

**SUMMARY OF THE
ACTS AND RESOLVES
OF THE
2012 VERMONT GENERAL ASSEMBLY**

Prepared by the
Office of the Legislative Council

Agriculture

**Act No. 142 (H.496). Agriculture; economic development
An act relating to preserving Vermont's working landscape**

This act creates the Vermont working lands enterprise board, which is charged with administering the working lands enterprise fund to make investments in, and provide services to, working lands enterprises, as well as to make investments in working lands infrastructure. The act also expands the charge and composition of the Vermont agricultural products development board to include forestry and forestry members. The act expands the mission of the Vermont housing and conservation board to include conservation of forestland. The act repeals three statutory provisions for programs that are no longer active, including the repeal of the Vermont agricultural innovation center, effective March 31, 2013. Finally, the act establishes funding priorities for amounts appropriated to the enterprise fund.

Multiple effective dates, beginning May 15, 2012

Conservation and Land Development

Act No. 73 (H.258). Conservation and land development; environmental enforcement; public participation: An act relating to public participation in environmental enforcement proceedings

This act amends public participation requirements for environmental enforcement actions in order to comply with federal requirements for certain federally authorized programs and in order to standardize public participation for all agency of natural resources (ANR) and natural resources board (NRB) enforcement actions. The act requires ANR and the NRB to post for public comment a draft enforcement action — including an administrative order, assurance of discontinuance, or civil complaint — for 30 days. If no comments are received during the 30-day notice period, the enforcement action may be filed with the environmental division for final processing.

If comments are received during the 30-day period, ANR or the NRB may withdraw the draft enforcement action or send it and all comments to the environmental division. If the enforcement action is sent to the environmental division, ANR or the NRB also shall post the action to its website for 14 days. During the 14 days, a person may file a motion for permissive intervention. To intervene,

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a person must be an “aggrieved person” who commented during the 30-day comment period. The act defines “aggrieved person” as one who alleges an injury to a particularized interest protected by an ANR or NRB enforceable statute, and the alleged injury is attributable to a violation addressed by the enforcement action. Permissive intervention is discretionary, and the environmental division may deny intervention.

If no intervention motion is received, the environmental division may finalize the enforcement action. If intervention is granted, it is for the sole purpose of establishing that the enforcement action is insufficient to carry out the purposes of the environmental enforcement chapter. If the environmental division finds the enforcement action insufficient, it may vacate the action. ANR or the NRB shall not oppose any motion for permissive intervention. If a person is granted intervention, ANR or the board may oppose the intervenor’s claim. The environmental division may hold a hearing on the intervenor’s claim. ANR, but not the NRB, shall investigate all citizen complaints of a violation of a federally authorized program and shall respond to the complaint in writing. The act also authorizes ANR to use an administrative order, assurance of discontinuance, or emergency order to recover from a violator up to \$20,000.00 in monies ANR expends from special funds to remediate a violation. The act also transfers the jurisdiction over ANR and NRB civil complaints from the judicial bureau to the environmental division.

Effective Date: July 1, 2012

Act No. 91 (H.752). Conservation and development; water resources; stormwater; property conveyance: An act relating to permitting stormwater discharges in impaired watersheds

This act recodifies the net zero standard for the discharge of stormwater to a stormwater-impaired water. The discharge standard for stormwater-impaired waters sunsets on January 15, 2012. This act reenacts the net zero standard and provides a statutory definition. The act also reenacts a statutory provision that provides that no encumbrance on record title to real property or effect on marketability of title is created by failure to obtain a discharge permit to a stormwater-impaired water prior to 2004. The effective date of the provision related to the encumbrance of title applies retroactively to January 15, 2012, the date on which the original statutory provision sunset. The act requires the agency of natural resources to report to the general assembly in January 2016 regarding whether to extend the sunset of the encumbrance language.

Effective Date: January 15, 2012

Act No. 117 (H.577). Conservation and development; municipal government; public water systems; isolation distances for potable water supply and wastewater systems: An act relating to public water systems

This act amends the terms and conditions for the issuance of loans from the state special environmental revolving fund in order to meet federal requirements. The act allows the amount of a loan from the Vermont environmental protection agency (EPA) pollution control revolving loan fund for a combined sewer overflow abatement project to be up to 100 percent of the eligible project cost if the project is

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included on the priority list, and the project is capitalized with a federal clean water state revolving fund grant.

