

Journal of the Senate

TUESDAY, MARCH 24, 2009

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

Devotional exercises were conducted by the Reverend Duane Somero of South Burlington.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 130.

By the Committee on Appropriations,

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

Joint Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Shumlin,

J.R.S. 25. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, March 27, 2009, it be to meet again no later than Tuesday, March 31, 2009.

President Assumes the Chair

Bill Amended; Third Reading Ordered

S. 5.

Senator Maynard, for the Committee on Transportation, to which was referred Senate bill entitled:

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

Reported recommending 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.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Rules Suspended; Bill Committed

S. 54.

Senate bill entitled:

An act relating to clean energy assessment districts.

Was taken up.

Thereupon, pending the reading of the report of the Committee on Natural Resources and Energy, Senator Shumlin moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Finance with the report of the Committee on Natural Resources and Energy *intact*,

Which was agreed to.

Proposals of Amendment; Third Reading Ordered

H. 11.

Senator Campbell, for the Committee on Judiciary, to which was referred House bill entitled:

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

Reported recommending 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.

And that the bill ought to pass in concurrence with such proposals of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposals of amendment were collectively agreed to, and third reading of the bill was ordered.

Third Reading Ordered

S. 99.

Senator Lyons, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

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

Reported that the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

**Joint Resolution Amended; Third Reading Ordered; Rules Suspended;
Joint Resolution Adopted; Rules Suspended; Joint Resolution Messaged**

J.R.S. 18.

Senator Mullin, for the Committee on Health and Welfare, to which was referred joint Senate resolution entitled:

Joint resolution relating to prescription drug pricing.

Reported recommending that the joint resolution be amended by striking it out in its entirety and inserting in lieu thereof the following:

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.

And that when so amended the joint resolution ought to adopted.

Thereupon, the joint resolution was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the joint resolution was ordered.

Thereupon, on motion of Senator Shumlin, the rules were suspended and the joint resolution was placed on all remaining stages of its adoption forthwith.

Thereupon, the joint resolution was read the third time and adopted on the part of the Senate.

Thereupon, on motion of Senator Shumlin, the rules were suspended, and the joint resolution was ordered messaged to the House forthwith.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

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.

Consideration Postponed

Senate bill entitled:

S. 109.

An act relating to brominated flame retardants.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Bill Amended; Bill Passed

S. 115.

Senate bill entitled:

An act relating to civil marriage.

Was taken up.

Thereupon, pending third reading of the bill, Senator Campbell moved to amend the bill by 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

Which was agreed to.

Thereupon, the bill was read the third time and passed.

Bill Amended; Third Reading Ordered

S. 47.

Senator Snelling, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

An act relating to salvage yards.

Reported recommending 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.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Rules Suspended; Bills Messaged

On motion of Senator Shumlin, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 18, S. 69, S. 86 and S. 115.

Bill Referred to Committee on Appropriations

S. 129

Senate bill of the following title, appearing on the Calendar for notice and carrying an appropriation or requiring the expenditure of funds, under the rule was referred to the Committee on Appropriations:

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

Senate Concurrent Resolutions

The following joint concurrent resolutions, having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted on the part of the Senate:

By Senators Snelling, Ashe, Ayer, Bartlett, Choate, Cummings, Doyle, Flanagan, Giard, Kitchel, Lyons, Miller, Racine and Scott,

By Representative Crawford and others,

S.C.R. 14.

Senate concurrent resolution congratulating the 2009 Vermont winners of the Prudential Spirit of Community Awards.

By Senators Illuzzi, Campbell, Carris, Flanagan, Hartwell, McCormack, Sears and Shumlin,

S.C.R. 15.

Senate concurrent resolution honoring the outstanding public service of Thomas Anderson, U.S. Attorney for the District of Vermont.

House Concurrent Resolutions

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence:

By Representative Reis and others,

By Senators Kitchel and Choate,

H.C.R. 69.

House concurrent resolution congratulating the primary care providers' offices in the Northeastern Vermont Regional Hospital service area that the National Committee for Quality Assurance has designated as patient-centered medical homes.

By Representative Jerman,

H.C.R. 70.

House concurrent resolution honoring the federal TRIO programs in Vermont.

By Representative Pugh and others,

By Senator Racine,

H.C.R. 71.

House concurrent resolution honoring the outstanding work of child care providers in Vermont.

By Representative Pugh and others,

H.C.R. 72.

House concurrent resolution congratulating Spectrum Youth and Family Services on its winning the 2009 National Network for Youth Agency of the Year Award.

By Representative Obuchowski and others,

By Senators Shumlin and White,

H.C.R. 73.

House concurrent resolution honoring Jayne Barber on her outstanding 28-year coaching career at Bellows Falls Union High School.

By Representative Ram and others,

H.C.R. 74.

House concurrent resolution congratulating University of Vermont basketball player Marqus Blakely on his 1,000th career point and award-winning accomplishments.

By Representative Jerman and others,

H.C.R. 75.

House concurrent resolution congratulating the Albert D. Lawton Middle School boys' A-basketball ADL tournament championship team.

By Representative Martin and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 76.

House concurrent resolution congratulating the 2009 Springfield Cosmos Division II championship boys' basketball team.

By Representative Morrissey and others,

By Senators Hartwell and Sears,

H.C.R. 77.

House concurrent resolution congratulating William "Bill" Collins on answering his 10,000th call for the Bennington Rescue Squad .

By Representative Klein and others,

H.C.R. 78.

House concurrent resolution congratulating the 2009 U-32 High School Raiders Division II championship Nordic ski team.

By Representatives Clark and Lanpher,

By Senators Ayer and Giard,

H.C.R. 79.

House concurrent resolution congratulating the Panton General Store on its receipt of a 2009 Vermont Centennial Business Award.

By Representatives Clark and Lanpher,

By Senators Ayer and Giard,

H.C.R. 80.

House concurrent resolution congratulating the J.W. & D.E. Ryan plumbing and heating contractors on the receipt of a 2009 Vermont Centennial Business Award.

By Representatives Clark and Lanpher,

By Senators Ayer and Giard,

H.C.R. 81.

House concurrent resolution congratulating the 2009 Vergennes Union High School Commodores Division II championship cheerleading team.

By Representative Edwards and others,

H.C.R. 82.

House concurrent resolution recognizing the work of the Brattleboro community to combat racial and ethnic intolerance.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eight o'clock and twenty-five minutes in the morning.