

Senate Calendar

FRIDAY, MARCH 27, 2009

80th DAY OF BIENNIAL SESSION

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ACTION CALENDAR

UNFINISHED BUSINESS OF TUESDAY, MARCH 24, 2009

Third Reading

S. 109

An act relating to brominated flame retardants.

UNFINISHED BUSINESS OF WEDNESDAY, MARCH 25, 2009

Third Reading

S. 5

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

S. 47

An act relating to salvage yards.

**AMENDMENT TO S. 47 TO BE OFFERED BY SENATORS SEARS,
CARRIS AND ILLUZZI BEFORE THIRD READING**

Senators Sears, Carris and Illuzzi move to amend the bill by adding a new section to be numbered Sec. 19 to read as follows:

**Sec. 19. REPEAL OF SUNSET OF SCRAP METAL PROCESSOR
REQUIREMENTS**

Sec. 12 of No. 195 of the Acts of the 2007 Adj. Sess. (2008) (sunset of scrap metal processor requirements for identification of persons selling scrap metal) is repealed.

**AMENDMENT TO S. 47 TO BE OFFERED BY SENATOR SNELLING,
ON BEHALF OF THE COMMITTEE ON NATURAL RESOURCES
AND ENERGY, BEFORE THIRD READING**

Senator Snelling, on behalf of the Committee on Natural Resources and Energy, moves to amend the bill by striking Sec. 15 in its entirety and inserting in lieu thereof the following:

**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 and for additional operational requirements for existing 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 seven 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.

(3) Recommended rules or requirements for salvage yards to install or construct fencing that is of an adequate size and construction in order to prohibit entry or access to the salvage yard during nonbusiness hours.

S. 99

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

H. 11

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

Second Reading

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 July 1, 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 Second Reading

S. 125

An act relating to expanding the sex offender registry.

By the Committee on Judiciary. (Senator Sears for the Committee)

**AMENDMENT TO S. 125 TO BE OFFERED BY SENATORS
CAMPBELL, CUMMINGS AND NITKA ON BEHALF OF THE
COMMITTEE ON JUDICIARY**

Senators Campbell, Cummings and Nitka, on behalf of the Committee on Judiciary, move to amend the bill by striking out Sec. 10 in its entirety and by renumbering the remaining sections to be numerically correct.

**AMENDMENT TO S. 125 TO BE OFFERED BY SENATOR SEARS ON
BEHALF OF THE COMMITTEE ON JUDICIARY**

Senator Sears, on behalf of the Committee on Judiciary, moves to amend the bill adding Sec. 9a to read as follows::

Sec. 9a. 20 V.S.A. § 2061 is amended to read:

§ 2061. FINGERPRINTING

* * *

(m) The Vermont crime information center may electronically transmit fingerprints and photographs of accused persons to the Federal Bureau of Investigation (FBI) at any time after arrest, summons, or citation ~~for the sole purpose of identifying an individual. However, the Vermont crime information center shall not forward fingerprints and photographs to the FBI for the purpose of inclusion in the National Crime Information Center Database until after arraignment.~~ If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and the defendant is acquitted, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs. If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and all charges against the defendant are dismissed, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs, unless the attorney for the state can show good cause why the fingerprints and photographs should not be destroyed.

* * *

**AMENDMENT TO S. 125 TO BE OFFERED BY SENATOR SEARS ON
BEHALF OF THE COMMITTEE ON JUDICIARY**

Senator Sears, on behalf of the Committee on Judiciary, moves to amend the bill adding Secs. 9b and 9c to read as follows:

Sec. 9b. 28 V.S.A. § 204 is amended to read:

§ 204. -SUBMISSION OF WRITTEN REPORT; PROTECTION OF RECORDS

* * *

(d) Any presentence report, pre-parole report, or supervision history prepared by any employee of the department in the discharge of the employee's official duty, except as provided in subdivision 204a(b)(5) and section 205 of this title, is privileged and shall not be disclosed to anyone outside the department other than the judge or the parole board, except that the court or board may in its discretion permit the inspection of the report or parts thereof by the state's attorney, the defendant or inmate or his or her attorney,

or other persons having a proper interest therein, whenever the best interest or welfare of the defendant or inmate makes that action desirable or helpful.

* * *

(f) Except as otherwise provided by law, reports and records subject to this section may be inspected by a state or federal prosecutor as part of a criminal investigation. The information in the files may be used for any lawful purpose but shall not otherwise be made public.

Sec. 9c. 28 V.S.A. § 601 is amended to read:

§ 601. POWERS AND RESPONSIBILITIES OF THE SUPERVISING OFFICER OF EACH CORRECTIONAL FACILITY

The supervising officer of each facility shall be responsible for the efficient and humane maintenance and operation and for the security of the facility, subject to the supervisory authority conferred by law upon the commissioner. Each supervising officer is charged with the following powers and responsibilities:

* * *

(10) To establish and maintain, in accordance with such rules and regulations as are established by the commissioner, a central file at the facility containing an individual file for each inmate. Except as otherwise may be indicated by the rules and regulations of the department, the content of the file of an inmate shall be confidential and shall not be subject to public inspection except by court order for good cause shown and shall not be accessible to inmates at the facility. Except as otherwise provided by law, the contents of an inmate's file may be inspected by a state or federal prosecutor as part of a criminal investigation. The information in the files may be used for any lawful purpose but shall not otherwise be made public.

AMENDMENT TO S. 125 TO BE OFFERED BY SENATOR SEARS ON BEHALF OF THE COMMITTEE ON JUDICIARY

Senator Sears, on behalf of the Committee on Judiciary, moves to amend the bill by adding Sec. 9d to read as follows:

Sec. 9d. 28 V.S.A. § 856 is added to read:

§ 856. SPECIAL MANAGEMENT MEALS

(a) When an inmate misuses bodily waste or fluids, food, or eating utensils, the supervising officer of the facility or his or her designee may order that the inmate be served special management meals in lieu of regular inmate meals pursuant to this section.

(b)(1) When it appears to the supervising officer that an inmate may be subject to an order to receive special management meals, the officer shall notify the inmate in writing of the reason for the determination and the facility's evidence for it.

(2)(A) Before being served special management meals, the inmate shall be provided an opportunity to meet with a member of the facility's staff not involved in the incident. The purpose of the meeting shall be to serve as an initial check against mistaken decisions and to determine whether there are reasonable grounds to believe that the inmate misused bodily waste or fluids, food, or eating utensils.

(B) At a meeting between an inmate and a staff member held pursuant to this subdivision, the inmate may identify any disagreement he or she has with the facility's version of the facts, identify witnesses who support his or her defense, identify any mitigating circumstances which should be considered, and offer any other arguments that may be appropriate. The inmate shall not have the right to cross-examine witnesses or to call witnesses to testify on his or her behalf.

(c) If the officer determines that there are reasonable grounds to believe that the inmate misused bodily waste or fluids, food, or eating utensils, the officer may order that the inmate be served special management meals in lieu of regular inmate meals for a maximum of seven consecutive days.

(d) When the supervising officer orders that an inmate be served special management meals, a hearing officer designated by the officer shall conduct a fact-finding hearing within 48 hours pursuant to the following procedure:

(1) Notice of the charge and of the hearing shall be given to the inmate.

(2) The inmate shall have an opportunity, subject to reasonable rules, to confront the person bringing the charge.

(3) The inmate shall have the right to be present and heard at the hearing subject to reasonable rules of conduct.

(4) The hearing officer shall summon to testify any available witness or other persons with relevant knowledge of the incident, subject to reasonable rules. The inmate charged may be permitted to question any person who testifies pursuant to this subdivision.

