

Journal of the Senate

WEDNESDAY, MARCH 24, 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. 40

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 House bills of the following titles:

H. 528. An act relating to the illegal cutting, removal, or destruction of forest products.

H. 775. An act relating to technical changes to the records management authority of the Vermont state archives and records administration.

H. 779. An act relating to potable water supply and wastewater system permits.

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. 273. House concurrent resolution congratulating the 2010 U-32 Raiders Division II championship boys' basketball team.

H.C.R. 274. House concurrent resolution congratulating the 2010 Lamoille Union High School Lady Lancers Division II championship girls' basketball team.

H.C.R. 275. House concurrent resolution commemorating the 200th anniversary of the birth of Senator Justin Smith Morrill, the father of America's land-grant colleges.

H.C.R. 276. House concurrent resolution honoring the federal TRIO programs in Vermont.

H.C.R. 277. House concurrent resolution congratulating the 2010 Williamstown Blue Devils Division IV championship boys' basketball team.

H.C.R. 278. House concurrent resolution congratulating the 2010 U-32 Raiders Division II championship girls' ice hockey team.

H.C.R. 279. House concurrent resolution designating October 16, 2010, as Vermont Pumpkin Carving Day.

H.C.R. 280. House concurrent resolution designating March 25, 2010, as Afterschool Program Day at the state house.

H.C.R. 281. House concurrent resolution congratulating the 2010 Missisquoi Valley Union High School Thunderbirds Division II championship boys' ice hockey team.

H.C.R. 282. House concurrent resolution congratulating the 2010 St. Johnsbury Academy Hilltoppers Division I championship girls' basketball team.

H.C.R. 283. House concurrent resolution in memory of Burr & Burton Academy film and technology teacher Brian Gawlik.

H.C.R. 284. House concurrent resolution honoring the outstanding efforts of those who care for, educate, and advocate for our young children in Vermont.

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

The House has considered concurrent resolution originating in the Senate of the following title:

S.C.R. 44. Senate concurrent resolution in memory of Henry P. Albarelli Sr. of Burlington.

And has adopted the same in concurrence.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 528.

An act relating to the illegal cutting, removal, or destruction of forest products.

To the Committee on Judiciary.

H. 775.

An act relating to technical changes to the records management authority of the Vermont state archives and records administration.

To the Committee on Government Operations.

H. 779.

An act relating to potable water supply and wastewater system permits.

To the Committee on Natural Resources and Energy.

Joint Resolution Placed on Calendar**J.R.S. 56.**

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senators Miller, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr, and White,

J.R.S. 56. Joint resolution supporting continuing implementation of the Inter-Rwandan Dialogue.

Whereas, 20 years ago, Ven Dhyani Ywahoo established the Sunray Peace Village in Lincoln, Vermont, and during the past two decades, she has welcomed many interested visitors and peacemakers, and

Whereas, she imparts to her guests, together with other peacemakers such as Vermont-based international mediator Dr. Louise Diamond, the wise values of compassion, justice, peace and reconciliation that Native American elders have long espoused, and

Whereas, among the peacemakers to the Sunray Peace Village have been two Spanish lawyer-mediators, and

Whereas, since 1990, hundreds of thousands of innocent persons residing in the African nation of Rwanda (Rwandans), and representative of that nation's three primary ethnic groups, Hutu, Tutsi and Twa, as well as Congolese from the neighboring Democratic Republic of the Congo, have perished in one of the most deadly interethnic conflicts since World War II, and

Whereas, both the United Nations and the European Parliament have repeatedly declared the existence of important political, economic and strategic interests in Africa's Great Lakes region where Rwanda is located, and

Whereas, the fissures in Rwandan society remain extremely deep, and an extensive restoration of civil harmony is needed in Rwanda and in Africa's entire Great Lakes Region in order for social, cultural, commercial and political life to function with any degree of long-term sustainability, and

Whereas, despite the legal significance of some international judicial proceedings, a true transformation of Rwandan society will require the establishment of new and enduring bonds of acceptance, cooperation and trust among the different Rwandan ethnic, political and social groups, and

