# Journal of the Senate

**WEDNESDAY, MARCH 17, 2010**

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

**Devotional Exercises**

A moment of silence was observed in lieu of devotions.

**Message from the House No. 35**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

**H. 614.** An act relating to the regulation of composting.

In the passage of which the concurrence of the Senate is requested.

The House has adopted House concurrent resolutions of the following titles:

**H.C.R. 271.** House concurrent resolution commemorating the Green Mountain Club on its centennial anniversary.

**H.C.R. 272.** House concurrent resolution honoring the South Burlington Community Library children's librarian Marje Von Ohlsen.

In the adoption of which the concurrence of the Senate is requested.

The House has considered concurrent resolutions originating in the Senate of the following titles:

**S.C.R. 41.** Senate concurrent resolution in memory of former Representative and Senator Nancy Chard.

**S.C.R. 42.** Senate concurrent resolution congratulating Ruth (Riddick) McLaine of St. Johnsbury on her 100th birthday.

**S.C.R. 43.** Senate concurrent resolution congratulating Julie Brill on her confirmation as a member of the Federal Trade Commission.

And has adopted the same in concurrence.

**Bill Referred to Committee on Finance**

**S. 224.**

Senate bill of the following title, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule was referred to the Committee on Finance:

An act relating to the establishment of a paint stewardship program.

**Bill Introduced**

Senate bill of the following title was introduced, read the first time and referred:

**S. 298.**

By Senator Miller,

An act relating to approval of amendments to the charter of the city of Burlington.

To the Committee on Government Operations.

**Bill Referred**

House bill of the following title was read the first time and referred:

**H. 614.**

An act relating to the regulation of composting.

To the Committee on Natural Resources and Energy.

**Consideration Postponed**

Senate bill entitled:

**S. 117.**

An act relating to the date of the primary election.

Was taken up.

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

**Third Reading Ordered**

**J.R.H. 34.**

Senator Starr, for the Committee on Education, to which was referred joint House resolution entitled:

Joint resolution in support of the New England Secondary School Consortium.

Reported that the joint resolution ought to be adopted in concurrence

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

**Bills Amended; Third Readings Ordered**

**S. 222.**

Senator Miller, for the Committee on Economic Development, Housing and General Affairs, to which was referred Senate bill entitled:

An act relating to recognition of Abenaki tribes.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds the following:

(1) State recognition of Vermont's tribes is necessary in order for the Indian Arts and Crafts Board (IACB) of the Bureau of Indian Affairs to permit them to market their arts and crafts as authentic Indian products and to provide tribal members access to state, federal, and private aid for cultural, artistic, and educational endeavors.

(2) In May 2006, the general assembly passed S.117, Act No. 125, in an effort to recognize the Abenaki people and create a Vermont Commission on Native American Affairs. The act failed to comport with the recognition requirements of the IACB, and therefore prevented Vermont Native Americans from marketing their arts and crafts as authentic Indian works.

(3) Fifteen other states have recognized their resident Native people as American Indian Tribes, without any of those tribes previously or subsequently acquiring federal recognition.

(4) According to a public affairs specialist from the U.S. Bureau of Indian Affairs (BIA) state recognition of Indian tribes plays a very small role in regard to federal recognition. The only exception is when a state recognized a tribe well before 1900.

(5) Recognition of a tribe by a state at this time will play no significant role in any subsequent effort to gain federal tribal recognition.

Sec. 2. 1 V.S.A. § 852 is amended to read:

§ 852. VERMONT COMMISSION ON NATIVE AMERICAN AFFAIRS ESTABLISHED; AUTHORITY

(a) In order to recognize the historic and cultural contributions of Native Americans to Vermont, to protect and strengthen their heritage, and to address their needs in state policy, programs, and actions, there is hereby established the Vermont commission on Native American affairs (the "commission").

(b) The commission shall ~~comprise seven members appointed by the governor for two-year terms from a list of candidates compiled by the division for historic preservation. The governor shall appoint a chair from among the members of the commission. The division shall compile a list of candidates' recommendations from the following:~~

~~(1) Recommendations from the Missisquoi Abenaki and other Abenaki and other Native American regional tribal councils and communities in Vermont.~~

~~(2) Applicants who apply in response to solicitations, publications, and website notification by the division of historical preservation~~:

(1) Be composed of the following members, who shall serve for no more than two consecutive three-year terms:

(A) Three members appointed by the Abenaki Nation of Missisquoi, St. Francis Sokoki Band, which is composed of the three Missisquoi Bands.

(B) One member appointed by the Koasek Traditional Band of the Koas Abenaki Nation.

(C) One member appointed by the Nulhegan Band of the Abenaki Nation.

(D) One member appointed by the ELNU Abenaki Tribe of the Koasek.

(E) One member appointed by any additional Abenaki tribe following recognition by the general assembly.

(F) Two or three at-large members to assure an odd number of members on the commission, to be appointed by the other commission members.

(2) Elect a chair to serve for two years.

(c) The commission shall ~~have the authority to assist Native American tribal councils, organizations, and individuals to~~:

(1) Assist Native American tribes recognized by the state to:

(A) Develop and market Vermont Native American fine and performing arts, craftwork, and cultural events in and outside Vermont.

(B) Secure social services, education, employment opportunities, health care, housing, and census information.

~~(2) Permit the creation, display, and sale of Native American arts and crafts and legally to label them as Indian or Native American produced as provided in 18 U.S.C. § 1159(c)(3)(B) and 25 U.S.C. § 305e(d)(3)(B)~~

~~(3) Receive assistance and support from the federal Indian Arts and Crafts Board, as provided in 25 U.S.C. § 305 et seq.~~

~~(4) Become eligible for federal assistance with educational, housing, and cultural opportunities.~~

~~(5) Establish and continue programs offered through the U.S. Department of Education Office on Indian Education pursuant to Title VII of the Elementary and Secondary Education Act established in 1972 to support educational and cultural efforts of tribal entities that have been either state or federally recognized.~~

(2) Assist bands and groups of Native Americans who are unrecognized to organize and develop a representative tribal organization in order to petition for legal tribal recognition by the state.

(3) Review petitions for tribal recognition, and, if satisfied that petitioners have complied with recognition criteria, file with the general assembly a copy of the petition together with a recommendation to recognize the band or group as a recognized tribe.

(4) Develop policies and programs to benefit Vermont's Native American population.

(d) The commission shall meet at least three times a year and at any other times at the request of the chair. The division of historic preservation of the agency of commerce and community development ~~and the department of education~~ shall provide administrative support to the commission.

(e) The commission may seek and receive funding from state, federal, and other sources to assist with its work.

Sec. 3. 1 V.S.A. § 853 is amended to read:

§ 853. RECOGNITION OF ABENAKI PEOPLE

(a) The state of Vermont recognizes ~~the Abenaki people and recognizes~~ all Native American people who reside in Vermont as a minority population.

(b) ~~Recognition of the Native American or Abenaki people provided in subsection (a) of this section shall be for the sole purposes specified in subsection 852(c) of this title and shall not be interpreted to provide any Native American or Abenaki person with any other special rights or privileges that the state does not confer on or grant to other state residents.~~ For the purposes of recognition, a Vermont Native American tribe must demonstrate that it has all of the following:

(1) A physical and legal residence in Vermont.

(2) An organized tribal membership roll along with specific criteria that were used to determine membership, including evidence of kinship among tribal members.

(3) Documented traditions, customs, and legends that signify Native American heritage.

(4) A tribal council, a constitution, and a chief.

(5) Been and continues to be recognized by other Native American communities in Vermont as a Vermont Native American band or group.

(6) Been known by state, county, or municipal officials, as a functioning Native American band or group in Vermont.

(7) Not been recognized as a tribe in any other state, province, or nation.

(8) An enduring community presence within the boundaries of Vermont that is documented by archaeology, ethnography, physical anthropology, history, genealogy, folklore, or any other applicable scholarly research and data.

(c) A band or group of Native Americans not identified in subsection (e) of this section may file a petition for recognition with the commission. If after thorough review of the petition and evidence supporting recognition, the commission determines that the petitioning group has complied with the criteria under subsection (b) of this section, the commission shall recommend to the general assembly that the state recognize the tribe.

