

# House Calendar

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Tuesday, April 09, 2013

91st DAY OF THE BIENNIAL SESSION

House Convenes at 10:00 A.M.

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**ACTION CALENDAR**

**Third Reading**

**H. 395**

An act relating to the establishment of the Vermont Clean Energy Loan Fund

**H. 514**

An act relating to the tax liability of certain agricultural workers and employers

**S. 144**

An act relating to the St. Albans state office building

**Favorable with Amendment**

**H. 198**

An act relating to the Legacy Insurance Management Act

**Rep. Kitzmiller of Montpelier**, for the Committee on **Commerce and Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. TITLE

This act shall be known as the “Legacy Insurance Management Act.”

Sec. 2. FINDINGS AND PURPOSE

(a) The Vermont General Assembly finds:

(1) The creation of jobs and investment in the state of Vermont through business expansion and recruitment is of the highest importance.

(2) Vermont has created a thriving alternative risk financing industry, which has provided Vermonters with well-paying jobs and has created significant premium tax revenue for the state.

(b) The purpose of this act is to regulate the receipt and management by solvent Vermont companies of closed blocks of nonadmitted commercial insurance policies and reinsurance agreements.

Sec. 3. 8 V.S.A. chapter 147 is added to read:

CHAPTER 147. LEGACY INSURANCE TRANSFERS

§ 7111. DEFINITIONS

As used in this chapter:

(1) “Assuming company” means a Vermont-domiciled company established specifically to acquire a closed block under a legacy insurance transfer plan approved by the Commissioner.

(2) “Closed block” means a block, line, or group of commercial nonadmitted insurance policies or reinsurance agreements or both:

(A) which a transferring insurer has ceased to offer, write, or sell to new applicants;

(B) for which all policy periods have been fully expired for not less than 60 months;

(C) for which active premiums are no longer being paid; and

(D) which is not workers’ compensation, health, life, or any other personal line of insurance.

(3) “Comment period” means the 60-day period starting on the date notice is issued by an assuming company under subsection 7112(h) of this chapter. For good cause, the comment period may be extended by the Commissioner up to an additional 30 days.

(4) “Commissioner” means the Commissioner of Financial Regulation.

(5) “Controlling party” means a person having “control” of an assuming company or transferring insurer. “Control” shall have the same meaning as in section 3681 of this title.

(6) “Department” means the Department of Financial Regulation.

(7) “Domicile regulator” means the primary insurance regulatory authority of the domicile jurisdiction of a transferring insurer.

(8) “Inward reinsurance agreement” means a contract of reinsurance between a transferring insurer and another insurance company with respect to which a transferring insurer is a party as the reinsurer.

(9) “Inward reinsurance counterparty” means an insurance company, other than the transferring insurer, that is a party to an inward reinsurance agreement.

(10) “Legacy insurance transfer” means the transfer of a closed block in accordance with the requirements of this chapter.

(11) “Legacy insurance transfer plan” or “plan” means a plan that sets forth all provisions and includes all documentation regarding a legacy insurance transfer required under subsection 7112(b) of this chapter.

(12) “Nonadmitted insurance” means any property and casualty

insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

(13) “Nonadmitted insurer” means, with respect to a state, an insurer not licensed to engage in the business of insurance in such state. The term does not include a risk retention group or a captive insurance company.

(14) “Outward reinsurance agreement” means a contract of reinsurance between a transferring insurer and another insurance company with respect to which a transferring insurer is a party as the reinsured.

(15) “Outward reinsurance counterparty” means an insurance company, other than the transferring insurer, that is a party to an outward reinsurance agreement.

(16) “Party” means:

(A) the assuming company;

(B) the transferring insurer;

(C) with respect to any policy to be transferred under a plan, each policyholder;

(D) with respect to any inward reinsurance agreement to be transferred under a plan, each inward reinsurance counterparty; and

(E) any other person the Commissioner approves as a party with respect to such proceeding.

(17) “Plan summary” means a written statement of the key terms and provisions of a plan as required under subdivision 7112(b)(18) of this chapter.

(18) “Policy” means a contract of property and casualty insurance that is not a contract of reinsurance or a personal lines insurance policy.

(19) “Policyholder” means the person identified as the policyholder or first named in a policy.

(20) “Reinsurance agreement” means an inward reinsurance agreement or an outward reinsurance agreement.

(21) “Reinsurance agreement counterparty” means an inward reinsurance agreement counterparty or an outward reinsurance counterparty.

(22) “Transferring insurer” means a nonadmitted insurer that is transferring a closed block to an assuming company under a legacy insurance transfer plan.

§ 7112. APPLICATION; FEE; PLAN

(a) An assuming company shall file a plan with the Commissioner and, at the time of filing, shall pay to the Commissioner the fee described in subdivision 7116(a)(1) of this chapter.