(5) If the inmate so requests, he or she may be assisted in the preparation and presentation of his or her case by an assigned employee of the facility if the supervising officer determines in his or her discretion that the requested employee is reasonably available.

(e) If the hearing officer determines that a preponderance of the evidence does not establish that the inmate misused bodily waste or fluids, food, or

eating utensils, the supervising officer shall discontinue service of special management meals to the inmate.

(f) The service of special management meals shall not be construed as punishment and shall not be subject to the requirements of sections 851–853 of this title.

S. 126

An act relating to digital forensic specialists.

By the Committee on Economic Development, Housing and General Affairs. (Senator Miller for the Committee)

S. 127

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

By the Committee on Education. (Senator Starr for the Committee)

AMENDMENT TO S. 127 TO BE OFFERED BY SENATOR McCORMACK

Senator McCormack moves to amend the bill by striking out Sec. 7 [Effective Date] in its entirety and inserting in lieu thereof three new sections to read as follows:

Sec. 7. 16 V.S.A. § 563 is amended to read:

§ 563. ~~POWERS OF SCHOOL BOARDS; FORM OF VOTE IF BUDGET EXCEEDS BENCHMARK AND DISTRICT SPENDING IS ABOVE AVERAGE~~

The school board of a school district, in addition to other duties and authority specifically assigned by law:

* * *

(11)(A) Shall prepare and distribute annually a proposed budget for the next school year according to such major categories as may from time to time be prescribed by the commissioner.

~~(B) If the proposed budget contains education spending in excess of the Maximum Inflation Amount, and the district's education spending per equalized pupil in the fiscal year preceding the year for which the budget is proposed was in excess of the statewide average district education spending per equalized pupil in that same fiscal year, as determined by the commissioner of education, then in lieu of any other statutory or charter form of budget adoption or budget vote, the board shall present the budget to the voters by~~

~~means of a divided question, in the form of vote provided in subdivision (ii) of this subsection.~~

~~(i) “Maximum Inflation Amount” in this section means:~~

~~(I) the statewide average district education spending per equalized pupil, as defined in subdivision 4001(6) of this title, in the fiscal year preceding the year for which the budget is proposed, as determined by the commissioner of education, multiplied by the New England Economic Project Cumulative Price Index percentage change, as of November 15 preceding distribution of the proposed budget, for state and local government purchases of goods and services for the fiscal year for which the budget is proposed, plus one percentage point; plus the district’s education spending per equalized pupil in the fiscal year preceding the year for which the budget is proposed, as determined by the commissioner of education;~~

~~(II) multiplied by the higher of the following amounts as determined by the commissioner of education:~~

~~(aa) the district’s equalized pupil count in the fiscal year preceding the year for which the budget is proposed; or~~

~~(bb) the district’s equalized pupil count in the fiscal year for which the budget is proposed.~~

~~(ii) Form of vote.~~

~~“School Budget Question #1:~~

~~Shall the voters of the _____ School District approve a total budget in the amount of [\$ _____], which includes the Maximum Inflation Amount of education spending?~~

~~“School Budget Question #2:~~

~~If Question #1 is approved, shall the voters of the School District also approve additional education spending of [\$ _____]?”~~

~~(C)(B)~~ At a school district’s annual meeting, the electorate may vote to provide notice of availability of the school budget required by this subdivision to the electorate in lieu of distributing the budget. If the electorate of the school district votes to provide notice of availability, it must specify how notice of availability shall be given, and such notice of availability shall be provided to the electorate at least 30 days before the district’s annual meeting. The proposed budget shall be prepared and distributed at least ten days before a sum of money is voted on by the electorate. Any proposed budget shall show the following information in a format prescribed by the commissioner of education:

(i) all revenues from all sources and expenses, including as separate items any assessment for a union school district or a supervisory union of which it is a member, and any tuition to be paid to a technical center;

(ii) the specific amount of any deficit incurred in the most recently closed fiscal year and how the deficit was or will be remedied;

(iii) the anticipated homestead tax rate and the percentage of household income used to determine income sensitivity in the district as a result of passage of the budget; including those portions of the tax rate attributable to the union school and supervisory union assessments; and

(iv) in the case of a school district:

(I) other than a union school district, the definition of "education spending," the number of pupils and number of equalized pupils in the school district, and the district's education spending per equalized pupil in the proposed budget and in each of the prior three years; or

(II) in the case of a union school district, the amount of the assessment to each of the member districts and the amount of the assessments per equalized pupil in the proposed budget and for the past three years.

* * *

Sec. 8. REPEAL

Sec. 6 (effective date; a divided question is required when voting for school budgets that exceed the maximum inflation amount for fiscal years 2010 ((school year 2009-2010)) through 2014 ((school year 2013-2014))) of No. 82 of the Acts of 2007 is repealed.

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage and shall apply to all proposed school budgets on which the electorate will vote after the effective date of this act.

S. 128

An act relating to workers' compensation benefits and misclassification.

By the Committee on Economic Development, Housing and General Affairs. (Senator Illuzzi for the Committee)

(Third Reading per Chapter II, §72, Vermont Constitution and Senate Rule 83)

Proposed Amendment to the Constitution

PROPOSAL 5

Pursuant to Rule 83 of the Senate Rules, the proposed amendment to the Constitution, Proposal 5, set forth below, will be read the third time and acted upon. The question is: "Shall the Senate concur in the proposal and request the concurrence of the House?" [majority of whole Senate is required for passage]

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.

NEW BUSINESS

Second Reading

Favorable

H. 31

An act relating to approval of amendments to the charter of the town of Williston.

Reported favorably by Senator Flanagan for the Committee on Government Operations.

(Committee vote: 5-0-0)

H. 95

An act relating to the approval of an amendment to the charter of the city of Burlington.

Reported favorably by Senator Flanagan for the Committee on Government Operations.

(Committee vote: 5-0-0)

Favorable with Recommendation of Amendment

S. 19

An act relating to extension of filing deadlines for homestead declarations and property tax adjustment claims.

Reported favorably with recommendation of amendment by Senator Hartwell for the Committee on Finance.

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. DEADLINE FOR CERTAIN 2008 HOMESTEAD DECLARATIONS AND PROPERTY TAX ADJUSTMENT CLAIMS

Notwithstanding any other provision of law, a claimant residing in a town that sent its 2008 property tax bill on September 15, 2008 and who, within 21 days of such date, filed a declaration of homestead and a property tax adjustment claim for that homestead shall be entitled to any refund resulting from the corrected property classification and education property tax adjustment claim. The commissioner of taxes shall pay any refund due under this section with respect to an education property tax adjustment to a claimant who applies in writing to the commissioner on or before July 17, 2009. A

refund due a claimant due to reclassification of property as homestead property under this section shall be refunded by the town.

(Committee vote: 7-0-0)

S. 58

An act relating to electronic payment of wages.

Reported favorably with recommendation of amendment by Senator Carris for the Committee on Economic Development, Housing and General Affairs.

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. 21 V.S.A. §§ 342 and 343 are amended to read:

§ 342. WEEKLY PAYMENT OF WAGES

(a) Any person having employees ~~in his service~~ doing and transacting business within the state shall ~~pay~~:

(1) Pay to those employees each week, in lawful money or checks, ~~each of his employees~~, the wages earned by ~~such~~ each employee to a day not more than six days prior to the date of ~~such~~ payment.

~~(b)(2)~~ After giving written notice to his the employees, ~~any person having employees in his service doing and transacting business within the state~~ may, ~~notwithstanding subsection (a) of this section~~, pay bi-weekly or semi-monthly in lawful money or checks, ~~each of his employees~~, employee the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.

