

Journal of the Senate

WEDNESDAY, APRIL 6, 2011

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Bill Referred to Committee on Finance

S. 104.

Senate Committee 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 modifications to the ban on gifts by manufacturers of prescribed products.

Bill Referred to Committee on Appropriations

S. 105.

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

An act relating to miscellaneous agricultural subjects.

Message from the Governor

Appointments Referred

A message was received from the Governor, by Alexandra MacLean, Secretary of Civil and Military Affairs, submitting the following appointments, which were referred to committees as indicated:

Lindholm, Justin of Rutland - Member of the Fish and Wildlife Board, - from March 24, 2011, to February 28, 2017.

To the Committee on Natural Resources and Energy.

Hover, Caprice of Rutland - Member of the Vermont State Housing Authority, - from March 1, 2011, to February 29, 2016.

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

Kreitzer, Jerry of Rutland - Member of the Children and Family Council for Prevention Programs, - from March 24, 2011, to February 28, 2014.

To the Committee on Health and Welfare.

Boyd-Hill, Shirley of Fairfax - Member of the Children and Family Council for Prevention Programs, - from March 24, 2011, to February 28, 2014.

To the Committee on Health and Welfare.

Burns, Cailie of Burlington - Member of the Children and Family Council for Prevention Programs, - from March 1, 2011, to February 28, 2014.

To the Committee on Health and Welfare.

Clifford, Eric of Starksboro - Member of the Vermont Citizens Advisory Committee on Lake Champlain's Future, - from March 31, 2011, to February 28, 2014.

To the Committee on Natural Resources and Energy.

Fisher, Lori of Williston - Member of the Vermont Citizens Advisory Committee on Lake Champlain's Future, - from March 1, 2011, to February 28, 2014.

To the Committee on Natural Resources and Energy.

Germain, Maurice of Colchester - Member of the Transportation Board, - from March 1, 2011, to February 28, 2014.

To the Committee on Transportation.

Gobeille, Al of Shelburne - Member of the Travel Information Council, - from March 24, 2011, to February 28, 2013.

To the Committee on Transportation.

Hansen, Paul of South Alburg - Member of the Vermont Citizens Advisory Committee on Lake Champlain's Future, - from March 1, 2011, to February 28, 2014.

To the Committee on Natural Resources and Energy.

Hayden, Mary of Barre - Member of the Children and Family Council for Prevention Programs, - from March 1, 2011, to February 28, 2014.

To the Committee on Health and Welfare.

LaBarge, John of South Hero - Member of the Travel Information Council, - from March 1, 2011, to February 28, 2013.

To the Committee on Transportation.

Lawyer, Tanya of Bristol - Member of the Children and Family Council for Prevention Programs, - from March 1, 2011, to February 28, 2014.

To the Committee on Health and Welfare.

Moore, Julie of Middlesex - Member of the Vermont Citizens Advisory Committee on Lake Champlain's Future, - from March 24, 2011, to February 28, 2014.

To the Committee on Natural Resources and Energy.

Naud, Mark of South Hero - Member of the Vermont Citizens Advisory Committee on Lake Champlain's Future, - from March 24, 2011, to February 29, 2012.

To the Committee on Natural Resources and Energy.

O'Hagan, Karen of Winooski - Member of the Vermont State Lottery Commission, - from March 24, 2011, to February 28, 2014.

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

Sheil, Robert of Montpelier - Member of the Children and Family Council for Prevention Programs, - from March 1, 2011, to February 28, 2014.

To the Committee on Health and Welfare.

Young, Sheri B. of Orwell - Member of the Vermont Citizens Advisory Committee on Lake Champlain's Future, - from March 1, 2011, to February 28, 2014.

To the Committee on Natural Resources and Energy.

Bill Amended; Third Reading Ordered

S. 90.

Senator Pollina, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to respectful language in state statutes in referring to people with disabilities.

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

Sec. 1. RESPECTFUL LANGUAGE STUDY

(a) The agency of human services shall convene a working group to propose guidelines for using respectful language when referring to people with

disabilities. In convening the working group, the agency shall invite the participation of two representatives from the Vermont coalition for disability rights, two representatives from Green Mountain self-advocates, one representative from the Vermont center for independent living, one representative from Vermont psychiatric survivors, one representative from the human rights commission, and two people appointed by the governor, at least one of whom shall be a high school student. In preparing its recommendations, the working group shall:

(1) identify words that should not be used in Vermont statutes and suggest in their place words that reflect positive views of people with disabilities;

(2) avoid using any language that changes the meaning or intent of state statutes;

(3) identify specific statutes that should be addressed by the general assembly;

(4) select wording that does not conflict with federal law; and

(5) develop guidelines to support state government agencies and departments to use respectful language in all areas of conducting business.