The act authorizes the agency of natural resources (ANR) to forgive portions of a loan from the Vermont EPA pollution control revolving loan fund when the recipient project is on a priority list, the grant is capitalized by a federal clean water or federal drinking water state revolving fund grant, and the federal grant authorizes loan forgiveness.

The act also strikes the requirements that public water systems have a term of 10 years. The act authorizes ANR to issue an operating permit for a public water system when the system cannot meet the drinking water standards set by statute or rule. The act repeals the authority for temporary public water system permits. In addition, the act requires a property owner installing a wastewater system or water supply with isolation distances that extend onto the property of others to notify affected property owners by certified mail. Notice to affected property owners would be on a form provided by ANR instead of providing a copy of the full permit.

Multiple effective dates, beginning July 1, 2012

**Act No. 118 (S.179). Conservation and land development
An act relating to amending perpetual conservation easements**

This act amends several provisions relating to conservation easements and conservation interests in real property. The act:

- Amends the statement of policy for the Vermont housing and conservation board to add language emphasizing the preservation of productive farms, farmland, and forestland for future generations
- In the statement of purpose for land acquisition by municipalities and state agencies, adds that the preservation of productive farmland strengthens the Vermont economy and helps to maintain historic settlement patterns
- Establishes that an easement holder may seek damages or injunctive relief against any person who damages the easement holder's rights, regardless of whether the owner of the underlying land is a party to the proceeding
- Creates a statutory presumption that the conveyance of an interest in real property less than fee simple is presumed to be perpetual, unless the conveyance is limited by its terms to a specific period
- Requires that mortgages, leases, transfers, and other conveyances of real property must reference any and all conservation rights associated with the property
- Amends Vermont's marketable title act, so that conservation easements are not barred or extinguished due to failure to file or refile notice in the land records
- Allows municipalities and state agencies to acquire and convey preemptive rights and options to purchase land or interests in land

The act also establishes a 16-member working group on conservation easements to make recommendations regarding the creation of a formal and transparent public process for the approval of amendments to perpetual conservation easements, the criteria for approving such amendments, and the

entity most appropriate to review and approve such amendments. The working group is directed to study as well whether conservation rights and interests should be excluded from the statutory requirement to re-record interests in land every 40 years. The act requires the working group to submit a report to the house and senate committees on agriculture and on natural resources and energy by January 15, 2013. The provision establishing the working group on conservation easements is effective on passage, and the remainder of the act takes effect on July 1, 2012.

Multiple effective dates, beginning May 9, 2012

Act No. 138 (S.202). Conservation and land development; water resources; flood hazard areas; stream alteration: An act relating to regulation of flood hazard areas, river corridors, and stream alteration

This act authorizes the agency of natural resources (ANR) to adopt by March 15, 2014 rules for the regulation in flood hazard areas of uses exempt from municipal land use regulation. Adoption of the rules is intended to bring the state and participating municipalities into compliance with the Federal Emergency Management Agency's (FEMA's) national flood insurance program (NFIP). Beginning July 1, 2014, uses that are exempt from municipal land use regulations shall need an ANR permit if the use occurs in a flood hazard area of a NFIP town. ANR may delegate to other state agencies permitting and enforcement of the flood hazard area rules. The act makes conforming amendment to municipal zoning authority to aid in state compliance with NFIP program.

Prior to ANR adoption of flood hazard area rules for uses exempt from municipal land use regulation, the act provides that certain new facilities or activities shall be allowed in a flood hazard area only if they conform with FEMA's NFIP development requirements.

The act clarifies ANR's authority over stream alteration. The act defines instream material for purposes of stream alteration. The act requires ANR to permit construction of a berm in a river corridor or flood hazard area, unless the berm is an emergency measure. ANR is authorized to adopt rules to implement stream alteration requirements, and ANR is required to adopt rules regarding stream alteration during emergencies. ANR is authorized to adopt rules regarding stormwater management during emergencies.

The act requires ANR to assess the geomorphic condition and sensitivity of rivers and identify those that pose a probable risk of harm to life, property, or infrastructure. ANR shall map rivers based on river sensitivity assessments. Upon completion of a river sensitivity assessment, ANR shall provide a map of the river to the municipalities and regional planning commission in which the river is located. The map shall identify floodplains, river corridor areas, and FEMA zones, and shall recommend best management practices, such as vegetated buffers. ANR's maps and recommendations are for municipal reference and have no regulatory effect.