(b) A plan shall include the following:

(1) a list of all policies and inward reinsurance agreements in the closed block to be transferred under the plan;

(2) a list of all outward reinsurance agreements attaching to the closed block;

(3) a list of all policyholders and inward reinsurance counterparties to policies and inward reinsurance agreements in the closed block to be transferred under the plan;

(4) the identities of the transferring insurer and the assuming company and their respective controlling parties, if any;

(5) certificates issued by the domicile regulator of the transferring insurer and, if applicable, by any controlling party that is a regulated insurance company attesting to the good standing of the transferring insurer and the controlling party under the insurance regulatory laws of the jurisdiction of their respective domiciles; or, if any such certificate is not obtainable under the laws or practices of a domicile regulator, a certificate of an officer of the transferring insurer or the controlling party, as applicable, attesting to the foregoing;

(6) a letter of no objection, or the equivalent, from the domicile regulator of the transferring insurer confirming that the regulator has no objection to the transfer of the closed block under the plan; or, if any such certificate is not obtainable under the laws or practices of a domicile regulator, a certificate of an officer of the transferring insurer or the controlling party, as applicable, attesting to the foregoing;

(7) a statement describing the terms and conditions, if any, of any policy or inward reinsurance agreement in the closed block prohibiting assignment and assumption of the rights, liabilities, and obligations of the transferring insurer without the prior written consent of the respective policyholder or inward reinsurance counterparty;

(8) the most recent audited financial statements and annual reports of the transferring insurer filed with its domicile regulator and such other financial information as the Commissioner may reasonably require with respect to a controlling party, if any;

(9) an actuarial study or opinion in a form satisfactory to the Commissioner that quantifies the liabilities to be transferred to the assuming

company under the policies or inward reinsurance agreements in the closed block;

(10) a statement of outward reinsurance agreement assets attaching to the closed block;

(11) three years of pro-forma financial statements demonstrating the solvency of the assuming company;

(12) officer's certificates of the transferring insurer and the assuming company attesting that each has obtained all required internal approvals and authorizations regarding the plan and completed all necessary and appropriate actions relating thereto;

(13) the form of notice to be provided under the plan to any policyholder or inward reinsurance counterparty in the closed block and how such notice shall be provided;

(14) the form of notice to be provided under the plan to any outward reinsurance counterparty attaching to the closed block and how such notice shall be provided;

(15) a statement describing any pending dispute between the transferring insurer and any policyholder or inward reinsurance counterparty or any disputed claim by a third party with respect to any policy or inward reinsurance agreement in the closed block;

(16) a statement describing the assuming company's proposed investment policies, officers, directors, key employees, and other arrangements regarding matters such as:

(A) any contemplated third-party claims management and administration arrangements;

(B) operations, management, and solvency relating to the closed block; and

(C) a detailed plan for annual or other periodic financial reporting to the Commissioner, including an annual financial audit with actuarial opinion;

(17) a statement from the assuming company consenting to the jurisdiction of the Commissioner with regard to ongoing oversight of operations, management, and solvency relating to the closed block, including the authority of the Commissioner to conduct examinations under section 7117 of this chapter and to set reasonable standards for oversight of the assuming company, including:

(A) material transactions with affiliates;

(B) adequacy of surplus; and

(C) dividends and other distributions, including limitations on extraordinary dividends.

(18) a statement from the assuming company submitting to the jurisdiction and authority of the Commissioner of Insurance, or the equivalent regulatory authority, in states in which policyholders or reinsurance counterparties reside, for the purposes of implementing each such state's Unfair Claims Settlement Practices Act, or its equivalent, if any, in such state's market conduct statutory framework. Notwithstanding any provision to the contrary in such act, the submission under this subdivision shall not confer a private cause of action upon any policyholder or reinsurance counterparty against the assuming company, even if the applicable Unfair Claims Settlement Practices Act, or equivalent, purports to provide a private cause of action;

(19) a plan summary which includes all information regarding the plan as reasonably required by the Commissioner;

(20) the statement described in subsection (c) of this section regarding the information and documents submitted as part of or with respect to a plan which are confidential; and

(21) any other information the Commissioner may reasonably require with respect to the plan in the exercise of his or her discretion.

