

Senate Calendar

WEDNESDAY, MARCH 22, 2017

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ACTION CALENDAR

NEW BUSINESS

Third Reading

S. 61.

An act relating to offenders with mental illness.

Second Reading

Favorable with Recommendation of Amendment

S. 32.

An act relating to climate change considerations in State procurement.

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

The Committee recommends that the bill be amended in Sec. 1, 3 V.S.A. § 347(b), by striking out “, including whether to give preference to resident bidders of the State or products raised or manufactured in the State”

(Committee vote: 4-1-0)

S. 72.

An act relating to requiring telemarketers to provide accurate caller identification information.

Reported favorably with recommendation of amendment by Senator Campion for the Committee on Finance.

The Committee recommends that the bill be amended in Sec. 1, in 9 V.S.A. chapter 63, subchapter 1, in § 2464a(b), by striking out subdivision (3) in its entirety and inserting in lieu thereof a new subdivision (3) to read:

(3) No person, telephone solicitor, or telemarketer engaged in a telephone solicitation shall cause a caller identification service to transmit misleading, inaccurate, or false caller identification information, provided that the person, telephone solicitor, or telemarketer may substitute the name and telephone number of the person on whose behalf he or she places the call.

(Committee vote: 6-0-1)

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

The Committee recommends that the bill be amended in Sec. 1, in 9 V.S.A. § 2464a(b), by striking out subdivision (3) in its entirety and inserting in lieu thereof a new subdivision (3) to read:

(3)(A) A telephone solicitor engaged in a telephone solicitation shall transmit, or cause to be transmitted, to a caller identification service in use by a consumer:

(i) the telephone solicitor's telephone number; and

(ii) if made available by the telephone solicitor's carrier, the telephone solicitor's name.

(B) Notwithstanding subdivision (3)(A) of this subsection, a telephone solicitor may substitute for its own name and number the name and the number, which is answered during regular business hours, of the person on whose behalf the telephone solicitor makes the telephone solicitation.

(Committee vote: 5-0-0)

S. 75.

An act relating to aquatic nuisance species control.

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

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. 10 V.S.A. § 1452 is amended to read:

§ 1452. DEFINITIONS

As used in this chapter:

(1) "Agency" means the ~~agency of natural resources~~ Agency of Natural Resources.

(2) "Aquatic nuisance" means undesirable or excessive substances or populations that interfere with the recreational potential or aquatic habitat of a body of water, including rooted aquatic plants and animal and algal populations. ~~Aquatic nuisances include rooted aquatic plants and animal and algal populations~~ zebra mussels (*Dreissena polymorpha*), quagga mussels (*Dreissena bugensis*), Asian clam (*Corbicula fluminea*), fishhook waterflea (*Cercopagis pengoi*), rusty crayfish (*Orconectes rusticus*), spiny waterflea (*Bythotrephes longimanus*), or other species identified by the Secretary by rule.

(3) “Aquatic plant” means a plant that naturally grows in water, saturated soils, or seasonally saturated soils, including algae and submerged, floating-leafed, floating, or emergent plants.

(4) “Biological controls” ~~mean~~ means multi-cellular organisms.

(5) “Board” ~~means the water resources panel of the natural resources board.~~ [Repealed.]

* * *

(9) “Secretary” means the ~~secretary of natural resources~~ Secretary of Natural Resources.

(10) “Water resources” means the waters and the values inherent or potential in waters and their uses.

(11) “Waters” means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, and springs and all bodies of surface waters, artificial or natural, ~~which~~ that are contained within, flow through, or border upon the state State or any portion of it.

(12) “Baitbox” means a receptacle, not exceeding 25 cubic feet in volume, used for holding or keeping baitfish alive for personal use.

(13) “Live well” means a well for keeping fish alive in a vessel by allowing water to circulate through the well.

(14) “Ballast tank” means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(15) “Bilge area” means the area in a vessel below a height of four inches measured from the lowest point in the vessel where water can collect when the vessel is in its static floating position.

(16) “Decontaminate” means a process used to kill, destroy, or remove aquatic nuisance species and other organic material that may be present in or on a vessel, motor vehicle transporting the vessel, trailer, or other equipment. Decontamination may include washing a vessel, motor vehicle transporting the vessel, trailer, or other equipment with water at a sufficient temperature to kill or remove aquatic nuisance species.

(17) “Lake association” means a lake protection organization registered with the Secretary of Natural Resources on a form provided by the Secretary.

(18) “Marina” means a property, other than a public access or landing area regulated under section 4145 of this title, on the shoreline of a water of the State that contains a dock, basin, or ramp that, at no cost or for remuneration, provides to the public secure moorings or access to the water.