The act requires ANR to report to the general assembly with recommendations on how to remediate and fund remediation of the water quality of state surface waters. The act transfers rulemaking authority for water quality, wetlands, use of surface waters, classification of waters, surface levels, and

lakes management from the water resources panel to ANR. ANR is directed to conduct a public participation process with stakeholders prior to rulemaking. The act clarifies that Vermont housing and conservation board funding is available for multiple conservation purposes, including surface water protection. The act amends the definition of “municipality” under the state revolving loan fund to clarify that statewide or regional utilities are eligible for awards from the fund.

The act requires that sludge or septage be land applied according to a nutrient management plan. Due to the pending resissuance of the Lake Champlain total maximum daily load plan (TMDL), the act amends requirements that ANR revise and report on implementation of TMDL. The act requires the department of public safety to develop educational materials regarding the treatment of propane and fuel tanks during emergencies.

Multiple effective dates, beginning May 14, 2012

Act No. 148 (H.485). Conservation and land development; solid waste; recycling: An act relating to establishing universal recycling of solid waste

This act amends multiple requirements for the management of solid waste in the state. The act requires solid waste facilities to separate recyclable materials from solid waste and requires waste transporters to offer to collect recyclable materials separate from solid waste. The recyclable materials required to be separated are: mandated recyclables, leaf and yard residuals, and food residuals. Mandated recyclable is defined as source-separated, traditional recyclable materials, such as cans, glass bottles, plastic containers, cardboard, and newspaper. Leaf and yard residuals are defined as source-separated, compostable untreated vegetative matter. Food residuals are defined as source-separated, compostable material derived from the processing or discarding of food. The requirements for separation of recyclable materials are phased in over several years. The act authorizes certain exemptions or variances for solid waste facilities and transporters. A solid waste facility that offers the collection of solid waste shall not charge a separate fee for the collection of mandated recyclables. Facilities may charge a commercial hauler for the collection of mandated recyclables. A transporter that offers the collection of solid waste shall not charge a separate line item fee for collection of mandated recyclables, but may charge a fee for each service call at a residential property.

The act establishes a hierarchy of how food residuals should be managed for various available uses. The act requires generators of food residuals to separate food residuals from solid waste and manage the residuals on site or transfer them to a location for management. The requirement to separate food residuals is only triggered when a generator exceeds a specified threshold amount, and the generator is located within 20 miles of a certified organics management facility that has capacity and will accept the residuals. The act provides that a de minimis amount of food residuals may be disposed of in solid waste. The date by which a generator will be required to separate food residuals will be phased in based on the tonnage of food residuals generated per year. By July 1, 2020, any person generating any amount of food residuals will be required to manage the residuals on site or arrange for their transfer.

The act requires the agency of natural resources (ANR) to readopt the state solid waste management plan by November 2013. The act adds additional priorities that the solid waste plan is required to

promote, including materials management which generates less waste, closed loop recycling, and reduction of reliance on disposal. The act requires the state solid waste implementation plan to include additional information, including a waste stream analysis and a waste composition study. ANR is required to report to the general assembly in November 2013 with a comprehensive analysis of the state solid waste system. The act requires a separate report on the management of waste tires in the state and a separate report on the expansion of the beverage container redemptions system.

The act requires municipal solid waste implementation plans to implement variable rate pricing for the collection of municipal solid waste by July 1, 2015. The act also imposes landfill disposal bans for mandated recyclable materials, leaf and yard residuals, wood waste, and food residuals. Beginning July 1, 2015, when a public building or public land provides a container for solid waste collection, an equal number of containers shall be provided for mandated recyclables. The act makes additional technical changes to ANR's solid waste management authority.

Effective Date: July 1, 2012

Act No. 152 (H.464). Conservation and development; natural gas and oil practices; water resources; hydraulic fracturing: An act relating to hydraulic fracturing wells for natural gas and oil production

This act prohibits any person in the state from engaging in the practice of hydraulic fracturing for oil or natural gas and from collecting, storing, or treating wastewater from hydraulic fracturing. The act prohibits the discharge of waste from hydraulic fracturing into or from a pollution abatement facility in the state. The act requires the secretary of natural resources to report to the general assembly on or before January 15, 2015 with a recommendation on how hydraulic fracturing should be regulated in the state. The act also requires the secretary of natural resources to report to the general assembly on or before January 15, 2016 regarding the safety of hydraulic fracturing, including whether the prohibition on hydraulic fracturing should be repealed. In addition, the act requires the agency of natural resources to amend the rules for discharges to an injection well on or before July 15, 2015.

