

Senate Calendar

TUESDAY, MARCH 24, 2009

77th DAY OF BIENNIAL SESSION

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ACTION CALENDAR

UNFINISHED BUSINESS OF FRIDAY, MARCH 20, 2009

Second Reading

Favorable with Proposal of Amendment

H. 11

An act relating to the disposition of property upon death, transfer of interest in vehicle upon death, and homestead exemption.

Reported favorably with recommendation of proposal of amendment by Senator Campbell for the Committee on Judiciary.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 14 V.S.A. § 314, in subdivision (b)(2), by striking out the word “or” and inserting in lieu thereof the word and

Second: In Sec. 2, 14 V.S.A. § 336, by striking out the last sentence in its entirety and inserting in lieu thereof a new sentence to read: Before an order is made for the payment or distribution of any money or estate as authorized in this section, notice shall be given as provided by the Vermont Rules of Probate Procedure.

(Committee Vote: 4-0-1)

(For House amendments, see House Journal for January 16, 2009, page 5.)

UNFINISHED BUSINESS OF MONDAY, MARCH 23, 2009

Second Reading

Favorable

S. 99

An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.

Reported favorably by Senator Lyons for the Committee on Natural Resources.

(Committee vote: 5-0-0)

Favorable with Recommendation of Amendment

S. 5

An act relating to accidents involving an on-duty law enforcement officer, firefighter, or emergency medical personnel.

Reported favorably with recommendation of amendment by Senator Maynard for the Committee on Transportation.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 23 V.S.A. § 1129(a) is amended to read:

(a) The operator of a motor vehicle involved in an accident whereby a person is injured or whereby there is total damage to all property to the extent of \$1,000.00 or more shall make a written report concerning the accident to the commissioner of motor vehicles on forms furnished by the commissioner. The written report shall be mailed to the commissioner within 72 hours after the accident. The commissioner may require further facts concerning the accident to be provided upon forms furnished by him or her. An accident report shall be prepared in all cases involving an on-duty law enforcement officer, firefighter, or emergency medical personnel, operating in the course of official business, a publicly owned vehicle, or one owned by a private nonprofit corporation or association. In those cases where there is a subsequent conviction and assessment of points under chapter 25 of this title, the report shall be filed with the department of motor vehicles within 72 hours of the conviction.

(Committee vote: 5-0-0)

S. 54

An act relating to clean energy assessment districts.

Reported favorably with recommendation of amendment by Senator Hartwell for the Committee on Natural Resources and Energy.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that it is in the public interest for municipalities to finance renewable energy projects and energy efficiency projects in light of the goals set forth in section 578 of Title 10 (greenhouse gas reduction goals), section 580 of Title 10 (25 by 25 state goal), and section 581 of Title 10 (building efficiency goals).

Sec. 2. 24 V.S.A. § 1751(3) is amended to read:

(3) "Improvement," shall include, apart from its ordinary signification;

(A) ~~the~~ The acquiring of land for municipal purposes, the construction of, extension of, additions to, or remodeling of buildings or other improvements thereto, also furnishings, equipment or apparatus to be used for or in connection with any existing or new improvement, work, department or other corporate purpose, and also shall include the purchase or acquisition of other capital assets, including licenses and permits, in connection with any existing or new improvement benefiting the municipal corporation, and all costs incurred by the municipality in connection with the construction or acquisition of the improvement and the financing thereof, including without limitation capitalized interest, underwriters discount, the funding of reserves and the payment of contributions to establish eligibility and participation with respect to loans made from any state revolving fund, to the extent such payment is consistent with federal law;

(B) Pursuant to subchapter 2 of chapter 87 of this title, projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible energy efficiency projects undertaken by owners of real property within the boundaries of the town, city, or incorporated village. Energy efficiency projects shall be those that are eligible under section 3267 of this title.

Sec. 3. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

* * *

(23) Acting individually or in concert with other towns, cities, or incorporated villages and pursuant to subchapter 2 of chapter 87 of this title, to incur indebtedness for or otherwise finance by any means permitted under chapter 53 of this title projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible energy efficiency projects undertaken by owners of real property within the boundaries of the town, city, or incorporated village. Energy efficiency projects shall be those that are eligible under section 3267 of this title.

Sec. 4. SUBCHAPTER DESIGNATION

24 V.S.A. chapter 87 §§ 3251 – 3256 shall be designated as:

Subchapter 1. General Provisions

Sec. 5. 24 V.S.A. § 3252 is amended to read:

§ 3252. PURPOSE OF ASSESSMENTS

Special assessments may be made for the purchase, construction, repair, reconstruction, or extension of a water system or sewage system, or any other public improvement which is of benefit to a limited area of a municipality to be served by the improvement, including those projects authorized under subchapter 2 of this chapter.

Sec. 6. 24 V.S.A. chapter 87, subchapter 2 is added to read:

Subchapter 2. Clean Energy Assessments

§ 3261. CLEAN ENERGY ASSESSMENT DISTRICTS; APPROVAL OF VOTERS

(a) The legislative body of a town, city, or incorporated village may submit to the voters of the municipality the question of whether to designate the municipality as a clean energy assessment district. In a clean energy assessment district, only those property owners who have entered into written agreements with the municipality under section 3262 of this title would be subject to a special assessment, as set forth in section 3255 of this title.