~~(c)(1)~~(b) An employee who ~~voluntarily~~:

(1) Voluntarily leaves ~~his~~ employment shall be paid on the last regular pay day, or if there is no regular pay day, on the following Friday.

(2) ~~An employee who is~~ Is discharged from employment shall be paid within 72 hours of ~~his~~ discharge.

(3) ~~If an employee is~~ Is absent from his or her regular place of employment on the employer's regular scheduled date of wages or salary payment ~~such employee~~ shall be entitled to ~~such~~ payment upon demand.

~~(d)~~(c) With the written authorization of an employee, an employer may pay wages due the employee by ~~deposit~~ any of the following methods:

(1) Deposit through electronic funds transfer or other direct deposit systems to a checking, savings, or other deposit account maintained by or for the employee in any financial institution within or without the state.

(2) Credit to a payroll card account directly or indirectly established by an employer in a financial institution to which electronic fund transfers of the employee's wages, salary, or other employee compensation are made on a recurring basis, other than a checking, savings, or other deposit account described in subdivision (1) of this subsection, provided all the following:

(A) The employer provides the employee written disclosure in plain language, in at least 10-point type of both the following:

(i) All the employee's wage payment options.

(ii) The terms and conditions of the payroll card account option, including a complete list of all known fees that may be deducted from the employee's payroll card account by the employer or the card issuer and whether third parties may assess fees in addition to the fees assessed by the employer or issuer.

(B) The employee voluntarily consents in writing to payment of wages by payroll card account after receiving the disclosures described in subdivision (A) of this subdivision (2), and this consent is not a condition of hire or continued employment.

(C) The employer provides that during each pay period the employee has at least three free withdrawals from the payroll card, one of which permits withdrawal of the full amount of the balance, at a financial institution, credit union, or other location convenient to the place of employment.

(D) None of the employer's costs associated with the payroll card account are passed on to the employee, and the employer shall not receive any financial remuneration for using the pay card at the employee's expense.

(E) At least 21 days before any change takes effect, the employer provides the employee with written notice in plain language, in at least 10 point type, of any change to any of the terms and conditions of the payroll card account, including any changes in the itemized list of fees. The employer may not charge the employee any additional fees until the employer has notified the employee in writing of the changes.

(F) The employer provides the employee the option to discontinue receipt of wages by a payroll card account at any time and without penalty to the employee.

(G) The payroll card issued to the employee shall be a branded-type payroll card that complies with all the following:

(i) Can be used at a PIN-based or a signature-based outlet.

(ii) The payroll card agreement prevents withdrawals in excess of the account balance and to the extent possible protects against the account being overdrawn.

(iii) The payroll card has no expiration date, unless the employer agrees to provide a replacement payroll card at no cost to the employee before the expiration date.

(H) A nonbranded payroll card may be issued for temporary purposes and shall be valid for no more than 60 days.

§ 343. FORM OF PAYMENT

~~Such~~ An employer shall not pay its employees with any form of evidence of indebtedness, including, ~~without limitation,~~ all scrip, vouchers, due bills, or store orders, unless the employer is in compliance with one or both of the following:

(1) ~~the~~ The employer is a cooperative corporation in which the employee is a stockholder. ~~However, such , in which case, the~~ cooperative corporation shall, upon request of any ~~such~~ shareholding employee, pay ~~him~~ the shareholding employee as provided in section 342 of this title; or .

(2) ~~payment~~ Payment is made by check as defined in Title 9A or by electronic fund transfer as provided in section 342 of this title.

Sec. 2. 8 V.S.A. § 2707(6) is added to read:

(6) A payroll card account issued pursuant to and in full compliance with 21 V.S.A. § 342(c).

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

(Committee vote: 5-0-0)

S. 89

An act relating to a maximum retail price for milk.

Reported favorably with recommendation of amendment by Senator Starr 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. VERMONT MILK COMMISSION; MILK PREMIUM; PRODUCER PRICE STABILIZATION

(a) The general assembly finds that the recent precipitous drop in producer prices is causing a tremendous burden on Vermont dairy producers and the industry at large, and that this burden must be alleviated as quickly as possible by regulatory action. Accordingly, the general assembly directs the Vermont milk commission to conduct without delay the proceedings necessary to determine whether a “retail fluid milk premium,” including its distribution to producers, should be enacted in accordance with 6 V.S.A. § 2924(e) and the regulations adopted under chapter 161 of Title 6.

(b) To facilitate these expedited proceedings, not later than five days after the enactment of this act, the chair of the commission shall direct the issuance of a further notice of hearing on the latest version of the commission’s “proposed order to establish a retail fluid milk premium” first issued on September 9, 2008. The commission is further directed to conduct this hearing as quickly as procedurally allowable, and to so proceed as expeditiously as possible with all subsequent regulatory actions required by law for its determination of whether to establish a retail fluid milk premium.

Sec. 2. 6 V.S.A. § 2924 is amended to read:

§ 2924. POWERS AND DUTIES; PRICING AUTHORITY; PUBLIC HEARINGS

(a) Authority over milk prices. The commission may establish an equitable minimum or maximum price, or both, and the manner of payments, which shall be paid producers or associations of producers by handlers, and the prices charged consumers and others for milk used in dairy products by distributors or handlers. The cost of the contracts and employment pursuant to section 2923 of this title and of administering the collection and distribution of monies collected under this section shall not exceed \$100,000.00 annually, and shall be collected independently from any assessment imposed under this section. The commission may impose a one-time assessment to cover the initial costs of establishing a pricing order as authorized by this section.

(b) Equitable minimum producer prices. The commission may establish by order after notice and hearing an equitable minimum price to be paid to dairy producers for milk produced in Vermont on the basis of the use thereof in the various classes, grades, and forms. Prices so established which exceed federal order prices shall be collected by the commission from the handlers for distribution to dairy producers as a blend price. ~~The cost of the contracts and employment pursuant to section 2923 of this title and of administering the collection and distribution of these moneys shall be covered by such moneys, not to exceed \$100,000.00.~~

* * *

Sec. 3. PREMIUM START-UP FUNDING

(a) The commission shall impose a one-time assessment to cover the administrative costs of its regulatory activities required by Sec. 1 of this act. The assessment required by this section shall not exceed \$35,000.00.

(b) The agency of agriculture, food and markets may borrow from its own general fund to cover these administrative expenses and the milk commission shall reimburse the agency of agriculture, food and markets' general fund upon receipt of the proceeds of the assessment authorized by subsection (a) of this section.

Sec. 4. PRODUCER REFERENDUM

(a) If adopted pursuant to this act, a final order by the Vermont milk commission to establish a retail fluid milk premium shall be submitted by Vermont dairy producers to a producer referendum in accordance with part II, section 7 of the "Vermont Milk Commission Procedure, Development and Issuance of an Order to Establish a Retail Fluid Milk Premium, Or Amendment of Such Order." Notwithstanding the provisions of part III, section 8 of this commission procedure, however, the referendum shall not be conducted as a "qualified cooperative representative vote," but shall instead provide for individual ballot and vote by each Vermont producer.

(b) The referendum shall be carried out and certified not more than 30 days after the adoption of a final order.

(c) The commission shall file with the secretary of state and the legislative committee on administrative rules a letter explaining that a qualified cooperative representative vote pursuant to part III, section 8 of the "Vermont Milk Commission Procedure, Development and Issuance of an Order to Establish a Retail Fluid Milk Premium, Or Amendment of Such Order" will not apply to an order adopted under this act. The commission shall also submit a copy of this act to the secretary of state and the legislative committee on administrative rules.