Effective Date: May 16, 2012

**Act No. 163 (S.183). Conservation and land development; potable water supplies
An act relating to the testing of potable water supplies**

This act establishes requirements for providing informational material regarding the health effect of contaminated groundwater to persons who may use a potable water supply that is not subject to water quality testing requirements. A well driller drilling or developing a new water well for use as a potable water supply shall provide the owner of the property with informational material regarding the health effects of contaminated groundwater and recommended tests to detect specific contaminants.

Similarly, the seller of a real property with a potable water supply that is not served by a public water system shall, for a contract for a conveyance of real property on or after January 1, 2013, provide

the buyer within 72 hours of execution informational material regarding the potential health effects of the consumption of contaminated groundwater and the availability of test kits provide by the department of health. The act also requires the department of health to update its education and outreach materials regarding the potential health effects of contaminants in groundwater. The department of health is also required to propose language to be added to a seller's property information report regarding the requirement that a seller notify the buyer of the health effects of groundwater when the real property has a potable water supply that is not a public water system.

Effective Date: January 1, 2013

Fish and Wildlife

Act No. 82 (H.449). Fish and wildlife; state fish: An act relating to the designation of brook trout and walleye pike as the state fish of Vermont

This act designates the brook trout as the state cold water fish and the walleye pike as the state warm water fish.

Effective Date: April 13, 2012

Act No. 108 (H.53). Fish and wildlife; fish and game violations; interstate wildlife violator Compact: An act relating to the Interstate Wildlife Violator Compact

This act adopts the Interstate Wildlife Violator Compact for the purposes of recognizing the suspension of fish and game licenses and permits in other states. Under the compact, if a person's license privileges are suspended or revoked in one member state, he or she would be subject to suspension or revocation in all member states, including Vermont. No person whose license or privilege to hunt has been suspended under the terms of the compact shall be permitted to obtain a license to hunt, trap, or fish in Vermont. A person who hunts, fishes, traps, possesses, or transports wildlife or purchases a license in violation of a suspension under the compact shall be subject to monetary penalties and shall be assessed 20 points under the state uniform point system.

Under the terms of the compact, the compact shall not go into effect in Vermont until a legislative act, such as this act, authorizes the state to enter the compact and the state provides notice to the board of compact administrators of enactment of the act.

Effective Date: July 1, 2012

Housing

Act No. 137 (S.99). Housing; economic development: An act relating to supporting mobile home ownership, strengthening mobile home parks, and preserving affordable housing

This act adopts multiple provisions concerning mobile homes, mobile home parks, and fair housing practices.

Sec. 1 adopts findings.

Sec. 2 adopts and amends both housekeeping and substantive provisions through 10 V.S.A. chapter 153, governing mobile home parks.

Sec. 2a adopts a nonbinding statement of intent regarding the expansion of the affordable housing tax credit.

Sec. 3 reduces the publication and notice requirements for the sale of abandoned or uninhabitable mobile homes in mobile home parks.

Sec. 4 directs the department of economic, housing and community development to conduct a long-range planning study on mobile home ownership and parks.

Sec. 5 directs the commissioner of public safety to clarify and update information concerning the applicability of housing codes, including ongoing updates of building codes.

Secs. 6–7 prohibit discrimination in land use decisions.

Secs. 8–9 limit who in Vermont may administer federal housing subsidies.

Sec. 10 creates the authority and process for a municipality to remove an abandoned or uninhabitable mobile home; the process mirrors the process for mobile home park owners addressed in Sec. 3.

Sec. 11 addresses a landlord’s liability to care for a tenant’s property during an ejectment proceeding.

Secs. 12–12a are nonbinding statements of intent concerning mobile home spending priorities and sales tax holidays.

Sec. 13 delays by two years the requirement of the Tri-Parks mobile home park to begin repaying certain government loans.

Effective Date: May 14, 2012

Judiciary

Act No. 99 (H.467). Judiciary; court procedure; limitations on landowner liability; noncommercial aviation; snowboarding: An act relating to limited liability for a landowner who permits a person to enter the owner’s land for recreational use

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This act expands the statute that protects a landowner from liability for injuries suffered by a person who enters the owner's land for recreational use to include noncommercial aviation and snowboarding.

