under this subdivision if the Division for Historic Preservation has determined the proposed demolition will have: no~~

~~adverse effect; no adverse effect provided that specified conditions are met; or will have an adverse effect, but that adverse effect will be adequately mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document. [Repealed.]~~

~~(C) For the purposes of determining jurisdiction under subdivisions subdivision (3)(A) and (3)(B) of this section, the following shall apply:~~

~~(i) Incentive for Growth Inside Designated Areas. Notwithstanding subdivision (3)(A)(iv) of this section, housing units constructed by a person partially or completely outside a designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area shall not be counted to determine jurisdiction over housing units constructed by that person entirely within a designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area. [Repealed.]~~

~~(ii) Five Year, Five Mile Radius Jurisdiction Analysis. Within any continuous period of five years, housing units constructed by a person entirely within a designated downtown district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area shall be counted together with housing units constructed by that person partially or completely outside a designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area to determine jurisdiction over the housing units constructed by a person partially or completely outside the designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area and within a five-mile radius in accordance with subdivision (3)(A)(iv) of this section. [Repealed.]~~

~~(iii) Discrete Housing Projects in Designated Areas and Exclusive Counting for Housing Units. Notwithstanding subdivisions (3)(A)(iv) and (19) of this section, jurisdiction shall be determined exclusively by counting housing units constructed by a person within a designated downtown development district, designated growth center, designated Vermont neighborhood, or designated neighborhood development area, provided that the housing units are part of a discrete project located on a single tract or multiple contiguous tracts of land. [Repealed.]~~

~~***~~

~~(27) "Mixed income housing" means a housing project in which the following apply:~~

~~(A) *Owner occupied housing.* At the option of the applicant, owner-occupied housing may be characterized by either of the following:~~

~~(i) *at least 15 percent of the housing units have a purchase price which at the time of first sale does not exceed 85 percent of the new construction, targeted area purchase price limits established and published annually by the Vermont Housing Finance Agency; or*~~

~~(ii) *at least 20 percent of the housing units have a purchase price which at the time of first sale does not exceed 90 percent of the new construction, targeted area purchase price limits established and published annually by the Vermont Housing Finance Agency;*~~

~~(B) *Affordable Rental Housing.* At least 20 percent of the housing units that is are rented by the occupants whose gross annual household income does not exceed 60 percent of the county median income, or 60 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development for use with the Housing Credit Program under Section 42(g) of the Internal Revenue Code, and the total annual cost of the housing, as defined at Section 42(g)(2)(B), is not more than 30 percent of the gross annual household income as defined at Section 42(g)(2)(C), and with constitute affordable housing and have a duration of affordability of no less than ~~30~~ 20 years.~~

~~(28) *“Mixed use” means construction of both mixed income housing and construction of space for any combination of retail, office, services, artisan, and recreational and community facilities, provided at least 40 percent of the gross floor area of the buildings involved is mixed income housing. “Mixed use” does not include industrial use.*~~

~~(29) *“Affordable housing” means either of the following:*~~

~~(A) *Housing that is owned by its occupants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes, insurance, and condominium association fees, is not more than 30 percent of the gross annual household income.*~~

~~(B) *Housing that is rented by the occupants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States*~~

~~Department of Housing and Urban Development, and the total annual cost of the housing, including rent, utilities, and condominium association fees, is not more than 30 percent of the gross annual household income.~~

~~***~~

~~(36) "Priority housing project" means a discrete project located on a single tract or multiple contiguous tracts of land that consists exclusively of:~~

~~(A) mixed income housing or mixed use, or any combination thereof, and is located entirely within a designated downtown development district, designated growth center, or designated village center that is also a designated neighborhood development area under 24 V.S.A. chapter 76A; or~~

~~(B) mixed income housing and is located entirely within a designated Vermont neighborhood or designated neighborhood development area under 24 V.S.A. chapter 76A.~~

~~***~~

~~*** Credit Facility for Vermont Clean Energy Loan Fund ***~~

~~Sec. 20. 2013 Acts and Resolves No. 87, Sec. 8 is amended to read:~~

~~Sec. 8. INVESTMENT OF STATE MONIES~~

~~The Treasurer is hereby authorized to establish a ~~short-term~~ credit facility for the benefit of the Vermont Economic Development Authority in an amount of up to \$10,000,000.00.~~

~~*** Licensed Lender Requirements; Exemption for De Minimis Lending Activity ***~~

~~Sec. 21. 8 V.S.A. § 2201 is amended to read:~~

~~2201. LICENSES REQUIRED~~

~~(a) No person shall without first obtaining a license under this chapter from the ~~commissioner~~ Commissioner:~~

~~(1) engage in the business of making loans of money, credit, goods, or things in action and charge, contract for, or receive on any such loan interest, a finance charge, discount, or consideration ~~therefore~~ therefor;~~

~~(2) act as a mortgage broker;~~

~~(3) engage in the business of a mortgage loan originator; or~~

~~(4) act as a sales finance company.~~

~~(b) Each licensed mortgage loan originator must register with and maintain a valid unique identifier with the Nationwide Mortgage Licensing System and Registry and must be either:~~

~~(1) an employee actively employed at a licensed location of, and supervised and sponsored by, only one licensed lender or licensed mortgage broker operating in this ~~state~~ State;~~

~~(2) an individual sole proprietor who is also a licensed lender or licensed mortgage broker; or~~

~~(3) an employee engaged in loan modifications employed at a licensed location of, and supervised and sponsored by, only one third-party loan servicer licensed to operate in this ~~state~~ State pursuant to chapter 85 of this title. ~~For purposes of As used in~~ this subsection, "loan modification" means an adjustment or compromise of an existing residential mortgage loan. The term "loan modification" does not include a refinancing transaction.~~

~~(c) A person licensed pursuant to subdivision (a)(1) of this section may engage in mortgage brokerage and sales finance if such person informs the ~~commissioner~~ Commissioner in advance that he or she intends to engage in sales finance and mortgage brokerage. Such person shall inform the ~~commissioner~~ Commissioner of his or her intention on the original license application under section 2202 of this title, any renewal application under section 2209 of this title, or pursuant to section 2208 of this title, and shall pay the applicable fees required by subsection 2202(b) of this title for a mortgage broker license or sales finance company license.~~

~~(d) No lender license, mortgage broker license, or sales finance company license shall be required of:~~

~~(1) a ~~state~~ State agency, political subdivision, or other public instrumentality of the ~~state~~ State;~~

~~(2) a federal agency or other public instrumentality of the United States;~~

~~(3) a gas or electric utility subject to the jurisdiction of the ~~public service board~~ Public Service Board engaging in energy conservation or safety loans;~~

~~(4) a depository institution or a financial institution as defined in 8 V.S.A. § 11101(32);~~

~~(5) a pawnbroker;~~

~~(6) an insurance company;~~

~~(7) a seller of goods or services that finances the sale of such goods or services, other than a residential mortgage loan;~~

~~(8) any individual who offers or negotiates the terms of a residential mortgage loan secured by a dwelling that served as the individual's residence, including a vacation home, or inherited property that served as the deceased's~~

~~dwelling, provided that the individual does not act as a mortgage loan originator or provide financing for such sales so frequently and under such circumstances that it constitutes a habitual activity and acting in a commercial context;~~

~~(9) lenders that conduct their lending activities, other than residential mortgage loan activities, through revolving loan funds, that are nonprofit organizations exempt from taxation under Section 501(c) of the Internal Revenue Code, 26 U.S.C. § 501(c), and that register with the ~~commissioner of economic development~~ Commissioner of Economic Development under 10 V.S.A. § 690a;~~

~~(10) persons who lend, other than residential mortgage loans, an aggregate of less than \$75,000.00 in any one year at rates of interest of no more than 12 percent per annum;~~

~~(11) a seller who, pursuant to 9 V.S.A. § 2355(f)(1)(D), includes the amount paid or to be paid by the seller to discharge a security interest, lien interest, or lease interest on the traded-in motor vehicle in a motor vehicle retail installment sales contract, provided that the contract is purchased, assigned, or otherwise acquired by a sales finance company licensed pursuant to this title to purchase motor vehicle retail installment sales contracts or a depository institution;~~

~~(12)(A) a person making an unsecured commercial loan, which loan is expressly subordinate to the prior payment of all senior indebtedness of the commercial borrower regardless of whether such senior indebtedness exists at the time of the loan or arises thereafter. The loan may or may not include the right to convert all or a portion of the amount due on the loan to an equity interest in the commercial borrower;~~

~~(B) ~~for purposes of~~ as used in this subdivision (12), "senior indebtedness" means:~~

~~(i) all indebtedness of the commercial borrower for money borrowed from depository institutions, trust companies, insurance companies, and licensed lenders, and any guarantee thereof; and~~

~~(ii) any other indebtedness of the commercial borrower that the lender and the commercial borrower agree shall constitute senior indebtedness;~~

~~(13) nonprofit organizations established under testamentary instruments, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and which make loans for postsecondary educational costs to students and their parents, provided that the organizations provide annual accountings to the Probate Division of the Superior Court;~~

~~(14) any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;~~

~~(15) a housing finance agency;~~

~~(16) a person who makes no more than three mortgage loans in any consecutive three-year period beginning on or after July 1, 2011.~~

~~(e) No mortgage loan originator license shall be required of:~~

~~(1) Registered mortgage loan originators, when employed by and acting for an entity described in subdivision 2200(22) of this chapter.~~

~~(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.~~

~~(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence, including a vacation home, or inherited property that served as the deceased's dwelling, provided that the individual does not act as a mortgage loan originator or provide financing for such sales so frequently and under such circumstances that it constitutes a habitual activity and acting in a commercial context.~~

~~(4) An individual who is an employee of a federal, ~~state~~ State, or local government agency, or an employee of a housing finance agency, who acts as a mortgage loan originator only pursuant to his or her official duties as an employee of the federal, ~~state~~ State, or local government agency or housing finance agency.~~

~~(5) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator. To the extent an attorney licensed in this State undertakes activities that are covered by the definition of a mortgage loan originator, such activities do not constitute engaging in the business of a mortgage loan originator, provided that:~~

~~(A) such activities are considered by the State governing body responsible for regulating the practice of law to be part of the authorized practice of law within this State;~~

~~(B) such activities are carried out within an attorney-client relationship; and~~

~~(C) the attorney carries them out in compliance with all applicable laws, rules, ethics, and standards.~~

~~(6) A person who makes no more than three mortgage loans in any consecutive three-year period beginning on or after July 1, 2011~~

~~(f) If a person who offers or negotiates the terms of a mortgage loan is exempt from licensure pursuant to subdivision (d)(16) or (e)(6) of this section, there is a rebuttable presumption that he or she is not engaged in the business of making loans or being a mortgage loan originator.~~

~~(g) Independent contractor loan processors or underwriters. A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a mortgage loan originator license. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.~~

~~(g)(h) This chapter shall not apply to commercial loans of \$1,000,000.00 or more.~~

~~*** Workforce Education and Training ***~~

~~Sec. 22. 10 V.S.A. § 545 is added to read:~~

~~§ 545. WORKFORCE EDUCATION AND TRAINING LEADER~~

~~(a) The Commissioner of Labor shall have the authority to create one full-time position of Workforce Education and Training Leader within the Department.~~

~~(a) The Commissioner of Labor shall have the authority to designate one existing full-time position within the Department as "Workforce Education and Training Leader."~~

~~(b) The Workforce Leader shall have primary authority within State government to conduct an inventory of the workforce education and training activities throughout the State both within State government agencies and departments that perform those activities and with State partners who perform those activities with State funding, and to coordinate those activities to ensure an integrated workforce education and training system throughout the State.~~

~~(c) In conducting the inventory pursuant to subsection (b) of this section, the Workforce Leader shall design and implement a stakeholder engagement process that brings together employers with potential employees, including students, the unemployed, and incumbent employees seeking further training.~~

~~(d) Notwithstanding any provision of State law to the contrary, and to the fullest extent allowed under federal law, the Leader shall ensure that in each State and State-funded workforce education and training program, the program administrator collects and reports individual data and outcomes at the individual level by Social Security Number or equivalent.~~

~~Sec. 23. INTERNSHIP OPPORTUNITIES FOR YOUNG PERSONS~~

~~On or before January 15, 2015, the Commissioner of Labor shall submit to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs a report that details the internship opportunities available to Vermonters between 15 and 18 years of age and recommends one or more means to expand these opportunities through the Vermont Career Internship Program, 10 V.S.A. § 544, or through other appropriate mechanisms.~~

~~*** Vermont Strong Scholars Program ***~~

~~Sec. 24. 16 V.S.A. chapter 90 is redesignated to read:~~

~~CHAPTER 90. FUNDING OF POSTSECONDARY INSTITUTIONS
EDUCATION~~

~~Sec. 25. 16 V.S.A. § 2888 is added to read:~~

~~§ 2888. VERMONT STRONG SCHOLARS PROGRAM~~

~~(a) Program creation. There is created a postsecondary loan forgiveness program to be known as the Vermont Strong Scholars Program designed to forgive a portion of Vermont Student Assistance Corporation (the Corporation) loans in order to encourage Vermonters to select majors that prepare them for jobs that are critical to the Vermont economy, to enroll and remain enrolled in a Vermont postsecondary institution, and to live in Vermont upon graduation.~~

~~(b) Academic majors; projections.~~

~~(1) Annually, on or before November 15, the Secretary of Commerce and Community Development (the Secretary), in consultation with the Vermont State Colleges, the University of Vermont, the Corporation, the Commissioner of Labor, and the Secretary of Education, shall identify eligible postsecondary majors, projecting at least four years into the future, that:~~

~~(A) are offered by the Vermont State Colleges, the University of Vermont, or Vermont independent colleges (the eligible institutions); and~~

~~(B) lead to jobs the Secretary has identified as critical to the Vermont economy.~~

~~(2) The Secretary shall prioritize the identified majors and shall select a similar number of associate's degree and bachelor's degree programs. A major shall be identified as eligible for this Program for no less than two years.~~

~~(3) Based upon the identified majors, the Secretary of Administration shall annually provide the General Assembly with the estimated cost of the Corporation's loan forgiveness awards under the Program during the then-current fiscal year and each of the four following fiscal years.~~

~~(c) Eligibility. An individual shall be eligible for loan forgiveness under this section if he or she:~~

~~(1) was classified as a Vermont resident by the eligible institution from which he or she was graduated;~~

~~(2) is a graduate of an eligible institution;~~

~~(3) shall not hold a prior bachelor's degree;~~

~~(4) was awarded an associate's or bachelor's degree in a field identified pursuant to subsection (b) of this section;~~

~~(5) completed the associate's degree within three years or the bachelor's degree within five years;~~

~~(6) is employed in Vermont in a field or specific position closely related to the identified degree during the period of loan forgiveness; and~~

~~(7) is a Vermont resident throughout the period of loan forgiveness.~~

~~(d) Loan forgiveness.~~

~~(1) An eligible individual shall have his or her postsecondary loan from the Corporation forgiven as follows:~~

~~(A) for an individual awarded an associate's degree by an eligible institution, in an amount equal to the tuition rate for 15 credits at the Community College of Vermont during the individual's final semester of enrollment, to be prorated over the three years following graduation; and~~

~~(B) for an individual awarded a bachelor's degree by an eligible institution, in an amount equal to the in-state tuition rate at the Vermont State Colleges during the individual's final year of enrollment, to be prorated over the five years following graduation;~~

~~(2) Loan forgiveness may be awarded on a prorated basis to an otherwise eligible Vermont resident who transfers to and is graduated from an eligible institution.~~

~~(e) Program management and funding. The Secretary shall develop all organizational details of the Program consistent with the purposes and requirements of this section, including the identification of eligible major programs and eligible jobs. The Secretary may contract with the Corporation for management of the Program. The Secretary may adopt rules pursuant to 3 V.S.A. chapter 25 necessary to implement the Program. The availability and payment of loan forgiveness awards under this section are subject to funding available to the Corporation for the awards.~~