Sec. 5. ANTI-TRUST INQUIRY; REPORT BY THE ATTORNEY GENERAL

(a) Findings. The general assembly is concerned that the highly concentrated market structure of the New England dairy industry, throughout all sectors, is operating to the disservice of Vermont dairy farmers and milk consumers alike. The raw milk sector of the industry is increasingly dominated by one large, nationally based dairy farm cooperative, and Vermont dairy farmers now have very few options for the initial marketing of their milk. The downstream processing sector is dominated by just two fluid milk processing concerns, which control both the procurement of raw milk from dairy farms and the sale of packaged milk to retail outlets. Finally, the dominant supermarket segment of the Vermont retail market is controlled by a

few large firms, many of whom are nationally based or multinational companies.

(b) Therefore, the attorney general shall undertake a study of the Northeast fluid milk market, and the Vermont segment of that market, and further work with the United States Congress and the United States attorney general to investigate possible anticompetitive practices of dairy cooperatives, processors, and retail firms operating in the Vermont marketplace.

(c) As part of the study, the attorney general shall determine whether operation of the Capper-Volstead Act of 1922 continues to serve its intended purpose and function in the public interest.

(d) By January 15, 2010, the attorney general shall report back to the house and senate committees on agriculture with the findings and recommendations of the study required by this section.

Sec. 6. EFFECTIVE DATE

This act shall take effect upon passage.

and that the title of the bill be amended to read:

“An act relating to stabilization of prices paid to Vermont dairy farmers”

(Committee vote: 5-0-0)

Committee Bill for Second Reading

S. 130

An act relating to premium changes to allow enhanced Medicaid match in fiscal year 2009.

By the Committee on Appropriations. (Senator Bartlett for the Committee)

NOTICE CALENDAR

Favorable with Recommendation of Amendment

S. 28

An act relating to the regulation of landscape architects.

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

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. 26 V.S.A. chapter 46 is added to read:

Chapter 46. Landscape Architects

Subchapter 1. General Provisions

§ 2611. DEFINITIONS

As used in this chapter:

(1) “Director” means the director of the office of professional regulation.

(2) “Disciplinary action” means any action taken against a licensed landscape architect for unprofessional conduct.

(3) “Landscape architect” means a person who complies with all provisions of this chapter and is licensed by the director to engage in the practice of landscape architecture.

(4) “License” means an authorization granted by the director to practice landscape architecture.

(5) “Practice of landscape architecture” means any service where landscape architectural education, training, experience and the application of mathematical, physical, and social science principles are applied in consultation, evaluation, planning, and design, including the preparation and filing of drawings, plans, specifications and other contract documents and the administration of contracts relative to projects principally directed at the functional and aesthetic development, use, or preservation of land that directly affects the health, safety and welfare of the public. These services include the implementation of land development concepts and natural resource management plans through the design or grading of: land forms; on-site, surface, and storm water drainage; soil conservation and erosion control; small water features; pedestrian, bicycle, and local motor vehicular circulation systems; and related construction details.

§ 2612. PROHIBITION AND ENFORCEMENT

(a) No person shall:

(1) Practice or attempt to practice landscape architecture or hold himself or herself as being able to do so in this state without first obtaining a valid license as required by this chapter.

(2) Use the title “landscape architect,” “landscape architecture,” or “landscape architectural” in connection with the person’s name without being duly licensed under this chapter.

(b) No person licensed under this chapter shall:

(1) Stamp or seal documents with his or her landscape architect seal if his or her license has expired or is revoked or suspended.

(2) Practice or attempt to practice landscape architecture during license revocation or suspension.

(3) Engage in unprofessional conduct.

(4) Violate any provisions of this chapter.

(c) A person who willfully violates any provisions of subsection (a) of this section shall be subject to the penalties provided in subsection 127(c) of Title 3.

(d) The administrative law officer may bring an action for injunctive relief to enforce the provisions of this chapter.

§ 2613. EXEMPTIONS

(a) This chapter shall not affect or prevent:

(1) The practice of architecture, land surveying, engineering, or other licensed profession by persons not licensed under this chapter;

(2) Drafters, clerks, project managers, superintendents, students, and other employees or interns from acting under the instructions, control, or supervision of their employers;

(3) The construction, alteration, or supervision of sites by contractors or superintendents employed by contractors or the preparation of shop drawings in connection with the construction, alteration, or supervision;

(4) Owners or contractors from engaging persons who are not landscape architects to observe and supervise site construction of a project;

(5) The preparation of construction documents showing plantings, other horticulture-related elements, or landscape materials unrelated to horticulture;

(6) Individuals from making plans, drawings, or specifications for any property owned by them and for their own personal use;

(7) The design of irrigation systems; and

(8) Officers or employees of the federal government from working in connection with their employment.

(b) This section shall not be construed to permit a person not licensed as provided in this chapter to use the title landscape architect or any title, sign, card, or device to indicate that the person is a landscape architect.

(c) This chapter shall not be construed to limit or restrict in any manner the right of a practitioner of another profession or occupation from carrying on in the usual manner any of the functions of that profession or occupation as their experience, education, and training allow them to practice, including the professions of landscape design, garden design, planning, forestry, and forestry management.

Subchapter 2. Administration

§ 2621. OFFICE OF PROFESSIONAL REGULATION

(a) The director shall:

(1) Provide general information to applicants for licensure as landscape architects.

(2) Explain appeal procedures to licensed landscape architects and applicants, and complaint procedures to the public.

(3) Administer fees as established by law.

(4) Receive applications for licensure, administer examinations, provide licenses to applicants qualified under this chapter, renew, revoke and reinstate licenses as ordered by an administrative law officer.

(5) Refer all disciplinary matters to an administrative law officer.

(b) The director may adopt rules necessary to perform his or her duties under this section.

§ 2622. ADVISOR APPOINTEES

(a) The secretary of state shall appoint two landscape architects for

four-year terms to serve at the secretary's pleasure as advisors in matters relating to landscape architecture. One of the initial appointments may be for less than a four-year term. An appointee shall have not less than three years' experience as a landscape architect immediately preceding appointment, shall be licensed as a landscape architect in Vermont or be in the process of applying for licensure, and shall be actively engaged in the practice of landscape architecture in this state during incumbency.

(b) The director shall seek the advice of the landscape architect advisors in carrying out the provisions of this chapter.

§ 2623. APPLICATIONS

Applications for licensure shall be on forms provided by the director. Each application shall contain a statement under oath showing the applicant's education, experience, and other pertinent information and shall be accompanied by the required fee.

§ 2624. QUALIFICATIONS

(a) A person shall be eligible for licensure as a landscape architect if the person qualifies under one of the following provisions:

(1) Comity or endorsement. A person holding a registration or license to engage in the practice of landscape architecture issued on the basis of an examination administered by the council of landscape architectural registration boards, by the appropriate regulatory authority of a state, territory, or possession of the United States, the District of Columbia, or another country

based on requirements and qualifications shown by the application to be equal to or greater than the requirements of this chapter may be examined on landscape architecture matters peculiar to Vermont and granted a license at the discretion of the director. The director shall accept evidence that an applicant holds a valid certificate from the council of landscape architectural registration boards as proof of qualification for licensure under this subdivision.

(2) Graduation and examination. An applicant who has graduated, having completed a landscape architecture curriculum approved by the landscape architectural accreditation board, followed by at least three years of diversified experience in landscape architecture under the supervision of a licensed, registered, or certified landscape architect and who has passed an examination administered by the council of landscape architectural registration boards may be granted a license. The director may accept experience received under the supervision of a licensed or registered architect, professional engineer, or land surveyor for one year of the experience required under this subdivision. All applicants shall have at least two years of experience under the supervision of a licensed, certified, or registered landscape architect.