(d) After a group or band is recognized by the general assembly as a Native American tribe, the band or group may refer to itself as a recognized tribe, and the tribe may appoint a member of that tribe to the Vermont commission on Native American affairs.

(e) Having complied with the criteria in subsection (b) of this section, the following groups or bands are recognized as Native American tribes by the state of Vermont:

(1) The Abenaki Nation of Missisquoi, St. Francis Sokoki Band, composed of the former Missisquoi, St. Francis, and Sokoki Bands.

(2) The Koasek Traditional Band of the Koas Abenaki Nation.

(3) The Nulhegan Band of the Abenaki Nation, historically known as the Northern Coosuk/Memphremagog/Old Philip's Band.

(4) The ELNU Abenaki Tribe of the Koasek.

(f) Native American tribes recognized by the state of Vermont may freely practice their traditional culture, lifeways, arts, language, and religion without interference, provided there is no violation of law.

(g) All documents related to recognition of any Vermont Native American tribe shall be maintained by the division of historic preservation and made available to the public.

(h) This chapter shall not be construed to recognize, create, extend, or form the basis of any right or claim to land or real estate in Vermont for the Abenaki people or any Abenaki individual and shall be construed to confer only those rights specifically described in this chapter. Abenaki tribes and other Vermont Native American tribes and individual members of those tribes are subject to the laws of the state.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

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 on a roll call, Yeas 27, Nays 0.

Senator Nitka having demanded the yeas and nays, they were taken and are as follows:

**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flory, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Snelling, Starr, White.

**Those Senators who voted in the negative were:** None.

**Those Senators absent or not voting were:** Flanagan, Illuzzi, Shumlin (presiding).

**Consideration Postponed**

**S. 77.**

House proposal of amendment to Senate bill entitled:

An act relating to the disposal of electronic waste.

Was taken up.

The House proposes to the Senate to amend the bill 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, computers, computer monitors, and printers are prevalent in modern society and contribute significantly to the waste generated in Vermont.

(3) Televisions, computers, computer monitors, and printers 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, computers, computer monitors, and printers 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 televisions, computers, computer monitors, and printers 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. COLLECTION AND RECYCLING OF ELECTRONIC DEVICES

### § 7551. DEFINITIONS

For the purposes of this chapter:

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

(2) "Cathode-ray tube" 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.

(5) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, including a laptop computer, desktop computer, and central processing unit. "Computer" does not include an automated typewriter or typesetter 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.

(7) "Computer peripheral" means a keyboard or any other device sold exclusively for external use with a computer that provides input or output into or from a computer.

(8) "Covered electronic device" means a: computer; computer monitor; device containing a cathode ray tube; printer; or television sold to a covered entity. "Covered electronic device" does not include: any motor vehicle or any part thereof; a camera or video camera; a portable or stationary radio; a wireless telephone; a household appliance, such as a clothes washer, clothes dryer, water heater, refrigerator, freezer, microwave oven, oven, range, or dishwasher; equipment that is functionally or physically part of a larger piece of equipment intended for use in an industrial, research and development, or commercial setting; security or anti-terrorism equipment; monitoring and control instruments or systems; thermostats; hand-held transceivers; a

telephone of any type; a portable digital assistant or similar device; a calculator; a global positioning system receiver or similar navigation device; commercial medical equipment that contains a cathode ray tube, a cathode ray tube device, a flat panel display, or similar video display that is not separate from the larger piece of equipment; or other medical devices, as the term "device" is defined under 21 U.S.C. § 321(h) of the Federal Food, Drug, and Cosmetic Act, as that section is amended from time to time.

(9) "Covered entity" means any household, charity, or school district in the state; or a business in the state that employs ten or fewer individuals.

(10) "Electronic waste" means a: computer; computer monitor; computer peripheral device containing a cathode ray tube; printer; or television sold to a covered entity. "Electronic waste" does not include: any motor vehicle or any part thereof; a camera or video camera; a portable or stationary radio; a wireless telephone; a household appliance, such as a clothes washer, clothes dryer, water heater, refrigerator, freezer, microwave oven, oven, range, or dishwasher; equipment that is functionally or physically part of a larger piece of equipment intended for use in an industrial, research and development, or commercial setting; security or antiterrorism equipment; monitoring and control instruments or systems; thermostats; handheld transceivers; a telephone of any type; a portable digital assistant or similar device; a calculator; a global positioning system receiver or similar navigation device; commercial medical equipment that contains a cathode ray tube, a cathode ray tube device, a flat panel display, or similar video display that is not separate from the larger piece of equipment; or other medical devices, as the term "device" is defined under 21 U.S.C. § 321(h) of the Federal Food, Drug, and Cosmetic Act, as that section is amended from time to time.

(11) "Manufacturer" means a person who:

(A) Manufactures or manufactured a covered electronic device under its own brand or label for sale in the state;

(B) Sells in the state under its own brand or label covered electronic devices produced by another supplier;

(C) Owns a brand that it licenses or licensed to another person for use on a covered electronic device sold in the state;

(D) Imports covered electronic devices into the United States for sale in the state;

(E) Manufactures covered electronic devices for sale in the state without affixing a brand name; or

(F) Assumes the responsibilities, obligations, and liabilities of a manufacturer as defined under subdivisions (A) through (E) of this subdivision (11), provided that the secretary may enforce the requirements of this chapter against a manufacturer if a person who assumes the manufacturer's responsibilities fails to comply with the requirements of this chapter.

(12) "Market share" means a "manufacturer's market share" which shall be the manufacturer's percentage share of the total weight of covered electronic devices sold in the state as determined by the best available information, which may include an estimate of the aggregate total weight of the manufacturer's covered electronic devices sold in the state during the previous program year based on national sales data.

(13) "Printer" means desktop printers, multifunction printer copiers, and printer fax 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 copying, scanning, faxing, and printing. Printers do not include floor-standing printers, printers with an 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.

(14) "Program year" means the period from July 1 through June 30.

(15) "Recycler" means a person who accepts electronic waste from covered entities and collectors for the purpose of recycling. A person who takes products solely for reuse, refurbishment, or repair is not a recycler.

(16) "Recycling" means the process of collecting and preparing electronic wastes 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; or land disposal.

(17) "Retailer" means a person who sells, rents, or leases covered electronic devices to a person in the state, through any means, including sales outlets, catalogues, the telephone, the Internet, or any electronic means.

(18) "Sell" or "sale" means any transfer for consideration of title or of the right to use by lease or sales contract of a covered electronic device to a person in the state. "Sell" or "sale" does not include the sale, resale, lease, or transfer of used covered electronic devices or a manufacturer's or a distributor's wholesale transaction with a distributor or a retailer.

(19) "Television" means any telecommunications system or device containing a cathode ray tube or other type of display system with a viewable area of greater than four inches when measured diagonally 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.

(20) "Transporter" means a person that moves electronic waste from a collector to a recycler.

§ 7552. STANDARD ELECTRONIC WASTE RECYCLING PLAN

(a) Standard plan adoption. Beginning January 1, 2011, the secretary shall adopt a plan for the collection and recycling of all electronic waste in the state. In developing the plan, the secretary shall evaluate existing electronic waste collection opportunities and services in each county to determine whether such opportunities and services are adequate. In making an adequacy determination, the secretary shall consider the geography, population, and population density of each county. If, after completion of an adequacy review, the secretary determines that the collection opportunities in a county are:

(1) inadequate, the secretary may require additional collection activities in that county. Additional collection activities may include additional collection facilities, collection events, or other collection activities identified by the secretary as necessary to achieve the statewide recycling goal. If the secretary requires additional collection activities, the secretary shall consider, as one of the criteria reviewed in selecting additional collection activities, the cost effectiveness of the additional collection activities in achieving the objective of convenient service.

(2) adequate, and that additional collection opportunities are not required.

(b) Standard plan minimum requirements. The standard plan shall:

(1) Site at least three permanent facilities in each county for the collection of electronic waste from covered entities, unless the secretary determines that existing or proposed collection opportunities are not required, but in no case shall the secretary reduce the number of permanent facilities below one.