Whereas, with this noble goal in mind, the Brussels-based Hutu president of a victims' association and the Rwandan government's Tutsi former plenipotentiary ambassador to the United Nations initiated an interethnic Rwanda dialogue, and

Whereas, in 2004, subsequent to the dialogue's initiation, ten Rwandan men and women, both Tutsi and Hutu, residing outside Rwanda met in Mallorca, Spain, and

Whereas, in 2006, after this first successful meeting and extensive subsequent planning, a second conclave of 20 mixed ethnic Rwandans, both residents of Rwanda and abroad, and now known as the Inter-Rwandan Dialogue, was convened in Barcelona, Spain under the auspices of the 1980 Noble Peace Prize laureate Aldolfo Pérez-Esquivel, and

Whereas, the 2006 Inter-Rwandan Dialogue in Barcelona laid the foundation for the International Network of Truth and Reconciliation in Central Africa, and the resulting protocol of findings led to five additional Dialogue Platforms during 2007 and 2008 that were held in Washington, D.C. (for Rwandans exiled in the United States and Canada); in Amsterdam (for Rwandans exiled in the Netherlands, Belgium and Germany); in Orleans, France (for Rwandans exiled in France and Italy); in Barcelona - The Platform for Rwandan Women (for Rwandan women exiled in seven European countries); and in Kinshasa, Democratic Republic of the Congo, where the plight of Congolese victims, in relation to Rwanda, was the special focus, and

Whereas, in 2009 the Inter-Rwandan Dialogue returned to Mallorca, Spain where the 30 male and female participants included representatives of the seven editions of Dialogue belonging to the Hutu, Tutsi and Twa ethnic groups, and

Whereas, this five-year process has involved former prime ministers, cabinet ministers, ambassadors and political leaders, as well as representatives from civil society, victims' and human rights organizations, and institutions devoted to peace and economic research, and

Whereas, all of these individuals and organizations have focused on the future and continuing this larger Inter-Rwandan Dialogue as the legitimate foundation upon which to build a new Rwanda that all political, ethnic, social, and economic groups in the country, as well as the international community, can widely accept, and

Whereas, the progress that the Inter-Rwandan Dialogue has achieved to date is largely attributable to the enormous leadership of the Spanish mediators who, in their summer of 2009 visit to the Sunray Peace Village, spoke of the centrality of Ven Dhyani Ywahoo's wise values in reducing, and perhaps ultimately transforming, the extreme animosity that the Hutu, Tutsi and Twa, as well as Congolese from the neighboring Democratic Republic of the Congo, have developed toward each other, and

Whereas, the Inter-Rwandan Dialogue is an exemplary and realistic model for the bringing together of opposing ethnic groups involved in major national and international conflicts, and this unusual and praiseworthy international dialogue should be universally applauded and encouraged, and if possible, this dialogue model should be extended to other countries in conflict, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly supports the implementation of the Inter-Rwandan Dialogue in its development and continuing implementation of the Inter-Rwandan Dialogue that is premised on the teachings of Ven Dhyani Ywahoo of Lincoln, Vermont, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to Ven Dhyani Ywahoo at the Sunray Peace Village in Lincoln, Vermont and to the administrative offices of the Inter-Rwandan Dialogue in Barcelona, Spain.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Consideration Postponed

Senate bill entitled:

S. 294.

An act relating to identification in electioneering communications and penalties for campaign finance violations.

Was taken up.

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

Consideration Resumed; Bill Amended; Third Reading Ordered

S. 237.

Consideration was resumed on Senate bill entitled:

An act relating to operational standards for salvage yards.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Natural Resources and Energy?, was decided in the affirmative.

Thereupon, pending the question, Shall the bill be read the third time? Senator Snelling on behalf of the Committee on Natural Resources and Energy, moved to amend the bill as follows:

First: In Sec. 1, 24 V.S.A. § 2248(a) by striking out subdivisions (4) and (5) in their entirety and inserting in lieu thereof the following:

(4) A salvage yard issued a certificate of registration under section 2242 of this title after July 1, 2010, shall not be sited or operated within 100 feet of a Class I or Class II wetland as those terms are defined in 10 V.S.A. § 902. This subdivision shall not apply to the renewal of a valid certificate of registration under this chapter.