(3) Experience and examination. An applicant who has completed nine or more years' diversified experience in landscape architecture under the supervision of a licensed, certified, or registered landscape architect and who has passed an examination administered by the council of landscape architectural review boards may be granted a license. Experience received under the supervision of a licensed or registered architect, professional engineer, or land surveyor may be substituted for no more than three years of this requirement. Credits from a landscape architecture program accredited by the landscape architectural accreditation board may be substituted for up to no more than three years of this requirement.

(b) Upon application for licensure, an applicant qualifying for licensure under subdivision (a)(2) or (3) of this section shall file a report with the director certifying the practical experience requirements completed. The director shall certify that, to the best of the director's knowledge, the report is correct.

(c) An applicant may submit experience accrued for a period of three years in the practice of landscape architecture, as defined in subdivision 2612(5) of this title, in order to meet the experience requirements set forth in subsection (a) of this section if the experience was obtained in Vermont on or before December 31, 2011. Evidence of experience shall be reviewed and approved by the director.

(d) An applicant qualifying for licensure under subdivision (a)(2) or (3) of this section shall pass a written examination administered by the council of landscape architectural boards on technical and professional subjects as may be

prescribed by the council of landscape architectural boards. Applicants may apply for examination before completing the experience requirement as long as the experience requirements will be fulfilled by the examination date. Notification of the results of examinations shall be mailed to each candidate within 30 days of the date the results are received by the director. A candidate failing to pass the examination may apply for reexamination and may sit for a regularly scheduled examination as many times as the candidate chooses to do so. If an applicant does not pass the entire examination, the applicant shall not be required to retake any section of an examination that the applicant has previously passed. No license shall be granted to an applicant until he or she passes all sections of the exam.

(e) Licensing standards and procedures adopted by the director by rule shall be fair and reasonable. Those standards and procedures shall be designed and implemented to ensure that all applicants are admitted to practice unless there is a good reason to believe that practice by a particular applicant would be inconsistent with the public health, safety, or welfare. Licensing standards shall not be designed or implemented for the purpose of limiting the number of licensed landscape architects.

§ 2625. LICENSURE; GENERALLY

The director shall issue a license, upon payment of the fees required in this chapter, to an applicant who has satisfactorily met all the requirements of this chapter.

§ 2626. LICENSE RENEWAL

(a) A license shall be renewed every two years upon application and payment of the required fee. Failure to comply with the provisions of this section shall result in suspension of all privileges granted to the licensee, beginning on the expiration date of the license. A license which has lapsed shall be renewed upon payment of the biennial renewal fee and the late renewal penalty.

(b) The director may adopt rules necessary for the protection of the public to assure the director that an applicant whose license has lapsed or who has not worked for more than three years is professionally qualified. Conditions imposed under this subsection shall be in addition to the requirements of subsection (a) of this section.

§ 2627. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

- (1) Application for licensure: \$150.00
- (2) Initial license issuance: \$40.00

(3) Biennial license renewal: \$250.00

§ 2628. SEAL

Each licensed landscape architect shall obtain a seal of a design as the director shall authorize and direct. Plans and specifications prepared by or under the direct supervision of a licensed landscape architect shall be stamped with the licensed landscape architect's seal.

§ 2629. UNPROFESSIONAL CONDUCT

Unprofessional conduct means the following conduct and the conduct by a licensee or applicant for licensure as set forth in section 129a of Title 3:

(1) Accepting and performing responsibilities which the licensed landscape architect knows or has reason to know that he or she is not competent to perform, or undertaking to perform professional services in specific technical areas in which the licensed landscape architect is not qualified by education, training, and experience;

(2) Failing to practice with reasonable care and competence and to apply the technical knowledge and skill ordinarily applied by licensed landscape architects practicing in the same locality;

(3) Assisting in the application for licensure of a person known by the licensed landscape architect to be unqualified in respect to education, training, or experience;

(4) Accepting compensation for services from more than one party on a project unless the circumstances are fully disclosed and agreed to by all interested parties;

(5) Failing to disclose fully in writing to a client or employer the nature of any business association or direct or indirect financial interest substantial enough to influence the licensed landscape architects judgment in the performance of professional services;

(6) Soliciting or accepting compensation from material or equipment suppliers in return for specifying or endorsing their products;

(7) Failing to disclose compensation for making public statements on landscape architectural questions;

(8) Offering or making a payment or gift to an elected or appointed government official with the intent to influence the official's judgment in connection with a prospective or existing project in which the licensed landscape architect is interested;

(9) Offering or making a gift of other than nominal value, including reasonable entertainment and hospitality, with the intent to influence the

judgment of an existing or prospective client in connection with a project in which the licensed landscape architect is interested;

(10) Knowingly designing a project in violation of applicable state and local laws and regulations;

(11) Making a willful material misrepresentation with respect to the qualifications or experience of an applicant or otherwise in the practice of the profession, whether by commission or omission;

(12) Acting, while serving as a advisor to the director, in any way to contravene willfully the provisions of this chapter and thereby artificially restricting the entry of qualified persons into the profession;

(13) Using the licensed landscape architect's seal on drawings prepared by others not in the his or her employ, or using the seal of another;

(14) Inaccurately representing to a prospective or existing client or employer the licensed landscape architect's qualifications and scope of responsibility for work for which he or she claims credit;

(15) Signing or sealing technical submissions unless they were prepared by or under the responsible control of the licensed landscape architect, except that the licensed landscape architect may sign or seal those portions of the technical submissions that were prepared by or under the responsible control of persons who are licensed under this chapter if the licensed landscape architect has reviewed and adopted in whole or in part those portions and has either coordinated their preparation or integrated them into his or her work; and

(16) In each office maintained for preparation of drawings, specifications, reports, or other professional work, failing to have a licensed landscape architect with direct knowledge and supervisory control of such work resident and regularly employed in that office.

Sec. 2. TRANSITIONAL PROVISIONS

The director shall establish a procedure so that residents of Vermont who have been engaged in the practice of landscape architecture in Vermont, and who are not licensed as landscape architects in other states prior to the effective date of this act, may become licensed without examination. To accomplish this, the director shall establish that these candidates shall provide evidence to the director and a special temporary panel, consisting of five Vermont landscape architects licensed under the provisions of chapter 46 of Title 26, to review the evidence regarding the qualifications for licensure without examination of candidates under this procedure. Only those applicants who can establish a record of landscape architectural practice for nine or more years shall be eligible for licensure under this section. A degree from an accredited landscape architecture program may substitute for years of the

experience requirement under this section at the rate of two years of accredited school work for one year of landscape architectural work experience.

Sec. 3. REPEAL

Sec. 2 of this act shall be repealed on July 1, 2014.

(Committee vote: 5-0-0)

Reported favorably with recommendation of amendment by Senator Ayer for the Committee on Finance.

The Committee recommends that the bill be amended as recommended by the Committee on Government Operations with the following amendment thereto: In Sec. 1, by striking out 26 V.S.A. § 2627 in its entirety and inserting in lieu thereof a new 26 V.S.A. § 2627 to read:

§ 2627. FEES

Applicants and persons regulated under this chapter shall pay those fees set forth in subsection 125(b) of Title 3.

(Committee vote: 7-0-0)

S. 77

An act relating to the disposal of electronic waste.