~~(f) Fund creation.~~

~~(1) There is created a special fund to be known as the Vermont Strong Scholars Fund pursuant to 32 V.S.A. chapter 7, subchapter 5. The Fund shall be used and administered solely for the purposes of this section. The Secretary may draw warrants for disbursements from the Fund in anticipation of receipts. Any remaining balance at the end of the fiscal year shall be carried forward in the Fund.~~

~~(2) The Fund shall consist of sums to be identified by the Secretary from any source accepted for the benefit of the Fund and interest earned from the investment of Fund balances.~~

~~Sec. 25a. VERMONT PRODUCTS PROGRAM; STUDY; REPORT~~

~~(a) On or before September 1, 2015, the Agency of Commerce and Community Development, after consulting with appropriate stakeholders, shall report to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on Commerce and Economic Development on creating a Vermont Products Program for the purpose of providing Vermont businesses with a means of promoting and marketing products and services that are manufactured, designed, engineered, or formulated in Vermont and avoiding confusion by consumers when the Vermont brand is used in marketing products or services.~~

~~(b) The report required by this section shall describe the method, feasibility, and cost of creating a Vermont Products Program that includes the following elements:~~

~~(1) The program shall include a licensing system that enables qualifying persons to make marketing claims concerning significant business activities occurring in Vermont, and to self-certify products and services that are manufactured, designed, engineered, or formulated in Vermont. Under this system, the Secretary shall identify and craft branding and marketing guidelines that concern whether and how qualifying products or services manufactured, designed, engineered, or formulated in Vermont can be properly claimed so as to be licensed. The licensing system shall permit an~~

~~applicant to self certify compliance with designated criteria and attest to the accuracy of claims authorized by the Secretary in order to obtain a license to advertise and promote a product or service using the licensed materials.~~

~~(2) The program may charge an annual fee for the issuance of the license.~~

~~(3) The program shall include an on-line application process that permits an applicant to obtain the license if he or she certifies compliance with criteria designated by the Secretary, attests to the accuracy of statements designated by the Secretary, and pays the required fee.~~

~~(4) Licenses issued under the program shall include a provision requiring that disputes regarding the license be resolved by alternative dispute resolution. A person who objects to the issuance of a license may file a complaint with the Secretary, who shall refer it for alternative dispute resolution as provided in the license.~~

~~(5) A special fund, comprising license fees and any monies appropriated by the General Assembly, may be created for the administration and advertising of the program.~~

~~(c) The report required by this section shall include a recommendation as to whether the Vermont Products Program should replace the rules regarding Vermont Origin adopted by the Attorney General.~~

~~Sec. 25. Sec. 26. VERMONT STATE TREASURER; CREDIT FACILITY FOR LOCAL INVESTMENTS~~

~~(a) Notwithstanding any other provision of law to the contrary, the Vermont State Treasurer shall have the authority to establish a credit facility of up to 10 percent of the State's average cash balance on terms acceptable to the Treasurer for purposes established by the Treasurer's Local Investment Advisory Committee.~~

~~(b) The amount authorized in subsection (a) of this section shall include all credit facilities authorized by the General Assembly and established by the Treasurer prior to or subsequent to the effective date of this section, and the renewal or replacement of those credit facilities.~~

~~Sec. 26. Sec. 27. TREASURER'S LOCAL INVESTMENT ADVISORY COMMITTEE; REPORT~~

~~(a) Creation of committee. The Treasurer's Local Investment Advisory Committee (Advisory Committee) is established to advise the Treasurer on funding priorities and address other mechanisms to increase local investment.~~

(b) Membership.

(1) The Advisory Committee shall be composed of six members as follows:

(A) the State Treasurer or designee;

(B) the Chief Executive Officer of the Vermont Economic Development Authority or designee;

(C) the Chief Executive Officer of the Vermont Student Assistance Corporation or designee;

(D) the Executive Director of the Vermont Housing Finance Agency or designee;

(E) the Director of the Municipal Bond Bank or designee; and

(F) the Director of Efficiency Vermont or designee.

(2) The State Treasurer shall be the Chair of the Advisory Committee and shall appoint a vice chair and secretary. The appointed members of the Advisory Committee shall be appointed for terms of six years and shall serve until their successors are appointed and qualified.

(c) Powers and duties. The Advisory Committee shall:

(1) meet regularly to review and make recommendations to the State Treasurer on funding priorities and using other mechanisms to increase local investment in the State of Vermont;

(2) invite regularly State organizations and citizens groups to Advisory Committee meetings to present information on needs for local investment, capital gaps, and proposals for financing; and

(3) consult with constituents and review feedback on changes and needs in the local and State investment and financing environments.

(d) Meetings. The Advisory Committee shall meet no more than six times per calendar year. The meetings shall be convened by the State Treasurer.

(e) Report. On or before January 15, 2015, and annually thereafter, the Advisory Committee shall submit a report to the Senate Committees on Finance and on Government Operations and the House Committees on Ways and Means and on Government Operations. The report shall include the following:

(1) the amount of the subsidies associated with lending through each credit facility authorized by the General Assembly and established by the Treasurer;

(2) a description of the Advisory Committee's activities; and

~~(3) any information gathered by the Advisory Committee on the State's unmet capital needs, and other opportunities for State support for local investment and the community.~~

~~(f) It is the intent of the General Assembly that the Advisory Committee report described in subsection (e) of this section that is due on or before January 15, 2015 shall include a recommendation on whether to grant statutory authority to the Vermont Economic Development Authority to engage in banking activities.~~

~~*** Effective Date ***~~

~~Sec. 26. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2014.~~

~~Sec. 26. Sec. 28. VERMONT STRONG INTERIM REPORT~~

~~On or before November 1, 2014, the Secretary of Commerce and Community Development shall report to the Joint Fiscal Committee on the organizational and economic details of the Vermont Strong Scholars Program, and specifically on the majors selected for forgiveness and the projected annual cost, the proposed funding source, and the projected fund balance for each fiscal year through fiscal year 2018.~~

~~Sec. 27. Sec. 29. EFFECTIVE DATES~~

~~This act shall take effect on July 1, 2014, except that 16 V.S.A. § 2888(d) in Sec. 25 shall take effect on July 1, 2015.~~

~~*** One-Stop Business Support Services ***~~

~~Sec. 1. ONE-STOP SHOP WEB PORTAL~~

~~(a) Purpose. The State of Vermont seeks to simplify and expedite the process for business creation and growth by providing:~~

~~(1) a clear guide to resources and technical assistance for all phases of business development;~~

~~(2) a directory of financial assistance, including grants, funding capital, tax credits, and incentives;~~

~~(3) a directory of workforce development assistance, including recruiting, job postings, and training;~~

~~(4) a link to centralized business services available from the Secretary of State, the Department of Labor, the Department of Taxes, and others; and~~

~~(5) agency contacts and links for available services and resources.~~

(b) Administration. On or before June 30, 2015, the Secretary of State, the Department of Taxes, the Department of Labor, the Vermont Attorney General, the Agency of Commerce and Community Development, and the Agency of Administration shall coordinate with other relevant agencies and departments within State government and outside partners, including regional development corporations, regional planning commissions, and small business development centers, to provide comprehensive business services, regional coaching teams, print materials, other outreach, and a "One-Stop Shop" website.

(c) On or before January 15, 2015, the Secretary of State and partners shall report to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on Commerce and Economic Development to inform the committees of the status of the project and a timeline for its completion.

Secs. 2-3. RESERVED

* * * Vermont Economic Development Authority * * *

Sec. 4. 10 V.S.A. chapter 12 is amended to read:

CHAPTER 12. VERMONT ECONOMIC DEVELOPMENT
AUTHORITY

* * *

Subchapter 12. ~~Technology Loan~~ Vermont Entrepreneurial Lending
Program

§ 280aa. FINDINGS AND PURPOSE

(a)(1) ~~Technology-based companies~~ Vermont-based businesses in seed, start-up, and growth stages are a vital source of innovation, employment, and economic growth in Vermont. The continued development and success of ~~this increasingly important sector of Vermont's economy~~ these businesses is dependent upon the availability of flexible, risk-based capital.

(2) Because the primary assets of ~~technology-based companies~~ Vermont-based businesses in seed, start-up, and growth stages often consist almost entirely of intellectual property or insufficient tangible assets to support conventional lending, ~~such~~ these companies frequently ~~do~~ may not have access to conventional means of raising capital, such as asset-based bank financing.

(b) To support the growth of ~~technology-based companies~~ Vermont-based businesses in seed, start-up, and growth stages and the resultant creation of ~~high-wage~~ higher wage employment in Vermont, ~~a technology loan program is~~

~~established under this subchapter~~ the General Assembly hereby creates in this subchapter the Vermont Entrepreneurial Lending Program.

§ 280bb. ~~TECHNOLOGY LOAN~~ VERMONT ENTREPRENEURIAL LENDING PROGRAM

~~(a) There is created a technology (TECH) loan program~~ the Vermont Entrepreneurial Lending Program to be administered by the Vermont economic development authority Economic Development Authority. The program Program shall seek to meet the working capital and capital-asset financing needs of technology-based companies Vermont-based businesses in seed, start-up, and growth stages. The Program shall specifically seek to fulfill capital requirement needs that are unmet in Vermont, including:

(1) loans up to \$100,000.00 to manufacturing businesses and software developers with innovative products that typically reflect long-term, organic growth;

(2) loans up to \$1,000,000.00 in growth-stage companies who do not meet the underwriting criteria of other public and private entrepreneurial financing sources; and

(3) loans to businesses that are unable to access adequate capital resources because the primary assets of these businesses are typically intellectual property or similar nontangible assets.

~~(b) The economic development authority Authority shall establish such adopt regulations, policies, and procedures for the program Program as are necessary to carry out the purposes of this subchapter. The authority's lending criteria shall include consideration of in-state competition and whether a company has made reasonable efforts to secure capital in the private sector increase the amount of investment funds available to Vermont businesses whose capital requirements are not being met by conventional lending sources.~~

(c) When considering entrepreneurial lending through the Program, the Authority shall give additional consideration and weight to an application of a business whose business model and practices will have a demonstrable effect in achieving other public policy goals of the State, including:

(1) The business will create jobs in strategic sectors such as the knowledge-based economy, renewable energy, advanced manufacturing, wood products manufacturing, and value-added agricultural processing.

(2) The business is located in a designated downtown, village center, growth center, industrial park, or other significant geographic location recognized by the State.

(3) The business adopts energy and thermal efficiency practices in its operations or otherwise operates in a way that reflects a commitment to green energy principles.

(4) The business will create jobs that pay a livable wage and significant benefits to Vermont employees.

(d) The Authority shall include provisions in the terms of an loan made under the Program to ensure that a loan recipient shall maintain operations within the State for a minimum of five years from the date on which the recipient receives the loan funds from the Authority or shall otherwise be required to repay the outstanding funds in full.

* * *

Sec. 5. VERMONT ENTREPRENEURIAL LENDING PROGRAM; LOAN LOSS RESERVE FUNDS; CAPITALIZATION

(a) The Vermont Economic Development Authority shall capitalize loan loss reserves for the Vermont Entrepreneurial Lending Program created in 10 V.S.A. § 280bb with the following funding from the following sources:

(1) up to \$1,000,000.00 from Authority funds or eligible federal funds currently administered by the Authority; and

(2) any fiscal year 2014 or fiscal year 2015 funds, or both, appropriated or authorized by the General Assembly.

(b) The Authority shall use the funds in subsection (a) of this section solely for the purpose of establishing and maintaining loan loss reserves to guarantee loans made pursuant to 10 V.S.A. § 280bb.

Sec. 6. 10 V.S.A. chapter 16A is amended to read:

CHAPTER 16A. VERMONT AGRICULTURAL CREDIT PROGRAM

§ 374a. CREATION OF THE VERMONT AGRICULTURAL CREDIT PROGRAM

* * *

(b) No borrower shall be approved for a loan from the corporation that would result in the aggregate principal balances outstanding of all loans to that borrower exceeding the then-current maximum Farm Service Agency loan guarantee limits, or \$2,000,000.00, whichever is greater.

§ 374b. DEFINITIONS

As used in this chapter:

(1) "Agricultural facility" means land and rights in land, buildings, structures, machinery, and equipment which is used for, or will be used for

producing, processing, preparing, packaging, storing, distributing, marketing, or transporting agricultural products which have been primarily produced in this ~~state~~ State, and working capital reasonably required to operate an agricultural facility.

(2) "Agricultural land" means real estate capable of supporting commercial farming or forestry, or both.

(3) "Agricultural products" mean crops, livestock, forest products, and other farm or forest commodities produced as a result of farming or forestry activities.

(4) "Farm ownership loan" means a loan to acquire or enlarge a farm or agricultural facility, to make capital improvements including construction, purchase, and improvement of farm and agricultural facility buildings that can be made fixtures to the real estate, to promote soil and water conservation and protection, and to refinance indebtedness incurred for farm ownership or operating loan purposes, or both.

(5) "Authority" means the Vermont ~~economic development authority~~ Economic Development Authority.

(6) "Cash flow" means, on an annual basis, all income, receipts, and revenues of the applicant or borrower from all sources and all expenses of the applicant or borrower, including all debt service and other expenses.

(7) "Farmer" means an individual directly engaged in the management or operation of an agricultural facility or farm operation for whom the agricultural facility or farm operation constitutes two or more of the following:

(A) is or is expected to become a significant source of the farmer's income;

(B) the majority of the farmer's assets; and

(C) an occupation in which the farmer is actively engaged ~~in~~, either on a seasonal or year-round basis.

(8) "Farm operation" shall mean the cultivation of land or other uses of land for the production of food, fiber, horticultural, silvicultural, orchard, maple syrup, Christmas trees, forest products, or forest crops; the raising, boarding, and training of equines, and the raising of livestock; or any combination of the foregoing activities. Farm operation also includes the storage, preparation, retail sale, and transportation of agricultural or forest commodities accessory to the cultivation or use of such land.

* * *

** * * Connecting Capital Providers and Entrepreneurs * * **

Sec. 7. NETWORKING INITIATIVES

(a) The Agency of Commerce and Community Development shall support networking events offered by one or more regional economic development providers designed to connect capital providers with one another or with Vermont entrepreneurs, or both, and shall take steps to facilitate outreach and matchmaking opportunities between investors and entrepreneurs.

(b) The Agency shall submit to the House Committee on Commerce and Economic Development and to the Senate Committee on Economic Development, Housing and General Affairs a report on or before January 15, 2015 concerning the structure of networking initiatives, the relevant provisions of governing performance contracts, the benchmarks and measures of performance, and the outcomes of and further recommendations for the program.

** * * Downtown Tax Credits * * **

Sec. 8. 32 V.S.A. § 5930aa(3) is amended to read:

(3) “Qualified code or technology improvement project” means a project:

(A)(i) ~~To~~ to install or improve platform lifts suitable for transporting personal mobility devices, elevators, sprinkler systems, and capital improvements in a qualified building, and the installations or improvements are required to bring the building into compliance with the statutory requirements and rules regarding fire prevention, life safety, and electrical, plumbing, and accessibility codes as determined by the ~~department of public safety.~~ Department of Public Safety; or

(ii) to install or improve data or network wiring, or heating, ventilating, or cooling systems reasonably related to data or network installations or improvements, in a qualified building, provided that a professional engineer licensed under 26 V.S.A. chapter 20 certifies as to the fact and cost of the installation or improvement;

(B) ~~To~~ to abate lead paint conditions or other substances hazardous to human health or safety in a qualified building; ~~;~~ or

(C) ~~To~~ to redevelop a contaminated property in a designated downtown or village center under a plan approved by the Secretary of Natural Resources pursuant to 10 V.S.A. § 6615a.

Sec. 9. 32 V.S.A. § 5930aa(7) is amended to read:

(7) “Qualified project” means a qualified code or technology improvement, qualified façade improvement, qualified technology infrastructure project, or qualified historic rehabilitation project as defined by this subchapter.

Sec. 10. 32 V.S.A. § 5930bb is amended to read:

§ 5930bb. ELIGIBILITY AND ADMINISTRATION

(a) Qualified applicants may apply to the State Board to obtain the tax credits provided by this subchapter for ~~qualified code improvement, façade improvement, or historic rehabilitation projects~~ a qualified project at any time before one year after completion of the qualified project.

