

Senate Calendar

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ACTION CALENDAR

UNFINISHED BUSINESS OF WEDNESDAY, APRIL 24, 2013

Third Reading

S. 165.

An act relating to collective bargaining for deputy state's attorneys.

NEW BUSINESS

Third Reading

H. 2.

An act relating to the Governor's Snowmobile Council.

H. 95.

An act relating to unclaimed life insurance benefits.

H. 105.

An act relating to adult protective services reporting requirements.

H. 205.

An act relating to professions and occupations regulated by the Office of Professional Regulation.

**PROPOSAL OF AMENDMENT TO H. 205 TO BE OFFERED BY
SENATOR SEARS BEFORE THIRD READING**

Senator Sears moves that the Senate propose to the House to amend the bill by adding a new section, to be Sec. 47a, to read:

* * * Barbers and Cosmetologists * * *

Sec. 47a. AMENDMENT TO RULES OF THE BOARD OF BARBERS
AND COSMETOLOGISTS

By March 31, 2014, the Board of Barbers and Cosmetologists (the "Board") shall amend Rule 12.3 of the Board to allow in a shop, including in an immediate work area of a shop, any cat or dog belonging to the owner or to an employee of that shop.

H. 377.

An act relating to neighborhood planning and development for municipalities with designated centers.

H. 513.

An act relating to the Department of Financial Regulation.

H. 533.

An act relating to capital construction and state bonding.

Second Reading

Favorable

H. 169.

An act relating to relieving employers' experience-rating records.

Reported favorably by Senator Galbraith for the Committee on Finance.

(Committee vote: 6-0-1)

(For House amendments, see House Journal of April 2, 2013, page 621.)

Reported favorably by Senator Westman for the Committee on Appropriations.

(Committee vote: 7-0-0)

**PROPOSAL OF AMENDMENT TO H. 169 TO BE OFFERED BY
SENATORS MULLIN, BENNING, FLORY, GALBRAITH, MAZZA,
McALLISTER, SEARS, STARR, SNELLING, AND WESTMAN**

Senators Mullin, Benning, Flory, Galbraith, Mazza, McAllister, Sears, Starr, Snelling, and Westman move that the Senate propose to the House to amend the bill as follows:

First: By striking out Sec. 4 (effective date) in its entirety and by inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. 21 V.S.A. § 1301 is amended to read:

§ 1301. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings unless the context clearly requires otherwise:

* * *

(6)(A)(i) "Employment," subject to the other provisions of this subdivision (6), means service within the jurisdiction of this ~~state~~ State, performed prior to January 1, 1978, which was employment as defined in this subdivision prior to such date and, subject to the other provisions of this subdivision, service performed after December 31, 1977, by an employee, as

defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Services partly within and partly without this ~~state~~ State may by election as hereinbefore provided be treated as if wholly within the jurisdiction of this ~~state~~ State. And whenever an employing unit shall have elected to come under the provisions of a similar act of a state where a part of the services of an employee are performed, the ~~commissioner~~ Commissioner, upon his or her approval of said election as to any such employee, may treat the services covered by said approved election as having been performed wholly without the jurisdiction of this ~~state~~ State.

* * *

(C) The term "employment" shall not include:

* * *

(xxi) Service performed by a direct seller if the individual is in compliance with all the following:

(I) The individual is engaged in:

(aa) the trade or business of selling or soliciting the sale of consumer products, including services or other intangibles, in the home or a location other than in a permanent retail establishment, including whether the sale or solicitation of a sale is to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person; or

(bb) the trade or business of the delivery or distribution of newspapers or shopping news, including any services directly related to such trade or business.

(II) Substantially all the remuneration, whether or not received in cash, for the performance of the services described in subdivision (I) of this subdivision (C)(xxi) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

(III) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee for federal and state tax purposes.

* * *

Second: By adding a Sec. 5 to read as follows:

Sec. 5. EFFECTIVE DATES

This act shall take effect on passage except that Sec. 4 of this act shall take effect on July 1, 2013.

H. 474.

An act relating to amending the membership and charge of the Government Accountability Committee.

Reported favorably by Senator Pollina for the Committee on Government Operations.

(Committee vote: 5-0-0)

(No House amendments.)

H. 525.

An act relating to approval of amendments to the charter of the Town of Stowe.

Reported favorably by Senator French for the Committee on Government Operations.

(Committee vote: 5-0-0)

(No House amendments.)

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.

Reported favorably by Senator McAllister for the Committee on Government Operations.