(2) Site at least one permanent facility in each city or town with a population of 10,000 or greater for the collection of electronic waste from covered entities.

(3) Require electronic waste collection facilities to accept electronic waste at no cost to covered entities.

(4) Ensures that each recycler used in implementing the plan complies with the recycling standards established under section 7559 of this title.

(5) Ensures that during plan implementation a public information and outreach effort takes place to inform consumers about how to recycle their electronic waste at the end of the product's life.

(6) Require electronic waste collection facilities to be staffed, open on an ongoing basis, and open to the public at a frequency needed to meet the needs of the area being served.

(7) Prohibit a collection facility from refusing to accept electronic waste delivered to the facility for recycling from a covered entity.

(c) Plan evaluation. The secretary shall annually review and analyze the standard plan to determine if implementation of the standard plan achieves the statewide collection and recycling goal set forth under section 7555 of this title. The secretary may modify the plan based upon the results of that review.

(d) Plan term. The secretary shall revise and adopt the standard plan every five years.

(e) Public review and consultation. Prior to the approval or modification of the standard plan, the agency shall make the proposed standard plan available for public review and comment for at least 30 days. The agency shall consult with interested persons, including manufacturers, recyclers, collectors, retailers, solid waste districts, and environmental groups.

(f) Applicability. A collector, transporter, or recycler not included in a plan approved under this section or under a plan approved under section 7554 of this title shall not be subject to the requirements of this section or section 7554.

§ 7553. SALE OF COVERED ELECTRONIC DEVICES; MANUFACTURER REGISTRATION

(a) Sale prohibited. Beginning July 1, 2010, no manufacturer shall sell or offer for sale or deliver to a retailer for subsequent sale a covered electronic device unless:

(1) the manufacturer has filed the registration required by this section;

(2)(A) beginning July 1, 2010, and annually thereafter, the manufacturer has paid the fee required by subsection (g) of this section; and

(B) beginning July 1, 2011, and annually thereafter, if the manufacturer is covered under the standard plan, the manufacturer has paid the fee required by subsection (h) of this section.

(3) the covered electronic device is labeled with the manufacturer's brand or registered trademark and the label or trademark is permanently affixed and readily visible.

(b) Manufacturer registration requirements.

(1) The manufacturer shall file a registration form with the secretary. The secretary shall provide the registration form to a manufacturer. The registration form shall include:

(A) a list of the manufacturer's brands of covered electronic devices offered for sale by the manufacturer in this state;

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

(C) beginning July 1, 2011 and annually thereafter, a certification that the manufacturer is seeking coverage under the standard plan set forth under subsection (a) of this section or, under a plan approved under section 7554 of this title, is opting out of the standard plan; and

(D) an estimate of the aggregate total weight of the manufacturer's covered electronic 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 estimate was calculated. The data submitted under this subdivision shall be considered a trade secret for the purposes of subdivision 317(c)(9) of Title 1.

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

(c) Registration prior to sale. A manufacturer who begins to sell or offer for sale covered electronic devices and has not filed a registration under this section or section 7554 of this title shall submit a registration to the agency of natural resources within ten days of beginning to sell or offer for sale covered electronic devices.

(d) Amendments to registration. 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.

(e) Effective date of registration. A registration is effective upon receipt by the agency of natural resources of a complete registration form and payment of fees required by this section. Registration under this chapter shall be renewed annually.

(f) Agency review of registration application. The agency of natural resources shall notify the manufacturer of any required information 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.

(g)(1) Registration fee. Each manufacturer of a covered electronic device registered under this section shall pay to the secretary a fee:

(A) For the program year beginning July 1, 2010, for manufacturers who sell in Vermont no more than 100 covered electronic devices, the fee shall be $1,250.00 and for all other manufacturers, the fee shall be $5,000.00.

(B) For the program year beginning July 1, 2011 and annually thereafter, the fee shall be determined by multiplying the manufacturer's market share by the cost to the agency of administering the electronic waste collection program under this chapter.

(2) The fees collected under this subsection shall be deposited into the electronic waste collection and recycling account of the waste management assistance fund.

(h) Implementation fee.

(1) For the program year of July 1, 2011, through June 30, 2012, each manufacturer that seeks coverage under the standard plan shall pay to the secretary an implementation fee that shall be assessed on a quarterly basis and that shall be determined by multiplying the manufacturer's market share by the prior quarter's cost of implementing the electronic waste collection and recycling program adopted under the standard plan. For purposes of this section, the electronic waste and recycling program includes collection, transportation, recycling, and the reasonable cost of contract administration.

(2) Beginning with the program year starting July 1, 2012, a proposed methodology for calculating the implementation fee for manufacturers seeking coverage under the standard plan shall be included in the executive branch fee report and approved by the general assembly according to the requirements of subchapter 6 of chapter 7 of Title 32.

(3) The fee collected under this subsection shall be deposited into the electronic waste collection and recycling account of the waste management assistance fund.

(4) For purposes of reimbursing the solid waste management account in full for all funds transferred to the electronic waste collection and recycling assistance account for implementation of the electronic waste collection and recycling program, the secretary, under subdivision (1) or (2) of this subsection, may assess against a manufacturer registered and operating under the standard plan set forth in section 7552 of this title a charge in addition to the manufacturer's prorated share of the costs of implementing the electronic waste collection and recycling program.

(5) At the end of each program year, the secretary shall review the total costs of collection and recycling for the program year and shall reapportion the implementation fee assessed under this subsection to accurately reflect the manufacturer's actual market share of covered electronic devices sold in the state during the program year.

(g) Exemption. A manufacturer who sells less than 20 covered electronic devices in Vermont in a program year is exempt from the requirements of this section.

§ 7554. MANUFACTURER OPT-OUT; INDIVIDUAL PLAN

(a) Opt-out of standard plan. A manufacturer or group of manufacturers may elect not to seek coverage under the standard plan established under section 7552 of this title, provided that the manufacturer or group of manufacturers complies with the requirements of subdivisions 7553(a)(1)–(3) and submits an individual plan to the secretary for approval that:

(1) Provides for each county the number of collection methods identified in the standard plan adopted under section 7552 of this title.

(2) Describes the collection, transportation, and recycling systems and service providers used, including a description of how the authority or authorized party will:

(A) Seek to use businesses within the state, including retailers, charities, processors, and collection and transportation services, to fulfill its program goal under this section;

(B) Fairly compensate collectors for providing collection services; and

(C) Fairly compensate recyclers for providing recycling services.

(3) Describes how the plan will provide service to covered entities.

(4) Describes the processes and methods used to recycle electronic waste, including a description of the processing that will be used and the facility location.

(5) Documents the audits of each recycler used in the plan and compliance with recycling standards established under section 7559 of this title.

(6) Describes the accounting and reporting systems that will be employed to track progress toward the plan's equivalent share.

(7) Includes a time line describing start-up, implementation, and progress toward milestones with anticipated results.

(8) Includes a public information campaign to inform consumers about how to recycle their electronic waste at the end of the product's life.

(b) Manufacturer program goal. An individual plan submitted under this section shall be implemented to ensure satisfaction of the manufacturer's electronic waste program goal. The electronic waste recycling program goal for a manufacturer that submits a plan under this section shall be the product of the relevant statewide recycling goal set forth in subsection 7555(a) of this title multiplied by the manufacturer's market share of covered electronic devices. A manufacturer that submits a plan under this section may only count electronic waste received from covered entities toward the program goal set forth in this section.

(c) Collection from covered entities. A manufacturer that submits a plan under this section or a collector operating on behalf of a manufacturer that submits a plan under this section shall not charge a fee to covered entities for the collection, transportation, or recycling of electronic waste.

(d) Public review and consultation. Prior to approval of a plan under this section, the agency shall make the manufacturer's proposed plan available for public review and comment for at least 30 days.

(e) Collection facilities. If a manufacturer that submits a plan under this section is required to implement a collection facility, the collection facility shall be staffed, open on an ongoing basis, and open to the public at a frequency approved by the secretary in order to meet the needs of the area being served. A collection facility implemented under this section shall be prohibited from refusing or rejecting acceptance of electronic waste delivered to the facility for recycling.