(b) Upon a vote of approval by a majority of the qualified voters of the municipality voting at an annual or special meeting duly warned for that purpose, the municipality may incur indebtedness for or otherwise finance projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible projects relating to energy efficiency as defined by section 3267 of this title, undertaken by owners of real property within the boundaries of the town, city, or incorporated village.

§ 3262. WRITTEN AGREEMENTS; CONSENT OF PROPERTY OWNERS; ENERGY SAVINGS ANALYSIS

(a) Upon an affirmative vote made pursuant to section 3261 of this title and the performance of an energy savings analysis pursuant to subsection (b) of this section, an owner of real property within the boundaries of a clean energy assessment district may enter into a written agreement with the municipality that shall constitute the owner's consent to be subject to a special assessment, as set forth in section 3255 of this title. A participating municipality may establish underwriting or other qualifying criteria it deems necessary to provide an adequate level of assurance that property owners will have the ability to meet assessment payment obligations. A participating municipality may refuse to enter into a written agreement if it determines that the property

owner will not have the ability to meet his or her assessment payment obligations.

(b) Prior to entering into a written agreement, a property owner shall have an analysis performed to quantify the project costs and energy savings and estimated carbon impacts of the proposed energy improvements, including an annual cash-flow analysis. This analysis shall be conducted by the entities appointed as energy efficiency utilities under subdivision 209(d)(2) of Title 30, or conducted by another entity deemed qualified by the participating municipality. All analyses shall be reviewed and approved by the entities appointed as energy efficiency utilities.

(c) A written agreement shall provide that:

(1) the length of time allowed for the property owner to repay the assessment shall not exceed the lifetime of the project. In instances where multiple projects have been installed, the length of time shall not exceed the average lifetime of all projects, weighted for cost. Lifetimes of projects shall be determined by the entities appointed as energy efficiency utilities under subdivision 209(d)(2) of Title 30 or another qualified technical entity designated by a participating municipality;

(2) At the time of foreclosure or a transfer of property ownership, the past due balances of any special assessment under this subchapter shall be due for payment, but future payments shall continue as a lien on the property.

(d) A written agreement and the analysis performed pursuant to subsection (b) of this section shall be filed with the clerk of the municipality for recording in the land records of the municipality and shall be disclosed to potential buyers prior to transfer of property of ownership.

(e) At least 14 days prior to entering into a written agreement, the property owner shall provide to the holders of any existing mortgages on the property notice of his or her intent to enter into the written agreement.

(f) The amount of an assessment under this subchapter shall not exceed more than 15 percent of the assessed value of the property.

§ 3263. COSTS OF OPERATION OF DISTRICT

The owners of real property who have entered into written agreements with the municipality under section 3262 of this title shall be obligated to cover the costs of operating the district. A municipality may use other available funds to operate the district.

§ 3264. RIGHTS OF PROPERTY OWNERS

A property owner who has entered into a written agreement with the municipality under section 3262 of this title may enter into a private agreement for the installation or construction of a project relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or relating to energy efficiency as defined by section 3267 of this title.

§ 3265. LIABILITY OF MUNICIPALITY

A municipality that incurs indebtedness for or otherwise finances projects under this subchapter shall not be liable for the failure of performance of a project.

§ 3266. INTERMUNICIPAL AGREEMENTS

Two or more municipalities, by resolution of their respective legislative bodies or boards, may establish and enter into agreements for incurring indebtedness or otherwise financing projects under this subchapter.

§ 3267. ELIGIBLE ENERGY EFFICIENCY PROJECTS

Those entities appointed as energy efficiency utilities under subsection 209(d) of Title 30 shall develop a list of eligible energy efficiency projects and shall make the list available to the public on or before July 1 of each year.

§ 3268. RESERVE FUND

A participating municipality shall create a reserve fund for use in the event of a foreclosure upon an assessed property. The reserve fund shall be funded by participating property owners at a level sufficient to provide for the payment of any outstanding assessment balances that exist in the event of a foreclosure upon any participating properties.

Sec. 7. 24 V.S.A. § 4592 is amended to read:

§ 4592. SUPPLEMENTARY POWERS

The bank, in addition to any other powers granted in this chapter, has the following powers:

* * *

(8) To the extent permitted under its contracts with the holders of bonds or notes of the bank, to consent to any modification of the rate of interest, time and payment of any installment of principal or interest, security or any other term of bond or note, contract or agreement of any kind to which the bank is a party; ~~and~~

(9) To issue its bonds or notes which are secured by neither the reserve fund nor the revenue bond reserve fund, but which may be secured by such other funds and accounts as may be authorized by the bank from time to time;

(10) To issue bonds, other forms of indebtedness, or other financing obligations for projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to energy efficiency projects under subchapter 2 of chapter 87 of this title.

(Committee vote: 4-1-0)

J.R.S. 18

Joint resolution relating to prescription drug pricing.

Reported favorably with recommendation of amendment by Senator Mullin for the Committee on Health and Welfare.