(b) By November 1, 2011, the working group shall report to the house committee on government operations and the senate committee on government operations the group's findings and recommendations, including any recommended legislation to address its findings and recommendations.

Sec. 2. 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.

Bill Amended; Bill Passed

S. 77.

Senate bill entitled:

An act relating to water testing of private wells.

Was taken up.

Thereupon, pending third reading of the bill, Senator Illuzzi moved to amend the bill by as follows:

First: In Sec. 2, 10 V.S.A. § 1981, by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) The secretary, after consultation with the department of health, the wastewater and potable water supply technical advisory committee, the Vermont association of realtors, the Vermont home inspectors' association, private laboratories, and other interested parties, shall adopt by rule requirements regarding:

(1) when, after construction or drilling of a well, the well test required under subsection (a) of this section shall be conducted;

(2) who shall be authorized to conduct the well test required under subsection (a) of this section, provided that the rule shall include licensed well drillers among those authorized to conduct the test;

(3) how well samples will be delivered for testing, including the form and information to be submitted with the well sample;

(4) a current, nationally-recognized accreditation or approval that an in-state or out-of-state laboratory shall possess in order to conduct a well test required under subsection (a) of this section; and

(5) any other requirements necessary to implement the requirements of this section.

Second: By striking out Sec. 5 in its entirety and inserting in lieu thereof a new Sec. 5 to read as follows:

Sec. 5. EFFECTIVE DATES

(a) This section and Secs. 1 (findings), 3 (disclosure of educational material), and 4 (department of health; education and outreach) of this act shall take effect upon passage.

(b) Sec. 2 (testing of private wells) of this act shall take effect upon passage, except that 10 V.S.A. § 1981(a) (well test requirement) and 10 V.S.A. § 1981(d) (well test reports) shall take effect on July 1, 2012.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Brock moved to amend the bill in Sec. 2, 10 V.S.A. § 1981, by striking the first sentence of subsection (a) in its entirety and inserting in lieu thereof the following:

(a) After construction of a newly drilled well intended for use as a potable water supply, the owner of the property on which the well is located shall test the well for the parameters set forth in subsection (b) of this section.

Which was agreed to.

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

Consideration Resumed; Bill Amended; Third Reading Ordered

S. 34.

Consideration was resumed on Senate bill entitled:

An act relating to the collection and disposal of mercury-containing lamps.

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

Thereupon, pending the question, Shall the bill be read a third time?, Senator Illuzzi moved to amend the bill as follows:

First: In Sec. 1, 10 V.S.A. § 7151, by inserting a new subdivision (10) to read as follows:

(10) "Stewardship organization" means an organization, association, or entity that has developed a system, method, or other mechanism which assumes the responsibilities, obligations, and liabilities under this chapter of multiple manufacturers of mercury-containing lamps.

Second: In Sec. 1, 10 V.S.A. § 7154(a), by striking the first full sentence and inserting in lieu thereof the following:

Prior to October 1, 2011, a manufacturer, individually or as a participant in a stewardship organization, shall submit a collection plan to the secretary for review.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Illuzzi moved to amend the bill as follows:

First: By adding a new section to be numbered Sec. 1 to read as follows:

Sec. 1. FINDINGS

The general assembly finds and declares that:

(1) Extended producer responsibility programs are an effective method of managing certain types of potentially hazardous waste, such as mercury-containing lamps;

(2) In implementing extended producer responsibility programs, states are often faced with the issue of how to regulate products sold in the state by a manufacturer with no corporate presence in Vermont or the United States.

(3) Under *Huey v. Bates*, 135 Vt. 160 (1977), *Northern Aircraft, Inc. v. Reed*, 154 Vt. 36 (1990), and *Hedges Western Auto Supply Co.*, 161 Vt. 614 (1994), a clear intention by a manufacturer or a distributor to participate in the Vermont market through the sale or purposeful utilization of an in-state distribution system is sufficient to provide the state with jurisdiction over the manufacturer or distributor.