Effective Date: July 1, 2012

Public Service

Act No. 125 (H.475). Energy; public service; net metering; conservation and land development: An act relating to net metering and the definitions of capacity

This act primarily consists of technical modifications to an existing statute that authorizes customers who self-generate electricity using renewable energy to "net meter" or count that generation against the electricity supplied to them by their electric company.

The act specifically raises from five to 10 kilowatts an existing individual capacity cap for a registration process for solar net metering systems and instructs the public service board to modify its solar net metering forms and procedures to reflect this new cap. The act also clarifies how credits are calculated for net metering customers who are on "demand" or "time-of-use" rate schedules. The act further requires an electric company to base the calculation of additional credits for solar net metering systems on the company's general residential rate schedule. The act directs the department of public service to submit a report to the general assembly by January 15, 2013 that evaluates and makes recommendations regarding Vermont's net metering statutes, rules, and procedures. The act also clarifies how capacity for solar energy plants is measured.

Multiple effective dates, beginning May 11, 2012

Act No. 165 (S.148). Energy; public service; conservation and land development; Hydroelectric: An act relating to expediting development of small and micro hydroelectric projects

This act makes findings on: the potential for additional hydroelectric power in Vermont; the fact that most hydroelectric projects in Vermont are smaller than five megawatts in capacity; the process to obtain approval of small hydroelectric projects from the Federal Energy Regulatory Commission (FERC); and FERC's entry into a memorandum of understanding (MOU) with the state of Colorado under which the FERC approval process for such projects is simplified through prescreening of applications by the state. The act requires the commissioner of public service (commissioner) in consultation with the secretary of natural resources to seek to enter into an MOU with FERC for a program to expedite the approval of small hydroelectric projects in Vermont.

In entering into such an MOU, the commissioner is directed to offer prescreening of applications by the state. The act requires the commissioner to submit a written report to the general assembly every two years that details the progress of the program and makes recommendations on improving procedures for approval of micro hydroelectric projects (100 kilowatts or less).

Effective Date: May 14, 2012

Act No. 169 (S.180). Public service; telecommunications; universal service fund; high-cost Program: An act relating to the universal service fund and establishment of a high-cost program

This act requires the commissioner of public service, in conjunction with the public service board, to study whether the universal service charge should be used as a means of keeping basic telecommunications service affordable in all parts of the state through establishment of a high-cost program. The study shall include an audit of the fund as well as an assessment of the impact that recent changes at the federal level will have on the fund. In addition, the act establishes a high-cost program for one year which requires any funds in excess of \$1 million remaining in the state universal service fund as of September 1, 2012 to be distributed among all incumbent local exchange carriers. Finally, the act requires the commissioner of public service, in consultation with the commissioner of taxes, to convene a work group to study application of the state's universal service charge to prepaid wireless telecommunications services.

Multiple effective dates, beginning May 18, 2012

Act No. 170 (S.214). Energy; public service; conservation and land development: An act relating to the Vermont Energy Act of 2012

This act makes the following changes to Vermont laws that affect energy:

Renewable energy goals. The act amends the state's renewable energy goals to encourage distributed renewable generation and to promote renewable energy plants that are diverse in size and technology and that use natural resources efficiently. The act requires the integrated resource plans of Vermont's electric utilities to be consistent with these goals.

SPEED program; generally. The act revises the goals of the Sustainably Priced Energy Enterprise Development (SPEED) program. It clarifies an existing SPEED goal that 20 percent of total retail sales statewide in 2017 be from new renewable energy, and it adds a total renewables target for each electric utility of 55 percent starting in 2017 rising to 75 percent by 2032. Utilities are required to manage their supply portfolios to be reasonably consistent with the total renewables targets. Consistency with the targets is to be reviewed as part of cases before the public service board (PSB).

SPEED; standard offer program. This act codifies the existing standard offer program in its own separate statutory section, clarifies eligibility for the program, and expands the program from a "cumulative capacity" ceiling of 50 megawatts (MW) to 127.5 MW in annual increments over the next 10 years. The PSB is required to reduce the annual increments to account for "greenhouse gas reduction credits" created by an eligible ratepayer (see below). The PSB is also authorized to allocate regulatory costs to both utilities and renewable energy project developers.

The act exempts three types of plants from the cumulative capacity ceiling: farm methane plants, new standard offer plants that have substantial benefits to the operation and management of the electric grid, and existing in-state hydroelectric plants that are five MW or less and that meet other eligibility requirements. The PSB is required to make a standard offer contract of 10 or 20 years available to these existing in-state hydroelectric plants, at a price of no more than \$.08 per kilowatt hour adjusted for inflation.