(f) Annual report. Beginning August 1, 2012, a manufacturer that submits a plan under this section shall report by August 1, and annually thereafter, to the secretary the following:

(1) the type of electronic waste collected;

(2) the aggregate total weight of electronic waste the manufacturer recycled by type during the preceding program year;

(3) a list of recyclers utilized by the manufacturer;

(4) a description of the processes and methods used to recycle the electronic waste; and

(5) a summary of the educational and outreach activities undertaken by the manufacturer.

(g)(1) Parity surcharge. A manufacturer that submits a plan under this section shall be assessed a surcharge if the lesser of the following occurs:

(A) the manufacturer accepts less than the program goal set forth in subsection (b) of this section; or

(B) the manufacturer accepts less than its market share portion of the total of electronic waste collected in the state.

(2) The surcharge shall be calculated by multiplying the average per pound of cost to the secretary for the current program year to implement the standard plan plus 20 percent by the number of additional pounds of electronic waste that should have been accepted by the manufacturer. The surcharges collected under this section shall be deposited into the electronic waste collection and recycling account of the waste management assistance fund and used to offset the costs of program implementation.

(h) Effective date of plan approval. A plan submitted under this section shall not be approved until the secretary determines that the plan will provide a functionally equivalent level of electronic waste collection and recycling as the standard plan and that all the requirements of this section have been met.

(i) Amendments to plan. An amendment to an individual plan approved under this section shall not take effect until approved by the secretary.

(j) Opt-in to standard plan. At the completion of any program year, a manufacturer approved under this section may seek coverage under the standard plan adopted under section 7552 of this title.

§ 7555. STATEWIDE RECYCLING GOAL

(a) Statewide recycling goal.

(1) For the program year of July 1, 2011, to June 30, 2012, the statewide recycling goal for electronic waste shall be the product of the U.S. Census Bureau's 2010 population estimate for the state multiplied by 5.5 pounds.

(2) For the program year of July 1, 2012, to June 30, 2013, the statewide recycling goal for electronic waste shall be the product of the U.S. Census Bureau's 2010 population estimate for the state multiplied by 6.0 pounds.

(3) For the program year of July 1, 2013, to June 30, 2014, and annually thereafter, the statewide recycling goal for all electronic waste shall be the product of the base weight multiplied by the goal attainment percentage.

(b) Base weight. For purposes of this section, "base weight" means the average weight of all electronic waste reported as collected under this chapter during the previous two program years.

(c) Goal attainment percentage. For purposes of this section, "goal attainment percentage" means, for each type of product:

(1) 90 percent if the base weight is less than 90 percent of the statewide recycling goal for the previous calendar year;

(2) 95 percent if the base weight is 90 percent or greater, but not more than 95 percent of the statewide recycling goal for the previous calendar year;

(3) 100 percent if the base weight is 95 percent or greater, but not more than 105 percent of the statewide recycling goal for the previous calendar year;

(4) 105 percent if the base weight is 105 percent or greater, but not more than 110 percent of the statewide recycling goal for the previous calendar year; or

(5) 110 percent if the base weight is 110 percent or greater of the statewide recycling goal.

§ 7556. RETAILER OBLIGATIONS

(a) Sale prohibited. Beginning July 1, 2010, no retailer shall sell or offer for sale a covered electronic device unless the covered electronic device is labeled by the manufacturer as required by subdivision 7553(a)(3) of this title, and the retailer has reviewed the website required in subdivision 7559(6) of this title to determine that the labeled manufacturers of all new covered electronic devices that the retailer is offering for sale are registered with the agency of natural resources.

(b) Expiration or revocation of manufacturer registration. A retailer shall not be responsible for an unlawful sale under this subdivision if the manufacturer was not registered or the manufacturer's registration expired or

was revoked if the retailer took possession of the covered electronic device prior to July 1, 2010 or prior to the expiration or revocation of the manufacturer's registration, and the unlawful sale occurred within six months after the expiration or revocation.

(c) Customer information. Beginning July 1, 2011, a retailer who sells new covered electronic devices shall provide information to customers describing where and how they may recycle electronic waste and advising them of opportunities and locations for the convenient collection of electronic waste for the purpose of recycling. This requirement may be met by the posting of signs provided under the standard plan or a plan approved under section 7554 of this title that includes a warning that electronic waste shall not be disposed of in a solid waste facility and that provides a toll-free number or website address regarding proper disposal of covered electronic devices.

§ 7557. RECYCLER PROGRAM RESPONSIBILITY

(a)(1) Recycler registration. Beginning July 1, 2011, no person may recycle electronic waste at a facility located within the state unless that person has submitted a registration with the agency of natural resources on a form prescribed by the agency. 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 electronic waste;

(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. Beginning August 1, 2012, a recycler of electronic waste shall report by August 1, and annually thereafter, to the agency of natural resources on a form provided by the agency: the type of electronic waste collected; the total weight of electronic waste recycled during the preceding program year; and whether electronic waste was collected under the standard or an approved individual plan. In the annual report, the recycler shall certify that the recycler has complied with the electronic management guidelines developed under subdivision 7559(7) of this title.

§ 7558. COLLECTOR AND TRANSPORTER PROGRAM RESPONSIBILITY

(a)(1) Collector and transporter registration. Beginning July 1, 2011, no person may operate as a collector or transporter of electronic waste unless that person has submitted a registration with the agency of natural resources on a form prescribed by the agency. 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.

(3) Beginning August 1, 2012, a collector of electronic waste shall report by August 1, and annually thereafter, to the agency of natural resources on a form provided by the agency: the type of electronic waste collected; the total weight of electronic waste recycled during the preceding program year; and whether electronic waste was collected under the standard or an approved individual plan.

(b) Transporter reporting requirements. Beginning August 1, 2012, a transporter of electronic waste not destined for recycling in Vermont shall report annually by August 1 to the agency of natural resources the total pounds of electronic waste collected and whether electronic waste was collected under the standard or an approved individual plan.

§ 7559. AGENCY OF NATURAL RESOURCES RESPONSIBILITIES

The agency of natural resources shall:

(1) Adopt and administer the standard plan required under section 7552 of this title.

(2) Establish procedures for:

(A) the registration and certifications required under this chapter; and

(B) making the registrations and certifications required under this chapter easily available to manufacturers, retailers, and members of the public.

(3) Collect the data submitted under this chapter.

(4) Annually review data submitted under this chapter to determine whether any of the variables in the statewide recycling goal should be changed, the agency shall submit recommended changes to the senate and house committees on natural resources and energy.

(5) Beginning February 15, 2012, annually report to the senate and house committees on natural resources and energy, the house committee on ways and means, the senate committee on finance, and the senate and house committees on appropriations regarding the implementation of this chapter. Prior to submitting this report, the secretary shall share it with interested persons. For each program year, the report shall provide the total weight of electronic waste recycled. The report shall also summarize the various collection programs used to collect electronic waste; information regarding electronic waste that is being collected by persons outside a plan approved under this chapter; and information about electronic waste, if any, being disposed of in landfills in this state. The report shall include an accounting of the cost of the program, the governor's estimated budget for the program for the next relevant fiscal year, and a summary of the funding sources for the program. The agency may include in its report other information regarding the implementation of this chapter and may recommend additional incentives to increase the rate of recycling.

(6) Maintain a website that includes the names of manufacturers with current, valid registrations; 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.

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

(8) Identify approved transporters, collectors, and recyclers.

§ 7560. ADMINISTRATION OF ELECTRONIC WASTE RECYCLING PROGRAM

(a) The secretary of natural resources may contract for implementation and administration of the standard plan required under section 7552 of this title and, in so doing, shall comply with the agency of administration's current contracting procedures.

(b) In contracting for implementation and administration of the standard plan, the secretary shall review the costs incurred by similar electronic waste collection and recycling programs in other states. The secretary in his or her discretion may reopen the standard plan if bids received in response to a

request for proposal exceed the average cost of collection and recycling incurred by similar electronic waste collection and recycling programs in other states.