* * *

Sec. 11. 32 V.S.A. § 5930cc(c) is amended to read:

(c) Code or technology improvement tax credit. The qualified applicant of a qualified code or technology improvement project shall be entitled, upon the approval of the State Board, to claim against the taxpayer’s State individual income tax, State corporate income tax, or bank franchise or insurance premiums tax liability a credit of 50 percent of qualified expenditures up to a maximum tax credit of \$12,000.00 for installation or improvement of a platform lift, a maximum tax credit of \$50,000.00 for installation or improvement of an elevator, a maximum tax credit of \$50,000.00 for installation or improvement of a sprinkler system, a maximum tax credit of \$30,000.00 for the combined costs of installation or improvement of data or network wiring or a heating, ventilating, or cooling system, and a maximum tax credit of \$25,000.00 for the combined costs of all other qualified code improvements.

Sec. 12. 30 V.S.A. § 218e is added to read:

§ 218e. IMPLEMENTING STATE ENERGY POLICY; MANUFACTURING

To give effect to the policies of section 202a of this title to provide reliable and affordable energy and assure the State’s economic vitality, it is critical to retain and recruit manufacturing and other businesses and to consider the impact on manufacturing and other businesses when issuing orders, adopting rules, and making other decisions affecting the cost and reliability of electricity and other fuels. Implementation of the State’s energy policy should:

(1) encourage recruitment and retention of employers providing high-quality jobs and related economic investment and support the State’s economic welfare; and

(2) appropriately balance the objectives of this section with the other policy goals and criteria established in this title.

Sec. 13. INVESTIGATION; ELECTRICITY COSTS; MANUFACTURING

(a) The Commissioner of Public Service and the Secretary of Commerce and Community Development, in consultation with the Public Service Board, a private organization that represents the interests of manufacturers, a cooperative electric company, an efficiency utility, a shareholder-owned utility, the Vermont Public Power Supply Authority (VPPSA), a municipal utility that is not a member of VPPSA, and the Vermont Electric Power Company (VELCO), shall conduct an investigation of how best to advance the public good through consideration of the competitiveness of Vermont's industrial or manufacturing businesses with regard to electricity costs.

(b) In conducting the investigation required by this section, the Commissioner and Secretary shall consider:

(1) how best to incorporate into rate design proceedings the impact of electricity costs on business competitiveness and the identification of the costs of service incurred by businesses;

(2) with regard to the energy efficiency programs established under 30 V.S.A. § 209, potential changes to their delivery, funding, financing, and participation requirements;

(3) the history and outcome of any evaluations of the Energy Savings Account or Customer Credit programs, as well as best practices for customer self-directed energy efficiency programs;

(4) the history and outcome of any evaluations of retail choice programs or policies, as related to business competitiveness, that have been undertaken in Vermont and in other jurisdictions;

(5) any other programs or policies the Commissioner and the Secretary deem relevant;

(6) whether and to what extent any programs or policies considered by the Commissioner and the Secretary under this section would impose cost shifts onto other customers, result in stranded costs (costs that cannot be recovered by a regulated utility due to a change in regulatory structure or policy), or conflict with renewable energy requirements in Vermont and, if so, whether such programs or policies would nonetheless promote the public good;

(7) whether and to what extent costs have shifted to residential and business ratepayers following the loss of large utility users, and potential scenarios for additional cost shifts of this type; and

(8) the potential benefits and potential cost shift to residential and business ratepayers if a large utility user undertakes efficiency measures and thereby reduces its share of fixed utility costs.

(c) In conducting the investigation required by this section, the Commissioner and Secretary shall provide the following persons and entities an opportunity for written and oral comments:

(1) consumer and business advocacy groups;

(2) regional development corporations and regional planning commissions; and

(3) any other person or entity as determined by the Commissioner and Secretary.

(d) On or before December 15, 2014, the Commissioner and Secretary shall provide a status report to the General Assembly of its findings and recommendations regarding regulatory or statutory changes that would reduce energy costs for Vermont businesses and promote the public good. On or before December 15, 2015, the Commissioner and Secretary shall provide a final report to the General Assembly of such findings and recommendations.

* * * Domestic Export Program * * *

**Sec. 14. DOMESTIC MARKET ACCESS PROGRAM FOR VERMONT
AGRICULTURE AND FOREST PRODUCTS**

(a) The Secretary of Agriculture, Food and Markets, in collaboration with the Agency of Commerce and Community Development and the Chief Marketing Officer, shall, subject to available funding, create a Domestic Export Program Pilot Project within the "Made in Vermont" designation program, the purpose of which shall be to:

(1) connect Vermont producers with brokers, buyers, and distributors in other U.S. state and regional markets;

(2) provide technical and marketing assistance to Vermont producers to convert these connections into increased sales and sustainable commercial relationships; and

(3) provide one-time matching grants of up to \$2,000.00 per business to attend trade shows and similar events to expand producers' market presence in other U.S. states, subject to available funding.

(b) The Secretary shall collect data on the activities and outcomes of the pilot project authorized under this section and shall report his or her findings and recommendations for further action on or before January 15, 2015, to the House Committees on Agriculture and Forest Products and on Commerce and

Economic Development and to the Senate Committees on Agriculture and on
Economic Development, Housing and General Affairs.

* * * Criminal Penalties for Computer Crimes * * *

Sec. 15. 13 V.S.A. chapter 87 is amended to read:

CHAPTER 87. COMPUTER CRIMES

* * *

§ 4104. ALTERATION, DAMAGE, OR INTERFERENCE

(a) A person shall not intentionally and without lawful authority, alter, damage, or interfere with the operation of any computer, computer system, computer network, computer software, computer program, or data contained in such computer, computer system, computer program, or computer network.

(b) Penalties. A person convicted of violating this section shall be:

(1) if the damage or loss does not exceed \$500.00 for a first offense, imprisoned not more than one year or fined not more than ~~\$500.00~~ \$5,000.00, or both;

(2) if the damage or loss does not exceed \$500.00 for a second or subsequent offense, imprisoned not more than two years or fined not more than ~~\$1,000.00~~ \$10,000.00, or both; or

(3) if the damage or loss exceeds \$500.00, imprisoned not more than 10 years or fined not more than ~~\$10,000.00~~ \$25,000.00, or both.

§ 4105. THEFT OR DESTRUCTION

(a)(1) A person shall not intentionally and without claim of right deprive the owner of possession, take, transfer, copy, conceal, or retain possession of, or intentionally and without lawful authority, destroy any computer system, computer network, computer software, computer program, or data contained in such computer, computer system, computer program, or computer network.

(2) Copying a commercially available computer program or computer software is not a crime under this section, provided that the computer program and computer software has a retail value of \$500.00 or less and is not copied for resale.

(b) Penalties. A person convicted of violating this section shall be:

(1) if the damage or loss does not exceed \$500.00 for a first offense, imprisoned not more than one year or fined not more than ~~\$500.00~~ \$5,000.00, or both;

(2) if the damage or loss does not exceed \$500.00 for a second or subsequent offense, imprisoned not more than two years or fined not more than ~~\$1,000.00~~ \$10,000.00, or both; or

(3) if the damage or loss exceeds \$500.00, imprisoned not more than 10 years or fined not more than ~~\$10,000.00~~ \$25,000.00, or both.

§ 4106. CIVIL LIABILITY

A person damaged as a result of a violation of this chapter may bring a civil action against the violator for damages, costs, and fees, including reasonable attorney's fees, and such other relief as the court deems appropriate.

* * *

* * * Statute of Limitations to Commence Action
for Misappropriation of Trade Secrets * * *

Sec. 16. 12 V.S.A. § 523 is amended to read:

§ 523. TRADE SECRETS

An action for misappropriation of trade secrets under 9 V.S.A. chapter 143 ~~of Title 9~~ shall be commenced within ~~three~~ six years after the cause of action accrues, and not after. The cause of action shall be deemed to accrue as of the date the misappropriation was discovered or reasonably should have been discovered.

* * * Protection of Trade Secrets * * *

Sec. 17. 9 V.S.A. chapter 143 is amended to read:

CHAPTER 143. TRADE SECRETS

§ 4601. DEFINITIONS

As used in this chapter:

(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) "Misappropriation" means:

(A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(B) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret; or

(ii) *at the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was:*

(I) *derived from or through a person who had utilized improper means to acquire it;*

(II) *acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or*

(III) *derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or*

(iii) *before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.*

(3) *“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:*

(A) *derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and*

(B) *is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.*

§ 4602. INJUNCTIVE RELIEF

(a) ~~Actual~~ *A court may enjoin actual or threatened misappropriation ~~may be enjoined~~ of a trade secret. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.*

(b) *In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, ~~but are not limited to,~~ a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.*

(c) *In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.*

§ 4603. DAMAGES

(a)(1) *Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation*

renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation.

(2) Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss.

(3) In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(4) A court shall award a substantially prevailing party his or her costs and fees, including reasonable attorney's fees, in an action brought pursuant to this chapter.

(b) If malicious misappropriation exists, the court may award punitive damages.

§ 4605. PRESERVATION OF SECRECY

In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

§ 4607. EFFECT ON OTHER LAW

(a) Except as provided in subsection (b) of this section, this chapter displaces conflicting tort, restitutionary, and any other law of this ~~state~~ State providing civil remedies for misappropriation of a trade secret.

(b) This chapter does not affect:

(1) contractual remedies, whether or not based upon misappropriation of a trade secret;

(2) other civil remedies that are not based upon misappropriation of a trade secret; or

(3) criminal remedies, whether or not based upon misappropriation of a trade secret.

** * **

** * * Intellectual Property; Businesses and Government Contracting * * **

Sec. 18. 3 V.S.A. § 346 is added to read:

§ 346. STATE CONTRACTING; INTELLECTUAL PROPERTY, SOFTWARE DESIGN, AND INFORMATION TECHNOLOGY

(a) The Secretary of Administration shall include in Administrative Bulletin 3.5 a policy direction applicable to State procurement contracts that include services for the development of software applications, computer coding, or other intellectual property, which would allow the State of Vermont to grant permission to the contractor to use or own the intellectual property created under the contract for the contractor's commercial purposes.

(b) The Secretary may recommend contract provisions that authorize the State to negotiate with a contractor to secure license terms and license fees, royalty rights, or other payment mechanism for the contractor's commercial use of intellectual property developed under a State contract.

(c) If the Secretary authorizes a contractor to own intellectual property developed under a State contract, the Secretary may recommend language to ensure the State retains a perpetual, irrevocable, royalty-free, and fully paid right to continue to use the intellectual property.

* * * Department of Financial Regulation * * *

Sec. 19. SMALL BUSINESS ACCESS TO CAPITAL

(a) Crowdfunding study. The Department of Financial Regulation shall study the opportunities and limitations for crowdfunding to increase access to capital for Vermont's small businesses. On or before January 15, 2015, the Department shall report its findings and recommendations to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs.

(b) Small business issuer education and outreach. On or before January 15, 2015, the Department of Financial Regulation shall conduct at least two educational events to inform the legal, small business, and investor communities and other interested parties, of opportunities for small businesses to access capital in Vermont, including the Vermont Small Business Offering Exemption regulation and other securities registration exemptions.

(c) Vermont Small Business Offering Exemption. The Commissioner of Financial Regulation shall exercise his or her rulemaking authority under 9 V.S.A. chapter 150 to review and revise the Vermont Small Business Offering Exemption and any other State securities exemptions, specifically including those designed to complement exemptions from federal registration requirements available under Regulation D, in order to recognize and reflect the evolution of capital markets and to ensure that Vermont remains current

and competitive in its securities regulations, particularly with respect to access to capital for small businesses.

*Sec. 20. STUDY; DEPARTMENT OF FINANCIAL REGULATION;
LICENSED LENDER REQUIREMENTS; COMMERCIAL
LENDERS*

On or before January 15, 2015, the Department of Financial Regulation shall solicit public comment on, evaluate, and report to the House Committee on Commerce and Economic Development and to the Senate Committees on Finance and on Economic Development, Housing and General Affairs any statutory and regulatory changes to the State's licensed lender requirements that are necessary to open private capital markets and remove unnecessary barriers to business investment in Vermont.

** * * Licensed Lender Requirements; Exemption for De Minimis
Lending Activity * * **

Sec. 21. 8 V.S.A. § 2201 is amended to read:

2201. LICENSES REQUIRED

(a) No person shall without first obtaining a license under this chapter from the ~~commissioner~~ Commissioner:

(1) engage in the business of making loans of money, credit, goods, or things in action and charge, contract for, or receive on any such loan interest, a finance charge, discount, or consideration ~~therefore~~ therefor;

(2) act as a mortgage broker;

(3) engage in the business of a mortgage loan originator; or

(4) act as a sales finance company.

(b) Each licensed mortgage loan originator must register with and maintain a valid unique identifier with the Nationwide Mortgage Licensing System and Registry and must be either:

(1) ~~an~~ An employee actively employed at a licensed location of, and supervised and sponsored by, only one licensed lender or licensed mortgage broker operating in this ~~state~~; State.

(2) ~~an~~ An individual sole proprietor who is also a licensed lender or licensed mortgage broker; ~~or~~.

(3) ~~an~~ An employee engaged in loan modifications employed at a licensed location of, and supervised and sponsored by, only one third-party loan servicer licensed to operate in this ~~state~~ State pursuant to chapter 85 of this title. ~~For purposes of~~ As used in this subsection, "loan modification"

means an adjustment or compromise of an existing residential mortgage loan. The term "loan modification" does not include a refinancing transaction.

(c) A person licensed pursuant to subdivision (a)(1) of this section may engage in mortgage brokerage and sales finance if such person informs the ~~commissioner~~ Commissioner in advance that he or she intends to engage in sales finance and mortgage brokerage. Such person shall inform the ~~commissioner~~ Commissioner of his or her intention on the original license application under section 2202 of this title, any renewal application under section 2209 of this title, or pursuant to section 2208 of this title, and shall pay the applicable fees required by subsection 2202(b) of this title for a mortgage broker license or sales finance company license.

(d) No lender license, mortgage broker license, or sales finance company license shall be required of:

(1) ~~a state~~ State agency, political subdivision, or other public instrumentality of the ~~state~~; State.

(2) ~~a~~ A federal agency or other public instrumentality of the United States; ;

(3) ~~a~~ A gas or electric utility subject to the jurisdiction of the ~~public service board~~ Public Service Board engaging in energy conservation or safety loans; ;

(4) ~~a~~ A depository institution or a financial institution as defined in 8 V.S.A. § 11101(32); ;

(5) ~~a~~ A pawnbroker; ;

(6) ~~an~~ An insurance company; ;

(7) ~~a~~ A seller of goods or services that finances the sale of such goods or services, other than a residential mortgage loan; ;

(8) ~~any~~ Any individual who offers or negotiates the terms of a residential mortgage loan secured by a dwelling that served as the individual's residence, including a vacation home, or inherited property that served as the deceased's dwelling, provided that the individual does not act as a mortgage loan originator or provide financing for such sales so frequently and under such circumstances that it constitutes a habitual activity and acting in a commercial context; ;

(9) ~~lenders~~ Lenders that conduct their lending activities, other than residential mortgage loan activities, through revolving loan funds, that are nonprofit organizations exempt from taxation under Section 501(c) of the Internal Revenue Code, 26 U.S.C. § 501(c), and that register with the

~~commissioner of economic development~~ Commissioner of Economic Development under 10 V.S.A. § 690a~~;~~

(10) ~~persons~~ Persons who lend, other than residential mortgage loans, an aggregate of less than \$75,000.00 in any one year at rates of interest of no more than 12 percent per annum~~;~~

(11) ~~a~~ A seller who, pursuant to 9 V.S.A. § 2355(f)(1)(D), includes the amount paid or to be paid by the seller to discharge a security interest, lien interest, or lease interest on the traded-in motor vehicle in a motor vehicle retail installment sales contract, provided that the contract is purchased, assigned, or otherwise acquired by a sales finance company licensed pursuant to this title to purchase motor vehicle retail installment sales contracts or a depository institution~~;~~

(12)(A) ~~a~~ A person making an unsecured commercial loan, which loan is expressly subordinate to the prior payment of all senior indebtedness of the commercial borrower regardless of whether such senior indebtedness exists at the time of the loan or arises thereafter. The loan may or may not include the right to convert all or a portion of the amount due on the loan to an equity interest in the commercial borrower~~;~~

(B) ~~for purposes of~~ As used in this subdivision (12), “senior indebtedness” means:

(i) all indebtedness of the commercial borrower for money borrowed from depository institutions, trust companies, insurance companies, and licensed lenders, and any guarantee thereof; and

(ii) any other indebtedness of the commercial borrower that the lender and the commercial borrower agree shall constitute senior indebtedness~~;~~

(13) ~~nonprofit~~ Nonprofit organizations established under testamentary instruments, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and which make loans for postsecondary educational costs to students and their parents, provided that the organizations provide annual accountings to the Probate Division of the Superior Court~~;~~

(14) ~~any~~ Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual~~;~~

(15) ~~a~~ A housing finance agency.