(c) The plan shall include a statement of the information and documentation included in the plan that the assuming company or the transferring insurer may request be given confidential treatment, which in all cases shall include all information identifying policyholders and reinsurance counterparties and which may include any information that qualifies as a trade secret or other confidential research, development, or commercial information of the transferring insurer or the assuming company. The Commissioner, subject to the exercise of his or her reasonable discretion, shall determine whether the information designated in such statement qualifies for confidential treatment and therefore shall be exempt from public inspection and copying under the Public Records Act. Any information qualifying for confidential treatment shall not be subject to subpoena and shall not be made public by the Commissioner or by any other person; provided, however, the Commissioner may in his or her discretion grant access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country, to public officers of a foreign or alien financial regulatory authority, or to state or federal law enforcement officers pursuant to a validly issued subpoena or search warrant; provided that such officers receiving the information agree in writing to hold it in a manner consistent with this section.



(d) Within 10 business days of the date the application is filed and the fee payable under subsection (a) of this section is paid in full, the Commissioner shall notify the assuming company whether the plan is complete. In his or her discretion, the Commissioner may extend the 10-business-day application review period for an additional 10 business days. With the written consent of the assuming company, the application review period may be extended beyond 20 business days.

(e) Upon submission of a plan, the assuming company shall have a continuing obligation to notify the Commissioner promptly and in a full and accurate manner of any material change to information in the plan.

(f) If the Commissioner notifies the assuming company that the plan is not complete, the Commissioner shall specify any modifications, supplements, or amendments to the plan that are required, and any additional information or documentation with respect to the plan that must be provided to the Commissioner before the Commissioner issues the notice referenced in subsection (d) of this section.

(g) If the Commissioner notifies the assuming company that the plan is complete, the Commissioner shall set a date, time, and place for a hearing on the plan as required under subsection (l) of this section.

(h) Within 30 days of the date the Commissioner notifies the assuming company under subsection (g) of this section that the plan is complete, the assuming company shall cause notice to be provided, in the form and manner specified in the plan, to all policyholders and reinsurance counterparties listed in the plan. The notice shall:

(1) comply with the plan and the provisions of 3 V.S.A. § 809(b);

(2) include the plan summary;

(3) describe the effect of the plan and the transfer on each policyholder and reinsurance counterparty and on his or her respective policy or reinsurance agreement, as applicable;

(4) state the right of each policyholder or inward reinsurance counterparty to:

(A) accept or object to the plan, together with a description of the means by which a policyholder or inward reinsurance counterparty may expressly accept or object to the plan and the effect of such acceptance or objection;

(B) file written comments on the plan with the Commissioner; and

(C) appear and present evidence on the plan at the hearing;

(5) describe the terms and conditions under which a policyholder or inward reinsurance counterparty shall be deemed to have accepted the plan;

(6) specify the date, time, and place of the hearing on the plan;

(7) include all other information reasonably required by the Commissioner; and

(8) be published in two newspapers of general nationwide circulation on two separate occasions, as determined by the Commissioner.

(i) During the comment period:

(1) any party may file written comments on the plan with the Commissioner;

(2) any policyholder or inward reinsurance counterparty may, by delivery of such notice in accordance with the terms and conditions of the plan and prior to the expiration of the comment period, provide an express written notice that he or she accepts or objects to the plan; and

(3) the assuming company shall file with the Commissioner such additional documentation and information regarding the plan as the Commissioner may reasonably require.

(j) In the event that, prior to the expiration of the comment period, any policyholder or inward reinsurance counterparty provides express written notice that he or she objects to the plan and specifies the policy or agreement with respect to which such objection is made, the assuming company shall, not later than 15 days after the end of the comment period, submit to the Commissioner either:

(1) an amended list of policies and reinsurance agreements in the plan, excluding such policyholder or inward reinsurance counterparty and its respective policy or inward reinsurance agreement from the plan; or

(2) an express written notice from such policyholder or inward reinsurance counterparty accepting the plan and consenting to the transfer having the full force and effect of a statutory novation of its respective policy or reinsurance agreement, as applicable, and withdrawing and rescinding its prior notice of objection.

(k) Any policyholder or inward reinsurance counterparty that, prior to the expiration of the comment period, has not provided express written notice objecting to the plan shall be deemed to have accepted the plan and the transfer shall have the full force and effect of a statutory novation of his or her respective policy or inward reinsurance agreement, as applicable.

(l) Notwithstanding any provision of this chapter to the contrary, if a policy

or inward reinsurance agreement contains a provision prohibiting the transfer of the policy or inward reinsurance agreement without the consent of the policyholder or inward reinsurance counterparty, then such policy or inward reinsurance agreement shall not be transferred under this chapter unless the applicable policyholder or inward reinsurance counterparty provides written consent to the proposed transfer.

(m) The hearing on the plan shall be held not later than 60 days after the end of the comment period. In his or her discretion, the Commissioner may postpone the hearing for an additional 10 days. With the written consent of the assuming company, the hearing may be postponed beyond 70 days. Each person participating in the hearing shall bear his or her own costs and attorney's fees.