Starting in 2013, for new standard offer plants, the PSB is instructed to set prices annually for each category of renewable energy using either a “market-based procurement” or “avoided cost” pricing mechanism. The act also tightens requirements for participation in the standard offer program in order to discourage developers from filling program capacity with projects unlikely to be built. If a standard offer project does not meet the requirements of the program in a timely manner, its contract terminates, and any capacity within the program is reallocated to other eligible plants. Further, the PSB is required to submit a report and action plan on any factors to date that have, relative to the standard offer program, caused delays in placing plants in service or increased the costs to ratepayers.

Biennial report on renewable energy programs. This act requires the PSB to submit to the general assembly biennial reports providing detailed information and analyses on the SPEED and standard offer programs. The required report also must compare Vermont’s electric retail rates to inflation rates and to rates in other New England states. If Vermont rates are increasing at a comparatively faster pace, the report must assess the contributions to the rate increases from various sources such as the cost of energy and capacity, transmission and distribution infrastructure, and the standard offer program. Further study and report on mechanisms to promote renewable energy. This act requires the PSB, in consultation with the department of public service (DPS), to submit a further study and report on a potential renewable portfolio standard for the state and other potential mechanisms to encourage renewable energy.

Greenhouse gas reduction credits. This act allows greenhouse gas reduction credits generated by an eligible ratepayer to adjust the cumulative capacity of the standard offer program and establishes a methodology for calculating such credits. Eligible reductions are reductions in emissions from the eligible ratepayer’s manufacturing process that are not energy-related, so long as the reductions result from specific projects, are otherwise required by law, are quantifiable, and are verified by an independent third party. Electricity providers are required to pass on savings realized through these credits proportionally to the eligible ratepayers generating the credits.

New gas and electric purchases; criteria for approval. This act amends the criteria applied by the PSB under 30 V.S.A. § 248 to determine whether to approve new electric generation and transmission and natural gas transmission facilities, purchases, and investments. It clarifies that the determination of whether a facility, purchase, or investment is needed is based on an assessment of environmental and economic costs performed in the same manner as for utility integrated resource plans. For the siting of an in-state facility, the act requires a determination that the facility will not have an undue adverse effect on the use of natural resources, and that due consideration is given to greenhouse gas impacts. For an in-state generation facility using woody biomass, it requires compliance with applicable air pollution control requirements, achievement of a reasonable design system efficiency for the type and

design of facility, and compliance with fuel harvesting guidelines and procurement standards that are consistent with those developed by the agency of natural resources (ANR) (see below).

Total energy report. This act requires the DPS to report on proposed policies and funding mechanisms that would support achieving the DPS's recommendation that, by 2050, 90 percent of energy consumed in Vermont be renewable energy. The report is to address Vermont's "total energy" consumption, including electricity, thermal energy, and transportation. The report also is to consider development of a science-based public information campaign on the causes and risks of climate change.

Greenhouse gas accounting. ANR is required to adopt rules for life cycle accounting of greenhouse gas emissions, to be used across state and local government.

Smart metering. This act establishes that utilities may, on prior written notice, install wireless smart meters for their customers. Customers may opt out of the installation at no charge. Further, DPS and the departments of health must submit a joint report on wireless smart meters and their potential health effects.

Biomass heating systems. This act establishes that high-efficiency biomass heating systems, whether they use wood or other biomass, are qualifying systems for the thermal efficiency services delivered by Efficiency Vermont. Under prior law, only woody biomass heating systems qualified.

Harvesting and procurement standards. This act directs ANR to develop wood harvesting guidelines to be used for wood energy purposes and other harvesting. These guidelines would be voluntary for private landowners, except that they would be incorporated into forest management plans and practices for lands in the use value appraisal program. The commissioner of forests, parks and recreation also is required to ensure that wood product harvests on state lands are consistent with the purpose of the guidelines. The act further directs ANR to develop procurement standards to be used in the state procurement of wood products, including biomass energy. These procurement standards would be available to other institutions on a voluntary basis. The act directs ANR to seek implementation of regional harvesting guidelines and procurement standards.

Resource mapping. This act requires ANR to complete resource mapping based on the geographic information system to identify natural resources throughout the state that may be relevant to energy projects and to consider these maps when providing evidence or making recommendations to the PSB and to district commissions.