(16) A person who makes no more than three mortgage loans in any consecutive three-year period beginning on or after July 1, 2011.

(e) No mortgage loan originator license shall be required of:

(1) Registered mortgage loan originators, when employed by and acting for an entity described in subdivision 2200(22) of this chapter.

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence, including a vacation home, or inherited property that served as the deceased's dwelling, provided that the individual does not act as a mortgage loan originator or provide financing for such sales so frequently and under such circumstances that it constitutes a habitual activity and acting in a commercial context.

(4) An individual who is an employee of a federal, ~~state~~ State, or local government agency, or an employee of a housing finance agency, who acts as a mortgage loan originator only pursuant to his or her official duties as an employee of the federal, ~~state~~ State, or local government agency or housing finance agency.

(5) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator. To the extent an attorney licensed in this State undertakes activities that are covered by the definition of a mortgage loan originator, such activities do not constitute engaging in the business of a mortgage loan originator, provided that:

(A) such activities are considered by the State governing body responsible for regulating the practice of law to be part of the authorized practice of law within this State;

(B) such activities are carried out within an attorney-client relationship; and

(C) the attorney carries them out in compliance with all applicable laws, rules, ethics, and standards.

(6) A person who makes no more than three mortgage loans in any consecutive three-year period beginning on or after July 1, 2011.

(f) If a person who offers or negotiates the terms of a mortgage loan is exempt from licensure pursuant to subdivision (d)(16) or (e)(6) of this section, there is a rebuttable presumption that he or she is not engaged in the business of making loans or being a mortgage loan originator.

(g) Independent contractor loan processors or underwriters. A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a mortgage loan originator license. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(g)(h) This chapter shall not apply to commercial loans of \$1,000,000.00 or more.

**** Vermont State Treasurer; Credit Facilities; 10 Percent for Vermont ****

Sec. 22. 2013 Acts and Resolves No. 87, Sec. 8 is amended to read:

Sec. 8. INVESTMENT OF STATE MONIES

The Treasurer is hereby authorized to establish a ~~short-term~~ credit facility for the benefit of the Vermont Economic Development Authority in an amount of up to \$10,000,000.00.

Sec. 23. VERMONT STATE TREASURER; CREDIT FACILITY FOR LOCAL INVESTMENTS

(a) Notwithstanding any other provision of law to the contrary, the Vermont State Treasurer shall have the authority to establish a credit facility of up to 10 percent of the State's average cash balance on terms acceptable to the Treasurer consistent with the provisions of the Uniform Prudent Investor Act, 14A V.S.A. chapter 9.

(b) The amount authorized in subsection (a) of this section shall include all credit facilities authorized by the General Assembly and established by the Treasurer prior to or subsequent to the effective date of this section, and the renewal or replacement of those credit facilities.

Sec. 24. TREASURER'S LOCAL INVESTMENT ADVISORY COMMITTEE; REPORT

(a) Creation of committee. The Treasurer's Local Investment Advisory Committee is established to advise the Treasurer on funding priorities and address other mechanisms to increase local investment.

(b) Membership.

(1) The Advisory Committee shall be composed of six members as follows:

(A) the State Treasurer or designee;

(B) the Chief Executive Officer of the Vermont Economic Development Authority or designee;

(C) the Chief Executive Officer of the Vermont Student Assistance Corporation or designee;

(D) the Executive Director of the Vermont Housing Finance Agency or designee;

(E) the Director of the Municipal Bond Bank or designee; and

(F) the Director of Efficiency Vermont or designee.

(2) The State Treasurer shall be the Chair of the Advisory Committee and shall appoint a vice chair and secretary. The appointed members of the Advisory Committee shall be appointed for terms of six years and shall serve until their successors are appointed and qualified.

(c) Powers and duties. The Advisory Committee shall:

(1) meet regularly to review and make recommendations to the State Treasurer on funding priorities and using other mechanisms to increase local investment in the State of Vermont;

(2) invite regularly State organizations, citizens groups, and members of the public to Advisory Committee meetings to present information on needs for local investment, capital gaps, and proposals for financing; and

(3) consult with constituents and review feedback on changes and needs in the local and State investment and financing environments.

(d) Meetings.

(1) Meetings of the Advisory Committee shall occur at the call of the Treasurer.

(2) A majority of the members of the Advisory Committee who are physically present at the same location or available electronically shall constitute a quorum, and a member may participate and vote electronically.

(3) To be effective, action of the Advisory Committee shall be taken by majority vote of the members at a meeting in which a quorum is present.

(e) Report. On or before January 15, 2015, and annually thereafter, the Advisory Committee shall submit a report to the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, on Finance, and on Government Operations and the House Committees on Appropriations, on Commerce and Economic Development, on Ways and Means, and on Government Operations. The report shall include the following:

(1) the amount of the subsidies associated with lending through each credit facility authorized by the General Assembly and established by the Treasurer;

(2) a description of the Advisory Committee's activities; and

(3) any information gathered by the Advisory Committee on the State's unmet capital needs, and other opportunities for State support for local investment and the community.

Sec. 25. SUNSET

Secs. 23–24 of this act shall be repealed on July 1, 2015.

Sec. 26. 9 V.S.A. § 2481w is amended to read:

§ 2481w. UNLICENSED LOAN TRANSACTIONS

(a) In this subchapter:

(1) “Financial account” means a checking, savings, share, stored value, prepaid, payroll card, or other depository account.

(2) “Lender” means a person engaged in the business of making loans of money, credit, goods, or things in action and charging, contracting for, or receiving on any such loan interest, a finance charge, a discount, or consideration.

(3) “Process” or “processing” includes printing a check, draft, or other form of negotiable instrument drawn on or debited against a consumer's financial account, formatting or transferring data for use in connection with the debiting of a consumer's financial account by means of such an instrument or an electronic funds transfer, or arranging for such services to be provided to a lender.

(4) “Processor” means a person who engages in processing, as defined in subdivision (3) of this subsection. In this section, “processor” does not include an interbank clearinghouse.

(5) “Interbank clearinghouse” means a person that operates an exchange of automated clearinghouse items, checks, or check images solely between insured depository institutions.

(b) It is an unfair and deceptive act and practice in commerce for a lender directly or through an agent to solicit or make a loan to a consumer by any means unless the lender is in compliance with all provisions of 8 V.S.A. chapter 73 or is otherwise exempt from the requirements of 8 V.S.A. chapter 73.

(c) It is an unfair and deceptive act and practice in commerce for a processor, other than a federally insured depository institution, to process a check, draft, other form of negotiable instrument, or an electronic funds transfer from a consumer's financial account in connection with a loan solicited or made by any means to a consumer unless the lender is in compliance with all provisions of 8 V.S.A. chapter 73 or is otherwise exempt from the requirements of 8 V.S.A. chapter 73.

(d) It is an unfair and deceptive act and practice in commerce for any person, including the lender's financial institution as defined in 8 V.S.A. § 10202(5), but not including the consumer's financial institution as defined in 8 V.S.A. § 10202(5) or an interbank clearinghouse as defined in subsection (a) of this section, to provide substantial assistance to a lender or processor when the person or the person's authorized agent receives notice from a regulatory, law enforcement, or similar governmental authority, or knows from its normal monitoring and compliance systems, or consciously avoids knowing that the lender or processor is in violation of subsection (b) or (c) of this section, or is engaging in an unfair or deceptive act or practice in commerce.

Sec. 27. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS FACILITIES

** * **

(b) Definitions. ~~For the purposes of~~ As used in this section:

** * **

(4) "Telecommunications facility" means a communications facility that transmits and receives signals to and from a local, State, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or State purposes and any associated support structure that is proposed for construction or installation which is primarily for communications purposes, and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure. An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to an existing structure.

(5) "Wireless service" means any commercial mobile radio service, wireless service, common carrier wireless exchange service, cellular service, personal communications service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.

* * *

(c) Findings. Before the Public Service Board issues a certificate of public good under this section, it shall find that:

(1) The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, and the public's use and enjoyment of the I-89 and I-91 scenic corridors or of any highway that has been designated as a scenic road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C. § 162, with due consideration having been given to the relevant criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K). However, with respect to telecommunications facilities of limited size and scope, the Board shall waive all criteria of this subdivision other than 10 V.S.A. § 6086(a)(1)(D)(floodways) and (a)(8)(aesthetics, scenic beauty, historic sites, rare and irreplaceable natural areas; endangered species; necessary wildlife habitat). Such waiver shall be on condition that:

(A) ~~The~~ the Board may determine, pursuant to the procedures described in subdivision (j)(2)(A) of this section, that a petition raises a significant issue with respect to any criterion of this subdivision; and

(B) A telecommunications facility of limited size and scope shall comply, at a minimum, with the requirements of the Low Risk Site Handbook for Erosion Prevention and Sediment Control issued by the Department of Environmental Conservation, regardless of any provisions in that handbook that limit its applicability.

(2) Unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively. Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located. A rebuttable presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan.

(3) If the proposed facility relates to the provision of wireless service, the proposed facility reasonably cannot be collocated on or at an existing telecommunications facility, or such collocation would cause an undue adverse effect on aesthetics.

* * *

(e) Notice. No less than 45 days prior to filing an application for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the Board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the Secretary of Natural Resources; the Secretary of Transportation; the Division for Historic Preservation; the Commissioner of Public Service and its Director for Public Advocacy; the Natural Resources Board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions.

(1) Upon motion or otherwise, the Public Service Board shall direct that further public or personal notice be provided if the Board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(2) On the request of the municipal legislative body or the planning commission, the applicant shall attend a public meeting with the municipal legislative body or planning commission, or both, within the 45-day notice period before filing an application for a certificate of public good. The Department of Public Service shall attend the public meeting on the request of the municipality. The Department shall consider the comments made and information obtained at the meeting in making recommendations to the Board on the application and in determining whether to retain additional personnel under subsection (o) of this section.

* * *

(i) Sunset of Board authority. Effective on July 1, 2014 2017, no new applications for certificates of public good under this section may be considered by the Board.

* * *

(m) Municipal bodies; participation. The legislative body and the planning commission for the municipality in which a telecommunications facility is located shall have the right to appear and participate on any application under this section seeking a certificate of public good for the facility.

(n) Municipal recommendations. The Board shall consider the comments and recommendations submitted by the municipal legislative body and planning commission. The Board's decision to issue or deny a certificate of

public good shall include a detailed written response to each recommendation of the municipal legislative body and planning commission.

(o) Retention; experts. The Department of Public Service may retain experts and other personnel as identified in section 20 of this title to provide information essential to a full consideration of an application for a certificate of public good under this section. The Department may allocate the expenses incurred in retaining these personnel to the applicant in accordance with section 21 of this title. The Department may commence retention of these personnel once the applicant has filed the 45-day notice under subsection (e) of this section. A municipal legislative body or planning commission may request that the Department retain these personnel. Granting such a request shall not oblige the Department or the personnel it retains to agree with the position of the municipality.

(p) Review process; guide. The Department of Public Service, in consultation with the Board, shall create, maintain, and make available to the public a guide to the process of reviewing telecommunications facilities under this section for use by local governments and regional planning commissions and members of the public who seek to participate in the process. On or before September 1, 2014, the Department shall complete the creation of this guide and make it publically available.

Sec. 28. PUBLIC SERVICE BOARD; ORDER REVISION

The Public Service Board (the Board) shall define the terms “good cause” and “substantial deference” for the purpose of 30 V.S.A. § 248a(c)(2) in accordance with the following process:

(1) Within 30 days of the effective date of this section, the Board shall provide direct notice to each municipal legislative body and planning commission, the Vermont League of Cities and Towns, the Department of Public Service, and such other persons as the Board considers appropriate, that it will be amending its procedures order issued under 30 V.S.A. § 248a(1) to include definitions of these terms. The notice shall provide an opportunity for submission of comments and recommendations and include the date and time of the workshop to be held.

(2) Within 60 days of giving notice under subdivision (1) of this section, the Board shall amend its procedures order to include definitions of these terms.

Sec. 29. REPORT; TELECOMMUNICATIONS FACILITY REVIEW PROCESS

On or before October 1, 2015, the Department of Public Service shall submit to the House Committee on Commerce and Economic Development and

the Senate Committee on Finance a report assessing the telecommunications facility review process under 30 V.S.A. § 248a. The report shall include the number of applications for the construction or installation of telecommunications facilities filed with the Board, the number of applications for which a certificate of public good was granted, the number of applications for which notice was filed but were then withdrawn, and the number of times the Department used its authority under 30 V.S.A. § 248(o) to allocate expenses incurred in retaining expert personnel to the applicant, during the year ending August 31, 2015.

Sec. 30. 10 V.S.A. § 1264(j) is amended to read:

(j) Notwithstanding any other provision of law, if an application to discharge stormwater runoff pertains to a telecommunications facility as defined in 30 V.S.A. § 248a and is filed before July 1, ~~2014~~ 2017 and the discharge will be to a water that is not principally impaired by stormwater runoff:

(1) The Secretary shall issue a decision on the application within 40 days of the date the Secretary determines the application to be complete, if the application seeks authorization under a general permit.

(2) The Secretary shall issue a decision on the application within 60 days of the date the Secretary determines the application to be complete, if the application seeks or requires authorization under an individual permit.

Sec. 31. 10 V.S.A. § 8506 is amended to read:

§ 8506. **RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS FACILITY; APPEALS**

(a) Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the ~~secretary~~ Secretary, under the provisions of law listed in section 8503 of this title, or any party by right may appeal to the ~~public service board~~ Public Service Board if the act or decision concerns a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248 or a telecommunications facility for which the applicant has applied or has served notice under 30 V.S.A. § 248a(e) that it will apply for approval under 30 V.S.A. § 248a. This section shall not apply to a facility that is subject to section 1004 (dams before the Federal Energy Regulatory Commission) or 1006 (certification of hydroelectric projects) or chapter 43 (dams) of this title. This section shall not apply to an appeal of an act or decision of the secretary regarding a telecommunications facility made on or after July 1, ~~2014~~ 2017.

* * *

Sec. 32. REPEAL

2011 Acts and Resolves No. 53, Sec. 14d (repeal of limitations on municipal bylaws; municipal ordinances; wireless telecommunications facilities) is repealed.

Sec. 33. 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, programmatic, or engineering expertise provided by the Agency of Natural Resources, provided that the following apply:

(A) ~~the~~ The Secretary does not have such expertise or services and such expertise is required for the processing of the application for the permit, license, certification, or order; ~~or,~~

(B) ~~the~~ The Secretary does have such expertise but has made a determination that it is beyond the ~~agency's~~ Agency's internal capacity to effectively utilize that expertise to process the application for the permit, license, certification, or order. In addition, the Secretary shall determine that such expertise is 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 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~~ Agency personnel or expert witnesses are required for the processing of the permit application.