(5)(A) A salvage yard issued a certificate of registration under section 2242 of this title after July 1, 2010, shall not be sited or operated within 300 feet of a potable water supply, as that term is defined in 10 V.S.A. § 1972, unless:

(i) the water supply provides water to the salvage yard; or

(ii) the agency of natural resources approves management practices or remedial measures to prevent contamination of the potable water supply.

(B) This subdivision shall not apply to the renewal of a valid certificate of registration under this chapter.

Second: In Sec. 1, 24 V.S.A. § 2248(b) by adding new subdivisions (1) and (2) to read as follows:

(1) the siting of all salvage yards, including setbacks from surface waters, wetlands, and potable water supplies;

(2) exemptions from the requirement to obtain a certificate of registration under section 2242 of this title;

and by renumbering the subsequent subdivisions of 24 V.S.A. § 2248(b) accordingly

Third: By striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. 24 V.S.A. § 2241 is amended to read:

§ 2241. DEFINITIONS

For the purposes of this subchapter:

- (1) “Abandoned” means a motor vehicle as defined in 23 V.S.A. § 2151.
- (2) “Board” means the state transportation board, or its duly delegated representative.
- (3) “Highway” means any highway as defined in section 1 of Title 19.
- (4) “Interstate or primary highway” means any highway, including access roads, ramps and connecting links, which have been designated by the state with the approval of the Federal Highway Administration, Department of Transportation, as part of the National System of Interstate and Defense Highways, or as a part of the national system of primary highways.
- (5) “Junk” means old or scrap copper, brass, iron, steel, and other old or scrap or nonferrous material, including but not limited to rope, rags, batteries, glass, rubber debris, waste, trash, or any discarded, dismantled, wrecked, scrapped, or ruined motor vehicles or parts thereof.
- (6) “Junk motor vehicle” means a discarded, dismantled, wrecked, scrapped, or ruined motor vehicle or parts thereof, or one other than an on-premise utility vehicle which is allowed to remain unregistered or uninspected for a period of ~~ninety~~ 90 days from the date of discovery.
- (7) “Salvage yard” means any place of outdoor storage or deposit for storing, keeping, processing, buying, or selling junk or as a scrap metal processing facility. “Salvage yard” also means any ~~place of outdoor storage or deposit, not in connection with a business which is maintained or used for storing or keeping four or more junk motor vehicles which are visible from any portion of a public highway or navigable water, as that term is defined in section 1422 of Title 10~~ outdoor area used for operation of an automobile graveyard. It does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.
- (8) “Legislative body” means the city council of a city, the board of selectmen of a town, or the board of trustees of a village.

(9) “Main traveled way” means the portion of a highway designed for the movement of motor vehicles, shoulders, auxiliary lanes, and roadside picnic, parking, rest, and observation areas and other areas immediately adjacent and contiguous to the traveled portion of the highway and designated by the transportation board as a roadside area for the use of highway users and generally but not necessarily located within the highway right-of-way.

(10) “Motor vehicle” means any vehicle propelled or drawn by power other than muscular power, including trailers.

(11) “Notice” means by certified mail with return receipt requested.

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

(13) “Secretary” means the secretary of natural resources or the secretary’s designee.

(14) “Automobile hobbyist” means a person who is not primarily engaged in the business of:

(A) selling motor vehicles or motor vehicle parts; or

(B) accepting, storing, or dismantling junk motor vehicles.

(15) “Automobile graveyard” means a yard, field, or other outdoor area used or maintained for storing or depositing four or more junk motor vehicles. “Automobile graveyard” does not include:

(A) an area used by an automobile hobbyist to store, organize, restore, or display motor vehicles or parts of such vehicles, provided that the hobbyist’s activities comply with all applicable federal, state, and municipal law;

(B) an area used for the storage of motor vehicles exempt from registration under chapter 7 of Title 23;

(C) an area owned or used by a dealer registered under 23 V.S.A. § 453 for the storage of motor vehicles; or

(D) an area used or maintained for the parking or storage of operational commercial motor vehicles, as that term is defined in 23 V.S.A.

§ 4103(4), that are temporarily out of service and unregistered but are expected to used in the future by the vehicle operator or owner.

Which was agreed to.