The Committee recommends that the resolution be amended by striking it out in its entirety and inserting in lieu thereof the following:

Joint resolution relating to prescription drug pricing

Whereas, in the United States, drug manufacturers are allowed to discriminate in drug pricing, and

Whereas, brand-name drug prices in the aggregate are higher in the United States than anywhere else in the world, and

Whereas, prescription drug spending is rising faster than most other health expenditures, and

Whereas, providing for affordable access to medically necessary prescription drugs will lower health care costs, and

Whereas, pharmaceutical companies benefit from public tax dollars appropriated to the National Institutes on Health and other government agencies to pay for a substantial portion of all new prescription drug research, and

Whereas, the cost of prescription drugs remains unaffordable for a large number of Vermonters, and

Whereas, among the persons who are most reliant on prescription drugs are Vermont's senior citizens, individuals with disabilities, and individuals with chronic diseases, and

Whereas, many citizens are reluctantly adopting unhealthy and potentially dangerous practices of reducing their physicians' prescribed prescription drug dosages or traveling to Canada to obtain their prescription drugs for lower costs, and

Whereas, pharmaceutical companies spend, on average, twice as much on advertising and marketing as they do on research and development, and

Whereas, one of the significant factors contributing to the increasing costs of prescription drugs is the growth of direct consumer promotional campaigns sponsored by the nation's pharmaceutical companies through print, broadcast and Internet media, and

Whereas, under Section 201(m) of the Food, Drug and Cosmetics Act, the Food and Drug Administration is responsible for regulating the promotional activities associated with prescription drugs, and

Whereas, the brief summaries of information relating to possible side-effects, contraindications, and effectiveness in advertisements is often overshadowed by the attractive and promotional character of the advertisement that has the potential to lure a lay person into accepting the positive claims and ignoring the less prominently promoted and possibly dangerous side-effects, and

Whereas, television advertisements have grown swiftly since 1997, when the Food and Drug Administration issued more relaxed guidance for direct consumer broadcast advertising, and

Whereas, prescription drug advertising may be misleading by not adequately communicating risk information, and may damage physician-patient relationships, increase prescription drug prices, increase liability actions, and lead to overmedication and drug abuse, and

Whereas, the Food and Drug Administration has repeatedly reprimanded drug companies for false or misleading advertising of prescription drugs that are prescribed for many maladies, including allergies, reduction of high blood pressure or cholesterol levels, and sexually transmitted diseases, and

Whereas, with the change of leadership at the Food and Drug Administration, and the-now more than a decade of nearly limitless television advertisements inducing unknowing consumers to purchase potentially harmful prescription drugs, as well the increased prevalence of similarly intended advertisements on popular websites, the time to rein in direct advertising of prescription drugs to consumers has clearly arrived, and

Whereas, an important price reduction option for both private consumers and state governments has been an increasing reliance on generic drugs which cost considerably less than their brand-name counterparts, but provide equivalent medicinal benefit, and

Whereas, a major impediment to the introduction of new generic drugs is a controversial patent infringement provision Congress adopted in 1984 as part of the Hatch-Waxman Act, and

Whereas, under this provision, a pharmaceutical company holding the patent on a brand-name drug can immediately trigger an automatic 30-month Food and Drug Administration-imposed delay in a generic drug's introduction, and

Whereas, in response to the impediment to the prompt introduction of effective generic drugs, Congress should speedily enact legislation to repeal this statutory impediment, and

Whereas, enactment of such federal legislation would serve as an important incentive for the expedited introduction of new generic drugs, and

Whereas, Medicare Part D prescription drug plans are unaffordable for many Vermonters without Vermont's state wrap-around program called "VPharm," and

Whereas, the federal government does not negotiate for rebates and discounts in the Medicare Part D program, and

Whereas, state Medicaid programs have greatly reduced drug prices in the Medicaid program by negotiating with pharmaceutical companies for reduced prices through rebates and discounts, and

Whereas, Medicare Part D is funded, in part, through payments from the states to the federal government, commonly known as the "clawback," and

Whereas, many senior citizens and individuals with disabilities on Medicare Part D, as well as states, would benefit from negotiated, reduced prices in the Medicare Part D program, and

Whereas, if the cost of prescription drugs is to be substantially reduced, the federal government must adopt new, more stringent, and effective regulatory restrictions on direct consumer prescription drug advertising, increase access to generic drugs, and negotiate prices in the Medicare Part D program, *now therefore be it*

Resolved by the Senate and the House of Representatives:

That the General Assembly calls upon our Congressional Delegation immediately to propose and seek passage of legislation that will:

1) Require any pharmaceutical company which receives or benefits from any federal funding for pharmaceutical research and development to amortize all of the company's research and development costs over the entire world market for prescription drugs, unless the federal Food and Drug Administration deems waiver of such amortization to be appropriate in the case of humanitarian or relief efforts;

2) Amend 42 U.S.C. § 381 and other related statutes so as to allow for the free trade of prescription drugs between the United States and Canada and between the United States and any other country whose prescription drugs the federal Food and Drug Administration determines to be safe and effective;

3) Restrain the huge expenditures by pharmaceutical companies on advertising and marketing;

4) Repeal the federal statutory patent infringement provision that enables the delay of the introduction of generic drugs to the public marketplace;

5) Create disincentives for states that have enacted or are considering enacting laws encouraging the use of higher-cost brand-name prescription drugs; and

6) Direct the Centers for Medicare and Medicaid to negotiate with pharmaceutical companies for rebates and discounts in the Medicare Part D program, *and be it further*

Resolved: That the General Assembly urges the federal Food and Drug Administration to institute a moratorium on the promotion of prescription drugs directly to consumers, and that during the moratorium, the Food and Drug Administration promulgate more effective regulations to address prescription drug advertisements directed at consumers, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Commissioner of the Food and Drug Administration and to the Vermont Congressional Delegation.