(19) “Motor vehicle” means any vehicle propelled or drawn by power other than muscular power, including a snowmobile, motorcycle, all-terrain vehicle, farm tractor, or tracked vehicle.

(20) “Personal watercraft” shall have the same meaning as set forth in 23 V.S.A. § 3302.

(21) “Transport” means to move motor vehicles, vessels, personal watercraft, seaplanes, trailers, and other equipment over land, but does not include movement within the immediate area required for loading and preparing vehicles, vessels, personal watercraft, seaplanes, trailers, and other equipment prior to movement into or away from a body of water.

(22) “Vessel” means every description of watercraft used or capable of being used as a means of transportation on water, including personal watercraft.

Sec. 2. 10 V.S.A. § 1454 is amended to read:

§ 1454. TRANSPORT OF AQUATIC PLANTS AND AQUATIC NUISANCE SPECIES

(a) ~~No~~ Transport of aquatic nuisance species; prohibition. A person shall not transport an aquatic plant ~~or~~, aquatic plant part, zebra mussels (*Dreissena polymorpha*), quagga mussels (*Dreissena bugensis*), or other aquatic nuisance species identified by the Secretary by rule to or from any Vermont waters on the outside of a vehicle, boat, personal watercraft, trailer, or other equipment water. This section shall not restrict:

(1) proper harvesting or other control activities undertaken for the purpose of eliminating or controlling the growth or propagation of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species; or

(2) proper collection of water samples for the purpose of water quality monitoring.

(b) Inspection of vessel entering or leaving water. A person transporting a vessel to or from a water shall, prior to launching the vessel and upon leaving a water, inspect the vessel, the motor vehicle transporting the vessel, the trailer, and other equipment, and shall remove any aquatic plants, aquatic plant parts, and aquatic nuisance species.

(c) Aquatic nuisance species inspection station. A person transporting a vessel to or from a water shall, prior to launching the vessel and upon leaving a water, have the vessel, the motor vehicle transporting the vessel, the trailer, and other equipment inspected and decontaminated at an approved aquatic nuisance species inspection station if:

(1) an aquatic nuisance species inspection station is maintained at the

area where the vessel is entering or leaving the water;

(2) the aquatic nuisance species inspection station is open; and

(3) an individual operating the aquatic nuisance species inspection station identifies the vessel for inspection or decontamination.

(d) Draining of vessel; transport.

(1) When leaving a water of the State and prior to transport away from the area where the vessel left the water, a person operating a vessel shall drain the vessel, vehicle transporting the vessel, trailer, and other equipment of water, including water in live wells, ballast tanks, and bilge areas. A person is not required to drain baitboxes or vehicles and trailers specifically designed and used for water hauling. A person operating a vessel shall drain the vessel, vehicle transporting the vessel, trailer, and other equipment of water in a manner to avoid a discharge to the water of the State. This subdivision does not authorize a person to discharge waste, as defined in section 1251 of this title, to waters of the State. A person shall dispose of waste in the manner required by law.

(2) When a person transports a vessel, the person shall remove or open the drain plugs, bailers, valves, and other devices that are used to control the draining of water from ballast tanks, bilge areas, and live wells of the vessel, vehicle transporting the vessel, trailer, and other equipment, except for vehicles and trailers specifically designed and used for water hauling and emergency response vehicles and equipment.

(e) Exceptions to transport prohibition. The Secretary may ~~grant exceptions to persons to~~ allow the transport of aquatic plants, ~~zebra mussels, quagga mussels,~~ aquatic plant parts, or other aquatic nuisance species for scientific ~~or~~ purposes, educational purposes, or other purposes specifically authorized by the Secretary. ~~When granting exceptions allowing the transport of aquatic plants, aquatic plant parts, or aquatic nuisance species under this subsection,~~ the Secretary shall take into consideration both the value of the scientific or educational purpose and the risk to Vermont surface waters posed by the transport and ultimate use of the specimens. A letter from the Secretary authorizing the transport must accompany the specimens during transport.

(e)(f) Signage; access areas and marinas. Signage shall be posted at all public access and landing areas regulated under section 4145 of this title and at all marinas regarding the requirements of subsections (a)-(d) of this section relating to aquatic nuisance transport and inspection and decontamination of vessels, motor vehicles transporting vessels, trailers, or other equipment. The Secretary shall provide marinas with the signs required under this section.