(4) Thus, an extended producer responsibility program for the collection and disposal of mercury containing lamps may regulate a manufacturer or distributor that purposefully and intentionally sells or distributes mercury-containing lamps in Vermont.

And by renumbering the remaining sections of the bill to be numerically correct.

Second: In renumbered Sec. 1, by striking out 10 V.S.A. § 7159 in its entirety and inserting in lieu thereof a new 10 V.S.A. § 7159 to read as follows:

§ 7159. MERCURY CONTENT STANDARDS

(a) Mercury content standards for lamps. Beginning January 1, 2012, a mercury-containing lamp sold in this state shall satisfy the mercury-content standard for lamps set by California.

(b) Rulemaking; implementation. The agency of natural resources may adopt rules to implement the requirements of this chapter, including exemptions from the mercury content standards established under subsection (a) of this section.

(c) Certificate of compliance.

(1) Beginning April 1, 2012, the secretary may request a manufacturer of a lamp or lamps to submit a certification, supported by technical information, that the manufacturer's lamp or lamps that are sold or offered for sale in the state comply with the standard established under subsection (a) of this section. A manufacturer shall submit a certificate of compliance within 30 days of the secretary's request. If a manufacturer fails to provide a requested

certification within 30 days of the request, the manufacturer shall be prohibited from selling lamps or offering lamps for sale in the state.

(2) Upon request of a retailer or other person selling a manufacturer's lamps, a manufacturer shall provide a certification that the manufacturer's lamp or lamps comply with the standard established under subsection (a) of this section. A manufacturer shall provide a certificate of compliance within 30 days of the retailer's request. The certification must specify that the lamp or lamps are not prohibited from sale in the state. If a manufacturer fails to provide a certification under this subdivision (c)(2), the manufacturer shall be prohibited from selling lamps or offering lamps for sale in the state.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Sears moved to amend the bill in Sec. 2, 10 V.S.A. by striking out § 7158 in its entirety and inserting in lieu thereof a new § 7158 to read as follows:

§ 7158. FEES; DISPOSITION

(a) A manufacturer or stewardship organization shall pay \$10,000.00 for each collection plan submitted to the agency for review under section 7154 of this title.

(b) Of the fees collected under subsection (a) of this section, no more than \$20,000.00 shall be retained by the agency annually for the performance of its responsibilities under section 7156 of this title. All fees collected by the agency in a year under subsection (a) of this section in excess of \$20,000.00 a year shall be deposited in the general fund.

Which was agreed to.

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

Bills Passed

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

S. 15. An act relating to insurance coverage for midwifery services and home births.

S. 52. An act relating to protect employees from abuse at work.

S. 100. An act relating to making miscellaneous amendments to education laws.

Bills Passed in Concurrence

House bills of the following titles were severally read the third time and passed in concurrence:

H. 85. An act relating to recognition of the Nulhegan Band of the Coosuk Abenaki Nation as a Native American Indian tribe.

H. 86. An act relating to recognition of the Elnu Abenaki tribe as a Native American Indian tribe.

Bill Passed in Concurrence with Proposal of Amendment**H. 236.**

House bill of the following title was read the third time and passed in concurrence with proposal of amendment:

An act relating to limitation of prosecutions for sexual abuse of a vulnerable adult.

Election of Senate Members to Judicial Nominating Board

The President announced that the next order of business was the election of three members of the Senate to serve on the Judicial Nominating Board pursuant to 4 V.S.A. §601.

Senator Mazza, on behalf of the Committee on Committees, placed in nomination the names of the following Senators to serve on the Board:

TIMOTHY R. ASHE

of Chittenden District, as the majority party member of the Board.

RICHARD A. WESTMAN

of Lamoille District, as the minority party member of the Board.

JOHN F. CAMPBELL

of Windsor District, as the third member of the Board.

Senator Mullin of Rutland District seconded these nominations.

There being no further nominations, on motion of Senator Mazza, the nominations were closed, and the Secretary was instructed to cast one ballot for

TIMOTHY R. ASHE

of Chittenden District, as the majority party member of the Board, for a term of two years or until her successor is elected and has qualified.

RICHARD A. WESTMAN

of Lamoille District, as the minority party member of the Board, for a term of two years or until his successor is elected and has qualified.

JOHN F. CAMPBELL

of Windsor District, as the third member of the Board, for a term of two years or until his successor is elected and has qualified.

Adjournment

On motion of Senator Campbell, the Senate adjourned until eleven o'clock and thirty minutes in the morning.