(Committee vote: 5-0-1)

NEW BUSINESS

Third Reading

S. 18

An act relating to limiting the power of municipalities or deeds to prohibit the installation of solar collectors, clotheslines, or other energy devices based on renewable resources.

S. 69

An act relating to digital campaign finance filings.

S. 86

An act relating to the administration of trusts.

S. 109

An act relating to brominated flame retardants.

S. 115

An act relating to civil marriage.

**AMENDMENT TO S. 115 TO BE OFFERED BY SENATOR
CAMPBELL BEFORE THIRD READING**

Senator Campbell moves to amend the bill in Sec. 7, 18 V.S.A. § 5131(a)(2) in the sample form, after the words “Application for Vermont License” by adding the word Civil and after the words “Fee for” and before the word “Marriage” by adding the word Civil

Second Reading

Favorable with Recommendation of Amendment

S. 47

An act relating to salvage yards.

Reported favorably with recommendation of amendment by Senator Snelling for the Committee on Natural Resources and Energy.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 6602 is amended to read:

§ 6602. DEFINITIONS

* * *

(25) “Fence” means a wall or structure that screens from view the contents inside the perimeter. Fences should be constructed of materials that are commonly regarded as fencing material and that have an aesthetic value consistent with the surrounding area.

(26) “Scrap metal recycling facility” means a facility at a fixed location that uses equipment to process and refabricate scrap metal into prepared grades and principally produces scrap iron, steel, or nonferrous metallic scrap for sale or a facility that stores scrap iron, steel, or nonferrous metallic scrap for future refabrication.

(27) “Salvage motor vehicle” means a discarded, dismantled, wrecked, scrapped, or ruined motor vehicle or parts thereof, or one other than an on-premises utility vehicle that is allowed to remain unregistered for a period of 90 days.

(28) “Salvage yard” means a scrap metal recycling facility or any place of outdoor storage or deposit which is maintained, operated, or used for storing, keeping, processing, buying, or selling seven or more unregistered salvage motor vehicles. The term does not include the following:

(A) A solid waste management facility certified pursuant to section 6605 or 6605c of this title.

(B) A vehicle or equipment repair garage where wrecked or disabled motor vehicles and equipment are stored for less than 90 days for inspection or repairs.

(C) A collection of unregistered farm vehicles, equipment, or parts utilized by an owner in the pursuit of farming.

Sec. 2. 10 V.S.A § 6605h is added to read:

§ 6605h. SALVAGE YARD PERMIT

(a) No person shall construct, substantially alter, or operate any salvage yard without first obtaining a permit from the secretary for such facility, site, or activity. A permit shall be valid for a period not to exceed three years.

(b) Salvage yard permits, where appropriate, shall:

(1) Specify the location of the facility, including limits on its development and isolation distances from surface waters, wetlands, and potable water supplies;

(2) Require proper operation and development of the facility in accordance with plans approved under the permit;

(3) Contain provisions for air, groundwater, and surface water monitoring throughout the life of the facility and for a reasonable time after closure of the facility;

(4) Contain provisions for erosion control, landscaping, drainage systems, and monitoring systems; and

(5) Contain such additional conditions, requirements, and restrictions as the secretary may deem necessary to preserve and protect the public health and air, groundwater, and surface water quality. Conditions may include, but are not limited to, requirements concerning reporting, recording, and inspection of the operation of the site.

(c) On or before the date of filing any permit application for a facility, the applicant shall send a notice and a copy of the application to the municipality in which the facility is located or proposed to be located and to any adjacent Vermont municipality if the land is located on a boundary. The applicant shall

furnish to the secretary the names of those notified of the application. The secretary shall not issue a permit for a new facility or permit renewal for an existing facility unless the town, city, or village in which the facility is located, and the owners of land abutting the facility have been notified.

(d) The secretary shall not issue a permit under this section without being provided a certificate of approved location as required by section 2255 of Title 24.

Sec. 3. 10 V.S.A. § 6607a(b) is amended to read:

(b) For purposes of this section:

(1) “Commercial hauler” means:

(A) any person that transports regulated quantities of hazardous waste; ~~and~~

(B) any person that transports solid waste for compensation in a vehicle having a rated capacity of more than one ton; and

(C) any person that operates a vehicle used for the crushing of salvage motor vehicles.

(2) The commercial hauler required to obtain a permit under this section is the legal or commercial entity that is transporting the waste, rather than the individual employees and subcontractors of the legal or commercial entity. In the case of a sole proprietorship, the sole proprietor is the commercial entity.

Sec. 4. 24 V.S.A. § 2241 is amended to read:

§ 2241. DEFINITIONS

For the purposes of this subchapter:

* * *

(5) ~~“Junk~~ “Salvage” means old or scrap copper, brass, iron, steel, and other old or scrap or nonferrous material, ~~including but not limited to rope, rags, batteries, glass, rubber debris, waste, trash or any discarded, dismantled, wrecked, scrapped or ruined motor vehicles or parts thereof.~~

(6) ~~“Junk~~ “Salvage motor vehicle” means a discarded, dismantled, wrecked, scrapped or ruined motor vehicle or parts thereof, or one other than an on-premise utility vehicle which is allowed to remain unregistered for a period of ninety days from the date of discovery.