(Committee vote: 5-0-0)

(No House amendments.)

Favorable with Recommendation of Amendment

S. 55.

An act relating to increasing efficiency in state government finance and lending operations.

Reported favorably with recommendation of amendment by Senator Pollina for the Committee on Government Operations.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. STATE FINANCIAL SERVICES TASK FORCE

(a) Creation of task force. There is created a State Financial and Lending Efficiency Task Force to evaluate state government operations relating to finance and lending, grant-making, investing, and banking.

(b) Membership. The Task Force shall be composed of the following members:

(1) The Secretary of Commerce and Community Development or designee.

(2) The President of the Vermont Community Foundation or designee.

(3) A business entrepreneur with relevant financial services experience, appointed by the Senate President Pro Tempore.

(4) A current officer or executive of a Vermont-based banking institution, appointed by the Speaker of the House of Representatives.

(5) The Vermont State Treasurer or designee.

(6) One member of the Vermont House of Representatives, appointed by the Speaker of the House of Representatives.

(7) One member of the Vermont Senate, appointed by the Senate President Pro Tempore.

(8) The Executive Director of the Vermont Economic Development Authority or designee.

(9) The executive director of a nonprofit with expertise in designing lending and banking services, appointed by the Senate President Pro Tempore.

(10) A municipal employee whose official duties involve local economic development, appointed by the Speaker of the House of Representatives.

(11) The Director of the Gund Institute for Ecological Economics or designee.

(12) An academic economist appointed jointly by the Speaker of the House of Representatives and the Senate President Pro Tempore.

(13) The president of the Vermont Student Assistance Corporation or designee.

(14) The executive director of the Vermont Housing Finance Agency or designee.

(c) Powers and duties.

(1) The Task Force shall study ways to increase efficiency and reduce costs in government financial operations, including:

(A) The number, nature, and scope of lending, loan servicing, investing, grant-making, and related operations performed by the State and its instrumentalities.

(B) The costs and benefits of contracting out banking services, including fees, transaction costs, debt service, lost profit opportunities, opportunities to increase local investing, and administrative savings.

(C) The costs and benefits of consolidating Vermont tax receipts, fees, or other revenues, including impacts on debt service, and on access to capital for Vermont economic development activities, education lending, and other lending activities:

(i) into one or more Vermont-based private banking institutions; or

(ii) into an existing or new public institution.

(D) How a new public institution can work in partnership with Vermont financial institutions:

(i) to increase access to capital for Vermont citizens and businesses; and

(ii) to provide lower cost capital to municipalities to meet infrastructure needs and other expenditures.

(2) For purposes of its study of these issues, the Task Force shall have administrative, policy, and legal support from the legislative Joint Fiscal Office and the Office of Legislative Council.

(d) Report. On or before January 15, 2014, the Task Force shall report to the House and Senate Committees on Government Operations its findings and any recommendations for legislative action.

(e) Reimbursement. For attendance at meetings during adjournment of the General Assembly, legislative members of the Task Force shall be entitled to compensation and reimbursement for expenses as provided in 2 V.S.A. § 406; and other members of the Task Force who are not employees of the State of Vermont shall be reimbursed at the per diem rate set in 32 V.S.A. § 1010(b) plus mileage reimbursement.

(f) Appropriation. The sum of \$5,000.00 is appropriated from the General Fund in fiscal year 2014 to the Department of Finance and Management for per

diem and expenses of the State Financial and Lending Efficiency Task Force under this section.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

Reported favorably by Senator Hartwell for the Committee on Finance when amended as recommended by the Committee on Government Operations.

(Committee vote: 6-0-1)

Reported favorably with recommendation of amendment by Senator Starr for the Committee on Appropriations.

The Committee recommends that the bill be amended as recommended by the Committee on Government Operations, with the following amendments thereto:

First: In Sec. 1, by striking out subsections (e)–(f) in their entirety.

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

Sec. 2. EFFECTIVE DATE; REPEAL

This act shall take effect on passage and shall be repealed on January 16, 2014.

(Committee vote: 7-0-0)

AMENDMENT TO S. 55 TO BE OFFERED BY SENATOR ASHE

Senator Ashe moves that the recommendation of amendment of the Committee on Government Operations, be amended as follows:

First: In Sec. 1, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read:

(b) Membership. The Task Force shall be composed of the following members:

(1) The Vermont State Treasurer, who shall serve as chair.

(2) The Secretary of Commerce and Community Development or designee.

(3) The President of the Vermont Community Foundation or designee.