(3) In addition to the authority set forth under 10 V.S.A. chapters 59 and 159 and § section 1283, the Secretary may require a person who caused the ~~agency~~ 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~~ Agency personnel or the cost of other research, scientific, or engineering services incurred by the ~~agency~~ Agency in response to a threat to public health or the environment presented by an emergency or exigent circumstance.

** * **

(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~~ 2017:

(1) Under subdivision (a)(1) of this section, the ~~agency~~ Agency shall not require an applicant to pay more than \$10,000.00 with respect to a facility.

(2) The provisions of subsection (c) (mandatory meeting) of this section shall not apply.

Sec. 34. JFO ACCD DEMOGRAPHIC STUDY

The Agency of Commerce and Community Development, with consultation and review by the legislative economist and the Joint Fiscal Office, shall conduct an economic impact analysis, including study of demographic and infrastructure impacts associated with recently announced development projects in the Northeast Kingdom of Vermont, and shall submit its findings to the House Committee on Commerce and Economic Development, the Senate Committee on Economic Development, Housing and General Affairs, and the Joint Fiscal Committee on or before December 1, 2014.

** * * Tourism Funding; Study * * **

Sec. 35. TOURISM FUNDING; PILOT PROJECT STUDY

On or before January 15, 2015, the Secretary of Commerce and Community Development shall submit to the House Committees on Appropriations and on Commerce and Economic Development and the Senate Committees on Appropriations and on Economic Development, Housing and General Affairs a report that analyzes the results of the performance-based funding pilot project for the Department of Tourism and Marketing and recommends appropriate legislative or administrative changes to the funding mechanism for tourism and marketing programs.

** * * Land Use; Housing; Industrial Development * * **

Sec. 36. 10 V.S.A. chapter 12 is amended to read:

CHAPTER 12. VERMONT ECONOMIC DEVELOPMENT AUTHORITY

** * **

§ 212. DEFINITIONS

As used in this chapter:

** * **

(6) “Eligible facility” or “eligible project” means any industrial, commercial, or agricultural enterprise or endeavor approved by the authority that meets the criteria established in the Vermont Sustainable Jobs Strategy adopted by the Governor under section 280b of this title, including land and rights in land, air, or water, buildings, structures, machinery, and equipment of such eligible facilities or eligible projects, except that an eligible facility or

project shall not include the portion of an enterprise or endeavor relating to the sale of goods at retail where such goods are manufactured primarily out of state, and except further that an eligible facility or project shall not include the portion of an enterprise or endeavor relating to housing. Such enterprises or endeavors may include:

* * *

(M) Sustainably Priced Energy Enterprise Development (SPEED) resources, as defined in 30 V.S.A. § 8002; ~~or~~

(N) any combination of the foregoing activities, uses, or purposes. An eligible facility may include structures, appurtenances incidental to the foregoing such as utility lines, storage accommodations, offices, dependent care facilities, or transportation facilities; or

(O) industrial park planning, development, or improvement.

* * *

§ 261. ADDITIONAL POWERS

In addition to powers enumerated elsewhere in this chapter, the authority may:

* * *

(6) provide loans and assistance under this subchapter for the planning, development, or improvement of an industrial park or an eligible project within an industrial park.

Sec. 37. 10 V.S.A. § 6001(35) is added to read:

(35) "Industrial park" means an area of land permitted under this chapter that is planned, designed, and zoned as a location for one or more industrial buildings, that includes adequate access roads, utilities, water, sewer, and other services necessary for the uses of the industrial buildings, and includes no retail use except that which is incidental to an industrial use, and no office use except that which is incidental or secondary to an industrial use.

Sec. 38. REVIEW OF MASTER PLAN POLICY

On or before January 1, 2015, the Natural Resources Board shall review its master plan policy and commence the policy's adoption as a rule. The proposed rule shall include provisions for efficient master plan permitting and master plan permit amendments for industrial parks. The Board shall consult with affected parties when developing the proposed rule.

**** Primary Agricultural Soils; Industrial Parks ****

Sec. 39. 10 V.S.A. § 6093(a)(4) is amended to read:

(4) Industrial parks.

(A) Notwithstanding any provision of this chapter to the contrary, a conversion of primary agricultural soils located in an industrial park—~~as defined in subdivision 212(7) of this title and permitted under this chapter and~~ in existence as of January 1, 2006, shall be allowed to pay a mitigation fee computed according to the provisions of subdivision (1) of this subsection, except that it shall be entitled to a ratio of 1:1, protected acres to acres of affected primary agricultural soil. If an industrial park is developed to the fullest extent before any expansion, this ratio shall apply to any contiguous expansion of such an industrial park that totals no more than 25 percent of the area of the park or no more than 10 acres, whichever is larger; provided any expansion based on percentage does not exceed 50 acres. Any expansion larger than that described in this subdivision shall be subject to the mitigation provisions of this subsection at ratios that depend upon the location of the expansion.

(B) ~~In any application to a district commission for expansion of District Commission to amend a permit for an existing industrial park, compact development patterns shall be encouraged that assure the most efficient and full use of land and the realization of maximum economic development potential through appropriate densities shall be allowed consistent with all applicable criteria of subsection 6086(a) of this title. Industrial park expansions and industrial park infill shall not be subject to requirements established in subdivision 6086(a)(9)(B)(iii) of this title, nor to requirements established in subdivision 6086(a)(9)(C)(iii).~~

Sec. 40. RESERVED

**** Workforce Education and Training ****

Sec. 41. 10 V.S.A. chapter 22A is amended to read:

CHAPTER 22A. WORKFORCE EDUCATION AND TRAINING

§ 540. WORKFORCE EDUCATION AND TRAINING LEADER

The Commissioner of Labor shall be the leader of workforce education and training in the State, and shall have the authority and responsibility for the coordination of workforce education and training within State government, including the following duties:

(1) Perform the following duties in consultation with the State Workforce Investment Board:

(A) advise the Governor on the establishment of an integrated system of workforce education and training for Vermont;

(B) create and maintain an inventory of all existing workforce education and training programs and activities in the State;

(C) use data to ensure that State workforce education and training activities are aligned with the needs of the available workforce, the current and future job opportunities in the State, and the specific credentials needed to achieve employment in those jobs;

(D) develop a State plan, as required by federal law, to ensure that workforce education and training programs and activities in the State serve Vermont citizens and businesses to the maximum extent possible;

(E) ensure coordination and non-duplication of workforce education and training activities;

(F) identify best practices and gaps in the delivery of workforce education and training programs;

(G) design and implement criteria and performance measures for workforce education and training activities; and

(H) establish goals for the integrated workforce education and training system.

(2) Require from each business, training provider, or program that receives State funding to conduct workforce education and training a report that evaluates the results of the training. Each recipient shall submit its report on a schedule determined by the Commissioner and shall include at least the following information:

(A) name of the person who receives funding;

(B) amount of funding;

(C) activities and training provided;

(D) number of trainees and their general description;

(E) employment status of trainees; and

(F) future needs for resources.

(3) Review reports submitted by each recipient of workforce education and training funding.

(4) Issue an annual report to the Governor and the General Assembly on or before December 1 that includes a systematic evaluation of the accomplishments of the State workforce investment system and the performance of participating agencies and institutions.

(5) Coordinate public and private workforce programs to assure that information is easily accessible to students, employees, and employers, and that all information and necessary counseling is available through one contact.

(6) Facilitate effective communication between the business community and public and private educational institutions.

(7) Notwithstanding any provision of State law to the contrary, and to the fullest extent allowed under federal law, ensure that in each State and State-funded workforce education and training program, the program administrator collects and reports data and outcomes at the individual level by Social Security Number or an equivalent.

~~§ 541. WORKFORCE DEVELOPMENT COUNCIL; STATE WORKFORCE INVESTMENT BOARD; MEMBERS, TERMS~~

~~(a) The Workforce education and training Council is created as the successor to and the continuation of the Governor's Human Resources Investment Council and shall be the State Workforce Investment Board under Public Law 105-220, the Workforce Investment Act of 1998, and any reauthorization of that act. The Council shall consist of the members required under the federal act and the following: the President of the University of Vermont or designee; the Chancellor of the Vermont State Colleges or designee; the President of the Vermont Student Assistance corporation or designee; the President of the Association of Vermont Independent Colleges or designee; a representative of the Abenaki Self Help Organization; at least two representatives of labor appointed by the Governor in addition to the two required under the federal act, who shall be chosen from a list of names submitted by Vermont AFL-CIO, Vermont NEA, and the Vermont State Employees Association; one representative of the low income community appointed by the Governor; two members of the Senate appointed by the Senate Committee on Committees; and two members of the house appointed by the speaker. In addition, the Governor shall appoint enough other members who are representatives of business or employers so that one half plus one of the members of the council are representatives of business or employers. At least one third of those appointed by the Governor as representatives of business or employers shall be chosen from a list of names submitted by the regional technical centers. As used in this section, "representative of business" means a business owner, a chief executive operating officer, or other business executive, and "employer" means an individual with policy-making or hiring authority, including a public school superintendent or school board member and representatives from the nonprofit, social services, and health sectors of the economy. If there is a dispute as to who is to represent an~~

~~interest as required under the federal law, the Governor shall decide who shall be the member of the Council.~~

~~(b) Appointed members, except legislative appointees, shall be appointed for three year terms and serve at the pleasure of the Governor.~~

~~(c) A vacancy shall be filled for the unexpired term in the same manner as the initial appointment.~~

~~(d) The Governor shall appoint one of the business or employer members to chair the council for a term of two years. A member shall not serve more than three consecutive terms as chair.~~

~~(e) Legislative members shall be entitled to compensation and expenses as provided in 2 V.S.A. § 406, and other members shall be entitled to compensation and expenses as provided in 32 V.S.A. § 1010.~~

~~(f) The Department of Labor shall provide the Council with administrative support.~~

~~(g) The Workforce education and training Council shall be subject to 1 V.S.A. chapter 5, subchapters 2 and 3, relating to public meetings and access to public records.~~

~~(h) [Repealed.]~~

~~(i) The Workforce education and training Council shall:~~

~~(1) Advise the Governor on the establishment of an integrated network of workforce education and training for Vermont.~~

~~(2) Coordinate planning and services for an integrated network of workforce education and training and oversee its implementation at State and regional levels.~~

~~(3) Establish goals for and coordinate the State's workforce education and training policies.~~

~~(4) Speak for the workforce needs of employers.~~

~~(5) Negotiate memoranda of understanding between the Council and agencies and institutions involved in Vermont's integrated network of workforce education and training in order to ensure that each is working to achieve annual objectives developed by the Council.~~

~~(6) Carry out the duties assigned to the State Workforce Investment Board, as required for a single service delivery state, under P.L. 105-220, the Workforce Investment Act of 1998, and any amendments that may be made to it. [Repealed.]~~

§ 541a. STATE WORKFORCE INVESTMENT BOARD

(a) Board established; duties. Pursuant to the requirements of 29 U.S.C. § 2821, the Governor shall establish a State Workforce Investment Board to assist the Governor in the execution of his or her duties under the Workforce Investment Act of 1998 and to assist the Commissioner of Labor as specified in section 540 of this title.

(b) Additional duties; planning; process. In order to inform its decision-making and to provide effective assistance under subsection (a) of this section, the Board shall:

(1) conduct an ongoing public engagement process throughout the State that brings together employers and potential employees, including students, the unemployed, and incumbent employees seeking further training, to provide feedback and information concerning their workforce education and training needs; and

(2) maintain familiarity with the federal Comprehensive Economic Development Strategy (CEDS) and other economic development planning processes, and coordinate workforce and education activities in the State, including the development and implementation of the State plan required under the Workforce Investment Act of 1998, with economic development planning processes occurring in the State, as appropriate.

(c) Membership. The Board shall consist of the Governor and the following members who are appointed by the Governor and serve at his or her pleasure, unless otherwise indicated:

(1) two Members of the Vermont House of Representatives appointed by the Speaker of the House;

(2) two Members of the Vermont Senate appointed by the Senate Committee on Committees;

(3) the President of the University of Vermont or designee;

(4) the Chancellor of the Vermont State Colleges or designee;

(5) the President of the Vermont Student Assistance Corporation or designee;

(6) a representative of an independent Vermont college or university;

(7) the Secretary of Education or designee;

(8) a director of a regional technical center;

(9) a principal of a Vermont high school;

(10) two representatives of labor organizations who have been nominated by State labor federations;

(11) two representatives of individuals and organizations who have experience with respect to youth activities, as defined in 29 U.S.C. § 2801(52);

(12) two representatives of individuals and organizations who have experience in the delivery of workforce investment activities, as defined in 29 U.S.C. § 2801(51);

(13) the lead State agency officials with responsibility for the programs and activities carried out by one-stop partners, as described in 29 U.S.C. § 2841(b), or if no official has that responsibility, a representative in the State with expertise relating to these programs and activities;

(14) the Commissioner of Economic Development;

(15) the Commissioner of Labor;

(16) the Secretary of Human Services or designee;

(17) two individuals who have experience in, and can speak for, the training needs of underemployed and unemployed Vermonters; and

(18) a number of appointees sufficient to constitute a majority of the Board who:

(A) are owners, chief executives, or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority;

(B) represent businesses with employment opportunities that reflect the employment opportunities of the State; and

(C) are appointed from among individuals nominated by State business organizations and business trade associations.

(d) Operation of Board.

(1) Member representation.

(A) Members of the State Board who represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the organizations, agencies, or entities.

(B) The members of the Board shall represent diverse regions of the State, including urban, rural, and suburban areas.

(2) Chair. The Governor shall select a chair for the Board from among the business representatives appointed pursuant to subdivision (c)(18) of this section.

(3) Meetings. The Board shall meet at least three times annually and shall hold additional meetings upon call of the Chair.

(4) Work groups; task forces. The Chair, in consultation with the Commissioner of Labor, may:

(A) assign one or more members to work groups to carry out the work of the Board; and

(B) appoint one or more members of the Board, or nonmembers of the Board, or both, to one or more task forces for a discrete purpose and duration.

(5) Quorum; meetings; voting.

(A) A majority of the sitting members of the Board shall constitute a quorum, and to be valid any action taken by the Board shall be authorized by a majority of the members present and voting at any regular or special meeting at which a quorum is present.

(B) The Board may permit one or more members to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication, including an electronic, telecommunications, and video- or audio-conferencing conference telephone call, by which all members participating may simultaneously or sequentially communicate with each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

(C) The Board shall deliver electronically the minutes for each of its meetings to each member of the Board and to the Chairs of the House Committees on Education and on Commerce and Economic Development, and to the Senate Committees on Education and on Economic Development, Housing and General Affairs.

(6) Reimbursement.

(A) Legislative members of the Board shall be entitled to compensation and expenses as provided in 2 V.S.A. § 406.

(B) Unless otherwise compensated by his or her employer for performance of his or her duties on the Board, a nonlegislative member of the Board shall be eligible for per diem compensation of \$50.00 per day for attendance at a meeting of the Board, and for reimbursement of his or her necessary expenses, which shall be paid by the Department of Labor solely from funds available for that purpose under the Workforce Investment Act of 1998.

(7) Conflict of interest. A member of the Board shall not:

(A) vote on a matter under consideration by the Board:

(i) regarding the provision of services by the member, or by an entity that the member represents; or

(ii) that would provide direct financial benefit to the member or the immediate family of the member; or

(B) engage in any activity that the Governor determines constitutes a conflict of interest as specified in the State Plan required under 29 U.S.C. § 2822.

(8) Sunshine provision. The Board shall make available to the public, on a regular basis through open meetings, information regarding the activities of the Board, including information regarding the State Plan adopted pursuant to 29 U.S.C. § 2822 and prior to submission of the State Plan to the U.S. Secretary of Labor, information regarding membership, and, on request, minutes of formal meetings of the Board.

§ 541b. WORKFORCE EDUCATION AND TRAINING; DUTIES OF OTHER STATE AGENCIES, DEPARTMENTS, AND PRIVATE PARTNERS

(a) To ensure the Workforce Investment Board and the Commissioner of Labor are able to fully perform their duties under this chapter, each agency and department within State government, and each person who receives funding from the State, shall comply within a reasonable period of time with a request for data and information made by the Board or the Commissioner in furtherance of their duties under this chapter.