(7) ~~“Junkyard~~ “Salvage yard” means any place of outdoor storage or deposit which is maintained, operated or used ~~in connection with a business~~ for storing, keeping, processing, buying or selling ~~junk~~ seven or more salvage

~~motor vehicles or as a scrap metal processing facility. "Junkyard" also means any place of outdoor storage or deposit, not in connection with a business which is maintained or used for storing or keeping four or more junk motor vehicles which are visible from any portion of a public highway. However, the term does not include a private garbage dump or a sanitary landfill which is in compliance with section 2202 of this title and the regulations of the secretary of human services. It does not mean~~ The term does not include:

~~(A) a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs~~ A vehicle or equipment repair garage where wrecked or disabled motor vehicles and equipment are stored for less than 90 days for inspection or repairs;

~~(B) a solid waste facility certified under section 6605 or 6605c of Title 10;~~

~~(C) a collection of unregistered farm vehicles, equipment, or parts used by their owner in the pursuit of farming.~~

~~(8) "Legislative body" means the city council of a city, the board of selectmen~~ selectboard of a town, or the board of trustees of a village.

* * *

~~(12) "Scrap metal processing recycling facility" means a manufacturing business which purchases sundry types of scrap metal from various sources including the following: industrial plants, fabricators, manufacturing companies, railroads, junkyards, auto wreckers, salvage dealers, building wreckers, and plant dismantlers and sells the scrap metal in wholesale shipments directly to foundries, ductile foundries and steel foundries where the scrap metal is melted down and utilized in their manufacturing process~~

a facility at a fixed location that uses equipment to process and refabricate scrap metal into prepared grades and principally produces scrap iron, steel, or nonferrous metallic scrap for sale or a facility that stores scrap iron, steel, or nonferrous metallic scrap for future refabrication.

Sec. 5. 24 V.S.A. § 2242 is amended to read:

§ 2242. REQUIREMENT FOR OPERATION OR MAINTENANCE

A person shall not operate, establish, or maintain a ~~junkyard~~ salvage yard unless ~~he~~ that person:

~~(1) Holds~~ holds a certificate of approval for the location of the junkyard; salvage yard and holds a permit to operate, establish, or maintain a salvage yard, pursuant to section 6605h of Title 10

~~(2) Holds a license to operate, establish or maintain a junkyard.~~

Sec. 6. 24 V.S.A. § 2243 is amended to read:

§ 2243. AGENCY OF TRANSPORTATION; RESPONSIBILITIES; DUTIES

~~The agency of transportation is designated as the state agency for the purpose of carrying out the provisions of this subchapter and shall have the following additional responsibilities and powers:~~

~~(1) It may make such reasonable rules and regulations as it deems necessary, provided such rules and regulations do not conflict with any federal laws, rules and regulations, or the provisions of this subchapter.~~

~~(2) It shall may enter into agreements with the United States Secretary of Transportation or his representatives in order to designate those areas of the state which are properly zoned or used for industrial activities, and to arrange for federal cost participation.~~

~~(3) It shall determine the effectiveness of the screening of any junkyard affected by this subchapter.~~

~~(4) It shall determine whether any junkyard must be screened or removed and may order such screening or any removal.~~

~~(5) It shall approve and pay from funds appropriated for this purpose costs incurred under section 2264 of this title, and may refuse payment of all or part of such costs when it finds they are unreasonable or unnecessary.~~

~~(6) It may seek an injunction against the establishment, operation or maintenance of a junkyard which is or will be in violation of this subchapter and may obtain compliance with its orders for screening or removal by a petition to the superior court for the county in which the junkyard is located.~~

~~(7) It shall conduct a continuing survey of all highways for the purpose of determining the status of junkyards affected and that the provisions of this subchapter are properly observed.~~

~~(8) It may issue necessary orders, findings, and directives, and do all other things reasonably necessary and proper to carry out the purpose of this subchapter.~~

Sec. 7. 24 V.S.A. § 2245 is amended to read:

§ 2245. ~~INCINERATORS, SANITARY LANDFILLS, ETC.,~~ SOLID WASTE MANAGEMENT FACILITIES; EXCEPTED

~~The provisions of this subchapter shall not be construed to apply to incinerators, sanitary landfills, or open dumps wholly owned or leased and operated by a municipality for the benefit of its citizens, or to any private garbage dump or any sanitary landfill which is in compliance with section~~

2202 of this title and the regulations of the secretary of human services solid waste facilities certified by the secretary of natural resources pursuant to section 6605 or 6605c of Title 10.

Sec. 8. 24 V.S.A. § 2251 is amended to read:

§ 2251. APPLICATION FOR CERTIFICATE OF APPROVED LOCATION

Application for a certificate of approved location shall be made in writing to the legislative body of the municipality where it is located or where it is proposed to locate the junkyard salvage yard, and, in municipalities having a zoning ordinance and a zoning board of adjustment bylaw, subdivision regulations established under sections 4301-4492 4301-4498 of this title, or a municipal ordinance or rule established under sections 1971-1984 of this title, the application shall be accompanied by a certificate from the board of adjustment legislative body or a public body designated by the legislative body. The legislative body or its designee shall find the proposed salvage yard location is not within an established district restricted against such uses or otherwise contrary to the requirements or prohibitions of such zoning ordinance bylaw or other municipal ordinance. The application shall contain a description of the land to be included within the junkyard salvage yard, which description shall be by reference to so-called permanent boundary markers.