Reported favorably with recommendation of amendment by Senator McDonald 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. LEGISLATIVE FINDINGS

The general assembly finds:

(1) According to the U.S. Environmental Protection Agency, discarded computers, computer monitors, televisions, and other consumer electronics—collectively referred to as e-waste—are the fastest growing portion of the waste stream growing by approximately eight percent from 2004 to 2005.

(2) Televisions and computers are prevalent in modern society and contribute significantly to the waste generated in Vermont.

(3) Televisions, computers, laptop computers, and computer monitors contain lead, mercury, and other hazardous substances that pose a threat to human health and the environment if improperly disposed of at the end of the useful life of these products.

(4) The state of Vermont has committed to providing its citizens with a safe and healthy environment and has actively undertaken efforts such as mercury reduction programs to reduce the potential for contamination.

(5) The appropriate recycling of televisions and computers protects public health and the environment by reducing the potential for the release of heavy metals and mercury from landfills into the environment, consistent with other state initiatives, and also conserving valuable landfill space.

(6) The establishment of a system to provide for the collection and recycling of electronic devices in Vermont is consistent with the state's duty to protect the health, safety, and welfare of its citizens; maintain and enhance the quality of the environment; conserve natural resources; prevent pollution of air, water, and land; and stimulate economic growth.

Sec. 2. 10 V.S.A. chapter 166 is added to read:

CHAPTER 166. DISPOSAL OF ELECTRONIC DEVICES

§ 7301. DEFINITIONS

For the purposes of this chapter, the following terms shall have the following meanings:

(1) "Agency" means the agency of natural resources.

(2) "Cathode-ray tube" or "CRT" means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

(3) "Collection" means the aggregation of covered electronic devices from covered entities and includes all the activities up to the time the covered electronic devices are delivered to a recycler.

(4) "Collector" means a public or private entity that receives covered electronic devices from covered entities and arranges for the delivery of the devices to a recycler on behalf of a manufacturer for the purpose of fulfilling a manufacturer's responsibilities under this chapter.

(5) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, but does not include an automated typewriter or typesetter, a portable handheld calculator, or other similar device.

(6) "Computer monitor" means a display device without a tuner that can display pictures and sound and is used with a computer. "Computer monitor" includes a laptop computer.

(7) "Covered electronic device" means computers; peripherals; video display devices; personal electronics such as personal digital assistants and personal music players; electronic game consoles; printers; fax machines; cell

phones; telephones; answering machines; videocassette recorders; digital versatile disc players; digital converter boxes; stereo equipment; and power supply cords (as used to charge electronic devices) that are sold to a consumer.

(8) “Covered entity” means any household, charity, or school district in the state, business that employs ten or fewer individuals, or any person giving seven or fewer covered electronic devices to a collector at any one time.

(9) “Manufacturer” means a person who:

(A) Has a physical presence and legal assets in the United States of America, and:

(i) Manufactures or manufactured a video display device under its own brand or label;

(ii) Sells under its own brand or label a video display device produced by another supplier; or

(iii) Owns a brand that it licenses or licensed to another person for use on a video display device; or

(B) Imports or imported a video display device into the United States that is manufactured by a person without a presence in the United States.

(10) “Peripheral” means a keyboard, printer, or any other device sold exclusively for external use with a computer that provides input or output into or from a computer.

(11) “Printer” means desktop printers, multifunction printer copiers, and printer ax combinations taken out of service that are designed to reside on a work surface, and include various print technologies, including without limitation laser and LED (electrographic), ink jet, dot matrix, thermal, and digital sublimation, and “multi-function” or “all-in-one” devices that perform different tasks, including without limitation copying, scanning, faxing, and printing. Printers do not include floor-standing printers, printers with optional floor stand, point of sale (POS) receipt printers, household printers such as a calculator with printing capabilities or label makers, or nonstand-alone printers that are embedded into products that are not covered electronic products.

(12) “Program year” means the period from July 1 through June 30.

(13) “Recycler” means a person who accepts covered electronic devices from covered entities and collectors for the purpose of recycling. A person who takes products solely for refurbishment or repair is not a recycler.

(14) “Recycling” means the process of collecting and preparing video display devices or covered electronic devices for use in manufacturing processes or for recovery of useable materials followed by delivery of such materials for use. Recycling does not include destruction by incineration,

waste-to-energy incineration, or other such processes; land disposal; or reuse, repair, or any other process through which video display devices or covered electronic devices are returned to use in their original form.

(15) "Recycling credits" means the number of pounds of covered electronic devices recycled by a manufacturer during a program year, less the product of the number of pounds of video display devices sold during the same program year, multiplied by the proportion of sales a manufacturer is required to recycle. The calculation and uses of recycling credits are as specified in section 7307 of this title.

(16) "Retailer" means a person who sells, rents, or leases to a household, through sales outlets, catalogues, or the Internet a video display device that is not for resale in any form.

(17) "Sell" or "sale" means any transfer for consideration of title or of the right to use by lease or sales contract of a video display device to a consumer in the state. "Sell" or "sale" does not include a manufacturer's or distributor's wholesale transaction with a distributor or a retailer.

(18) "Television" means any telecommunications system or device that can broadcast or receive moving pictures and sound over a distance and includes a television tuner or a display device peripheral to a computer that contains a television tuner.

(19) "Transporter" means a person or entity that moves covered electronic devices from a collector to a recycler.

(20) "Video display device" means a printer or a unit capable of presenting images electronically on a screen, with a video display greater than four inches when measured diagonally, that are viewed by the user, and includes televisions, computer monitors, laptop computers, cathode ray tubes, plasma displays, liquid crystal displays, rear and front enclosed projection devices, and other similar displays that may be developed. "Video display device" does not include any of the following:

(A) a video display device that is part of a motor vehicle or any component of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;

(B) a video display device, including a touch-screen display, that is functionally or physically part of a larger piece of equipment or is designed and intended for use in an industrial, commercial, or retail setting;

(C) a video display device that is contained within a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or

(D) a telephone of any type unless it contains a video display greater than nine inches when measured diagonally.

§ 7302. PROHIBITIONS; REQUIREMENTS FOR THE SALE OF COVERED ELECTRONIC DEVICES; RETAILER OBLIGATIONS

(a) Sale prohibited. No manufacturer shall sell or offer for sale or deliver to retailers for subsequent sale a new video display device unless:

(1) the video display device is labeled with the manufacturer's brand, which label is permanently affixed and readily visible; and

(2) the manufacturer has filed a registration with the agency, as specified in section 7303 of this title.

(b) Retailer obligations.

(1) A retailer who sells or offers for sale a new video display device to a household shall, before the initial offer of sale, review the agency website specified in subdivision 7303(7) of this title to determine that all new video display devices that the retailer is offering for sale are labeled with the manufacturer's brands that are registered with the agency.

(2) A retailer is not responsible for an unlawful sale under this subdivision if the manufacturer's registration expired or was revoked, the retailer took possession of the video display device prior to the expiration or revocation of the manufacturer's registration, and the unlawful sale occurred within six months after the expiration or revocation.

(3) A retailer who sells new video display devices shall provide information to customers describing where and how they may recycle video display devices and advising them of opportunities and locations for the convenient collection of video display devices for the purpose of recycling. This requirement may be met by providing the agency's toll-free number and website address. Retailers selling through catalogues or the Internet may meet this requirement by including the information in a prominent location on the retailer's website.

§ 7303. MANUFACTURER'S PROGRAM RESPONSIBILITY

(a) Manufacturer registration and reporting requirements.

(1)(A) No manufacturer shall sell or offer for sale a video display device in this state without first submitting a registration to the agency on a form provided by the agency. The form shall include:

(i) a list of the manufacturer's brands of video display devices offered for sale by the manufacturer in this state;

(ii) the name, address, and contact information of a person responsible for ensuring compliance with this chapter; and

(iii) a certification that the manufacturer has complied and will continue to comply with the requirements of this chapter.