(b) The Agency of Commerce and Community Development shall coordinate its work in adopting a statewide economic development plan with the activities of the Board and the Commissioner of Labor, including the development and implementation of the state plan for workforce education and training required under the Workforce Investment Act of 1998.

§ 542. REGIONAL WORKFORCE ~~DEVELOPMENT~~ EDUCATION AND TRAINING

(a) The Commissioner of Labor, in coordination with the Secretary of Commerce and Community Development, and in consultation with the Workforce ~~education and training~~ Council ~~Investment Board~~, is authorized to issue performance grants to one or more persons to perform workforce education and training activities in a region.

(b) Each grant shall specify the scope of the workforce education and training activities to be performed and the geographic region to be served, and shall include outcomes and measures to evaluate the grantee's performance.

(c) The Commissioner of Labor and the Secretary of Commerce and Community Development shall jointly develop a grant process and eligibility criteria, as well as an outreach process for notifying potential participants of the grant program. The Commissioner of Labor shall have final authority to approve each grant.

§ 543. WORKFORCE EDUCATION AND TRAINING FUND; GRANT PROGRAMS

(a) Creation. There is created a Workforce Education and Training Fund in the ~~department of labor~~ Department of Labor to be managed in accordance with 32 V.S.A. chapter 7, subchapter 5.

(b) Purposes. The Fund shall be used exclusively for the following ~~two~~ purposes:

(1) ~~training to improve the skills of~~ for Vermont workers, including those who are unemployed, underemployed, or in transition from one job or career to another; and

(2) internships to provide students with work-based learning opportunities with Vermont employers; and

(3) apprenticeship-related instruction.

(c) Administrative Support. Administrative support for the grant award process shall be provided by the ~~Departments~~ Department of Labor and of Economic Development. Technical, ~~administrative, financial, and other~~ support shall be provided whenever appropriate and reasonable by the ~~Workforce Development Council~~ Investment Board and all other public entities involved in ~~Economic Development, workforce development and training, and education~~ economic development and workforce education and training.

(d) Eligible Activities. Awards from the Fund shall be made to employers and entities that offer programs that require collaboration between employees and businesses, including private, public, and nonprofit entities, institutions of higher education, high schools, technical centers, and workforce education and training programs. Funding shall be for training programs and student internship programs that offer education, training, apprenticeship, mentoring, or work-based learning activities, or any combination; that employ innovative intensive student-oriented competency-based or collaborative approaches to workforce education and training; and that link workforce education and economic development strategies. Training programs or projects that demonstrate actual increased income and economic opportunity for employees and employers may be funded for more than one year. Student internships and training programs that involve the same employer may be funded multiple times, provided that new students participate.

~~(e) Award Criteria and Process. The Workforce education and training Council, in consultation with the Commissioners of Labor and of Economic Development and the Secretary of Education, shall develop criteria consistent with subsection (d) of this section for making awards under this section. The Commissioners of Labor and of Economic Development and the Secretary of Education, shall develop a process for making awards. [Repealed].~~

~~(f) Awards. Based on guidelines set by the council, the The Commissioner of labor, and the Secretary of Education Labor, in consultation with the Workforce Investment Board, shall jointly develop award criteria and may make awards to the following:~~

~~(1) Training Programs.~~

~~(A) Public, private, and nonprofit entities for existing or new innovative training programs. Awards may be made to programs that retrain incumbent workers that enhance the skills of Vermont workers and:~~

~~(i) train workers for trades or occupations that are expected to lead to jobs paying at least 200 percent of the current minimum wage or at least 150 percent if benefits are included; this requirement may be waived when warranted based on regional or occupational wages or economic reality;~~

~~(ii) do not duplicate, supplant, or replace other available programs funded with public money;~~

~~(iii) articulate clear goals and demonstrate readily accountable, reportable, and measurable results; and~~

~~(iv) demonstrate an integrated connection between training and specific new or continuing employment opportunities.~~

~~(B) Awards under this subdivision shall be made to programs or projects that do all the following:~~

~~(A)(i) offer innovative programs of intensive, student-centric, competency-based education, training, apprenticeship, mentoring, or any combination of these;~~

~~(B)(ii) address the needs of workers who are unemployed, underemployed, or are at risk of becoming unemployed due to changing workplace demands by increasing productivity and developing new skills for incumbent workers; or~~

~~(iii) in the discretion of the Commissioner, otherwise serve the purposes of this chapter.~~

~~(C) train workers for trades or occupations that are expected to lead to jobs paying at least 200 percent of the current minimum wage or at least~~

~~150 percent if benefits are included; this requirement may be waived when warranted based on regional or occupational wages or economic reality;~~

~~(D) do not duplicate, supplant, or replace other available programs funded with public money;~~

~~(E) articulate clear goals and demonstrate readily accountable, reportable, and measurable results;~~

~~(F) demonstrate an integrated connection between training and specific employment opportunities, including an effort and consideration by participating employers to hire those who successfully complete a training program; and~~

~~(2) Vermont Career Internship Program. Funding for eligible internship programs and activities under the Vermont Career Internship Program established in section 544 of this title.~~

~~(3) Apprenticeship Program. The Vermont Apprenticeship Program established under 21 V.S.A. chapter 13. Awards under this subdivision may be used to fund the cost of apprenticeship-related instruction provided by the Department of Labor.~~

~~(g) [Repealed.]~~

~~§ 544. VERMONT CAREER INTERNSHIP PROGRAM~~

~~(a)(1) The Department of Labor, in consultation with the Agency of Education, shall develop and implement a statewide Vermont Career Internship Program for Vermonters who are in high school or in college and for those who are recent graduates of 24 months or less.~~

~~(2) The Department of Labor shall coordinate and provide funding to public and private entities for internship programs that match Vermont employers with students from public and private secondary schools, regional technical centers, the Community High School of Vermont, colleges, and recent graduates of 24 months or less.~~

~~(3) Funding awarded through the Vermont Career Internship Program may be used to administer an internship program and to provide participants with a stipend during the internship, based on need. Funds may be made only to programs or projects that do all the following:~~

~~(A) do not replace or supplant existing positions;~~

~~(B) create real workplace expectations and consequences;~~

~~(C) provide a process that measures progress toward mastery of skills, attitude, behavior, and sense of responsibility required for success in that workplace;~~

(D) are designed to motivate and educate secondary and postsecondary students and recent graduates through work-based learning opportunities with Vermont employers that are likely to lead to real employment;

(E) include mechanisms that promote employer involvement with secondary and postsecondary students and curriculum and the delivery of education at the participating schools; and

(F) offer participants a continuum of learning, experience, and relationships with employers that will make it financially possible and attractive for graduates to continue to work and live in Vermont.

(4) ~~For the purposes of~~ As used in this section, “internship” means a learning experience working with an employer where the intern may, but does not necessarily, receive academic credit, financial remuneration, a stipend, or any combination of these.

(b) The Department of Labor, in collaboration with the Agencies of Agriculture, Food and Markets and of Education, ~~state-funded~~ State-funded postsecondary educational institutions, the Workforce ~~Development Council~~ Investment Board, and other ~~state~~ State agencies and departments that have workforce education and training and training monies, shall:

(1) identify new and existing funding sources that may be allocated to the Vermont Career Internship Program;

(2) collect data and establish program goals and quantifiable performance measures for internship programs funded through the Vermont Career Internship Program;

(3) develop or enhance a website that will connect students and graduates with internship opportunities with Vermont employers;

(4) engage appropriate agencies and departments of the State in the Internship Program to expand internship opportunities with State government and with entities awarded State contracts; and

(5) work with other public and private entities to develop and enhance internship programs, opportunities, and activities throughout the State.

Sec. 42. 10 V.S.A. chapter 22 is amended to read:

CHAPTER 22. ~~EMPLOYMENT~~ THE VERMONT
TRAINING PROGRAM

§ 531. ~~EMPLOYMENT~~ THE VERMONT TRAINING PROGRAM

(a)(1) The Secretary of Commerce and Community Development ~~may~~, in consultation with the Workforce Investment Board, shall have the authority to

design and implement a Vermont Training Program, the purpose of which shall be to issue performance-based grants to any employer, consortium of employers, or providers of training, either individuals or organizations, as necessary, to conduct training under the following circumstances: to employers and to education and training providers to increase employment opportunities in Vermont consistent with this chapter.

(2) The Secretary shall structure the Vermont Training Program to serve as a flexible, nimble, and strategic resource for Vermont businesses and workers across all sectors of the economy.

~~(1) when issuing grants to an employer or consortium of employers, the employer promises as a condition of the grant to where eligible facility is defined as in subdivision 212(6) of this title relating to the Vermont Economic Development Authority, or the employer or consortium of employers promises to open an eligible facility within the State which will employ persons, provided that for the purposes of this section, eligible facility may be broadly interpreted to include employers in sectors other than manufacturing; and~~

~~(2) training is required for potential employees, new employees, or long-standing employees in the methods, either singularly or in combination relating to pre-employment training, on-the-job training, upgrade training, and crossover training, or specialized instruction, either in plant or through a training provider.~~

(b) Eligibility for grant. The Secretary of Commerce and Community Development may award a grant to an employer if:

~~(1) the employer's new or expanded initiative will enhance employment opportunities for Vermont residents; the training is for preemployment, new employees, or incumbent employees in the methods, either singularly or in combination, relating to preemployment training, on-the-job training, upgrade training, crossover training, or specialized instruction, either on-site or through a training provider;~~

~~(2) the employer provides its employees with at least three of the following:~~

~~(A) health care benefits with 50 percent or more of the premium paid by the employer;~~

~~(B) dental assistance;~~

~~(C) paid vacation and;~~

~~(D) paid holidays;~~

~~(D)(E) child care;~~

~~(E)(F) other extraordinary employee benefits;~~

~~(F)(G) retirement benefits; and~~

~~(H) other paid time off, including paid sick days;~~

~~(3) the training is directly related to the employment responsibilities of the trainee; and~~

~~(4) compensation for each trainee at the completion of the training program equals or exceeds the livable wage as defined in 2 V.S.A. § 505, provided that the Secretary shall have the authority to modify this requirement if he or she determines that the employer offers compensation or benefits, the value of which exceeds the compensation and benefit assumptions in the basic needs budget and livable wage calculated pursuant to 2 V.S.A. § 505.~~

~~(c) The employer promises as a condition of the grant to:~~

~~(1) employ new persons at a wage which, at the completion of the training program, is two times the prevailing state or federal minimum wage, whichever is greater, reduced by the value of any existing health benefit package up to a limit of 30 percent of the gross program wage, or for existing employees, to increase the wage to two times the prevailing state and federal minimum wage, whichever is greater, reduced by the value of any existing health benefit package up to a limit of 20 percent of the gross program wage, upon completion of training; provided, however, that in areas defined by the Secretary of Commerce and Community Development in which the Secretary finds that the rate of unemployment is 50 percent greater than the average for the State, the wage rate under this subsection may be set by the Secretary at a rate no less than one and one-half times the federal or state minimum wage, whichever is greater;~~

~~(2) employ persons who have completed the training provided for them and nominated as qualified for a reasonable period at the wages and occupations described in the contract, unless the employer reasonably finds the nominee is not qualified;~~

~~(3) provide its employees with at least three of the following:~~

~~(A) health care benefits with 50 percent or more of the premium paid by the employer;~~

~~(B) dental assistance;~~

~~(C) paid vacation and holidays;~~

~~(D) child care;~~

~~(E) other extraordinary employee benefits; and~~

~~(F) retirement benefits.~~

~~(4) submit a customer satisfaction report to the Secretary of Commerce and Community Development, on a form prepared by the Secretary for that purpose, no more than 30 days from the last day of the training program.~~

~~In the case of a grant to a training provider, the Secretary shall require as a condition of the grant that the provider shall disclose to the Secretary the name of the employer and the number of employees trained prior to final payment for the training.~~

~~(d) In order to avoid duplication of programs or services and to provide the greatest return on investment from training provided under this section, the Secretary of Commerce and Community Development shall:~~

~~(1) first consult with the Commissioner of Labor regarding whether the grantee has accessed, or is eligible to access, other workforce education and training resources offered by public or private workforce education and training partners;~~

~~(2) disburse grant funds only for training hours that have been successfully completed by employees; provided that a grant for on-the-job training shall either provide not more than 50 percent of wages for each employee in training, or not more than 50 percent of trainer expense, but not both, and further provided that training shall be performed in accordance with a training plan that defines the subject of the training, the number of training hours, and how the effectiveness of the training will be evaluated; and~~

~~(3) use funds under this section only to supplement training efforts of employers and not to replace or supplant training efforts of employers.~~

~~(e) The Secretary of Commerce and Community Development shall administer all training programs under this section, may select and use providers of training as appropriate, and shall adopt rules and may accept services, money, or property donated for the purposes of this section. The Secretary may promote awareness of, and may give priority to, training that enhances critical skills, productivity, innovation, quality, or competitiveness, such as training in Innovation Engineering, "Lean" systems, and ISO certification for expansion into new markets. [Repealed.]~~

~~(f) Upon completion of the training program for any individual, the secretary of Commerce and Community Development shall review the records and shall award to the trainee, if appropriate, a certificate of completion for the training.~~

~~(g) None of the criteria in subdivision (a)(1) of this section shall apply to a designated job development zone under chapter 29, subchapter 2 of this title. [Repealed.]~~

~~(h) The Secretary may designate the Commissioner of Economic Development to carry out his or her powers and duties under this chapter. [Repealed.]~~

~~(i) Program Outcomes:~~

~~(1) On or before September 1, 2011, the Agency of Commerce and Community Development, in coordination with the department of labor, and in consultation with the Workforce education and training Council and the legislative Joint Fiscal Office, shall develop, to the extent appropriate, a common set of benchmarks and performance measures for the training program established in this section and the Workforce Education and Training Fund established in section 543 of this title, and shall collect employee specific data on training outcomes regarding the performance measures; provided, however, that the Secretary shall redact personal identifying information from such data.~~

~~(2) On or before January 15, 2013, the Joint Fiscal Office shall prepare a performance report using the benchmarks and performance measures created pursuant to subdivision (1) of this subsection. The Joint Fiscal Office shall submit its report to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on Commerce and Economic Development.~~

~~(3) The Secretary shall use information gathered pursuant to this subsection and customer satisfaction reports submitted pursuant to subdivision (c)(4) of this section to evaluate the program and make necessary changes that fall within the Secretary's authority or, if beyond the scope of the Secretary's authority, to recommend necessary changes to the appropriate committees of the General Assembly. [Repealed.]~~

~~(j) Consistent with the training program's goal of providing specialized training and increased employment opportunities for Vermonters, and notwithstanding provisions of this section to the contrary, the Secretary shall canvas apprenticeship sponsors to determine demand for various levels of training and classes and shall transfer up to \$250,000.00 annually to the regional technical centers to fund or provide supplemental funding for apprenticeship training programs leading up to certification or licensing as journeyman or master electricians or plumbers. The Secretary shall seek to provide these funds equitably throughout Vermont; however, the Secretary shall give priority to regions not currently served by apprenticeship programs offered through the Vermont Department of Labor pursuant to 21 V.S.A. chapter 13. [Repealed].~~

~~(k) Annually on or before January 15, the Secretary shall submit a report to the House Committee on Commerce and Economic Development and the~~

Senate Committee on Economic Development, Housing and General Affairs summarizing. In addition to the reporting requirements under section 540 of this title, the report shall identify:

(1) all active and completed contracts and grants;

(2) ~~the types of training activities provided, from among the following, the category the training addressed:~~

(A) preemployment training or other training for a new employee to begin a newly created position with the employer;

(B) preemployment training or other training for a new employee to begin in an existing position with the employer;

(C) training for an incumbent employee who, upon completion of training, assumes a newly created position with the employer;

(D) training for an incumbent employee who upon completion of training assumes a different position with the employer;

(E) training for an incumbent employee to upgrade skills;

(3) for the training identified in subdivision whether the training is onsite or classroom-based;

(4) the number of employees served, ~~and~~ ;

(5) the average wage by employer, ~~and addressing~~;

(6) any waivers granted;

(7) the identity of the employer, or, if unknown at the time of the report, the category of employer;

(8) the identity of each training provider; and

(9) whether training results in a wage increase for a trainee, and the amount of increase.