Sec. 9. 24 V.S.A. § 2253 is amended to read:

§ 2253. LOCATION REQUIREMENTS

(a) At the time and place set for hearing, the legislative body shall hear the applicant, the owners of land abutting the facility, and all other persons wishing to be heard on the application for certificate of approval for the location of the junkyard salvage yard. ~~In passing upon the same, it shall take into account, after~~ The legislative body shall consider the following in determining whether to grant or deny the certificate:

(1) proof of legal ownership or the right to such use of the property by the applicant;

(2) the nature and development of surrounding property, such as the proximity of highways and state and town roads and the feasibility of screening the proposed junkyard from such highways and state and town roads, the proximity of ~~churches~~ places of worship, schools, hospitals, existing or planned residential areas, public buildings, or other places of public gathering; and

(3) whether or not the proposed location can be reasonably protected from affecting the public health, safety, environment, or ~~morals by reason of~~

~~offensive or unhealthy odors or smoke, or of other causes~~ other nuisance conditions.

(b) Beginning on June 1, 2009, a person shall not establish, operate, or maintain a ~~junkyard~~ salvage yard which is within ~~one thousand~~ 1,000 feet of the nearest edge of the right-of-way of the interstate or primary highway systems or of the nearest edge of the right-of-way of a state or town road and visible from the main traveled way thereof at any season of the year.

(c) Notwithstanding ~~any provision of this subchapter~~ subsection (b) of this section, junkyards and scrap metal processing facilities, may be operated within areas adjacent to the interstate and primary highway systems or to a state or town road, which are within ~~one thousand~~ 1,000 feet of the nearest edge of the right-of-way, provided they are zoned industrial under authority of state law, or if not zoned industrial under authority of state law, are used for industrial activities as determined by the board with the approval of the United States Secretary of Transportation.

Sec. 10. 24 V.S.A. § 2254 is amended to read:

§ 2254. AESTHETIC, ENVIRONMENTAL, AND COMMUNITY WELFARE CONSIDERATIONS

At the hearing regarding location of the ~~junkyard~~ salvage yard, the legislative body may also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued stability and development of the tourist and recreational industry of the state and the general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection the legislative body may consider collectively the type of road servicing the ~~junkyard~~ salvage yard or from which the ~~junkyard~~ salvage yard may be seen, the natural or artificial barriers protecting the ~~junkyard~~ salvage yard from view, the proximity of the proposed ~~junkyard~~ salvage yard to established tourist and recreational areas or main access routes, thereto, proximity to neighboring residences, drinking water supplies, consistency with an adopted town plan, as well as the reasonable availability of other suitable sites for the ~~junkyard~~ salvage yard.

Sec. 11. 24 V.S.A. § 2255 is amended to read:

§ 2255. GRANT OR DENIAL OF APPLICATION; APPEAL

(a) After the hearing the legislative body shall, within ~~two weeks~~ 30 days, make a finding as to whether or not the application should be granted, giving notice of their finding to the applicant by mail, postage prepaid, to the address given on the application.

(b) If approved, the certificate of approved location shall be ~~forthwith issued to remain in effect for not less than three nor more than five~~ issued for a period not to exceed three years from the following July 1. and shall contain at a minimum the following conditions:

(1) Conditions to ensure that the screening requirements of section 2257 of this title are met;

(2) Approval shall be personal to the applicant and not assignable;

(3) Conditions that the legislative body deems appropriate to ensure that considerations of section 2254 of this title have been met; and

(4) Any other condition that the legislative body deems appropriate to ensure the protection of public health, the environment, safety, or other nuisance conditions.

(c) Certificates of approval shall be renewed thereafter for successive periods of not ~~less than three nor more than five~~ three years upon payment of the renewal fee without hearing, provided all provisions of this subchapter are complied with during the preceding period, and the ~~junkyard~~ salvage yard does not become a public nuisance under the common law.

(d) Any person ~~dissatisfied with the granting or denial of an application~~ may appeal the issuance or denial of a certificate of approved location to the superior court for the county in which the proposed junkyard is located environmental court within 30 days of the decision. ~~The court by its order may affirm the action of the legislative body or, direct the legislative body to grant or deny the application.~~ No costs shall be taxed against either party upon such appeal.

Sec. 12. 24 V.S.A § 2257 is amended to read:

§ 2257. SCREENING REQUIREMENTS; FENCING

(a) ~~Junkyards~~ Salvage yards shall be screened by a fence or vegetation which effectively screens it from public view ~~from the highway~~, and shall have a gate which shall be closed, except when entering or departing the yard.

(b) Fences and artificial means used for screening purposes as hereafter provided shall be maintained neatly and in good repair. They shall not be used for advertising signs or other displays which are visible from the main traveled way of a highway.

(c) All ~~junk~~ salvage and salvage motor vehicles stored or deposited in a ~~junkyard~~ salvage yard shall be kept within the enclosure, except while being transported to or from the ~~junkyard~~ salvage yard. All wrecking or other work

on the ~~junk~~ salvage and salvage motor vehicles shall be accomplished within the enclosure.

