

Senate Health and Welfare Committee

Hearing on S. 139, Amendments to Act 188

Testimony of Patrick Parenteau

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This is a summary of the oral testimony I gave. I addressed three discrete issues.

1. **Federal preemption.** The H&W Committee is right to be concerned about the bipartisan bill currently working its way through Congress. Secretary Markowitz has set forth the concerns of the Agency of Natural Resources in a letter dated March 13 to Senator James Inhofe Chair of the Senate Environment and Public Works Committee. The California Attorney General has submitted even more detailed comments on the potential negative effects of the proposed legislation on the ability of states to regulate high priority chemicals. At this point it is impossible to determine what the precise effects will be. That cannot be known until the law has been passed and signed by the President. Only when the final text is known can an assessment be made of its preemptive effect and by then it will be too late for the Vermont legislature to do anything about it. But an even more basic point is that the proposed amendments to Act 188 contained in the committee bill make sense regardless of what happens in Washington. There are two major points I will make about the amendments
2. **The role of the Chemicals of High Concern Working Group.** I strongly support the amendment contained in the committee bill which would change the requirement that the Commissioner of Public Health can only act on the basis of a recommendation of the Working Group to one that would only require consultation with the WG. As I explained, based on my experience as Commissioner of the Department of Environmental Conservation, advisory bodies play a key role in helping state agencies craft appropriate regulations but they cannot and should not take the place of the officials who are charged by law with making the final decision on when to take action to protect the public health especially where children may be at risk from potential exposure to chemicals of high concern. Advisory bodies require considerable administrative support. They require technical support. They take time to get up to speed on the issues. It takes time to work through the issues and try to come to consensus. It takes a quorum to make decisions and that can pose logistical challenges. Consensus is not always possible. In the end someone has to make a decision based on the best available evidence not necessarily the best evidence. And that someone is the state official charged by law with carrying out the commands of the legislature. Accountability is important. Committees are not accountable. Individuals are. I am not aware of any state law that requires the approval of an advisory body like the WG. It is not necessary to go that far to accomplish the purpose of insuring that stakeholders have a voice in the process.
3. **The standard authorizing the Commissioner to take preventive action.** I also strongly support the amendment that would change the requirement in the existing law that there must be a

“probability” of harm to children before the Commissioner can act to a standard that triggers action whether there is the “potential for exposure to chemicals of high concern.” In law the probability standard means “more likely than not.” In court this would require proof by a “preponderance of evidence.” This may be an appropriate standard for deciding questions of liability for harm done by a chemical after the fact. But it is not the standard that should be used to decide when action is needed to prevent the harm in the first place. Where public health is at stake the law should take a precautionary approach based on the best available science and erring on **the** side of protecting the health of vulnerable children. That is the way virtually all of our environmental and public health laws are written. The precautionary principle is the appropriate standard to incorporate in this law. There is no evidence that Vermont’s Health Commissioners have or would exercise this authority in an arbitrary fashion and there are safeguards in the unlikely event that might happen. The Vermont judiciary can be counted on to police any agency abuses.

In conclusion I support passage of S.139 because it will strengthen Act 188 regardless of what happens in Congress.