#### § 7113. PLAN REVIEW

(a) The Commissioner may retain an actuary to conduct an actuarial study quantifying the liabilities under insurance policies and reinsurance agreements to be transferred to the assuming company under the plan and is authorized to retain any other legal, financial, and examination services from outside the Department necessary to assist in plan review.

(b) In reviewing the plan, the Commissioner shall take into account all written comments filed with respect to the plan, all evidence taken at the hearing, and any other factors the Commissioner reasonably deems relevant with respect to the plan. In all cases, the Commissioner shall make findings with respect to each of the following:

(1) the solvency of the assuming company before and after the implementation of the proposed plan;

(2) the adequacy of the assuming company's proposals described in the statement required under subdivision 7112(b)(16) of this chapter;

(3) the adequacy of the assuming company's consent to jurisdiction required under subdivision 7112(b)(17) of this chapter;

(4) the ability of the assuming company to comply with all requirements of the policies and inward reinsurance agreements, including the capacity of the assuming company regarding the administration of claims in process on or after the effective date of the transfer;

(5) whether any outward reinsurance agreement relating to any policy or policies in the closed block will be adversely effected by the transfer;

(6) whether the plan materially adversely affects the interests of any party or outward reinsurance counterparty or the interests of any policyholder or inward reinsurance counterparty who has accepted or been deemed to have

accepted the plan;

(7) whether policyholders or inward reinsurance counterparties objecting to the plan and not withdrawing such objections, together with their respective insurance policies and inward reinsurance agreements, have been excluded from the plan as required under subsections 7112(j) and (l) of this chapter; and

(8) the fairness of the plan to all parties.

#### § 7114. ORDER

(a) Within 30 days of the date the hearing is held on the plan, the Commissioner shall issue an order setting forth the amount of fees payable by the assuming company under subdivision 7116(a)(2) of this chapter, payable not later than 14 days after the date of such order. Upon receipt of such payment, the Commissioner shall within five days issue an order approving or disapproving the plan in whole or in part. Whenever it is not practicable to issue an order within 30 days, the Commissioner may extend such time up to an additional 30 days. If the order approves the plan, the order shall:

(1) include the terms and conditions of the Commissioner's oversight with regard to ongoing oversight of the operations, management, and solvency relating to the closed block and any specific standards that the assuming company will be required to comply with, including standards relating to:

(A) material transactions with affiliates;

(B) adequacy of surplus; and

(C) dividends and other distributions, including limitations on dividends;

(2) set forth the fee payable by the assuming company under subsection 7116(b) of this chapter, which fee shall be payable not later than 14 days after the date of such order;

(3) not be effective until such time as the fees described in this subsection have been paid in full.

(b) The Commissioner shall not approve a plan unless the Commissioner finds that the assuming company has:

(1) sufficient assets to meet its liabilities;

(2) sufficient procedures in place for the handling of claims;

(3) consented to sufficient regulatory oversight by the Department; and

(4) excluded from the plan any policy or agreement with respect to

which a policyholder or inward reinsurance agreement counterparty has objected to the proposed transfer under the plan, as required under subsections 7112(j) and (l) of this chapter.

(c) An order issued under subsection (a) of this section approving the plan shall have the full force and effect of a statutory novation with respect to all policyholders and reinsurance counterparties and their respective policies and reinsurance agreements under the plan and shall provide that the transferring insurer shall have no further rights, obligations, or liabilities with respect to such policies and reinsurance agreements, and that the assuming company shall have all such rights, obligations, and liabilities as if it, instead of the transferring insurer, were the original party to such policies and reinsurance agreements.

(d) The Commissioner may issue any other orders he or she reasonably deems necessary to fully implement an order issued under subsection (a) of this section.

(e) No order issued under subsection (a) or (d) of this section shall be construed to modify or amend the terms of a policy or reinsurance agreement, other than with respect to matters specifically subject to modification or amendment under this chapter.

(f) If a party objects to a plan, the Commissioner may not approve the plan with respect to such party unless the Commissioner determines that the plan:

- (1) does not materially adversely affect the objecting party; and
- (2) otherwise complies with the requirements of this chapter.

(g) At any time before the Commissioner issues the order described in subsection (a) of this section, the assuming company may file an amendment to the plan, subject to the Commissioner's approval.

(h) At any time before the Commissioner issues the order described in subsection (a) of this section, the assuming company may withdraw the plan without prejudice. Upon such withdrawal, however, the Commissioner shall issue an order setting forth the amount of fees payable by the assuming company under subdivision 7116(a)(2) of this chapter, payable not later than 14 days after the date of such order.

#### § 7115. JURISDICTION; APPEALS

(a) The Commissioner shall have exclusive jurisdiction with respect to the review and approval or denial of any plan.