(B) A renewal of a registration without changes may be accomplished through notifying the agency on a form provided by the agency.

(2)(A) Beginning July 1, 2011, each manufacturer shall report by July 1 of each year to the agency the aggregate total weight of video display devices sold during the previous program year. This information may be provided by one of the following:

(i) the aggregate total weight of its video display devices sold during the previous program year; or

(ii) an estimate of the aggregate total weight of its video display devices sold during the previous program year based on national sales data. A manufacturer shall submit with the report required under this subsection a description of how the information or estimate was calculated.

(B) By July 1 of each year, beginning July 1, 2011, each manufacturer shall report to the agency the aggregate total weight of covered electronic devices the manufacturer recycled during the preceding program year.

(3) A manufacturer who begins to sell or offer for sale video display devices to households and has not filed a registration under this subsection shall submit a registration to the agency within ten days of beginning to sell or offer for sale video display devices.

(4) A registration shall be amended within ten days after a change to any information included in the registration submitted by the manufacturer under this section.

(5) A registration is effective upon receipt by the agency and is valid for a period of five years.

(6) The agency shall notify the manufacturer of any information required by this title that is omitted from the registration. Upon receipt of a notification from the agency, the manufacturer shall submit a revised registration providing the information noted by the agency.

(7) The agency shall maintain on its website the names of manufacturers and the manufacturers' brands listed in registrations filed with the agency. The agency shall update the website information within 10 days of receipt of a complete registration.

(b) Manufacturer's program responsibilities. Manufacturers shall comply with the following:

(1) A manufacturer shall annually recycle or arrange and pay for the collection and recycling of an amount of covered electronic devices equal to the total weight of its video display devices sold during the preceding program year, multiplied by the proportion of sales of video display devices required to be recycled as established by the agency under subdivision 7307(a)(3)(B) of this title. Manufacturers or entities with whom they contract may not charge fees at the time of collecting the unwanted covered electronic devices if those devices will be counted toward the manufacturer's recycling requirement.

(2) Manufacturers may only count covered electronic devices received from covered entities toward their recycling requirements listed under subdivision 7307(a)(3)(B) of this title.

(3) A manufacturer shall certify that a facility recycling covered electronic devices in order to meet the manufacturer's obligation under subdivision (1) of this subsection complies with the recycling standards contained in subdivision 7306(9) of this title. A manufacturer is responsible for maintaining, for a period of three years, documentation of the information relied upon as the basis for the certification under this subdivision.

(4) A manufacturer registered under this section or a collector operating on behalf of a manufacturer under this section shall not charge a fee to covered entities for the collection, transportation, or recycling of covered electronic devices.

§ 7304. RECYCLER PROGRAM RESPONSIBILITY

(a)(1) Recycler registration. No person may recycle a covered electronic device unless that person has submitted a registration with the agency on a form prescribed by the secretary. A registration is effective upon receipt by the agency and is valid for a period not to exceed five years. An electronics recycling facility registered under this section is not required to obtain a solid waste certification pursuant to chapter 159 of this title. Registration information shall include:

(A) the name, address, telephone number, and location of all recycling facilities under the direct control of the recycler that may receive covered electronic devices;

(B) evidence that the financial assurance requirements of section 6611 of this title have been satisfied.

(2) A registration shall be amended within ten days after a change to any information included in the registration submitted by the recycler under this section.

(b) Recycler's reporting requirements. By July 1 of each year, beginning July 1, 2011, a recycler of covered electronic devices shall report to the agency the total weight of covered electronic devices recycled during the preceding program year and shall certify that the recycler has complied with subdivision 7306(8) of this title.

(c) Approved vendors. A recycler of covered electronic devices shall only contract for transport, transport to, or dispose of covered electronic devices through a manufacturer mail back or take back program or with a vendor listed by the agency of natural resources on its approved vendor list.

§ 7305. COLLECTOR AND TRANSPORTER PROGRAM RESPONSIBILITY

(a)(1) Collector and transporter registration. No person may operate as a collector or transporter of covered electronic devices unless that person has submitted a registration with the agency on a form prescribed by the secretary. A registration is effective upon receipt by the agency and is valid for a period not to exceed five years. An electronics collector or transporter registered under this section shall not be required to obtain a solid waste certification or a solid waste hauler permit pursuant to chapter 159 of this title.

(2) A registration shall be amended within ten days after a change to any information included in the registration submitted by the collector under this section.

(b) Transporter's reporting requirements. By July 1 of each year, beginning July 1, 2011, a transporter of covered electronic devices not destined for recycling in Vermont shall report to the agency the total pounds of covered electronic devices collected and the manufacturer who received credits from the covered electronic devices.

§ 7306. AGENCY PROGRAM RESPONSIBILITIES

The agency shall:

(1) Administer this chapter.

(2) Establish procedures for:

(A) the registration statements and certifications filed with the agency under this chapter; and

(B) making the statements and certifications easily available to manufacturers, retailers, and members of the public.

(3) Collect the data submitted annually by each manufacturer on the total aggregate weight of video display devices sold and the total aggregate weight of covered electronic devices collected which are recycled.

(4) Annually review the value of the variables used to calculate a manufacturer's variable recycling fee under subdivision 7307(a)(3) of this title. If the agency determines that any of these values shall be changed in order to improve the efficiency or effectiveness of the activities regulated under this chapter or if the revenues in the account exceed the amount that the agency determines is necessary, the agency shall submit recommended changes to the senate and house committees on natural resources and energy.

(5) Based on the data provided by a manufacturer regarding the sales of video display devices, estimate by July 1 of each year each registered manufacturer's sales of video display devices during the previous year.

(6) Beginning December 1, 2011, report to the senate and house committees on natural resources and energy regarding the implementation of this chapter. For each program year, the report shall provide the total weight of covered electronic devices recycled and a summary of information in the reports submitted by manufacturers, collectors, and recyclers under this chapter. The report shall also discuss the various collection programs used by manufacturers to collect covered electronic devices; information regarding covered electronic devices that are being collected by persons other than registered manufacturers, collectors, and recyclers; and information about covered electronic devices, if any, being disposed of in landfills in this state. The report shall include a description of enforcement actions under this chapter. The agency may include in its report other information received by the agency regarding the implementation of this chapter.

(7) Promote public participation in the activities regulated under this chapter through public education and outreach efforts.

(8) Post on its website the contact information provided by each manufacturer under subdivision 7303(a)(1)(A)(ii) of this title.

(9) In consultation with interested parties, establish guidelines for the environmentally sound management of consumer electronics, including specific requirements for collectors, transporters, and recyclers.

(10) Identify approved transporters, collectors, recyclers, and other downstream vendors of covered electronic devices and list such entities on its website.

§ 7307. MANUFACTURER'S REGISTRATION FEE; CREATION OF ACCOUNT

(a) Registration fee.

(1) By July 1 of each year, all manufacturers who register under subsection 7303(a) of this title shall pay to the agency an annual registration

fee as established under this section. The secretary shall deposit the fee into the account established by this section.

(2) The annual registration fee for a manufacturer who sells video display devices in the state is \$5,000.00 for the initial program year. In years following the initial program year, the annual registration fee for a manufacturer who sells video display devices in the state is \$5,000.00 plus the variable recycling fee calculated according to the formula in subdivision (3) of this subsection. The annual registration fee for a manufacturer who produces fewer than 100 video display devices for sale is \$1,250.00.