§ 7561. OTHER RECYCLING PROGRAMS

A municipality or other public agency may not require covered entities to use public facilities to recycle their electronic waste 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 electronic waste in addition to those provided by manufacturers or prohibits or restricts any persons from receiving, collecting, transporting, or recycling electronic waste, provided that those persons are registered as required under this chapter.

§ 7562. MULTISTATE IMPLEMENTATION

The agency of natural resources or a contracted entity under section 7560 of this title is authorized to participate in the establishment of a regional multistate organization or compact to assist in carrying out the requirements of this chapter.

§ 7563. LIMITATIONS

If a federal law or combination of federal laws takes effect that is applicable to all covered electronic devices sold in the United States and establishes a program for the collection and recycling or reuse of covered electronic devices that is applicable to all covered electronic devices, the agency shall evaluate whether the federal law provides 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.

§ 7564. RULEMAKING

The secretary of natural resources may adopt rules to implement the requirements of this chapter.

Sec. 3. 10 V.S.A. § 6618 is amended to read:

§ 6618. WASTE MANAGEMENT ASSISTANCE FUND

(a) There is hereby created in the state treasury a fund to be known as the waste management assistance fund, to be expended by the secretary of the agency of natural resources. The fund shall have ~~two~~ three accounts: one for solid waste management assistance ~~and~~, one for hazardous waste management assistance, and one for electronic waste collection and recycling assistance.

The hazardous waste management assistance account shall consist of a percentage of the tax on hazardous waste under the provisions of 32 V.S.A. chapter 237, as established by the secretary, the toxics use reduction fees under subsection 6628(j) of this title, and appropriations of the general assembly. In no event shall the amount of the hazardous waste tax which is deposited to the hazardous waste management assistance account exceed 40 percent of the annual tax receipts. The solid waste management assistance account shall consist of the franchise tax on waste facilities assessed under the provisions of subchapter 13 of chapter 151 of Title 32, and appropriations of the general assembly. The electronic waste collection and recycling account shall consist of the program and implementation fees required under section 7553 of this title. All balances in the fund accounts at the end of any fiscal year shall be carried forward and remain a part of the fund accounts, except as provided in subsection (e) of this section. Interest earned by the fund shall be deposited into the appropriate fund account. Disbursements from the fund accounts shall be made by the state treasurer on warrants drawn by the commissioner of finance and management.

* * *

(d) The secretary shall annually allocate from the fund accounts the amounts to be disbursed for each of the functions described in subsections (b) ~~and~~, (c), and (f) of this section. The secretary, in conformance with the priorities established in this chapter, shall establish a system of priorities within each function when the allocation is insufficient to provide funding for all eligible applicants.

* * *

Sec. 4. 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) Banned electronic devices. After January 1, 2011, computers; peripherals; computer monitors; cathode ray tubes; televisions; printers; personal electronics such as personal digital assistants and personal music players; electronic game consoles; printers; fax machines; wireless telephones; telephones; answering machines; videocassette recorders; digital versatile disc players; digital converter boxes; stereo equipment; and power supply cords (as used to charge electronic devices).

Sec. 5. 10 V.S.A. § 8003(a) is amended to read:

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

* * *

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

(19) 24 V.S.A. chapter 61, subchapter 10, relating to salvage yards; and

(20) 10 V.S.A. chapter 166, relating to collection and recycling of electronic waste.

Sec. 6. 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:

* * *

(P) chapter 166 (collection and recycling of electronic waste).

Sec. 6a. SUNSET

10 V.S.A. § 7559(5) (ANR annual report to general assembly regarding electronic waste collection and recycling program) shall be repealed February 16, 2014.

Sec. 6b. ELECTRONIC WASTE COLLECTION AND RECYCLING PROGRAM FUNDING

(a) Beginning in fiscal year 2012, the governor's proposed budget for the agency of natural resources shall include a line item, including the source of the funds, for the electronic waste collection and recycling activities required under chapter 166 of Title 10.

(b) The secretary of natural resources may transfer funds within the waste management assistance fund from the solid waste management assistance account to the electronic waste collection and recycling assistance account to pay the initial costs incurred by the agency of natural resources in the first quarter of the program year beginning July 1, 2011, in implementing the electronic waste collection and recycling requirements of chapter 166 of Title 10. In no case shall the unencumbered balance of the solid waste management

assistance account following a transfer under this subsection be less than $300,000.00.

(c) On or before January 15, 2012, the secretary of natural resources shall reimburse the solid waste management account in full for all funds transferred from the solid waste management account to the environmental contingency fund under 10 V.S.A. § 6618(f) for implementation of the electronic waste collection and recycling program under chapter 166 of Title 10.

(d) On or before February 15, 2011, the secretary of natural resources shall provide the house and senate committees on natural resources, the house committee on ways and means, the senate committee on finance, and the senate and house committees on appropriations with a summary of the status of the secretary's development of the electronic waste collection and recycling standard plan under 10 V.S.A. § 7552 and of the status of any request for proposal to implement the standard plan.

Sec. 6c. ANR DISBURSEMENTS; APPROPRIATIONS

(a) In fiscal year 2011, the secretary of natural resources may authorize disbursements from the electronic waste collection and recycling account within the waste management assistance fund for the purpose of paying the costs of administering and implementing the electronic waste collection program set forth under chapter 166 of Title 10.

(b) In addition to any other funds appropriated to the agency of natural resources in fiscal year 2011, there is appropriated from the general fund to the agency $50,000.00 in fiscal year 2011 for the purpose of administering and implementing the electronic waste collection and recycling program under chapter 166 of Title 10.

Sec. 7. EFFECTIVE DATE

This act shall take effect upon passage.

And that after passage the title of the bill be amended to read:

"An act relating to the recycling and disposal of electronic waste."

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Lyons moved that the Senate concur in the House proposal of amendment with an amendment as follows:

First: In Sec. 2, 10 V.S.A. § 7551(3), by striking out the following: "covered electronic devices" where it appears and inserting in lieu thereof the following: electronic waste

Second: In Sec. 2, 10 V.S.A. § 7551(10), in the first sentence, by inserting a semicolon between "computer peripheral" and "device containing" and in the second sentence by inserting the following: library, between "industrial," and "research and development"

Third: In Sec. 2, 10 V.S.A. § 7551(11), by striking out subdivision (11)(D) in its entirety and inserting in lieu thereof the following:

(D) Imports into the United States for sale in the state a covered electronic device manufactured by a person without a presence in the United States;

Fourth: In Sec. 2, 10 V.S.A. § 7553(h)(5) by striking out the following: "to accurately reflect the manufacturer's actual market share" where it appears and inserting in lieu thereof the following: to accurately reflect the actual cost of the program and the manufacturer's market share

Fifth: In Sec. 6c(a), by striking out the following: "In fiscal year 2011," where it appears and inserting in lieu thereof the following: In fiscal years 2011 and 2012,

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment with further proposal of amendment?, on motion of Senator Lyons consideration of the bill was postponed until the next legislative day.

**S. 283.**

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

An act relating to amending miscellaneous motor vehicle laws, eliminating the motorcycle rider training program advisory committee, and repealing the interstate compact for motor vehicle safety equipment.

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. § 4 is amended to read:

§ 4. DEFINITIONS

Except as may be otherwise provided herein, and unless the context otherwise requires in statutes relating to motor vehicles and enforcement of the law regulating vehicles, as provided in this title and part 5 of Title 20, the following definitions shall apply:

* * *

(45) "Moped" means a motor driven cycle equipped with two or three wheels, with or without foot pedals to permit muscular propulsion, a power source providing up to a maximum of two brake horsepower and having a maximum piston or rotor displacement of 50 cubic centimeters if a combustion engine is used, which will propel the vehicle, unassisted, at a speed not to exceed 30 miles per hour on a level road surface, and which is equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged. As motor vehicles, mopeds shall be subject to the purchase and use tax imposed under chapter 219 of Title 32 rather than to a general sales tax. An electric personal assistive mobility device is not a moped.