(b) Any party aggrieved by a final order of the Commissioner may appeal that order to the Vermont Supreme Court under 3 V.S.A. § 815.

§ 7116. FEES AND COSTS

(a) To cover the costs of processing and reviewing a plan under this chapter, the assuming company shall pay to the Commissioner the following nonrefundable fees at the times set forth in subsections 7112(a) and 7114(a) of this chapter:

(1) an administrative fee in the amount of \$30,000.00; and

(2) the reasonable costs of persons retained by the Commissioner under subsection 7113(a) of this chapter.

(b) When a plan is approved, the assuming company shall pay the Commissioner a transfer fee equal to the sum of:

(1) one percent of the first \$100,000,000.00 of the gross liabilities transferred, including direct and assumed unpaid claims, losses, and loss adjustment expenses with no reductions for amounts ceded; and

(2) 0.5 percent of the gross liabilities transferred that exceed \$100,000,000.00, including direct and assumed unpaid claims, losses, and loss adjustment expenses with no reductions for amounts ceded.

(c) All fees and payments received by the Department under subsection (a) of this section and 10 percent of the transfer fee under subsection (b) of this section shall be credited to the insurance regulatory and supervision fund under section 80 of this title. The remaining 90 percent of the transfer fee shall be deposited directly into the general fund.

§ 7117. EXAMINATIONS

(a) The Commissioner has the authority to order any assuming company to produce any records, books, and papers in the possession of the assuming company or its affiliates necessary to ascertain the financial condition or legality of conduct of the assuming company.

(b) The Commissioner shall exercise his or her authority under subsection (a) of this section only if he or she has reason to believe the interests of the assuming company's policyholders may be adversely affected under the plan.

(c) The Commissioner may retain, at the assuming company's expense, attorneys, actuaries, accountants, and other experts not otherwise a part of the Commissioner's staff reasonably necessary to assist with an examination under this section. Any persons so retained shall be under the direction and control of the Commissioner and shall act in a purely advisory capacity.

(d) Each assuming company that produces records, books, and papers for examination under this section shall pay the expense of such examination.

§ 7118. APPLICABLE LAWS

(a) Chapter 157 (transfer and novation of insurance contracts) of this title shall not apply to any legacy insurance transfer under this chapter.

(b) In the event of any conflict between a provision of this chapter and any other provision of this title, such provision of this chapter shall control.

(c) A proposed legacy insurance transfer shall be a “contested case” under 3 V.S.A. chapter 25, except that a “party” shall be limited as defined in subdivision 7111(15) of this chapter.

§ 7119. ASSUMING COMPANY; BOARD; PRINCIPAL PLACE OF BUSINESS; REGISTERED AGENT

No assuming company shall be a party to a legacy insurance transfer under this chapter unless:

(1) its board of directors or committee of managers holds at least one meeting each year in this State;

(2) it maintains its principal place of business in this State; and

(3) it appoints a registered agent to accept service of process and to otherwise act on its behalf in this State; provided that whenever such registered agent cannot with reasonable diligence be found at the registered office of the assuming company, the Secretary of State shall be an agent of such assuming company upon whom any process, notice, or demand may be served.

§ 7120. POSTING OF PLANS ON WEBSITE

The Commissioner shall require that all plans filed with the Department are posted on the Department’s website, along with any other notice or other information the Commissioner deems appropriate, excluding any information designated as confidential under subsection 7112(c) of this chapter.

§ 7121. REGULATION OF ASSUMING COMPANIES AND SERVICE PROVIDERS

(a) An assuming company shall be subject to all rules adopted by the Commissioner under this subchapter and also shall be subject to:

(1) chapter 145 (supervision, rehabilitation, and liquidation of insurers) of this title; and

(2) the market conduct and unfair trade practices provisions of chapter 129 (insurance trade practices) of this title, as deemed applicable by the Commissioner.

(b) An assuming company shall not be subject to the requirements of

chapter 101, subchapter 9 (Property and Casualty Insurance Guaranty Association) of this title.

(c) The Commissioner may adopt rules regarding the provision of services to an assuming company by persons other than any director, officer, or employee of the assuming company with respect to the administration of policies and reinsurance agreements assumed by the assuming company under a legacy insurance transfer, including licensing or other requirements.

(d) The Commissioner may adopt any other rules necessary or appropriate to carry out the provisions of this chapter.

#### Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

**( Committee Vote: 9-2-0)**

**Rep. Wilson of Manchester**, for the Committee on **Ways and Means**, recommends the bill ought to pass when amended as recommended by the Committee on **Commerce and Economic Development** and when further amended as follows:

First: In Sec. 3, 8 V.S.A. § 7112(m), by striking out the word “person” and by inserting in lieu thereof “party”

Second: In Sec. 3, 8 V.S.A. § 7113(b), subdivision (6), after the words “outward reinsurance counterparty” by striking out the first instance of the word “or” and by inserting in lieu thereof “, including”

Third: In Sec. 3, 8 V.S.A. § 7113(b), subdivision (7), by striking out the words “objecting to the plan and not withdrawing such objections”

Fourth: In Sec. 3, 8 V.S.A. § 7114(b), by striking out subdivision (4) in its entirety and by inserting in lieu thereof a new subdivision (4) to read as follows:

(4) excluded from the plan any policy or agreement required to be excluded under subsections 7112(j) and (l) of this chapter.

Fifth: In Sec. 3, 8 V.S.A. § 7114, by striking out subsection (f) in its entirety and by inserting in lieu thereof a new subsection (f) to read as follows:

(f) If a policyholder or inward reinsurance counterparty provides express written notice that he or she objects to the plan after the comment period has expired, and provides evidence reasonably satisfactory to the Commissioner that he or she was not provided notice of the plan in the form and manner previously approved by the Commissioner, or if an outward reinsurance counterparty or other party provides express written notice that he or she



objects to a plan, the Commissioner may not approve the plan with respect to such party unless the Commissioner determines that the plan:

- (1) does not materially adversely affect the objecting party; and
- (2) otherwise complies with the requirements of this chapter.

Sixth: In Sec. 3, 8 V.S.A. § 7115(a), after the word “exclusive” by inserting the word “regulatory”

Seventh: In Sec. 3, 8 V.S.A. § 7121, by striking out subsection (a) in its entirety and by inserting in lieu thereof a new subsection (a) to read as follows:

(a) An assuming company shall be subject to all rules adopted by the Commissioner under this chapter and also shall be subject to:

- (1) chapter 145 (supervision, rehabilitation, and liquidation of insurers) of this title;
- (2) the market conduct and unfair trade practices provisions of chapter 129 (insurance trade practices) of this title, as deemed applicable by the Commissioner; and
- (3) in addition to the initial transfer fee required under subsection 7116(b) of this chapter, an annual renewal fee of \$300.00.

**( Committee Vote: 9-0-2)**

## **H. 262**

An act relating to establishing a program for the collection and recycling of paint

**Rep. Ellis of Waterbury**, for the Committee on **Natural Resources and Energy**, recommends the bill be amended by striking 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; and collect, transport, and process postconsumer paint, 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 manage properly 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, including interior or exterior water- and oil-based coatings, primers, sealers, or wood coatings, that are sold in containers of five gallons or less. “Architectural paint” does not mean industrial coatings, original equipment coatings, 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) “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.

(4) “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.

(5) “Municipality” means a city, town, or a village.

(6) “Paint stewardship assessment” means a one-time charge that is:

(A) added to the purchase price of architectural paint sold in Vermont;

(B) passed from the producer to the wholesale purchaser to the retailer and then to a retail consumer; and

(C) necessary to cover the cost of collecting, transporting, and processing the postconsumer paint managed through the statewide program.

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

(8) “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.

(9) "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.

(10) "Retailer" means any person that offers architectural paint for sale at retail in Vermont.

(11) "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.

(12) "Secretary" means the Secretary of Natural Resources.

(13) "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.

(14) "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 March 1, 2014. The plan shall address the following:

(1) Provide a list of participating producers and brands covered by the program.

(2) Provide specific information on the architectural paint products covered under the program, such as interior or exterior water- and oil-based coatings, primers, sealers, or wood coatings.

(3) 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.

(4) 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 use the

existing household hazardous waste collection infrastructure when selecting collection points for postconsumer architectural paint. A paint retailer shall be authorized as a paint collection point of postconsumer architectural paint for a paint stewardship program if the paint retailer volunteers to act as a paint collection point and complies with all applicable laws and regulations.

(5) Provide geographic information modeling to determine the number and distribution of sites for collection of postconsumer architectural paint based on the following criteria:

(A) at least 90 percent of Vermont residents shall have a permanent collection site within a 15-mile radius; and

(B) one additional permanent site will be established for every 10,000 residents of a municipality and additional sites shall be distributed to provide convenient and reasonably equitable access for residents within each municipality, unless otherwise approved by the Secretary.

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

(7) 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.

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

(b) 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 in Vermont. 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.

(c) Beginning no later than July 1, 2014, or three months after approval of the plan for a paint stewardship program required under subsection (a) of this section, whichever occurs later, a producer of architectural paint sold at retail or a stewardship organization of which a producer is a member shall implement the approved plan for a 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.

(e) A plan approved under this section shall provide for collection of postconsumer architectural paint at no cost to the person from whom the architectural paint is collected.

(f) When a plan or amendment to an approved plan is submitted under this section, the Secretary shall make the proposed plan or amendment available for public review and comment for at least 15 days.