(3) Using quantities from the preceding program year, the variable recycling fee shall be calculated according to the formula—variable recycling fee = $(A \times B) - (C + D) \times E$, where:

(A) A = the number of pounds of a manufacturer's video display device sold during the previous program year, as reported to the agency under section 7303 of this title;

(B) B = the proportion of sales of video display devices required to be recycled, set at 0.6 for the first program year and at 0.8 for the second program year and every year thereafter;

(C) C = the number of pounds of covered electronic devices recycled by a manufacturer during the previous program year, as reported to the agency under section 7303 of this title;

(D) D = the number of recycling credits a manufacturer elects to use during the current program year to calculate the variable recycling fee, as reported to the agency under section 7303 of this section;

(E) E = the estimated per-pound cost of recycling used to calculate the variable recycling fee initially set at \$0.50 per pound for manufacturers who recycle less than 50 percent of the product required to be recycled under this chapter $(A \times B)$; \$0.40 per pound for manufacturers who recycle at least 50 percent but less than 90 percent of the product required to be recycled under this chapter $(A \times B)$; and \$0.30 per pound for manufacturers who recycle at least 90 percent of the product required to be recycled under this chapter $(A \times B)$.

(4) For the purpose of calculating a manufacturer's variable recycling fee for a given year, a manufacturer may carry recycling credits forward from any of the three preceding program years to be added, in whole or in part, to the number of pounds reported recycled. Recycling credits are created when the number of pounds reported recycled exceeds the number of pounds required to have been recycled under this chapter according to the formula: credit = $C - (A \times B)$, where A, B, and C are defined in subdivision (3) of this

subsection. A manufacturer may sell any portion of its recycling credits to another manufacturer, at a price negotiated by the parties, who may use the credits in the same manner and may carry recycling credits forward from any of the three preceding program years.

(b) Creation of electronic waste management fund. The electronic waste management fund is established in the state treasury pursuant to subchapter 5 of chapter 7 of Title 32. The fund shall be administered by the department of environmental conservation to administer and implement the programs authorized by this chapter. This shall include funding administrative costs to the agency, and may include as funding allows providing grants to entities recycling electronics waste and education and outreach costs. The fund shall consist of the fees collected under subsection (a) of this section and any gifts, donations, and appropriations by the general assembly. All balances in the fund at the end of any fiscal year shall be carried forward and remain part of the fund. Interest earned by the fund shall be deposited in the fund.

§ 7308. OTHER RECYCLING PROGRAMS

A municipality or other public agency may not require covered entities to use public facilities to recycle their covered electronic devices to the exclusion of other lawful programs available. A municipality and other public agencies are encouraged to work with manufacturers to assist them in meeting their recycling obligations under this chapter. Nothing in this chapter prohibits or restricts the operation of any program recycling covered electronic devices in addition to those provided by manufacturers or prohibits or restricts any persons from receiving, collecting, transporting, or recycling covered electronic devices, provided that those persons are registered under section 7303 of this title.

§ 7309. ANTICOMPETITIVE CONDUCT

Manufacturers or industry trade groups may work together and pool resources and collection activities to meet the requirements of this chapter.

§ 7310. MULTISTATE IMPLEMENTATION

The agency is authorized to participate in the establishment of a regional multistate organization or compact to assist in carrying out the requirements of this chapter.

§ 7311. LIMITATIONS

If a federal law or combination of federal laws takes effect that is applicable to all video display devices sold in the United States and establishes a program for the collection and recycling or reuse of video display devices that is applicable to all discarded video display devices, the agency will evaluate whether the laws provide a solution that is equal to or better than the program

established under this chapter. The agency shall report its findings to the general assembly.

§ 7312. BAN ON PRISON LABOR

No facility that recycles covered electronic products, including downstream recycling operations, shall use prison labor in the state of Vermont to recycle covered electronic products.

Sec. 3. 10 V.S.A. § 6621a(a) is amended to read:

(a) In accordance with the following schedule, no person shall knowingly dispose of the following solid waste in landfills:

* * *

(8) Covered electronic devices, as defined in chapter 166 of this title, after July 1, 2011.

Sec. 4. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes:

* * *

(17) 10 V.S.A. § 2625, relating to heavy cutting of timber; ~~and~~

(18) 10 V.S.A. chapter 164, relating to comprehensive mercury management;

(19) 10 V.S.A. chapter 166, relating to disposal of covered electronic devices.

Sec. 5. 10 V.S.A. § 8503(a) is amended to read:

(a) This chapter shall govern all appeals of an act or decision of the secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

* * *

(O) chapter 166 (disposal of covered electronic devices).

* * *

Sec. 6. EFFECTIVE DATE

This act shall take effect July 1, 2010.

Sec. 7. ANR REPORT ON ADDITIONAL INCENTIVES FOR RECYCLING ELECTRONIC WASTE

On or before January 15, 2011, the secretary of natural resources shall report to the senate and house committees on natural resources and energy with recommended incentives to increase the rate of recycling of covered electronic devices and video display devices, as those terms are defined in 10 V.S.A. § 7301.

(Committee vote: 6-1-0)

Reported favorably by Senator MacDonald for the Committee on Finance.

(Committee vote: 6-1-0)

Committee Bills for Second Reading

S. 121

An act relating to miscellaneous election laws.

By the Committee on Government Operations. (Senator White for the Committee)

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 (Senator Racine for the Committee)

Reported favorably by Senator Bartlett for the Committee on Appropriations.

(Committee vote: 5-0-2)

Concurrent Resolutions for Notice

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively.

H.C.R. 83

House concurrent resolution congratulating the 2009 Essex High School Hornets Division I championship girls' ice hockey team

H.C.R. 84

House concurrent resolution congratulating the 2009 Essex High School Hornets state gymnastics championship team

H.C.R. 85

House concurrent resolution congratulating Essex High School gymnast Mary Krug on winning four consecutive all-around state championship competitions

H.C.R. 86

House concurrent resolution congratulating the 2009 Proctor High School Phantoms' Division IV championship boys' basketball team

H.C.R. 87

House concurrent resolution honoring Olympic runner and model sportsman Andrew Wheating of Norwich

H.C.R. 88

House concurrent resolution celebrating the success of the education-based after-school programs in Vermont

H.C.R. 89

House concurrent resolution commending the leadership of Green Mountain Power Corporation and other electric companies and state offices in restoring electric power in southern Vermont following the December 2008 ice storm

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)

Kenneth Linsley of Danville – Member of the Vermont Educational and Health Buildings Financing Agency – By Sen. Maynard for the Committee on Finance. (3/26/09)

Gary Moore of Bradford – Member of the Vermont State Colleges Board of Trustees – By Sen. Starr for the Committee on Education. (3/30/09)

Linda R. Milne of Montpelier – Member of the Vermont State Colleges Board of Trustees – By Sen. Doyle for the Committee on Education. (3/30/09)

Mark Young of Orwell – Member of the University of Vermont Board of Trustees – By Sen. Giard for the Committee on Education. (3/30/09)

Donald Collins of Swanton – Member of the State Board of Education – By Sen. Brock for the Committee on Education. (3/30/09)

INFORMATION NOTICE

The following item was recently received by the Joint Fiscal Committee:

JFO #2370 — \$19,600,000 grant from the U.S. Department of Housing and Urban Development (HUD) to the Agency of Commerce and Community Affairs – Housing and Community Affairs. These funds were allocated to Vermont for the Neighborhood Stabilization Program authorized under the Housing and Economic Recovery Act of 2008 and are intended to assist the State in addressing problems created by abandoned and foreclosed residential properties. [*JFO received 3/25/09*]