* * *

Sec. 2. 23 V.S.A. § 114(a)(21) is amended to read:

(21) Records not otherwise specified ~~4.00~~ 6.00 per page

Sec. 3. 23 V.S.A. §§ 453 and 459 are amended to read:

§ 453. FEES AND NUMBER PLATES

* * *

(g) The commissioner of motor vehicles shall not issue a dealer's certificate of registration to a new or used car dealer~~,~~ unless the dealer has provided the commissioner with a surety bond, letter of credit, or certificate of deposit issued by an entity authorized to transact business in the same state. The amount of such surety bond, letter of credit, or certificate of deposit shall be between ~~$5,000.00~~ $20,000.00 and ~~$15,000.00,~~ $35,000.00 based on the number of new or used units sold in the previous year; such schedule is to be determined by the commissioner of motor vehicles. In the case of a certificate of deposit, it shall be issued in the name of the dealer and assigned to the commissioner or his or her designee. The bond, letter of credit, or certificate of deposit shall serve as indemnification for any monetary loss suffered by the state or by a purchaser of a motor vehicle by reason of the dealer's failure to remit to the commissioner any fees collected by the dealer under the provisions of chapters 7 and 21 of this title or by a dealer's failure to remit to the commissioner any tax collected by the dealer under chapter 219 of Title 32. This state or the motor vehicle owner who suffers such loss or damage shall have the right to claim against the surety upon the bond or against the letter of credit or certificate of deposit. The bond, letter of credit, or certificate of deposit shall remain in effect for the pending registration year and one year thereafter. The liability of any such surety or claim against the letter of credit or certificate of deposit shall be limited to the amount of the fees or tax

collected by the dealer under chapters 7 and 21 of this title or chapter 219 of Title 32 and not remitted to the commissioner.

§ 459. NOTICE TO COMMISSIONER

(a) Upon issuing a number plate with temporary validation stickers, temporary number plate, or decal to a purchaser for attachment to a motor vehicle, a dealer shall, within ~~three business~~ 15 calendar days, forward to the commissioner the application and fee, deposited with him or her by the purchaser, together with notice of such issue and such other information as the commissioner may require.

(b) If a number plate with temporary validation stickers, temporary registration plate, or decal is not issued by a dealer in connection with the sale or exchange of a motor vehicle, the dealer may accept, from the purchaser, a properly executed registration, tax and title application, and the required fees for transmission to the commissioner. The dealer shall, within ~~three business~~ 15 calendar days, forward to the commissioner the application and fee together with such other information as the commissioner may require.

Sec. 4. 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~~ $3,000.00 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.

Sec. 5. 23 V.S.A. § 1222(c) is amended to read:

(c) Notwithstanding the provisions of subsection (a) of this section, an exhibition vehicle of model year 1940 or before~~,~~ registered as prescribed in section 373 of this title or a trailer registered as prescribed in subdivision 371(a)(1)(A) of this title shall be exempt from inspection; provided, however, the vehicle must be equipped as originally manufactured, must be in good mechanical condition, and must meet the applicable standards of the inspection manual.

Sec. 6. 23 V.S.A. § 2017(b) is amended to read:

(b) The commissioner shall maintain at his or her central office a record of all certificates of title issued by him or her~~:~~

~~(1) Under~~ for vehicles 15 years old and newer under a distinctive title number assigned to the vehicle;

~~(2) Under~~ under the identification number of the vehicle;

~~(3) Alphabetically~~ alphabetically, under the name of the owner; and, in the discretion of the commissioner, by any other method he or she determines. The original records may be maintained on microfilm or electronic imaging. ~~and, in the discretion of the commissioner, by any other method he or she determines. The original records may be maintained on microfilm or electronic imaging.~~

Sec. 7. REPEAL

23 V.S.A. § 735 (motorcycle rider training program advisory committee) and chapter 20 of Title 23 (interstate compact for motor vehicle safety equipment) are repealed.

And that when so amended the bill ought to pass.

Senator Hartwell, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass when so amended.

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

**Bill Passed**

Senate bill entitled:

**S. 207.** An act relating to handling of milk samples.

Was taken up.

Thereupon, the bill was read the third time and passed on a roll call, Yeas 28, Nays 0.

Senator Flanagan having demanded the yeas and nays, they were taken and are as follows:

**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Snelling, Starr, White.

**Those Senators who voted in the negative were:** None.

**Those Senators absent or not voting were:** Illuzzi, Shumlin (presiding).

**Bill Passed**

Senate bill of the following title was read the third time and passed:

**S. 259.** An act relating to the tuition to be paid by a designating school district.

**Bill Amended; Bill Passed**

**S. 292.**

Senate bill entitled:

An act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees.

Was taken up.

Thereupon, pending third reading of the bill, Senator Brock moved to amend the bill by in Sec. 5, in subsection (c) after the words "nonviolent felony probationers" by adding the following: , except those who are on probation pursuant to 23 V.S.A. § 1210(d), and in subsection (d) after the words "nonviolent felonies" by adding the following: , except those who are serving a sentence pursuant to 23 V.S.A. § 1210(d),

Which was agreed to.

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

**Bill Passed**

Senate bill of the following title was read the third time and passed:

**H. 607.** An act relating to codifying and amending the charter of the Chittenden County Transportation Authority.

**Third Readings Ordered**

**H. 761.**

Senator Kitchel, for the Committee on Transportation, to which was referred House bill entitled:

An act relating to authorization of High-Speed Intercity Passenger Rail Program grants.

Reported that the bill ought to pass in concurrence.

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence.

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

**S. 64.**

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

An act relating to growth center designations and appeals of such designations.

Reported recommending that the bill be amended by striking out Secs. 2 through 4 in their entirety and inserting in lieu thereof new Secs. 2, 3 and 4 to read as follows:

Sec. 2. 24 V.S.A. § 2792 is amended to read:

§ 2792. VERMONT DOWNTOWN DEVELOPMENT BOARD; VERMONT GROWTH CENTER BOARD

(a) A "Vermont downtown development board," also referred to as the "state board," is created to administer the provisions of this chapter, except for those responsibilities assigned under section 2793c of this title to the Vermont growth center board. The state board shall be composed of the following members, or their designees:

* * *

(c) ~~The state board shall elect its chair from among its membership.~~ A "Vermont growth center board" also referred to as the "growth center board" is created to perform those tasks assigned by section 2793c of this title. The growth center board shall be composed of the following members:

(1) The secretary of commerce and community development or, in the secretary's absence, the deputy secretary of commerce and community development, who shall serve as chair.

(2) The secretary of transportation or, in the secretary's absence, the deputy secretary of transportation.

(3) The secretary of natural resources or, in the secretary's absence, the deputy secretary of natural resources.

(4) A member of the Vermont planners association (VPA) designated by the association.

(5) A municipal officer designated by the Vermont League of Cities and Towns (VLCT) and an alternate municipal officer designated by VLCT to enable all applications to be considered by an officer from a municipality other

than the applicant municipality. The alternate municipal officer may vote only when the designated municipal officer does not vote.

(6) A representative of a regional planning commission designated by the Vermont association of regional planning and development agencies (VAPDA) and an alternate representative designated by VAPDA to enable all applications to be considered by a representative from a regional planning commission other than the one to which the applicant municipality is a member. The alternate designated by VAPDA may vote only when the designated representative does not vote.

(7) Three members of the public, appointed by the governor, each of whom has professional expertise in the fields of community and land use planning, smart growth, downtown revitalization, community development, architecture, urban design, or historic preservation. Prior to making an appointment under this subdivision, the governor shall solicit recommended appointees from groups with expertise in these fields, including the land use institute at the Vermont law school, Smart Growth Vermont, the Vermont natural resources council, the Vermont chapter of the American Society of Landscape Architects, and the Vermont chapter of the American Institute of Architects.

(d) The department of economic, housing, and community ~~affairs~~ development shall provide staff and administrative support to the state board and to the growth center board.

(e) On or before January 1, 1999, the state board shall report to the general assembly on the progress of the downtown development program.