(g) A producer or paint stewardship organization shall submit to the Secretary an amendment to an approved plan when there is:

- (1) a change to a paint stewardship assessment under the plan;
- (2) an addition to or removal of a product covered under the program; or
- (3) a revision of the product stewardship organization's goals.

(h) A plan approved by the Secretary under section 6675 of this title shall have a term not to exceed five years, provided that the producer remains in compliance with the requirements of this chapter and the terms of the approved plan.

(i) Upon submission of a plan to the Secretary under this section, a producer or a stewardship organization shall pay the fee required by 3 V.S.A. § 2822(j). Thereafter, the producer or stewardship organization shall pay the fee required by 3 V.S.A. § 2822(j) annually by July 1 of each year.

#### § 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 that architectural paint brand or a stewardship program of which the producer of that architectural paint brand is a member is implementing an approved plan for a paint stewardship program

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 or paint brand is listed on the Agency of Natural Resources' website as a producer or brand participating in an approved plan for a paint stewardship program.

(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 management options for post-consumer paint collected through the paint stewardship program or a brand of paint being sold under the program.

#### § 6675. AGENCY RESPONSIBILITY

(a) Within 90 days of receipt of a plan submitted under section 6673 of this title, the Secretary shall review the plan and make a determination whether or not to approve the plan. The Secretary shall issue a letter of approval for a submitted plan if it provides for the establishment of a paint stewardship program that meets the requirements of subsections 6673(a) and (b) of this title. If the Secretary does not approve a plan, the Secretary shall issue to the paint stewardship organization a letter listing the reasons for the disapproval of the plan. If the Secretary disapproves a plan, a paint stewardship organization intending to sell or continue to sell architectural paint in the State shall submit a new plan within 60 days of receipt of the letter of disapproval.

(b) The Secretary shall review and approve the stewardship assessment proposed by a producer pursuant to subsection 6673(c) of this title. In approving a proposed stewardship assessment, the Secretary shall determine that the assessment is reasonable and the assessment does not exceed the costs of implementing an approved plan.

(c) 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 post-consumer paint, 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 October 15, 2015, 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 at each collection center 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) an independent financial audit of the paint stewardship program implemented by the producer or the stewardship program; and

(5) 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 a trade secret exempt from public inspection and copying under 1 V.S.A. § 317(c)(9), provided that the Secretary may use and disclose such information in summary or aggregated form that does not directly or indirectly identify individual producers, distributors, or retailers. The Secretary 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 trade secret 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) is added to read:

(j) In accordance with subsection (i) of this section, the following fees are established for permits, licenses, certifications, approvals, registrations, orders, and other actions taken by the agency of natural resources.

\* \* \*

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

Sec. 3. AGENCY OF NATURAL RESOURCES REPORT ON PAINT  
STEWARDSHIP ASSESSMENT

On or before March 15, 2014, the Secretary of Natural Resources shall report to the House and Senate Committees on Natural Resources and Energy, the House Committee on Ways and Means, and the Senate Committee on Finance regarding the paint stewardship assessment proposed by architectural paint producers or stewardship organizations under 10 V.S.A. § 6673. The report shall include:

- (1) a summary of the number of paint producers or stewardship organizations submitting plans;
- (2) the paint stewardship assessment proposed in any submitted plan;
- (3) a recommendation from the Secretary as to whether a proposed paint stewardship assessment is adequate or should be modified; and
- (4) a recommendation from the Secretary whether and at what amount to establish a statutory maximum cap on the amount of a paint stewardship assessment.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

**( Committee Vote: 10-0-1)**

**Rep. Komline of Dorset**, for the Committee on **Ways and Means**, recommends the bill ought to pass when amended as recommended by the Committee on **Natural Resources and Energy**.

**(Committee Vote: 10-0-1)**

**S. 159**

An act relating to various amendments to Vermont's land use control law and related statutes

**Rep. McCormack of Burlington**, for the Committee on **Natural Resources and Energy**, recommends that the House propose to the Senate that the bill be amended as follows:

First: In Sec. 1, 10 V.S.A. § 6001, in subdivision (3)(D)(vii), by striking unless the chair of the district commission, after notice and opportunity for



hearing, determines that action has been taken to circumvent the requirements of this chapter, and

Second: By striking Sec. 6 (repeal of 10 V.S.A. § 6001e) in its entirety and inserting in lieu thereof [Deleted.]

Third: In Sec. 14, 10 V.S.A. § 6089, in the last sentence, by striking 6001(3)(D)(vii) and inserting in lieu thereof 6001e

Fourth: In Sec. 21, 10 V.S.A. § 8020(c) and (d), in subsection (d), in the first sentence, after document, by striking and and inserting in lieu thereof or

**(Committee vote: 11-0-0 )**

**(For text see Senate Journal 3/27/2013 )**

**Favorable**

**H. 521**

An act relating to making miscellaneous amendments to education law.