(4) A business entrepreneur with relevant financial services experience, appointed by the Senate President Pro Tempore.

(5) A current officer or executive of a Vermont-based banking institution, appointed by the Speaker of the House of Representatives.

(6) The Executive Director of the Vermont Economic Development Authority or designee.

(7) The executive director of a nonprofit with expertise in designing lending and banking services, appointed by the Senate President Pro Tempore.

(8) A municipal employee whose official duties involve local economic development, appointed by the Speaker of the House of Representatives.

(9) The Director of the Gund Institute for Ecological Economics or designee.

(10) An academic economist appointed jointly by the Speaker of the House of Representatives and the Senate President Pro Tempore.

(11) The president of the Vermont Student Assistance Corporation or designee.

(12) The executive director of the Vermont Housing Finance Agency or designee.

(13) The executive director of the Vermont Municipal Bond Bank.

(14) A director of a regional economic development corporation appointed by the Senate Committee on Committees.

Second: In Sec. 1, subdivision (c) subsection (1) by adding new subdivisions (E)–(G) to read:

(E) State revenues and cash flow and liquidity requirements of the State and relevant entities or instrumentalities and the potential liquidity impact of potential structural models considered by the Task Force.

(F) Required capital appropriations, if any, or other sources of capital required under potential structural models for start-up and ongoing operations.

(G) Legal issues, constitutional or statutory, compliance with federal and state laws and regulations, and regulatory capital requirements, including:

(i) Requirements of monies paid to the treasury.

(ii) Loans of state money for private purposes.

(iii) Duties of the State Treasurer, Commissioner of Finance and Management, and other relevant state authorities.

(iv) State investment statutes.

(v) Issues arising from use and operation of special funds.

(vi) Regulatory issues for financial institutions under the authority of the Department of Financial Regulation.

Third: In Sec. 1, subsection (c) by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

(2) For purposes of its study of these issues, the Task Force shall have administrative support from the Office of the Treasurer.

Favorable with Proposal of Amendment

H. 99.

An act relating to equal pay.

Reported favorably with recommendation of proposal of amendment by Senator Mullin for the Committee on Economic Development, Housing and General Affairs.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 21 V.S.A. § 495, by striking out subdivision (a)(7)(B) and inserting a new subdivision (a)(7)(B) to read:

(B)(i) No employer may do any of the following:

~~(i)(I)~~ (I) Require, as a condition of employment, that an employee refrain from disclosing the amount of his or her wages or from inquiring about or discussing the wages of other employees.

~~(ii)(II)~~ (II) Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages or to inquire about or discuss the wages of other employees.

~~(iii)~~ (iii) ~~Discharge, formally discipline, or otherwise discriminate against an employee who discloses the amount of his or her wages.~~

(ii) Unless otherwise required by law, an employer may prohibit a human resources manager from disclosing the wages of other employees.

Second: In Sec. 2, 21 V.S.A. § 495, in subsection (h), by adding a sentence at the end of the subsection to read: “Unless otherwise required by law, nothing in this section shall require an employee to disclose his or her wages in response to an inquiry by another employee.”

Third: In Sec. 3, 3 V.S.A. § 345, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read:

(b) A contractor subject to this section shall maintain and make available its books and records at reasonable times and upon notice to the contracting agency and the Attorney General so that either may determine whether the contractor is in compliance with this section.

Fourth: By striking out Sec. 6 in its entirety and inserting in lieu thereof a new Sec. 6 to read:

Sec. 6. 21 V.S.A. § 309 is added to read:

§ 309. FLEXIBLE WORKING ARRANGEMENTS

(a)(1) An employee may request a flexible working arrangement that meets the needs of the employer and employee. The employer shall consider a request using the procedures in subsections (b) and (c) of this section at least twice per calendar year.

(2) As used in this section, “flexible working arrangement” means intermediate or long-term changes in the employee’s regular working arrangements including changes in the number of days or hours worked, changes in the time the employee arrives at or departs from work, work from home, or job-sharing. “Flexible working arrangement” does not include vacation, routine scheduling of shifts, or another form of employee leave.

(b)(1) The employer shall discuss the request for a flexible working arrangement with the employee in good faith. The employer and employee may propose alternative arrangements during the discussion.

(2) The employer shall consider the employee’s request for a flexible working arrangement and whether the request could be granted in a manner that is not inconsistent with its business operations or its legal or contractual obligations.