Thereupon, the recurring question, Shall the bill be read the third time?, was decided in the affirmative.

Bill Passed

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

S. 293. An act relating to state standards for boilers and pressure vessels.

Third Readings Ordered

S. 224.

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

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

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

Sec. 1. 10 V.S.A. chapter 159, subchapter 4 is added to read:

Subchapter 4. Paint Stewardship Program

§ 6671. POLICY

The general assembly finds and declares that it is in the best interest of Vermont to have an environmentally sound, cost-effective paint stewardship program that will undertake responsibility for the development and implementation of strategies to reduce the generation of postconsumer paint, promote the reuse of postconsumer paint, and collect, transport, and process postconsumer paint for end-of-life management, including reuse, recycling, energy recovery, and disposal. The paint stewardship program will follow the waste management hierarchy for managing and reducing leftover paint in the order as follows: reduce consumer generation of leftover paint, reuse, recycle, provide for energy recovery, and dispose. The paint stewardship program will provide more opportunities for consumers to properly manage their leftover paint; provide fiscal relief for local government in managing postconsumer paint; keep paint out of the waste stream; and conserve natural resources.

§ 6672. DEFINITIONS

As used in this subchapter:

(1) “Architectural paint” means interior and exterior architectural coatings sold in containers of five gallons or less and does not mean industrial, original equipment, or specialty coatings.

(2) “Distributor” means a company that has a contractual relationship with one or more producers to market and sell architectural paint to retailers in Vermont.

(3) “Environmentally sound management practices” means policies to be implemented by a producer or a stewardship organization to ensure compliance with all applicable laws and also addressing such issues as adequate record keeping, tracking and documenting the fate of materials within the state and beyond, and adequate environmental liability coverage for professional services and for the operations of the contractors working on behalf of the producer organization.

(4) “Energy recovery” means recovery in which all or a part of the solid waste materials are processed in order to use the heat content or other forms of energy of or from the material.

(5) “Paint stewardship assessment” means the amount added to the purchase price of architectural paint sold in Vermont necessary to cover the cost of collecting, transporting, and processing the postconsumer paint managed through the statewide program.

(6) “Postconsumer paint” means architectural paint not used and no longer wanted by a purchaser.

(7) “Producer” means a manufacturer of architectural paint who sells, offers for sale, or distributes that paint in Vermont under the producer’s own name or brand.

(8) “Recycling” means any process by which discarded products, components, and by-products are transformed into new usable or marketable materials in a manner in which the original products may lose their identity but does not include energy recovery or energy generation by means of combusting discarded products, components, and by-products with or without other waste products.

(9) “Retailer” means any person that offers architectural paint for sale at retail in Vermont.

(10) “Reuse” means the return of a product into the economic stream for use in the same kind of application as originally intended, without a change in the product’s identity.

(11) “Secretary” means the secretary of natural resources.

(12) “Sell” or “sale” means any transfer of title for consideration, including remote sales conducted through sales outlets, catalogues, or the Internet or any other similar electronic means.

(13) “Stewardship organization” means a corporation, nonprofit organization, or other legal entity created by a producer or group of producers to implement the paint stewardship program required under this subchapter.

§ 6673. PAINT STEWARDSHIP PROGRAM

(a) A producer or a stewardship organization representing producers shall submit a plan for the establishment of a paint stewardship program to the secretary for approval by July 1, 2011. The plan shall address the following:

(1) Describe how the program proposed under the plan will collect, transport, recycle, and process postconsumer paint for end-of-life management, including recycling, energy recovery, and disposal, using environmentally sound management practices.

(2) Describe the program and how it will provide for convenient and available statewide collection of postconsumer architectural paint in urban and rural areas of the state. The producer or stewardship organization shall utilize the existing recycling infrastructure when selecting collection points for postconsumer architectural paint where cost effective.

(3) Provide for collection rates and convenience of collection equal to or greater than the collection programs available to consumers prior to the paint stewardship program.

(4) Provide the facility name, location, and hours of operation of facilities accepting paint for recycling under the program.

(5) Establish goals to reduce the generation of postconsumer paint, to promote the reuse of postconsumer paint, and for the proper end-of-life management of postconsumer paint, as practical based on current household hazardous waste program information. The goals may be revised by the manufacturer or stewardship organization based on the information collected for the annual report.