Sec. 43. REPEAL

2007 Acts and Resolves No. 46, Sec. 6(a), as amended by 2009 Acts and Resolves No. 54, Sec. 8 (workforce education and training leader) and 2013 Acts and Resolves No. 81, Sec. 2, is repealed.

Sec. 44. DEPARTMENT OF LABOR; AGENCY OF COMMERCE AND
COMMUNITY DEVELOPMENT; STATUTORY PROPOSALS

On or before November 1, 2014:

(1) The Commissioner of Labor shall submit to the House Committee on Commerce and Economic Development and the Senate Committee on

Economic Development, Housing and General Affairs a proposal to amend the language of 10 V.S.A. § 543 to reflect best practices and improve clarity in the administration of, and for applicants to, the grant program from the Workforce Education and Training Fund under that section.

(2) The Secretary of Commerce and Community Development shall submit to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs a proposal to amend the language of 10 V.S.A. § 531 to reflect best practices and improve clarity in the administration of, and for applicants to, the Vermont Training Program under that section.

Sec. 45. INTERNSHIP OPPORTUNITIES FOR YOUNG PERSONS

On or before January 15, 2015, the Commissioner of Labor shall submit to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs a report that details the internship opportunities available to Vermonters between 15 and 18 years of age and recommends one or more means to expand these opportunities through the Vermont Career Internship Program, 10 V.S.A. § 544, or through other appropriate mechanisms.

** * * Vermont Strong Scholars Program * * **

Sec. 46. 16 V.S.A. chapter 90 is redesignated to read:

**CHAPTER 90. FUNDING OF POSTSECONDARY INSTITUTIONS
EDUCATION**

Sec. 47. 16 V.S.A. § 2888 is added to read:

**§ 2888. VERMONT STRONG SCHOLARS AND INTERNSHIP
INITIATIVE**

(a) Creation.

(1) There is created a postsecondary loan forgiveness and internship initiative designed to forgive a portion of Vermont Student Assistance Corporation loans of students employed in economic sectors identified as important to Vermont's economy and to build internship opportunities for students to gain work experience with Vermont employers.

(2) The initiative shall be known as the Vermont Strong Scholars and Internship Initiative and is designed to:

(A) encourage students to:

(i) consider jobs in economic sectors that are critical to the Vermont economy;

(ii) enroll and remain enrolled in a Vermont postsecondary institution; and

(iii) live in Vermont upon graduation;

(B) reduce student loan debt for postsecondary education in targeted fields;

(C) provide experiential learning through internship opportunities with Vermont employers; and

(D) support a pipeline of qualified talent for employment with Vermont's employers.

(b) Vermont Strong Loan Forgiveness Program.

(1) Economic sectors; projections.

(A) Annually, on or before November 15, the Secretary of Commerce and Community Development and the Commissioner of Labor, in consultation with the Vermont State Colleges, the University of Vermont, the Vermont Student Assistance Corporation, the Secretary of Human Services, and the Secretary of Education, shall identify economic sectors, projecting at least four years into the future, that are or will be critical to the Vermont economy.

(B) Based upon the identified economic sectors and the number of students anticipated to qualify for loan forgiveness under this section, the Secretary of Commerce and Community Development shall annually provide the General Assembly with the estimated cost of the Vermont Student Assistance Corporation's loan forgiveness awards under the loan forgiveness program during the then-current fiscal year and each of the four following fiscal years.

(2) Eligibility. A graduate of a public or private Vermont postsecondary institution shall be eligible for forgiveness of a portion of his or her Vermont Student Assistance Corporation postsecondary education loans under this section if he or she:

(A) was a Vermont resident, as defined in 16 V.S.A. § 2822(7), at the time he or she was graduated;

(B) enrolled in a postsecondary institution on or after July 1, 2015 and completed an associate's degree within three years, or a bachelor's degree within six years;

(C) becomes employed in Vermont within 12 months of graduation in an economic sector identified by the Secretary and Commissioner under subdivision (1) of this subsection;

(D) remains employed in Vermont throughout the period of loan forgiveness in an economic sector identified by the Secretary and Commissioner under subdivision (1) of this subsection; and

(E) remains a Vermont resident throughout the period of loan forgiveness.

(3) Loan forgiveness. An eligible individual shall have a portion of his or her Vermont Student Assistance Corporation loan forgiven as follows:

(A) for an individual awarded an associate's degree, in an amount equal to the comprehensive in-state tuition rate for 15 credits at the Vermont State Colleges during the individual's final semester of enrollment, to be prorated over the three years following graduation; and

(B) for an individual awarded a bachelor's degree, in an amount equal to the comprehensive in-state tuition rate for 30 credits at the Vermont State Colleges during the individual's final year of enrollment, to be prorated over the five years following graduation.

(C) Loan forgiveness may be awarded on a prorated basis to an otherwise eligible Vermont resident who transfers to and is graduated from a Vermont postsecondary institution.

(4) Management.

(A) The Secretary of Commerce and Community Development shall develop all organizational details of the loan forgiveness program consistent with the purposes and requirements of this section.

(B) The Secretary shall enter into a memorandum of understanding with the Vermont Student Assistance Corporation for management of the loan forgiveness program.

(C) The Secretary may adopt rules pursuant to 3 V.S.A. chapter 25 necessary to implement the Program.

(c) Vermont Strong Internship Program.

(1) Internship program management.

(A) The Commissioner of Labor and the Secretary of Commerce and Community Development shall jointly develop and implement the organizational details of the internship program consistent with the purposes and requirements of this section and may adopt rules pursuant to 3 V.S.A. chapter 25 necessary to implement the internship program.

(B) The Commissioner, in consultation with the Secretary, shall issue a request for proposals for a person to serve as an Internship Program Intermediary, who shall perform the duties and responsibilities pursuant to the

terms of a performance contract negotiated by the Commissioner and the Intermediary.

(C) The Department of Labor, the Agency of Commerce and Community Development, the regional development corporations, and the Intermediary, shall have responsibility for building connections within the business community to ensure broad private sector participation in the internship program.

(D) The Program Intermediary shall:

(i) identify and foster postsecondary internships that are rigorous, productive, well-managed, and mentored;

(ii) cultivate relationships with employers, employer-focused organizations, and state and regional government bodies;

(iii) build relationships with Vermont postsecondary institutions and facilitate recruitment of students to apply for available internships;

(iv) create and maintain a registry of participating employers and associated internship opportunities;

(v) coordinate and provide support to the participating student, the employer, and the student's postsecondary institution;

(vi) develop and oversee a participation contract between each student and employer, including terms governing the expectations for the internship, a work plan, mentoring and supervision of the student, reporting by the employer and student, and compensation terms; and

(vii) carry out any additional activities and duties as directed by the Commissioner.

(2) Qualifying internships.

(A) Criteria. To qualify for participation in the internship program an internship shall at minimum:

(i) be with a Vermont employer as approved by the Intermediary in consultation with the Commissioner and Secretary;

(ii) pay compensation to an intern of at least the prevailing minimum wage; and

(iii) meet the quality standards and expectations as established by the Intermediary.

(B) Employment of interns. Interns shall be employed by the sponsoring employer except, with the approval of the Commissioner on a case-by-case basis, interns may be employed by the Intermediary and assigned

to work with a participating Vermont employer, in which case the sponsoring employer shall contribute funds as determined by the Commissioner.

(3) Student eligibility. To participate in the internship program an individual shall be:

(A) a Vermont resident enrolled in a post-secondary institution in or outside Vermont;

(B) a student who graduated from a postsecondary institution within 24 months of entering the program who was classified as a Vermont resident during that schooling or who is a student who attended a post-secondary institution in Vermont; or

(C) a student enrolled in a Vermont post-secondary institution.

(d) Funding.

(1) Loan forgiveness program.

(A) Loan forgiveness; State funding.

(i) There is created a special fund to be known as the Vermont Strong Scholars Fund pursuant to 32 V.S.A. chapter 7, subchapter 5, which shall be used and administered by the Secretary of Commerce and Community Development solely for the purposes of loan forgiveness pursuant to this section.

(ii) The Fund shall consist of sums to be identified by the Secretary from any source accepted for the benefit of the Fund and interest earned from the investment of Fund balances.

(iii) Any interest earned and any remaining balance at the end of the fiscal year shall be carried forward in the Fund.

(iv) The availability and payment of loan forgiveness awards under this subdivision is subject to State funding available for the awards.

(B) Loan forgiveness; Vermont Student Assistance Corporation.

The Vermont Student Assistance Corporation shall have the authority to grant loan forgiveness pursuant to this section by using the private loan forgiveness capacity associated with bonds issued by the Corporation to raise funds for private loans that are eligible for forgiveness under this section, if available.

(2) Internship program. Notwithstanding any provision of law to the contrary, the Commissioner of Labor shall have the authority to use funds allocated to the Workforce Education and Training Fund established in 10 V.S.A. § 543 to implement the internship program created in this section.

Sec. 48. VERMONT STRONG INTERIM REPORT

On or before November 1, 2014, the Secretary of Commerce and Community Development shall report to the Joint Fiscal Committee on the organizational and economic details of the Vermont Strong Scholars Initiative, including:

(1) the economic sectors selected for loan forgiveness;

(2) the projected annual cost of the Initiative,

(3) the proposed funding sources;

(4) programmatic proposals and economic projections on the feasibility and impacts of expanding eligibility for the loan forgiveness program to include Vermont residents who attend postsecondary institutions outside Vermont and out-of-state residents who attend Vermont postsecondary institutions; and

(5) the projected balance of the Vermont Strong Scholars Fund for each fiscal year through fiscal year 2018.

Sec. 49. VERMONT PRODUCTS PROGRAM; STUDY; REPORT

(a) On or before September 1, 2016, the Agency of Commerce and Community Development, after consulting with appropriate stakeholders, shall report to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on Commerce and Economic Development on creating a Vermont Products Program for the purpose of providing Vermont businesses with a means of promoting and marketing products and services that are manufactured, designed, engineered, or formulated in Vermont and avoiding confusion by consumers when the Vermont brand is used in marketing products or services.

(b) The report required by this section shall describe the method, feasibility, and cost of creating a Vermont Products Program that includes the following elements:

(1) The program shall include a licensing system that enables qualifying persons to make marketing claims concerning significant business activities occurring in Vermont, and to self-certify products and services that are manufactured, designed, engineered, or formulated in Vermont. Under this system, the Secretary shall identify and craft branding and marketing guidelines that concern whether and how qualifying products or services manufactured, designed, engineered, or formulated in Vermont can be properly claimed so as to be licensed. The licensing system shall permit an applicant to self-certify compliance with designated criteria and attest to the

accuracy of claims authorized by the Secretary in order to obtain a license to advertise and promote a product or service using the licensed materials.

(2) The program may charge an annual fee for the issuance of the license.

(3) The program shall include an on-line application process that permits an applicant to obtain the license if he or she certifies compliance with criteria designated by the Secretary, attests to the accuracy of statements designated by the Secretary, and pays the required fee.

(4) Licenses issued under the program shall include a provision requiring that disputes regarding the license be resolved by alternative dispute resolution. A person who objects to the issuance of a license may file a complaint with the Secretary, who shall refer it for alternative dispute resolution as provided in the license.

(5) A special fund, comprising license fees and any monies appropriated by the General Assembly, may be created for the administration and advertising of the program.

(c) The report required by this section shall include a recommendation as to whether the Vermont Products Program should replace the rules regarding Vermont Origin adopted by the Attorney General.

(d) On or before February 1, 2015, the Secretary of Commerce and Community Development shall deliver testimony to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on Commerce and Economic Development on the status of the Vermont Products Program pursuant to this section.

** * * Workers' Compensation * * **

Sec. 50. 21 V.S.A. § 632 is amended to read:

*§ 632. COMPENSATION TO DEPENDENTS; ~~DEATH BENEFITS~~
BURIAL AND FUNERAL EXPENSES*

If death results from the injury, the employer shall pay to the persons entitled to compensation or, if there is none, then to the personal representative of the deceased employee, the actual burial and funeral expenses ~~in the amount of \$5,500.00~~ not to exceed \$10,000.00 and the actual expenses for out-of-state transportation of the decedent to the place of burial ~~not to exceed \$1,000.00~~ \$5,000.00. Every two years, the Commissioner of Labor shall evaluate the average burial and funeral expenses in the State and make a recommendation to the House Committee on Commerce and Economic Development and the Senate Committee on Finance as to whether an adjustment in compensation is warranted. The employer shall also pay to or

for the benefit of the following persons, for the periods prescribed in section 635 of this title, a weekly compensation equal to the following percentages of the deceased employee's average weekly wages. The weekly compensation payment herein allowed shall not exceed the maximum weekly compensation or be lower than the minimum weekly compensation:

* * *

Sec. 51. 21 V.S.A. § 639 is amended to read:

§ 639. DEATH, PAYMENT TO DEPENDENTS

In cases of the death of a person from any cause other than the accident during the period of payments for disability or for the permanent injury, the remaining payments for disability then due or for the permanent injury shall be made to the person's dependents according to the provisions of sections 635 and 636 of this title, or if there are none, the remaining amount due, but ~~not~~ not exceeding \$5,500.00 for burial and funeral expenses no more than the actual burial and funeral expenses not to exceed \$10,000.00 and the actual expenses for out-of-state transportation of the decedent to the place of burial not to exceed \$1,000.00 \$5,000.00, shall be paid in a lump sum to the proper person. Every two years, the Commissioner of Labor shall evaluate the average burial and funeral expenses in the State and make a recommendation to the House Committee on Commerce and Economic Development and the Senate Committee on Finance as to whether an adjustment in compensation is warranted.

Sec. 52. 21 V.S.A. § 640c is added to read:

§ 640c. OPIOID USAGE DETERRENCE

(a) In support of the State's fundamental interest in ensuring the well-being of employees and employers, it is the intent of the General Assembly to protect employees from the dangers of prescription drug abuse while maintaining a balance between the employee's health and the employee's expedient return to work.

(b) As it pertains to workers' compensation claims, the Commissioner of Labor, in consultation with the Department of Health, the State Pharmacologist, the Vermont Board of Medical Practice, and the Vermont Medical Society, shall adopt rules consistent with the best practices governing the prescription of opioids, including patient screening, drug screening, and claim adjudication for patients prescribed opioids for chronic pain. In adopting rules, the Commissioner shall consider guidelines and standards such as the Occupational Medicine Practice Guidelines published by the American College of Occupational and Environmental Medicine and other medical authorities with expertise in the treatment of chronic pain. The rules

shall be consistent with the standards and guidelines under 18 V.S.A. § 4289 and any rules adopted by the Department of Health pursuant to 18 V.S.A § 4289.

Sec. 53. 21 V.S.A. § 641 is amended to read:

§ 641. VOCATIONAL REHABILITATION

* * *

(e)(1) In support of the State's fundamental interest in ensuring the well-being of employees and employers, it is the intent of the General Assembly that, following a workplace accident, an employee return to work as soon as possible but remain cognizant of the limitations imposed by his or her medical condition.

(2) The Commissioner shall adopt rules promoting development and implementation of cost-effective, early return-to-work programs.