**(Rep. Stuart of Brattleboro will speak for the Committee on Education.)**

**Rep. Manwaring of Wilmington**, for the Committee on **Appropriations**, recommends the bill ought to pass.

**(Committee Vote: 10-0-1)**

**H. 527**

An act relating to approval of the adoption and the codification of the charter of the Town of Northfield

**Rep. Townsend of Randolph**, for the Committee on **Government Operations**, recommends the bill ought to pass.

**( Committee Vote: 11-0-0)**

## **NOTICE CALENDAR**

**Favorable with Amendment**

**H. 512**

An act relating to approval of amendments to the charter of the City of Barre

**Rep. Higley of Lowell**, for the Committee on **Government Operations**, recommends the bill be amended as follows:

amended in Sec. 2, in 24 App. V.S.A. chapter 1, section 407 (appointments), as follows:

First: After “~~and board of aldermen~~”, by striking out “Board of Councilors” and inserting in lieu thereof “City Council”

Second: After “the ~~selectmen~~”, by striking out “selectboard” and inserting in lieu thereof “City Council”

( **Committee Vote: 11-0-0**)

#### **H. 517**

An act relating to approval of the adoption and the codification of the charter of the Town of St. Albans

**Rep. Consejo of Sheldon**, for the Committee on **Government Operations**, recommends the bill be amended as follows:

amended in Sec. 2, 24 App. V.S.A. chapter 150, in § 3 (local option tax), by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) If the Selectboard of the Town of St. Albans by a majority vote recommends, the voters of the Town may, at an annual or special meeting warned for the purpose, by a majority vote of those present and voting, assess any or all of the following:

- (1) a one-percent sales tax;
- (2) a one-percent meals and alcoholic beverages tax;
- (3) a one-percent rooms tax.

( **Committee Vote: 11-0-0**)

#### **Favorable**

#### **H. 529**

An act relating to approval of an amendment to the charter of the Winooski Incorporated School District related to the term of district treasurer

**Rep. Martin of Wolcott**, for the Committee on **Government Operations**, recommends the bill ought to pass.

( **Committee Vote: 10-0-1**)

### S. 3

An act relating to allowing participation in out-of-state contests requiring a fee to enter

**Rep. Savage of Swanton**, for the Committee on **General, Housing and Military Affairs**, recommends that the bill ought to pass in concurrence.

**(Committee Vote: 8-0-0)**

**(For text see Senate Journal 2/6/2013 )**

#### **Public Hearings**

April 18, 2013 - Room 11 - 6:00-8:00 PM - H. 208 Earned Sick Days - House General, Housing and Military Affairs

**April 17, 2013** - Room 11, 5:30-7:30 PM - H. 225, Statewide Policy on Training Requirements for Electronic Control Devices (Tasers) - House Government Operations

#### **For Informational Purposes**

STATE OF VERMONT  
EXECUTIVE DEPARTMENT  
EXECUTIVE ORDER NO. 03- 13

[Governor's Business Advisory Council on Health Care Financing]

WHEREAS, the prosperity of Vermonters depends on business competitiveness and a robust Vermont economy is of the utmost importance

WHEREAS, health care costs in Vermont are rising at an unsustainable rate, and threaten Vermont's prosperity if the health care system is not reformed;

WHEREAS, as set forth in Act 48, Green Mountain Care. Vermont's publicly funded, universal health care system, requires enactment of a law establishing its financing prior to implementation;

WHEREAS, the Governor desires the counsel of private citizens knowledgeable about the needs of Vermont businesses to inform the discussion of how to finance Green Mountain Care.

NOW, THEREFORE, BE IT' RESOLVED that I, Peter Shumlin, by virtue of the authority vested in me as Governor of the State of Vermont, do hereby create the Governor's Business Advisory Council on Health Care Financing.

I. Composition, Appointments, and Process

The Governor's Business Advisory Council on Health (.are Financing shall consist of no less than 10 and no more than 25 members, all of whom shall be appointed by the Governor and serve at his pleasure.

The Council shall meet with-the Governor at least four times annually.

The Governor shall annually appoint one member to serve as Chair and one member to serve as Vice Chair.

The Agency of Administration shall provide administrative support to the Council as requested.

#### H. Charge

The Council shall provide the Governor advice and information on health care financing based on the business experience of its members.

#### I. Effective Date

This Executive Order shall take effect upon signing and shall expire on July 15, 2015.

Dated April 3, 2013

Peter Shumlin Governor  
Executive Order No. 03-1.3