(f) ~~In situations in which the state board is considering applications for designation as a growth center, in addition to the permanent members of the state board, membership shall include as a full voting member a member of the Vermont planners association (VPA) designated by the association; the chair of the natural resources board or a representative of the land use panel of the natural resources board designated by the chair; and a representative of a regional planning commission designated by the Vermont association of regional planning and development agencies (VAPDA) and an alternate representative designated by VAPDA to enable all applications to be considered by a representative from a regional planning commission other than the one to which the applicant municipality is a member. The alternate designated by VAPDA may vote only when the designated representative does not vote.~~ The state board shall elect its chair from among its membership.

Sec. 3. 24 V.S.A. § 2793c is amended to read:

§ 2793c. DESIGNATION OF GROWTH CENTERS

* * *

(b) Growth center designation application assistance.

(1) ~~By October 1, 2006, the~~ The chair of the land use panel of the natural resources board and the commissioner of economic, housing, and community ~~affairs~~ development jointly shall ~~constitute a planning coordination group which shall~~ develop and maintain a coordinated process to:

(A) ensure consistency between regions and municipalities regarding growth centers designation and related planning;

(B) provide municipalities with a preapplication review process ~~within the planning coordination group~~ early in the local planning process;

(C) coordinate state agency review on matters of agency interest; and

(D) provide the ~~state~~ growth center board with ongoing, coordinated staff support and expertise in land use, community planning, and natural resources protection.

(2) This ~~program~~ process shall include the following:

(A) The preparation of a "municipal growth centers planning manual and implementation checklist" to assist municipalities and regional planning commissions to plan for growth center designation. The implementation manual shall identify state resources available to assist municipalities and shall include a checklist indicating the issues that should be addressed by the municipality in planning for growth center designation. The manual shall address other relevant topics in appropriate detail, such as: methodologies for conducting growth projections and build-out analyses; defining appropriate boundaries that are not unduly expansive; enacting plan policies and implementation bylaws that accommodate reasonable densities, compact settlement patterns, and an appropriate mix of uses within growth centers; planning for infrastructure, transportation facilities, and open space; avoiding or mitigating impacts to important natural resources and historic resources; and strategies for maintaining the rural character and working landscape outside growth center boundaries.

(B) A preapplication review process ~~that allows~~ under which municipalities ~~to~~ shall submit a preliminary application to the ~~planning coordination group~~ growth center board, consisting of a draft growth center map and a brief explanation of planning and implementation policies that the

municipality anticipates ~~enacting~~ it will enact prior to submission of an application under subsection (d) of this section in order to guide development inside the growth center and maintain the rural character of the surrounding area, to the extent that it exists. ~~Department~~ This preapplication review process shall be required prior to filing of an application under subsection (d) of this section. Supported by department and land use panel staff, the growth center board shall solicit comments from state agencies regarding areas of respective agency interest; evaluate the preliminary application for conformance with the requirements of this section; identify potential issues related to the growth center boundary and implementation tools; and provide recommendations for addressing those issues through adjustment to the growth centers boundary, revisions to planned implementation tools, or consideration of alternative implementation tools. Preliminary review shall be available to municipalities while they are engaged in the municipal planning process so that recommendations may be considered prior to the adoption of the municipal plan and associated implementation measures.

(C) Ongoing assistance to the ~~state~~ growth center board to review applications for growth center designation, including coordinating review by state agencies on matters of agency interest and evaluating applications and associated plan policies and implementation measures for conformance with the definition under subdivision 2791(12) of this title and any designation requirements established under subsection (e) of this section.

* * *

(d) Application and designation requirements. Any application for designation as a growth center shall be to the ~~state~~ growth center board and shall include a specific demonstration that the proposed growth center meets each provision of subdivisions (e)(1)(A) through (J) of this section. In addition to those provisions, each of the following shall apply:

(1) ~~a demonstration that the growth center proposal meets the definition of a growth center established in subdivision 2791(12) of this title;~~ In the event that a proposed growth center lacks one or a portion of one of the characteristics listed in subdivision 2791(12)(B) of this title, the application shall contain an explanation of the unique circumstances that prevent the growth center from possessing that characteristic and why, in the absence of that characteristic, the proposed growth center will comply with the purposes of this chapter and all other requirements of this section.

(2) Any demonstration that an application complies with subdivision (e)(1)(C) of this section shall include an analysis, with respect to each existing designated downtown or village or new town center located within the

applicant municipality, of current vacancy rates, opportunities to develop or redevelop existing undeveloped or underdeveloped properties and whether such opportunities are economically viable, and opportunities to revise zoning or other applicable bylaws in a manner that would permit future development that is at a higher density than existing development.

~~(2) a~~ (3) A map and a conceptual plan for the growth center~~;~~.

~~(3) identification of important natural resources and historic resources within the proposed growth center, the anticipated impacts on those resources, and any proposed mitigation;~~

~~(4) when the secretary of agriculture, food and markets has developed guidelines in compliance with 6 V.S.A. § 8, the applicant shall demonstrate that the approved municipal plan and the regional plan both have been updated during any five-year plan readoption that has taken place since the date the secretary of agriculture, food and markets developed those guidelines, have been used to identify areas proposed for agriculture, and have been designed so as to avoid the conversion of primary agricultural soils, wherever possible;~~

~~(5) a demonstration:~~

~~(A) that the applicant has a regionally confirmed planning process and an approved municipal plan, pursuant to section 4350 of this title;~~

~~(B) that the approved plan contains provisions that are appropriate to implement the designated growth center proposal;~~

~~(C) that the applicant has adopted bylaws in conformance with the municipal plan that implement the provisions in the plan that pertain to the designated growth center;~~

~~(D) that the approved plan and the implementing bylaws further the goal of retaining a more rural character in the area surrounding the growth center, to the extent that a more rural character exists, and provide reasonable protection for important natural resources and historic resources located outside the proposed growth center;~~

~~(6) a capital budget and program adopted in accordance with section 4426 of this title, together with a demonstration that existing and planned infrastructure is adequate to implement the growth center;~~

~~(7) a~~ (4) A build-out analysis and needs study that demonstrates that the growth center~~:~~

~~(A) is of an appropriate size sufficient to accommodate a majority of the projected population and development over a 20-year planning period in a~~

~~manner that is consistent with the definition under subdivision 2791(12) of this title; and~~

~~(B) does not encompass an excessive area of land that would involve the unnecessary extension of infrastructure to service low-density development, or result in a scattered or low-density pattern of development at the conclusion of the 20-year planning period;~~

~~(8) a demonstration:~~

~~(A) that the growth center will support and reinforce any existing designated downtown, village center, or new town center located in the municipality or adjacent municipality by accommodating concentrated residential neighborhoods and a mix and scale of commercial, civic, and industrial uses that is consistent with the anticipated demand for those uses within the municipality and region;~~

~~(B) that the proposed growth center growth cannot reasonably be achieved within an existing designated downtown, village center, or new town center located within the applicant municipality~~ meets the provisions of subdivision (e)(1)(J) of this section.

(e) Designation decision.

(1) Within 90 days of the receipt of a completed application, after providing notice as required in the case of a proposed municipal plan or amendment under subsection 4384(e) of this title, and after providing an opportunity for the public to be heard, the ~~state~~ growth center board formally shall designate a growth center if the ~~state~~ growth center board finds, in a written decision, that the growth center proposal meets each of the following:

(A) ~~that the~~ The growth center ~~proposal~~ meets the definition of a growth center established in subdivision 2791(12) of this title~~;~~, including planned land uses, densities, settlement patterns, infrastructure, and transportation within the center and transportation relationships to areas outside the center. In the event that a proposed growth center lacks one or a portion of one of the characteristics listed in subdivision 2791(12)(B) of this title, the growth center board shall not approve the growth center proposal unless it finds that the absence of that characteristic will not prevent the proposed growth center from complying with the purposes of this chapter and all other requirements of this section. This subdivision (A) does not confer authority to approve a growth center that lacks more than one characteristic listed in subdivision 2791(12)(B) of this title.

(B) The growth center will support and reinforce any existing designated downtown, village center, or new town center located in the

municipality or adjacent municipality by accommodating concentrated residential neighborhoods and a mix and scale of commercial, civic, and industrial uses that are consistent with the anticipated demand for those uses within the municipality and region.