Sec. 54. 21 V.S.A. § 643a is amended to read:

§ 643a. DISCONTINUANCE OF BENEFITS

Unless an injured worker has successfully returned to work, an employer shall notify both the Commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to discontinue payments shall be filed on forms prescribed by the Commissioner and shall include the date of the proposed discontinuance, the reasons for it, and, if the employee has been out of work for 90 days, a verification that the employer offered vocational rehabilitation screening and services as required under this chapter. All relevant evidence, including evidence that does not support discontinuance in the possession of the employer not already filed, shall be filed with the notice. The liability for the payments shall continue for seven days after the notice is received by the Commissioner and the employee. If the claimant disputes the discontinuance, the claimant may file with the Commissioner an objection to the discontinuance and seek an extension of 14 days. The objection to the discontinuance shall be specific as to the reasons and include supporting evidence. A copy of the objection shall be provided to the employer at the time the request is made to the Commissioner. Those payments shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the Commissioner determines that the discontinuance is warranted or if otherwise ordered by the Commissioner. Every notice shall be reviewed by the Commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, after review of all the evidence in the file, the Commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the Commissioner shall

order that payments continue until a hearing is held and a decision is rendered. Prior to a formal hearing, an injured worker may request reinstatement of benefits by providing additional new evidence to the Department that establishes that a preponderance of all evidence now supports the claim. If the Commissioner's decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the Commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce a repayment order in any court of law having jurisdiction.

Sec. 54a. REPEAL

21 V.S.A. § 643a shall be repealed on July 1, 2018.

Sec. 54b. 21 V.S.A. § 643a is added to read:

§ 643a. DISCONTINUANCE OF BENEFITS

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

Commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce a repayment order in any court of law having jurisdiction.

Sec. 54c. STUDY; REPORT; DISCONTINUANCE OF BENEFITS

The Commissioner of Labor shall assess the financial and administrative impacts of the statutory revisions to 21 V.S.A. § 643a, as amended by this act, and on or before January 15, 2017 shall submit to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs a report addressing:

(1) whether the statutory revisions expedited the discontinuance process;

(2) whether the statutory revisions affected workers' compensation insurance rates;

(3) how many requests to discontinue benefits were received, acted on, the time required for action, and whether there was a subsequent order for reinstatement of benefits; and

(4) any other matters deemed relevant by the Commissioner.

Sec. 55. 21 V.S.A. § 691a is added to read:

§ 691a. POSTING OF SAFETY RECORDS

(a) In support of the State's fundamental interest in ensuring the well-being of employees and employers, it is the intent of the General Assembly to improve the safety experience in the workplace.

(b) An employer subject to the provisions of this chapter shall post a notice in the employer's place of business to advise employees of where they may review the employer's record of workplace safety, including workplace injury and illness data, in accordance with rules adopted by the Commissioner. The employer's record of workplace safety, including workplace injury and illness data, shall be available for review by employees at the employer's place of business and the Commissioner, but shall not otherwise be public information. The posting shall be in a format approved by the Commissioner. The posting may be in a format provided by the Commissioner.

Sec. 56. 21 V.S.A. § 696 is amended to read:

§ 696. CANCELLATION OF INSURANCE CONTRACTS

A policy or contract shall not be cancelled within the time ~~limited~~ specified in the policy or contract for its expiration, until at least 45 days after a notice of intention to cancel the policy or contract, on a date specified in the notice, has been filed in the office of the ~~commissioner~~ Commissioner and provided to

the employer. The notice shall be filed with the Commissioner in accordance with rules adopted by the Commissioner and provided to the employer by certified mail ~~or certificate of mailing~~. The cancellation shall not affect the liability of an insurance carrier on account of an injury occurring prior to cancellation.

Sec. 57. 21 V.S.A. § 697 is amended to read:

§ 697. NOTICE OF INTENT NOT TO RENEW POLICY

An insurance carrier who does not intend to renew a workers' compensation insurance policy of workers' compensation insurance or guarantee contract covering the liability of an employer under the provisions of this chapter, 45 days prior to the expiration of the policy or contract, shall give notice of ~~the~~ its intention to the commissioner of labor Commissioner and to the covered employer at least 45 days prior to the expiration date stated in the policy or contract. The notice shall be given to the employer by certified mail ~~or certificate of mailing~~. An insurance carrier who fails to give notice shall continue the policy or contract in force beyond its expiration date for 45 days from the day the notice is received by the ~~commissioner~~ Commissioner and the employer. However, ~~this latter provision shall not apply if, prior to such expiration date, on or before the expiration of the existing insurance or guarantee contract the insurance carrier has, by delivery of a renewal contract or otherwise, offered to continue the insurance beyond the date by delivery of a renewal contract or otherwise,~~ or if the employer notifies the insurance carrier in writing that the employer does not wish the insurance continued beyond the expiration date, or if the employer complies with the provisions of section 687 of this title, on or before the expiration of the existing insurance or guarantee contract then the policy will expire upon notice to the Commissioner.

Sec. 58. ROBERT H. WOOD CRIMINAL JUSTICE AND FIRE SERVICE TRAINING CENTER STUDY

The Department of Labor and the Office of Risk Management, in consultation with the Vermont League of Cities and Towns and any other interested parties, shall conduct a study, to be submitted to the House Committee on Commerce and Economic Development and the Senate Committee on Finance on or before January 15, 2015, to:

(1) analyze existing and frequently occurring injuries suffered by individuals while attending the Robert H. Wood Criminal Justice and Fire Service Training Center;

(2) analyze preventive measures to avoid injuries;

(3) recommend who should bear the financial burden of the workers' compensation premiums; and

(4) recommend preventive measures necessary to reduce injuries.

Sec. 59. *WORKPLACE SAFETY RANKING STUDY*

The Department of Labor and the Department of Financial Regulation, in consultation with the National Council on Compensation Insurance, shall study whether information may be made available to employers to allow an employer to compare its workplace safety and workers' compensation experience with that of employers in similar industries or North American Industry Classification System codes.

Sec. 60. *2013 Acts and Resolves No. 75, Sec. 14 is amended as follows:*

Sec. 14. *UNIFIED PAIN MANAGEMENT SYSTEM ADVISORY COUNCIL*

* * *

(b) The Unified Pain Management System Advisory Council shall consist of the following members:

* * *

(4) the Commissioner of Labor or designee;

(5) the Director of the Blueprint for Health or designee;

~~(5)~~(6) the Chair of the Board of Medical Practice or designee, who shall be a clinician;

~~(6)~~(7) a representative of the Vermont State Dental Society, who shall be a dentist;

~~(7)~~(8) a representative of the Vermont Board of Pharmacy, who shall be a pharmacist;

~~(8)~~(9) a faculty member of the academic detailing program at the University of Vermont's College of Medicine;

~~(9)~~(10) a faculty member of the University of Vermont's College of Medicine with expertise in the treatment of addiction or chronic pain management;

~~(10)~~(11) a representative of the Vermont Medical Society, who shall be a primary care clinician;

~~(11)~~(12) a representative of the American Academy of Family Physicians, Vermont chapter, who shall be a primary care clinician;

~~(12)~~(13) a representative from the Vermont Board of Osteopathic Physicians, who shall be an osteopath;

~~(13)~~(14) a representative of the Federally Qualified Health Centers, who shall be a primary care clinician selected by the Bi-State Primary Care Association;

~~(14)~~(15) a representative of the Vermont Ethics Network;

~~(15)~~(16) a representative of the Hospice and Palliative Care Council of Vermont;

~~(16)~~(17) a representative of the Office of the Health Care Ombudsman;

~~(17)~~(18) the Medical Director for the Department of Vermont Health Access;

~~(18)~~(19) a clinician who works in the emergency department of a hospital, to be selected by the Vermont Association of Hospitals and Health Systems in consultation with any nonmember hospitals;

~~(19)~~(20) a member of the Vermont Board of Nursing Subcommittee on APRN Practice, who shall be an advanced practice registered nurse;

~~(20)~~(21) a representative from the Vermont Assembly of Home Health and Hospice Agencies;

~~(21)~~(22) a psychologist licensed pursuant to 26 V.S.A. chapter 55 who has experience in treating chronic pain, to be selected by the Board of Psychological Examiners;

~~(22)~~(23) a drug and alcohol abuse counselor licensed pursuant to 33 V.S.A. chapter 8, to be selected by the Deputy Commissioner of Health for Alcohol and Drug Abuse Programs;

~~(23)~~(24) a retail pharmacist, to be selected by the Vermont Pharmacists Association;

~~(24)~~(25) an advanced practice registered nurse full-time faculty member from the University of Vermont's Department of Nursing; ~~and~~

~~(25)~~(26) a consumer representative who is either a consumer in recovery from prescription drug abuse or a consumer receiving medical treatment for chronic noncancer-related pain;

(27) a clinician who specializes in occupational medicine;

(28) a clinician who specializes in physical medicine and rehabilitation; and

(29) a consumer representative who is or has been an injured worker and has been prescribed opioids.

* * *

Sec. 61. 21 V.S.A. § 602 is amended to read:

§ 602. *PROCESS AND PROCEDURE*

* * *

(c) Any communication from an employer or an insurer to a claimant that is not otherwise required to be provided on a form prescribed by the Commissioner must include a statement advising the claimant that he or she should contact the Department of Labor's Workers' Compensation Division to determine any right to object or appeal, as provided by law, and to seek information from the Department on the process and procedures.

Sec. 62. 21 V.S.A. § 655 is amended to read:

§ 655. *PROCEDURE IN OBTAINING COMPENSATION; MEDICAL EXAMINATION; VIDEO AND AUDIO RECORDING*

After an injury and during the period of disability, if so requested by his or her employer, or ordered by the Commissioner, the employee shall submit to examination, at reasonable times and ~~places~~ within a two-hour driving radius of the residence of the injured employee, by a duly licensed physician or surgeon designated and paid by the employer. The Commissioner may in his or her discretion permit an examination outside the two-hour driving radius if it is necessary to obtain the services of a provider who specializes in the evaluation and treatment specific to the nature and extent of the employee's injury. The employee may make a video or audio recording of any examination performed by the insurer's physician or surgeon or have a licensed health care provider designated and paid by the employee present at the examination. The employer may make an audio recording of the examination. The right of the employee to record the examination shall not be construed to deny to the employer's physician the right to visit the injured employee at all reasonable times and under all reasonable conditions during total disability. If an employee refuses to submit to or in any way obstructs the examination, the employee's right to prosecute any proceeding under the provisions of this chapter shall be suspended until the refusal or obstruction ceases, and compensation shall not be payable for the period which the refusal or obstruction continues.

Sec. 63. 21 V.S.A. § 663b is added to read:

§ 663b. *FRAUD*

(a) Any claims of fraud submitted to the Department shall require action by the Commissioner to determine if further investigation is warranted. The Commissioner shall order the insurer to investigate specific allegations of claimant fraud and submit a written report to the Department. Once the insurer's report is received, the Commissioner shall afford the claimant an

opportunity to respond in person or in writing within 30 days. The Commissioner may order additional information to be provided to the Department from the insurer or the claimant. The Department shall issue a determination on the fraud allegation, including penalties and any reimbursement as provided under section 708 of this title. The party may appeal the decision of the Commissioner as provided under 3 V.S.A. chapter 25.

(b) An employee found to have committed fraud in order to receive compensation under this chapter shall be ordered to repay all compensation fraudulently received in addition to other administrative penalties ordered by the Department. These payments shall not be charged to the employer for purposes of calculating its experience rating.

Sec. 64. FRAUD STUDY AND REPORT

The Department shall initiate a study of the best practices to detect and deter workers' compensation fraud by employees, employers, and other persons involved with the workers' compensation system. The study shall include investigation procedures, penalties, and recapture of fraudulently obtained payments in a timely and cost-effective manner. On or before January 15, 2015, the Department shall report its findings and recommendations to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs.

Sec. 65. 21 V.S.A. § 624(e) is amended to read:

(e)(1) In an action to enforce the liability of a third party, the injured employee may recover any amount which the employee or the employee's personal representative would be entitled to recover in a civil action. Any recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of recovery, shall first reimburse the employer or its workers' compensation insurance carrier for any amounts paid or payable under this chapter to date of recovery, and the balance shall forthwith be paid to the employee or the employee's dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payment of compensation benefits. Reimbursement required under this subsection, except to prevent double recovery, shall not reduce the employee's recovery of any benefit or payment provided by a plan or policy that was privately purchased by the injured employee, including ~~uninsured under insured~~ uninsured-underinsured motorist coverage, or any other first party insurance payments or benefits.

(2) Should the recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of recovery, be

less than the full value of the claim for personal injuries or death, the reimbursement to the employer or workers' compensation insurance carrier shall be limited to that portion of the recovery allocated for damages covered by the Workers' Compensation Act. If a court has not allocated or the parties cannot agree to the allocation of the recovered damages, either party may request that the Commissioner make an administrative determination. Upon receiving a request, the Commissioner shall order mediation with a mediator selected from a list approved by the Commissioner. If mediation is unsuccessful, the Commissioner may adjudicate the dispute or refer the dispute to an arbitrator approved by the Commissioner. The determination of the Commissioner or of an arbitrator approved by the Commissioner shall be final. The cost of any mediation or arbitration shall be split equally by the parties.

Sec. 66. 21 V.S.A. § 678 is amended to read:

§ 678. COSTS; ~~ATTORNEY~~ ATTORNEY'S FEES

(a) Necessary costs of proceedings under this chapter, including deposition expenses, subpoena fees, and expert witness fees, shall be assessed by the ~~commissioner~~ Commissioner against the employer or its workers' compensation carrier when the claimant prevails. The ~~commissioner~~ Commissioner may allow the claimant to recover reasonable ~~attorney~~ attorney's fees when the claimant prevails. Costs shall not be taxed or allowed either party except as provided in this section.

(b) In appeals to the ~~superior or supreme courts~~ Superior or Supreme Court, if the claimant prevails, he or she shall be entitled to reasonable ~~attorney~~ attorney's fees as approved by the ~~court~~ Court, necessary costs, including deposition expenses, subpoena fees, and expert witness fees, and interest at the rate of 12 percent per annum on that portion of any award the payment of which is contested. Interest shall be computed from the date of the award of the ~~commissioner~~ Commissioner.

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* * * Notice of Data Security Breach * * *

Sec. 67. 9 V.S.A. § 2435(b)(4) is amended to read:

(4)(A) The notice to a consumer required by this subsection shall be delayed upon request of a law enforcement agency. A law enforcement agency may request the delay if it believes that notification may impede a law enforcement investigation, or a national or Homeland Security investigation or jeopardize public safety or national or Homeland Security interests. In the event law enforcement makes the request for a delay in a manner other than in writing, the data collector shall document such request contemporaneously in

writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. A law enforcement agency shall promptly notify the data collector in writing when the law enforcement agency no longer believes that notification may impede a law enforcement investigation, or a national or Homeland Security investigation or jeopardize public safety or national or Homeland Security interests. The data collector shall provide notice required by this section without unreasonable delay upon receipt of a written communication, which includes facsimile or electronic communication, from the law enforcement agency withdrawing its request for delay.

(B) A Vermont law enforcement agency with a reasonable belief that a security breach has or may have occurred at a specific business shall notify the business in writing of its belief. The agency shall also notify the business that additional information on the security breach may need to be furnished to the Office of the Attorney General or the Department of Financial Regulation and shall include the website and telephone number for the Office and the Department in the notice required by this subdivision. Nothing in this subdivision shall alter the responsibilities of a data collector under this section or provide a cause of action against a law enforcement agency that fails, without bad faith, to provide the notice required by this subdivision.

** * * Insurance; Form of Notice * * **

Sec. 68. 8 V.S.A. § 3666 is added to read:

§ 3666. RULES; METHODS OF NOTICE

Notwithstanding the requirements under sections 3883, 4226, and 4714 of this title, the Commissioner of Financial Regulation shall adopt rules specifying the methods by which a notice to a party required under section 3880, 3881, 4224, 4225, 4712, or 4713 of this title shall be given.

** * * Effective Dates * * **

Sec. 69. *EFFECTIVE DATES*

(a) This section, Secs. 28 (Public Service Board; order revision), 52, 53, 54c, and 58–66 (certain workers' compensation provisions) shall take effect on passage.

(b) Sec. 54b (reinstatement of current law governing discontinuance of workers' compensation insurance benefits) shall take effect on July 1, 2018.

(c) 16 V.S.A. § 2888(b)(3) (Vermont Strong loan forgiveness) in Sec. 47 shall take effect on July 1, 2015.

(d) 10 V.S.A. § 531(c) in Sec. 42 shall take effect on July 2, 2014.

(e) The remaining provisions of this act shall take effect on July 1, 2014.