(6) Describe how postconsumer paint will be managed in the most environmentally and economically sound manner, including following the waste-management hierarchy of source reduction, reuse, recycling, energy recovery, and disposal.

(7) Describe education and outreach efforts to promote the source reduction and recycling of architectural paint for each of the following: consumers, contractors, and retailers.

(b) Beginning no later than July 1, 2012, or three months after approval of the paint stewardship program plan under subsection (a) of this section, a producer of architectural paint sold at retail or a stewardship organization of which a producer is a member shall implement the approved paint stewardship program plan.

(c) A plan submitted under subsection (a) of this section shall include a funding mechanism under which each architectural paint producer remits to a stewardship organization payment of a paint stewardship assessment for each container of architectural paint it sells in this state. The paint stewardship assessment shall be added to the cost of all architectural paint sold to Vermont retailers and distributors, and each Vermont retailer or distributor shall add the paint stewardship assessment to the purchase price of all architectural paint sold in this state. To ensure that the funding mechanism is equitable and sustainable, a uniform paint stewardship assessment shall be established for all architectural paint sold. The paint stewardship assessment shall be approved by the secretary and shall be sufficient to recover, but not exceed, the costs of the paint stewardship program.

(d) A producer or a stewardship organization of which a producer is a member shall promote a paint stewardship program and provide consumers with educational and informational materials describing collection opportunities for postconsumer paint statewide and promotion of waste prevention, reuse, and recycling. The educational and informational program shall make consumers aware that the funding for the operation of the paint stewardship program has been added to the purchase price of all architectural paint sold in the state.

§ 6674. RETAILER RESPONSIBILITY

(a) A producer or retailer may not sell or offer for sale architectural paint to any person in Vermont unless the producer of a paint brand or a stewardship program of which the producer is a member is implementing an approved paint stewardship program plan as required by section 6673 of this title. A retailer complies with the requirements of this section if, on the date the architectural paint was ordered from the producer or its agent, the producer of the paint brand is listed on the agency of natural resources website as a producer implementing an approved paint stewardship program plan.

(b) At the time of sale to a consumer, a producer, a stewardship organization, or a retailer selling or offering architectural paint for sale shall provide the consumer with information regarding available end-of-life management options for architectural paint collected through the paint stewardship program or a brand of paint being sold under the program.

§ 6675. AGENCY RESPONSIBILITY

(a) The secretary shall review and approve plans, and amendments to plans, describing a producer's or product stewardship organization's paint management program. Approvals under this subsection shall be valid for not more than five years. In approving a plan, in addition to finding all elements required by subsection 6673(a) of this title are adequately addressed, the secretary shall determine that the implementation of the plan will result in reasonably convenient services to consumers, and that reasonable efforts have been taken to control the cost of the program.

(b) A plan may be amended by a producer, a stewardship organization, or by the secretary.

(c) The secretary shall review and approve stewardship fees assessed by a producer pursuant to subsection 6673(c) of this title. Approvals under this subsection shall be valid for not more than one year. In approving a stewardship fee, the secretary shall determine that the fee is reasonable and the fee does not exceed the costs of implementing an approved plan. In no case shall the secretary approve a stewardship fee greater than \$0.75 per gallon without further justification of the necessity for a higher fee.

(d) Facilities solely collecting paint for the paint stewardship program that would not otherwise be subject to solid waste certification requirements shall not be required to obtain a solid waste certification. Persons solely transporting paint for the paint stewardship program that would not otherwise be subject to solid waste hauler permitting requirements shall not be required to obtain a solid waste hauler's permit.

§ 6676. ANTICOMPETITIVE CONDUCT

A producer or an organization of producers that manages end-of-life management options, including collection, transport, recycling, and processing, of postconsumer paint as required by this subchapter may engage in anticompetitive conduct to the extent necessary to implement the plan approved by the secretary and is immune from liability for the conduct under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce.