(3) As used in this section, “inconsistent with business operations” includes:

(A) the burden on an employer of additional costs;

(B) a detrimental effect on aggregate employee morale unrelated to discrimination or other unlawful employment practices;

(C) a detrimental effect on the ability of an employer to meet consumer demand;

(D) an inability to reorganize work among existing staff;

(E) an inability to recruit additional staff;

(F) a detrimental impact on business quality or business performance;

(G) an insufficiency of work during the periods the employee proposes to work; and

(H) planned structural changes to the business.

(c) The employer shall notify the employee of the decision regarding the request. If the request was submitted in writing, the employer shall state any complete or partial denial of the request in writing.

(d) This section shall not diminish any rights under this chapter or pursuant to a collective bargaining agreement. An employer may institute a flexible working arrangement policy that is more generous than is provided by this section.

(e) The Attorney General, a state's attorney, or the Human Rights Commission in the case of state employees may enforce subsections (b) and (c) of this section by restraining prohibited acts, conducting civil investigations, and obtaining assurances of discontinuance in accordance with the procedures established in subsection 495b(a) of this title. An employer subject to a complaint shall have the rights and remedies specified in subsection 495b(a) of this title. An investigation against an employer shall not be a prerequisite for bringing an action. The Civil Division of the Superior Court may award injunctive relief and court costs in any action. There shall be no private right of action to enforce this section.

(f) An employer shall not retaliate against an employee exercising his or her rights under this section. The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this section.

(g) Nothing in this section shall affect any legal rights an employer or employee may have under applicable law to create, terminate, or modify a flexible working arrangement.

Fifth: By striking out Sec. 13 in its entirety and inserting in lieu thereof a new Sec. 13 to read:

Sec. 13. PAID FAMILY LEAVE STUDY COMMITTEE

(a) Creation. There is created a Committee to study the issue of paid family leave in Vermont and to make recommendations regarding whether and how paid family leave may benefit Vermont citizens.

(b) Membership. The Committee shall consist of the following members:

(1) two members of the House of Representatives, who shall not be of the same party, chosen by the Speaker;

(2) two members of the Senate, who shall not be of the same party, chosen by the Committee on Committees;

(3) three representatives from the business community, one appointed by the Speaker and two by the Committee on Committees;

(4) two representatives from labor organizations, one appointed by the Speaker and one by the Committee on Committees;

(5) one representative appointed by the Governor;

(6) the Attorney General or designee;

(7) the Commissioner of Labor or designee;

(8) the Executive Director of the Vermont Commission on Women or designee; and

(9) the Executive Director of the Human Rights Commission or designee.

(c) Duties. The Committee shall examine:

(1) existing paid leave laws and proposed paid leave legislation in other states;

(2) which employees should be eligible for paid leave benefits;

(3) the appropriate level of wage replacement for eligible employees;

(4) the appropriate duration of paid leave benefits;

(5) mechanisms for funding paid leave through employee contributions;

(6) administration of paid leave benefits;

(7) transitioning to a funded paid leave program; and

(8) any other issues relevant to paid leave.

(d) The Committee shall make recommendations including proposed legislation to address paid family leave in Vermont.

(e) The Committee shall convene its first meeting on or before September 1, 2013. The Commissioner of Labor or designee shall be

designated Chair of the Committee and shall convene the first and subsequent meetings. The Committee shall have the administrative assistance of the Department of Labor.

(f) The Committee shall report its findings and recommendations on or before January 15, 2014 to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs.

(g) For participation on the Committee at meetings during the adjournment of the General Assembly, legislative members shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

(h) Other members of the Committee who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their participation shall be entitled to per diem compensation or reimbursement of expenses, or both, pursuant to 32 V.S.A. § 1010.

(i) The Committee shall cease to function upon transmitting its report.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 19, 2013, page 406.)

Reported favorably with recommendation of proposal of amendment by Senator Fox for the Committee on Appropriations.

The Committee recommends that the Senate propose to the House to amend the bill as recommended by the Committee on Economic Development, Housing and General Affairs with the following amendments thereto:

First: In Sec. 13 (Study Committee), subsection (b), by striking out subdivisions (1) and (2) in their entirety and inserting in lieu thereof the following:

(1) One member of the House of Representatives chosen by the Speaker;

(2) One member of the Senate chosen by the Committee on Committees;

Second: In Sec. 13 (Study Committee), at the end of subsection (e) by adding the following: The Committee shall meet not more than five (5) times.

(Committee vote: 7-0-0)

H. 178.

An act relating to anatomical gifts.