(d) Where the topography, natural growth of timber or other natural barrier screen the ~~junkyard~~ salvage yard from view in part, the ~~agency~~ legislative body shall upon granting the ~~license~~ certificate of approved location, require the applicant to screen only those parts of the ~~junkyard~~ salvage yard not so screened.

~~(e) A junkyard prohibited by section 2253(b) of this title which is lawfully established after July 1, 1969 shall be screened or removed at the time it becomes nonconforming.~~

Sec. 13. 24 V.S.A. § 2274 is amended to read:

§ 2274. CONSTRUCTION WITH OTHER STATUTES

In the event the provisions of this subchapter conflict with any other law relating to abandoned or unclaimed property, this subchapter controls, and its provisions shall not be construed to repeal or abrogate any other provisions of law relating to ~~junkyards~~ salvage yards but to be in aid thereof or as an alternative.

Sec. 14. 24 V.S.A. § 2281 is amended to read:

§ 2281. INJUNCTIVE RELIEF; OTHER REMEDIES

In addition to the penalty in section 2282 of this title, ~~the agency or~~ the legislative body may seek a temporary restraining order, preliminary injunction or permanent injunction against the establishment, operation, or maintenance of a ~~junkyard~~ salvage yard which is or will be in violation of this act and may obtain compliance with its orders for screening and protection of the public health, safety, environment, or nuisance conditions by complaint to the superior court for the county in which the junkyard is located.

Sec. 15. AGENCY OF NATURAL RESOURCES REPORT ON THE REGULATION OF SALVAGE YARDS

On or before January 15, 2010, the agency of natural resources shall report to the senate and house committees on natural resources and energy, the senate and house committees on transportation, and the senate and house committees on government operations with recommendations for regulating additional activities in the state as salvage yards. The report shall include:

(1) Recommended rules, requirements, or methods for regulating the owners of property who store or keep outdoors less than seven salvage motor vehicles on their property, including rules, requirements, or methods for

preventing environmental contamination from property on which less than 12 salvage motor vehicles are stored outdoors.

(2) Recommended rules, requirements, or methods for regulating as salvage yards property that does not qualify for a solid waste facility certification under 10 V.S.A. chapter 159 on which is stored outdoors salvage materials other than salvage motor vehicles. The recommendations shall include threshold levels under which the outdoor storage of certain salvage materials, which may include snowmobiles, all-terrain vehicles, all forms of appliances, and boats, shall trigger regulation as a salvage yard. Such threshold levels shall be provided as equivalent units of a salvage motor vehicle.

Sec. 16. REPEAL

24 V.S.A. §§ 2247 (junkyard licenses); 2261 (application); 2262 (eligibility); 2263 (fee); 2264 (compensation); 2272 (taking title to junk motor vehicles); 2273 (general contract authority for removal of junk vehicles); and 2283 (appeals) are repealed.

Sec. 17. TRANSITION

For facilities permitted prior to the effective date of this act, the permit shall remain in effect until the expiration of the permit. No rule adopted by the secretary of natural resources shall impose new siting criteria on existing permitted and operating facilities unless the location of the facility creates a threat to public health, the environment, or a nuisance.

Sec. 18. IMPLEMENTATION AND EFFECTIVE DATES

(a) The secretary of natural resources shall adopt a rule for the management of scrap, salvage, and salvage yard permits on or before January 15, 2010.

(b) This act shall take effect on January 16, 2010.

(c) A new facility or an existing facility without a permit shall submit complete applications under 24 V.S.A. § 2251 (certificate of approved location) and 10 V.S.A. § 6605h (salvage yard permit) under this act on or before July 1, 2010.

(Committee vote: 5-0-0)

NOTICE CALENDAR

Favorable with Recommendation of Amendment

S. 38

An act relating to requiring the Department of Finance and Management to annually publish on its website a report on grants issued by executive branch agencies.

Reported favorably with recommendation of amendment by Senator Brock for the Committee on Government Operations.

The Committee recommends that the bill be amended by striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 and Secs. 3, 4, and 5 to read:

Sec. 2. 32 V.S.A. § 313 is added to read:

§ 313. GRANT REPORT

(a) Annually, beginning January 31, 2010, the department of finance and management shall publish on its website a report on all grants of federal monies made by each executive branch agency in the preceding calendar year. The report shall be formatted as a table and shall include, for each grant issued after October 1, 2008:

(1) An identification number or code for each federal grant issued by an agency;

(2) The name and address of the subrecipient of the federal grant;

(3) A description of the purpose or use of the grant;

(4) The amount of the grant; and

(5) The Catalog of Federal Domestic Assistance (CFDA) number for each federal grant.

(b) Grant reports issued under this section shall be public records available for inspection and review.

(c) For the purposes of this section, “grant” means a legally enforceable agreement between an agency (grantor) and a recipient or subrecipient (grantee) to carry out a purpose as defined in that agreement.

Sec. 3. 32 V.S.A. § 314 is added to read:

§ 314. GRANT REPORT

(a) Annually, beginning January 31, 2015, the department of finance and management shall publish on its website a report on all grants of federal and

state monies made by each executive branch agency in the preceding calendar year. The report shall be formatted as a table and shall include, for each grant:

(1) An identification number or code for each federal or state grant issued by an agency;

(2) The name and address of the recipient or subrecipient of the state or federal grant;

(3) A description of the purpose or use of the grant;

(4) The amount of the grant; and

(5) The Catalog of Federal Domestic Assistance (CFDA) number for each federal grant.