§ 6677. PRODUCER REPORTING REQUIREMENTS

No later than July 1, 2013, and annually thereafter, a producer or a stewardship program of which the producer is a member shall submit to the secretary a report describing the paint stewardship program that the producer or stewardship program is implementing as required by section 6673 of this title. At a minimum, the report shall include:

(1) a description of the methods the producer or stewardship program used to reduce, reuse, collect, transport, recycle, and process postconsumer paint statewide in Vermont;

(2) the volume and type of postconsumer paint collected by the producer or stewardship program in all regions of Vermont;

(3) the volume of postconsumer paint collected by the producer or stewardship program in Vermont by method of disposition, including reuse, recycling, energy recovery, and disposal;

(4) The total volume of architectural paint sold in this state during the preceding calendar year under the stewardship program;

(5) an independent financial audit of the paint stewardship program implemented by the producer or the stewardship program; and

(6) samples of the educational materials that the producer or stewardship program provided to consumers of architectural paint.

§ 6678. CONFIDENTIAL BUSINESS INFORMATION

Data reported to the secretary by a producer or stewardship organization under this subchapter shall be deemed to be confidential business information that is exempt from public disclosure, provided that the agency may use and disclose such information in summary or aggregated form that does not directly or indirectly identify individual producers, distributors, or retailers. The agency may require, as a part of the report submitted under section 6677 of this title that the manufacturer or stewardship organization provide a report that does not contain confidential business information and is available for public inspection and review.

§ 6679. RULEMAKING; PROCEDURE

The secretary may adopt rules or procedures to implement the requirements of this subchapter.

Sec. 2. 3 V.S.A. § 2822(j)(29) is added to read:

(29) For review of plans required by 10 V.S.A. § 6673: \$15,000.00.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

And that when so amended the bill ought to pass.

Senator McCormack, 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 was agreed to, and third reading of the bill was ordered on a roll call, Yeas 26, Nays 2.

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, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Nitka, Racine, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: Brock, Mullin.

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

Recess

On motion of Senator Mazza the Senate recessed until 1:00 P.M.

Called to Order

At 1:10 P.M. the Senate was called to order by the President *pro tempore*.

Message from the House No. 41

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 considered joint resolution originating in the Senate of the following title:

J.R.S. 55. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

The House has considered Senate proposal of amendment to House proposal of amendment to Senate bill of the following title:

S. 77. An act relating to the disposal of electronic waste.

And has concurred therein.

The Governor has informed the House that on the March 19, 2010, he approved and signed a bill originating in the House of the following title:

H. 517. An act relating to approval of an amendment to the charter of the Village of Enosburg Falls.

Consideration Postponed

Senate bill entitled:

S. 226.

An act relating to medical marijuana dispensaries.

Was taken up.

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

Third Reading Ordered

S. 239.

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

An act relating to retiring outdoor wood-fired boilers that do not meet the 2008 emission standard for particulate matter.

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

Sec. 2. 10 V.S.A. § 584 is added to read:

§ 584. INEFFICIENT OUTDOOR WOOD-FIRED BOILER CHANGE-OUT PROGRAM; RETIREMENT

(a) At the earliest feasible date, the secretary shall create and put into effect a change-out program within the air pollution control division of the department of environmental conservation to purchase the retirement of inefficient, high emission outdoor wood-fired boilers (OWB) that will be replaced with OWBs or other heating appliances with substantially lower emissions and higher fuel efficiency.

(b) The secretary shall fund this program using at least \$500,000.00 of the funds available to the state of Vermont for environmental mitigation projects under the consent decree approved on or about October 9, 2007 in the case of *United States, et al. v. American Elec. Power Service Corp., et al.*, Civil Actions No. C2-99-1182, C2-99-1250, C2-04-1098, C2-05-360 (the AEP consent decree). The secretary may add to this funding such additional moneys as may be appropriated to the program authorized under this section or otherwise may be available by grant, contribution, or donation.

(c) The secretary shall take all steps necessary to secure use of the funds from the AEP consent decree in the manner described in subsection (a) of this section.

(d)(1) To be eligible for the program under this section, an OWB shall be one that is not certified under the air pollution control regulations as meeting either the Phase I emission limit for particulate matter of 0.44 pounds per million British thermal units (BTUs) of heat input or the Phase II emission limit for particulate matter of 0.32 pounds per million BTUs of heat output.