(C) The growth that is proposed to occur in the growth center cannot reasonably be achieved within an existing designated downtown, village center, or new town center located within the applicant municipality.

(D) In the case of a growth center that is associated with a designated new town center, the applicable municipal bylaws provide that areas within the growth center that will be zoned predominantly for retail and office development will be located within the new town center.

(E) In the case of a growth center that is associated with a designated downtown or village center, the applicable municipal bylaws provide that, with respect to those areas within the growth center that will be located outside the designated downtown or village center and will be zoned predominantly for retail and office development:

(i) The total acreage of all such areas will be less than or equal to the total acreage of the designated downtown or village center;

(ii) Such areas will serve as a logical expansion of the designated downtown or village center through such means as sharing of infrastructure and facilities and shared pedestrian accessibility; and

(iii) Such areas will be subject to enacted land use and development standards that will establish a development pattern that is compact, oriented to pedestrians, and consistent with smart growth principles.

~~(B) that the~~ (F) The applicant has identified important natural resources and historic resources within the proposed growth center and the anticipated impacts on those resources, and has proposed mitigation~~;~~.

~~(C) that the~~ (G) The approved municipal plan and the regional plan both have been updated during any five-year plan readoption that has taken place since the date the secretary of agriculture, food and markets has developed guidelines in compliance with 6 V.S.A. § 8, have been used to identify areas proposed for agriculture, and have been designed so as to avoid the conversion of primary agricultural soils, wherever possible~~;~~.

~~(D)~~(H)(i) ~~that the~~ The applicant has a regionally confirmed planning process and an approved municipal plan, pursuant to section 4350 of this title;

(ii) ~~that the~~ The approved plan contains provisions that are appropriate to implement the designated growth center proposal;

(iii) ~~that the~~ The applicant has adopted bylaws in conformance with the municipal plan that implement the provisions in the plan that pertain to the designated growth center, including:

(I) bylaw provisions that ensure that land development and use in the growth center will comply with smart growth principles; and

(II) with respect to residential development in the growth center, bylaw provisions that allow a residential development density that is:

(aa) at least four dwelling units per acre; and

(bb) a higher development density if necessary to conform with the historic densities and settlement patterns in residential neighborhoods located in close proximity to a designated downtown or village center which the growth center is within or to which the growth center is adjacent under subdivision 2791(12)(A)(i) or (ii) of this title; and

(iv) ~~that the~~ The approved plan and the implementing bylaws further the goal of retaining a more rural character in the areas surrounding the growth center, to the extent that a more rural character exists, and provide reasonable protection for important natural resources and historic resources located outside the proposed growth center~~;~~.

~~(E) that the~~ (I) The applicant has adopted a capital budget and program in accordance with section 4426 of this title, and that existing and planned infrastructure is adequate to implement the growth center~~;~~.

~~(F) that the~~ (J) The growth center:

(i) is of an appropriate size sufficient to accommodate a majority of the projected population and development over a 20-year planning period in a manner that is consistent with the definition under subdivision 2791(12) of this title~~, and that the growth center~~;

(ii) does not encompass an excessive area of land that would involve the unnecessary extension of infrastructure to service low-density development or result in a scattered or low-density pattern of development at the conclusion of the 20-year planning period; and

(iii) using a 20-year planning period commencing with the year of the application, is sized to accommodate each of the following:

(I) an amount of residential development that is no more than 150 percent of the projected residential growth in the municipality; and

(II) an amount of commercial or industrial development, or both, that does not exceed 100 percent of the projected commercial and industrial growth in the municipality.

~~(G)(i) that the growth center will support and reinforce any existing designated downtown, village center, or new town center located in the municipality or adjacent municipality by accommodating concentrated residential neighborhoods and a mix and scale of commercial, civic, and industrial uses consistent with the anticipated demand for those uses within the municipality and region;~~

~~(ii) that the proposed growth center growth cannot reasonably be achieved within an existing designated downtown, village center, or new town center located within the applicant municipality.~~

(2) The growth center board, as a condition of growth center designation, may require certain regulatory changes prior to the effective date of designation. In addition, the growth center designation may be modified, suspended, or revoked if the applicant fails to achieve the required regulatory changes within a specified period of time. As an option, municipalities applying for growth center designation may make certain regulatory changes effective and contingent upon formal designation.

(3) Within 21 days of a growth center designation under subdivision (1) of this subsection, a person or entity that submitted written or oral comments to the growth center board during its consideration of the application for the designated growth center may request that the growth center board reconsider the designation. Any such request for reconsideration shall identify each specific finding of the growth center board for which reconsideration is requested and state the reasons why each such finding should be reconsidered. The filing of such a request shall stay the effectiveness of the designation until the growth center board renders its decision on the request. On receipt of such a request, the growth center board shall promptly notify the applicant municipality of the request if that municipality is not the requestor. The growth center board shall convene at the earliest feasible date to consider the request and shall render its decision on the request within 90 days of the date on which the request was filed.

(4) Except as otherwise provided in this section, growth center designation shall extend for a period of 20 years. The ~~state~~ growth center board shall review a growth center designation no less frequently than every five years, after providing notice as required in the case of a proposed municipal plan or amendment under subsection 4384(e) of this title, and after providing an opportunity for the public to be heard. For each applicant, the

~~state~~ growth center board may adjust the schedule of review under this subsection so as to coincide with the review of the related and underlying designation of a downtown, village center, or new town center. If, at the time of the review, the ~~state~~ growth center board determines that the growth center no longer meets the standards for designation established in this section, it may take any of the following actions:

(A) require corrective action;

(B) provide technical assistance through the coordinated assistance program; or

(C) remove the growth center's designation, with that removal not affecting any of the growth center's previously awarded benefits.

~~(4)~~(5) At any time a municipality shall be able to apply to the ~~state~~ growth center board for amendment of a designated growth center or any related conditions or other matters, according to the procedures that apply in the case of an original application.

(f) Review by land use panel and issuance of Act 250 findings of fact and conclusions of law. Subsequent to growth center designation by the ~~state~~ growth center board, an applicant municipality may submit a request for findings of fact and conclusions of law under specific criteria of 10 V.S.A. § 6086(a) to the land use panel of the natural resources board for consideration in accordance with the following:

* * *

(6) The decision of the ~~state~~ growth center board pursuant to this section shall not be binding as to the criteria of 10 V.S.A. § 6086(a) in any proceeding before the panel or a district commission.

* * *

(i) Benefits from designation. A growth center designated by the ~~state~~ growth center board pursuant to this section is eligible for the following development incentives and benefits:

(1) Financial incentives.

(A) A municipality may use tax increment financing for infrastructure and improvements in its designated growth center pursuant to the provisions of Title 24 and Title 32. A designated growth center under this section shall be presumed to have met any locational criteria established in Vermont statutes for tax increment financing. The ~~state~~ growth center board may consider project criteria established under those statutes and, as

appropriate, may make recommendations as to whether any of those project criteria have been met.

* * *

Sec. 4. EFFECTIVE DATES; TRANSITION; APPLICATION

(a) This section shall take effect on passage.

(b) No later than July 1, 2010, the Vermont planners association, the Vermont League of Cities and Towns, and the Vermont association of regional planning and development shall designate and the governor shall appoint the members of the Vermont growth center board described in Sec. 2 of this act, 24 V.S.A. § 2792(c)(4)–(6), that those provisions authorize them respectively to designate or appoint.

(c) Secs. 1 through 3 of this act shall take effect on September 1, 2010, and shall apply to applications for designation under 24 V.S.A § 2793c that are filed and to reviews of designations under 24 V.S.A § 2793c(e)(4) that are commenced on or after September 1, 2010. The Vermont downtown development board shall have jurisdiction in accordance with prior law to complete consideration of applications for and reviews of such designations that are pending as of September 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 Mazza, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

**S. 207, S. 259, S. 292, H. 607.**

**Adjournment**

On motion of Senator Mazza, the Senate adjourned until nine o'clock in the morning.