(b) Grant reports issued under this section shall be public records available for inspection and review.

(c) For the purposes of this section, “grant” means a legally enforceable agreement between an agency (grantor) and a recipient or subrecipient (grantee) to carry out a purpose as defined in that agreement.

Sec. 4. REPEAL

Sec. 2, 32 V.S.A. § 313 (department of finance and management report on federal grants), shall be repealed on July1, 2014.

Sec. 5. EFFECTIVE DATE

Sec. 3 shall take effect on July 1, 2014.

(Committee vote: 3-0-2)

S. 94

An act relating to licensing state forestland for maple sugar production.

Reported favorably with recommendation of amendment by Senator Choate for the Committee on Agriculture.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec.1. MAPLE SUGAR LICENSES ON STATE FOREST LAND

The commissioner of forests, parks and recreation shall consult with the Vermont maple sugar makers association to develop a procedure under which the commissioner shall issue additional licenses for the use of state forestland for the tapping of maple trees, the collection of maple sap, and the right to transport such sap to a processing site located off state forest land or to sites located on state forest land if approved by the commissioner. In addition, the

commissioner of forests, parks and recreation shall consult with the Vermont maple sugar makers association to develop guidelines for tapping maple trees.

(Committee vote: 5-0-0)

Committee Bills for Notice

S. 125

An act relating to expanding the sex offender registry.

By the Committee on Judiciary.

S. 126

An act relating to digital forensic specialists.

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

S. 127

An act relating to small school districts that pay tuition for their resident students.

By the Committee on Education.

S. 128

An act relating to workers' compensation benefits and misclassification.

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

S. 129

An act relating to containing health care costs by decreasing variability in health care spending and utilization.

By the Committee on Health and Welfare.

Proposed Amendment to the Constitution

PROPOSAL 5

(Sixth day on Notice Calendar pursuant to Rule 83)

Pursuant to Rule 83 of the Senate Rules, notice is hereby given that proposed amendment to the Constitution, Proposal 5, set forth below, will be read the third time and acted upon, on the seventh legislative day following Wednesday, February 25, 2009. At that time, the following question shall be presented: "Shall the Senate concur in the proposal and request the concurrence of the House?"

SUBJECT: Elections; voter's oath; self-administration

PENDING ACTION: Third reading of the proposal (second biennium)

PROPOSAL 5

Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont to provide that a person who will attain the age of 18 by the date of the general election shall have the right to vote in the primary election.

Sec. 2. Section 42 of Chapter II of the Vermont Constitution is amended to read:

§ 42. [VOTER'S QUALIFICATIONS AND OATH]

Every person of the full age of eighteen years who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who is of a quiet and peaceable behavior, and will take the following oath or affirmation, shall be entitled to all the privileges of a voter of this state:

You solemnly swear (or affirm) that whenever you give your vote or suffrage, touching any matter that concerns the State of Vermont, you will do it so as in your conscience you shall judge will most conduce to the best good of the same, as established by the Constitution, without fear or favor of any person.

Every person who will attain the full age of eighteen years by the date of the general election who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who is of a quiet and peaceable behavior, and will take the oath or affirmation set forth in this section, shall be entitled to vote in the primary election.

Sec. 3. EFFECTIVE DATE

This proposal of amendment shall take effect from the date of its approval by a majority vote of the voters of the state.

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of

Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Susan D. Plaustiner of Brownsville – Member of the Vermont Economic Development Authority – By Sen. Maynard for the Committee on Finance. (1/21)

Rachel Schumacher of North Bennington – Member of the Vermont Economic Development Authority – By Sen. Hartwell for the Committee on Finance. (1/21)

Steven J. Bourgeois of Swanton – Member of the Vermont Economic Development Authority – By Sen. Carris for the Committee on Finance. (1/28)

Thomas Pelletier of Montpelier – Member of the Vermont Housing Finance Agency – By Sen. Cummings for the Committee on Finance. (1/28)

Neale F. Lunderville of Burlington – Secretary of the Agency of Administration – By Sen. Flanagan for the Committee on Government Operations. (2/17)

Neale F. Lunderville of Burlington – Secretary of the Agency of Administration – By Sen. Flanagan for the Committee on Government Operations. (2/17)

Michael Welch of St. Johnsbury – Member of the Valuation Appeals Board – By Sen. McCormack for the Committee on Finance. (2/18/09)

David R. Coates of Colchester – Member of the Vermont Municipal Bond Bank – By Sen. Carris for the Committee on Finance. (2/18/09)

Sonia D. Alexander of Wilmington – Member of the Valuation Appeals Board – By Sen. Hartwell for the Committee on Finance. (2/25/09)

Paulette Thabault of South Burlington – Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration – By Sen. Cummings for the Committee on Finance. (3/3/09)

Kathryn T. Boardman of Shelburne – Member of the Vermont Municipal Bond Bank – By Sen. Maynard for the Committee on Finance. (3/4/09)

John D. Burke of Castleton – Member of the Public Service Board – By Sen. Maynard for the Committee on Finance. (3/24/09)