Reported favorably with recommendation of proposal of amendment by Senator Ayer for the Committee on Health and Welfare.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 18 V.S.A. § 5227, by inserting a new subsection (c) to read as follows:

(c) If the disposition of the remains of a decedent is determined under subdivision (a)(9) of this section and the funeral director or crematory operator has cremated the remains, the funeral director or crematory operator shall retain the remains for three years, and, if no interested party as provided in subdivisions (a)(1) through (8) of this section claims the decedent's remains after three years, the funeral director or crematory operator shall arrange for the final disposition of the cremated remains consistent with any applicable law and standard funeral practices.

and by relettering the existing subsection (c) to be (d).

Second: In Sec. 4, subsection (b), at the end of subdivision (4), by striking out the word “and” and by inserting new subdivisions (5) and (6) to read:

(5) a licensed funeral director or crematory operator;

(6) a family member of a decedent who made an anatomical gift under 18 V.S.A. chapter 110; and

and by renumbering the existing subdivision (5) to be (7)

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 20, 2013, page 423.)

Reported favorably by Senator Fox for the Committee on Appropriations when amended as recommended by the Committee on Health and Welfare.

(Committee vote: 7-0-0)

Report of Committee of Conference

H. 131.

An act relating to harvesting guidelines and procurement standards.

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon House Bill entitled:

H. 131. An act relating to harvesting guidelines and procurement standards.

Respectfully reports that it has met and recommends that the House accede to the Senate proposal of amendment and that the bill be further amended in Sec. 4, 30 V.S.A. § 248(b)(11), by striking out subdivisions (B) and (C) in their entirety and inserting in lieu thereof new subdivisions (B) and (C) to read:

(B) ~~incorporate commercially available and feasible designs to achieve a reasonable~~ the highest design system efficiency that is commercially available, feasible, and cost-effective for the type and design of the proposed facility; and

(C) comply with harvesting ~~guidelines~~ procedures and procurement standards that ~~are consistent~~ ensure long-term forest health and sustainability. These procedures and standards at a minimum shall be consistent with the guidelines and standards developed by the secretary of natural resources pursuant to 10 V.S.A. § 2750 (harvesting guidelines and procurement standards) when adopted under that statute.

*ROBERT M. HARTWELL
JOHN S. RODGERS
DIANE B. SNELLING*

Committee on the part of the Senate

*JOHN W. MALCOLM
ANTHONY W. KLEIN
WILLIAM P. CANFIELD*

Committee on the part of the House

NOTICE CALENDAR

Second Reading

Favorable with Proposal of Amendment

H. 262.

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

Reported favorably with recommendation of proposal of amendment by Senator Snelling for the Committee on Natural Resources and Energy.

The Committee recommends that the Senate propose to the House to amend the bill 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. PURPOSE

The purpose of this subchapter is to establish an environmentally sound, cost-effective paint stewardship program in the State 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, including reuse, recycling, energy recovery, and disposal. The paint stewardship program will follow the waste management hierarchy for managing and reducing postconsumer paint in the order as follows: reduce consumer generation of postconsumer paint, reuse, recycle, provide for energy recovery, and dispose. The paint stewardship program will provide more opportunities for consumers to manage properly their postconsumer 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 nonprofit corporation or nonprofit organization 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 December 1, 2013. 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. The management of paint under the program shall use management activities that promote 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) The producer or stewardship organization shall submit a budget for the program proposed under subsection (a) of this section, and for any amendment to the plan that would affect the program's costs. The budget 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. Prior to submitting the proposed budget and assessment to the Secretary, the producer or stewardship organization shall provide the budget and assessment to a third-party auditor agreed upon by the Secretary. The third-party auditor shall provide a recommendation as to whether the proposed budget and assessment is cost-effective, reasonable, and limited to covering the cost of the program. 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 30 days.

(g) A producer or paint stewardship organization shall submit to the Secretary for review, in the same manner as required under subsection 6675(a) of this title, 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 category of products 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) In addition to the requirements specified in subsection (a) of this section, a stewardship organization shall notify the Secretary in writing within 30 days of any change to:

(1) the number of collection sites for post-consumer architectural paint identified under this section as part of the plan;

(2) the producers identified under this section as part of the plan;

(3) the brands of architectural paint identified under this section as part of the plan; and

(4) the processors that manage post-consumer architectural paint identified under this section as part of the plan.

(j) 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)(31). Thereafter, the producer or stewardship organization shall pay the fee required by 3 V.S.A. § 2822(j)(31) 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 postconsumer paint collected through the paint stewardship program or a brand of paint being sold under the program.