Biomass energy demonstration project. This act authorizes a biomass energy demonstration project to be implemented in Chittenden County. The demonstration project will be subject to forest harvesting guidelines and procurement standards and must provide pellets at a reduced cost to low income households.

Solar energy devices; exemption; flat roofs. This act exempts solar energy devices installed on flat roofs from regulation under municipal land use bylaws. Multiple effective dates, beginning May 18, 2012.

Taxation and Fees

Act No. 161 (H.769). Taxation and fees: An act relating to department of environmental conservation fees

This act adjusts department of environmental conservation fees by increasing fees for air contaminant source permits; storm water application discharge permits; potable water supply and wastewater permits; well drill licenses; solid waste disposal permits; public water supply and bottled water permits; public water system operator certifications; hazardous waste hauler permits; hazardous waste generator registrations; wetland authorization permits; air contaminant registrations; and petroleum tank permits.

The act changes the fee for extracting earth resources from \$0.20 per cubic yard of the maximum estimated annual extraction to a fee of \$0.02 per cubic yard on the first million cubic yards to be extracted over the life of the extraction permit and a fee of \$0.01 per cubic yard of additional extraction above one million cubic yards. The act requires that Vermont web portal fees be entered into the annual fee report. It allows the agency of natural resources to require a permittee to pay for the agency's costs in processing the permit if the agency does not have the capacity to process the permit effectively. The act sets up guidelines for making loans for the repair of potable water supply and wastewater systems.

Finally, the act gives the legislative council the authority to reformat the department of environmental conservation fees in the Vermont Statutes Annotated.

Effective Date: July 1, 2012

Transportation

Act No. 123 (H.272). Private roads; maintenance: An act relating to maintenance of private roads

This act provides that in the absence of an express agreement or requirement governing maintenance of a private road, when more than one person enjoys a common benefit from a private road, each person must contribute ratably to the cost of maintaining the road, and has the right to bring a civil action to enforce the requirement.

Effective Date: July 1, 2012

Act No. 126 (H.523). Highways; condemnation: An act relating to revising the state highway condemnation law

This act rewrites the law governing condemnation proceedings for state highway projects found in 19 V.S.A. chapter 5. Among the many changes to chapter 5 are the following:

(1) The agency of transportation (agency) is required to make every reasonable effort to acquire property by negotiation, to provide the property owner a detailed notice of procedures and rights, and to make the owner an offer of just compensation prior to filing a condemnation proceeding in superior court.

(2) The agency is required to file a complaint in superior court if the issue of the legality of the taking is contested, but need not file an action if the owner has stipulated to the legality of the taking. If a complaint is filed, a final hearing on the contested issues must be held within 90 days of the last answer due, absent a showing of good cause for a delay.

(3) The act creates a rebuttable presumption that the agency's determination of the public purpose of a project and the necessity for a project overall is correct, but provides for no deference to the agency on the issue of the necessity of taking particular property.

(4) The act allows the agency to obtain title to property after it obtains a favorable decision from the superior court or a stipulation from the property owner on the issue of the legality of the taking, tenders the owner the amount of the agency's offer of just compensation, and provides notice to the owner of these actions.

(5) The act changes the process for determining damages when the issue of compensation is contested. The property owner will have a choice of contesting damages by bringing an action either in superior court or before the transportation board if the amount in controversy is \$25,000.00 or less, whereas the property owner will be required to proceed in superior court if the amount in controversy exceeds \$25,000.00.

The act also makes a number of technical and conforming changes; includes a transition provision that clarifies how the act will apply to current and future state highway condemnation proceedings; requires the agency to file a report with the house and senate committees on judiciary and on transportation on the issue of waiver valuations, which are informal appraisals conducted by agency personnel when the agency determines that a property is of low fair market value; and requires the executive secretary of the transportation board to provide training to current and new members of the transportation board on topics related to the determination of damages in condemnation proceedings.

Multiple effective dates, beginning May 11, 2012

**Act No. 153 (H.770). Transportation; paving; rail; public transit; bonds; positions; relinquishment; state aid for towns; sales and use tax; property acquisitions and transfers
An act relating to the state's transportation program**

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DISCLAIMER: Summaries copied from legislative websites. Refer to statutes for accuracy.

This act:

(1) Adopts the state's fiscal year 2013 transportation program appended to the agency of transportation's ("agency") fiscal year 2013 proposed budget, as amended by modifying spending authority in the program development, Vermont local roads, state aid for disasters, town highway structures, town highway aid, rail, and transportation buildings programs; adding projects to the state highway bridge and rail programs; and enlarging the scope of authorized activities for a project in the public transit program.