(2) The secretary may develop program eligibility criteria that are in addition to the criteria of subdivision (1) of this subsection. Such additional criteria may allow an OWB to be eligible for the program under this section even if the OWB does not meet the requirements of subdivision (1) of this subsection. In developing these additional criteria, the secretary shall consult with affected persons and entities such as the American Lung Association.

(e) An eligible OWB that is accepted into the change-out program under this section shall be:

(1) Replaced with an OWB that is certified under the air pollution control regulations as a Phase II OWB with a particulate matter emission rate of no more than 0.32 pounds per million BTUs of heat output or another type of heating appliance that the secretary determines has an equivalent or more stringent emission rate; and

(2) Retired within a specified period not to exceed six months after acceptance into the program.

(f) In implementing the program required by this section, the secretary:

(1) Shall give priority to replacing eligible OWBs that have resulted in complaints regarding emissions, including particulate matter or smoke, that the agency has determined are valid, and have the highest emission rates, cause nuisance, or are within 200 feet of a residence, school, or health care facility.

(2) May allow replacement of an eligible OWB that is less than the required setback distance from a residence, school, or health care facility that is neither served by the OWB nor owned by the owner or lessee of the OWB with an OWB or heating appliance that is also less than the required setback distance from a residence, school, or health care facility, unless such location of the replacement OWB or heating appliance will cause a nuisance or will not comply with all applicable local ordinances and bylaws. For the purposes of this subdivision (2), "required setback distance" means the setback distance applicable to the OWB that is required by the air pollution control regulations.

(3) May require that an eligible OWB be replaced with a heating appliance that is not an OWB if, based on the secretary's consideration of area topography, air flows, site conditions, and other relevant factors, the secretary determines that the replacement OWB would cause nuisance.

(4) To the extent practical, should provide over time for decreasing emission rates and increasing fuel efficiency requirements for replacement OWBs under this program as new technology for boilers becomes commercially available.

(g) Any OWB in the state that is not certified under the air pollution control regulations to meet the Phase I, Phase II, or a more stringent emission limit shall be retired on or before December 31, 2012, if the OWB is located within 200 feet of a residence, school, or health facility that is neither served by the OWB nor owned by the owner or lessee of the OWB and has resulted or results in a complaint regarding emissions, including particulate matter or smoke, that the agency has determined is valid.

(h) For the purpose of this section:

(1) "Outdoor wood-fired boiler" or "OWB" means a fuel-burning device designed to burn primarily wood that the manufacturer specifies should or may be installed outdoors or in structures not normally occupied by humans, such as attached or detached garages or sheds, and that heats spaces or water by the distribution through pipes of a fluid heated in the device, typically water or a mixture of water and antifreeze. In addition, this term also means any wood-fired boiler that is actually installed outdoors or in structures not normally occupied by humans, such as attached or detached garages or sheds, regardless of whether such use has been specified by the manufacturer.

(2) "Retire" means to remove an OWB permanently from service, disassemble it into its component parts, and either recycle those parts or dispose of them in accordance with applicable law.

(i) For the purpose of determinations under subdivisions (f)(1) (priority for change-out), (2) (installation of replacement OWB closer than 100 feet) and (3) (non-OWB replacement) of this section, "nuisance" means interference with the ordinary use or enjoyment of property caused by particulate matter, smoke, or other emissions of an OWB that a reasonable person would find disturbing, annoying, or physically uncomfortable. Precedence in time and balancing of harm shall be irrelevant to such determinations. This section shall not affect the burden or elements of proof with respect to a claim of nuisance caused by an OWB brought in a civil court under common law.

(j) The secretary may adopt rules to implement this section.

Sec. 3. EFFECTIVE DATE

This act shall take effect from passage.

And that when so amended the bill ought to pass.

Senator Bartlett, for the Committee on Appropriations, 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 was agreed to, and third reading of the bill was ordered.

Consideration Postponed

Senate bills entitled:

S. 280.

An act relating to prohibiting texting while operating on a highway.

S. 288.

An act relating to the Vermont recovery and reinvestment act of 2010.

Were taken up.

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

Adjournment

On motion of Senator Mazza, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, March 26, 2010.