§ 6675. AGENCY RESPONSIBILITY

(a)(1) 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:

(A) the submitted plan provides for the establishment of a paint stewardship program that meets the requirements of subsections 6673(a); and

(B) the Secretary determines that the plan:

(i) achieves convenient collection for consumers;

(ii) educates the public on proper paint management;

(iii) manages waste paint in a manner that is environmentally safe and promotes reuse and recycling; and

(iv) is cost-effective.

(2) If the Secretary does not approve a submitted 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)(1) The Secretary shall review and approve the stewardship assessment proposed by a producer pursuant to subsection 6673(b) of this title. The Secretary shall only approve the program budget and any assessment if the applicant has demonstrated that the costs of the program and any proposed assessment are reasonable and the assessment does not exceed the costs of implementing an approved plan.

(2) If an amended plan is submitted under subsection 6673(g) of this title that proposes to change the cost of the program or proposes to change the paint stewardship assessment under the plan, the disapproval of any proposed new assessment or the failure of an approved new assessment to cover the total costs of the program shall not relieve a producer or stewardship organization of its obligation to continue to implement the approved plan under the originally approved assessment.

(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) A producer or an organization of producers that manages postconsumer 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 relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce.

(b) The activity authorized and the immunity afforded under subsection (a) of this section shall not apply to any agreement among producers or paint stewardship organizations:

(1) establishing or affecting the price of paint, except for the paint stewardship assessment approved under subsection 6675(b) of this title;

(2) setting or limiting the output or production of paint;

(3) setting or limiting the volume of paint sold in a geographic area;

(4) restricting the geographic area where paint will be sold; or

(5) restricting the customers to whom paint will be sold or the volume of paint that will be sold.

§ 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;

(5) the prior year's actual direct and indirect costs for each program element and the administrative and overhead costs of administering the approved 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 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.

§ 6680. UNIVERSAL WASTE DESIGNATION FOR WASTE ARCHITECTURAL PAINT

(a) The requirements of Subchapter 9 of the Vermont Hazardous Waste Management Rules apply to persons managing waste architectural paint provided that:

(1) the waste architectural paint is collected as a part of a stewardship plan approved under this subchapter; and

(2) the collected waste architectural paint is or includes paint which is a hazardous waste as defined and regulated by the Vermont Hazardous Waste Management Rules.

(b) Architectural paint becomes a waste on the date that the handler decides to discard it (i.e., when architectural paint is initially collected for the purpose of later being disposed).

(c) Small and large quantity handlers must manage universal waste architectural paint in a manner that prevents releases of any universal waste or component of the universal waste to the environment. Universal waste architectural paint shall be managed in one of the following manners:

(1) A container that remains closed, structurally sound, and compatible with the architectural paint, and the container lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of subdivision (1) of this subsection, provided that the unacceptable container is overpacked in a container that meets the requirements of subdivision (1).

(d) Containers holding universal waste architectural paint shall be clearly labeled "Universal Waste Paint," "Used Paint," or "Waste Paint."

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 January 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: 5-0-0)

(For House amendments, see House Journal for April 9, 2013, page 705.)

CONCURRENT RESOLUTIONS FOR ACTION

H.C.R. 116-122 (For text of Resolutions, see Addendum to House Calendar for April 25, 2013)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Patrick Berry of Middlebury – Commissioner, Fish and Wildlife – By Sen. Hartwell for the Committee on Natural Resources and Energy. (3/27/13)

Robert Ide of Peacham – Commissioner, Department of Motor Vehicles – By Sen. Kitchel for the Committee on Transportation. (4/18/13)

Brian Searles of Burlington – Secretary of Transportation – By Sen. Mazza for the Committee on Transportation. (4/19/13)

Keith Flynn of Troy – Commissioner of Public Safety – By Sen. Flory for the Committee on Transportation. (4/23/13)

Cory Richardson of East Montpelier – Member of the Vermont State Housing Authority – By Sen. Cummings for the Committee on Economic Development, Housing and General Affairs. (4/26/13)

REPORTS ON FILE

Reports 2013

Pursuant to the provisions of 2 V.S.A. §20(c), one (1) hard copy of the following reports is on file in the office of the Secretary of the Senate. Effective January 2010, pursuant to Act No. 192, Adj. Sess. (2008) §5.005(g) some reports will automatically be sent by electronic copy only and can be found on the State of Vermont Legislative webpage.

4. Report by Secretary of Administration pursuant to Act 156, Adj. Sess. (2012), Sec. 8 regarding supervisory union size and structure.