(2) Directs the secretary of transportation ("secretary") to study the feasibility and evaluate the costs and benefits of acquiring a portable hot mix plant.

(3) Adds the Rutland–Burlington Rail and Crossings project and the Circ Alternatives–Phase I Alternatives project to the fiscal year 2012 transportation program, and directs the secretary to review existing plans for the Waterbury Main Street project.

(4) Specifies that the secretary may anticipate receipts of federal funds into the transportation – rail program.

(5) Renames the VTrans Learning Campus project and program to be the VTrans Training Center project and program, and directs the secretary to continue to pursue the acquisition or construction of a facility suitable to satisfy the long-term objectives of the program.

(6) Grants the secretary authority to execute and file applications and grants with the Federal Transit Administration.

(7) Authorizes the issuance of up to \$11.5 million in transportation infrastructure bonds, the expenditure of \$9 million in bond proceeds on projects in the program development program, and the expenditure of \$1 million in bond proceeds on projects in the town highway bridge program.

(8) Authorizes the agency to establish 17 new limited service positions to terminate by June 30, 2014, and to establish six new permanent positions.

(9) Transfers \$1.12 million from the transportation fund to the central garage fund.

(10) Authorizes the secretary to enter into an agreement with the town of St. Albans to relinquish to the town's jurisdiction a 1.7-acre segment of state highway right-of-way.

(11) Requires the transportation enhancement grant committee to give preference to environmental mitigation projects for fiscal years 2013–2015.

(12) Amends the town highways structures program to add another category of eligible projects to the program: alternatives that eliminate the need for a bridge, culvert, or other structure.

- (13) Creates a program for towns to receive state aid for federal disasters in order to assist towns that receive federal highway administration emergency relief assistance to satisfy local match requirements.
- (14) For bridge replacement projects and bridge rehabilitation projects for which a federal/state/local or state/local funding match is authorized, reduces by one-half the match that a town must contribute, provided the town closes the bridge and does not erect a temporary bridge for the duration of the project.
- (15) Repeals provisions related to the state infrastructure bank (“SIB”) van pool program.
- (16) Repeals six periodic transportation-related reports; eliminates July and September reports by the agency to the joint transportation oversight committee and adds a reporting requirement if projects are delayed due to a generalized increase in bids, downgrades in revenue forecasts, or changes in the availability of federal funds; eliminates a conservation plate report; repeals a duplicate public transit performance report; and preserves specified transportation-related reports.
- (17) Makes technical corrections to replace “Interstate Commerce Commission” with “Surface Transportation Board” in two statutes.
- (18) Eliminates the highway board from the list of entities which receive a copy of annual municipal reports.
- (19) Directs the joint fiscal office, in consultation with the commissioner of public safety, to analyze and estimate highway safety-related state police costs, and to study how these state police costs could be apportioned between the general fund and the transportation fund.
- (20) Directs the secretary of transportation, in consultation with the joint fiscal office, the commissioner of motor vehicles, the commissioner of taxes, and the commissioner of public service, to analyze options for user fees and fee collection mechanisms for motor vehicles that rely on energy sources not currently taxed so as to contribute to the transportation fund.
- (21) Establishes a seven-member study committee to examine the trends of state transportation and transportation infrastructure bond (TIB) fund revenues, to estimate the gap between projected revenues and the cost of maintaining the state’s existing transportation infrastructure, and to evaluate alternative and supplemental transportation revenue sources.
- (22) Authorizes the agency to use \$12,000.00 of central garage funds to purchase Vermont Strong plates for agency vehicles.
- (23) Provides that proceeds from the sales and use tax imposed on natural gas used to propel motor vehicles be allocated to the transportation fund, and exempts natural gas from the tax on the sales of gasoline and other motor fuels.

(24) Directs the agency to convene a regional public meeting to hear public concerns prior to a planned closure and detour of a state highway, and to consult concerned entities to develop mitigation strategies.

(25) Directs the agency to install plaques on bridge #30 on Vermont Route 30 in the town of Jamaica honoring Richard W. Hube Jr.

(26) Requires the agency to acquire or dispose of certain transportation-related property with an appraised or estimated value of \$500,000.00 or above only with the specific prior approval of the general assembly when it is in session, and of the joint transportation oversight committee when the general assembly is not in session.

Multiple effective dates, beginning on May 16, 2012