(g) Violations. A Pursuant to 4 V.S.A. § 1102, a violation of this section

may be brought in the Judicial Bureau by any law enforcement officer, as that term is defined in 23 V.S.A. § 3302(2), or, pursuant to section 8007 or 8008 of this title, a violation of this section may be brought in the Environmental Division of the Superior Court. ~~When a violation is brought by an enforcement officer other than an environmental enforcement officer employed by the Agency of Natural Resources, the enforcement officer shall submit to the Secretary a copy of the citation for purposes of compliance with the public participation requirements of section 8020 of this title. If a violation is brought in one body, the same violation shall not be brought in the other body.~~

Sec. 3. 10 V.S.A. § 1455 is amended to read:

§ 1455. AQUATIC NUISANCE CONTROL PERMIT

(a) ~~No~~ A person ~~may~~ shall not use pesticides, chemicals other than pesticides, biological controls, bottom barriers, structural barriers, structural controls, or powered mechanical devices in waters of the State to control nuisance aquatic plants, insects, or other aquatic nuisances, including lamprey, unless that person has been issued a permit by the ~~secretary~~ Secretary.

(b) Notwithstanding other requirements set forth in chapter 47 of this title to the contrary, the Secretary may issue permits under this section.

(c) Persons desiring a permit under this section shall make application to the Secretary on a form prescribed by the Secretary.

(d) The Secretary shall issue a permit for the use of pesticides in waters of the State for the control of nuisance aquatic plants, insects, or other aquatic life, including lamprey, when the applicant demonstrates and the Secretary finds:

- (1) there is no reasonable nonchemical alternative available;
- (2) there is acceptable risk to the nontarget environment;
- (3) there is negligible risk to public health;

(4) a long-range management plan has been developed ~~which~~ that incorporates a schedule of pesticide minimization; and

(5) there is a public benefit to be achieved from the application of a pesticide or, in the case of a pond located entirely on a landowner's property, there is no undue adverse effect upon the public good.

(e) A landowner applying to use a pesticide on a pond located entirely on the landowner's property is exempt from the requirement of subdivision (d)(4) of this section.

(f) The Secretary shall issue a permit for the control of aquatic nuisances

by biological controls, bottom barriers, structural barriers, structural controls, powered mechanical devices, or chemicals other than pesticides when the Secretary finds:

- (1) there is acceptable risk to the nontarget environment;
- (2) there is negligible risk to public health; and
- (3) there is either benefit to or no undue adverse effect upon the public good.

(g) The use of bottom barriers, structural barriers, structural controls, powered mechanical devices, and copper compounds as an algaecide in waters with a surface area of one acre or less located entirely on a person's property and with an outlet where the flow can be controlled for at least three days is exempt from the permit requirements of this section.

* * *

(i) An aquatic nuisance control permit issued under this section shall:

(1) ~~specify~~ Specify in writing the Secretary's findings under subsection (d) or (f) of this section;

(2) ~~specify~~ Specify the location, manner, nature, and frequency of the permitted activity;

(3) ~~contain~~ Contain additional conditions, requirements, and restrictions as the Secretary deems necessary to preserve and protect the quality of the receiving waters, to protect the public health, and to minimize the impact on the nontarget environment. ~~Such conditions~~ Conditions may include requirements concerning recording, reporting, and monitoring;

(4) ~~be~~ Be valid for the period of time specified in the permit, not to exceed five years for chemical control, and not to exceed ten years for nonchemical control.

(j) An aquatic nuisance control permit issued under this chapter may be renewed from time to time upon application to the Secretary. The process of permit renewal will be consistent with the requirements of this section.

* * *

(l) No permit shall be required under this section for mosquito control activities that are regulated by the Agency of Agriculture, Food and Markets, provided that:

(1) Prior to authorizing the use of larvicides or pupacides in waters of the State, the Secretary of Agriculture, Food and Markets shall designate acceptable control products and methods for their use and issue permits

pursuant to 6 V.S.A. § 1083(a)(5); and

(2) [Repealed.]

(m) The Secretary may issue general permits for the use of nonchemical aquatic nuisance control activities, provided that the Secretary makes the findings required in subsection (f) of this section. A general permit issued under this subsection is not required to specify the exact location or the frequency of the permitted activity.

(n) The Secretary shall not require a permit under this section for the use of up to 15 bottom barriers on an inland lake to control aquatic nuisance species, provided that:

(1) the bottom barriers are managed and controlled by a lake association;

(2) each bottom barrier shall be of no greater size than 14 feet by 14 feet;

(3) the bottom barriers are not installed: in an area where they create a hazard to public health; or in area where they unreasonably impede boating or navigation;

(4) the lake association notifies the Secretary of the use of the barriers within three days of placement in a water; and

(5) the Secretary may require the removal of the bottom barriers upon a determination that the barriers pose a threat to a threatened or endangered species.

Sec. 4. 10 V.S.A. § 1461 is added to read:

§ 1461. AQUATIC NUISANCE INSPECTION STATIONS; TRAINING PROGRAM

(a) The Secretary of Natural Resources shall establish a training program regarding how to conduct inspection of vessels, motor vehicles, trailers, and other equipment for the presence of aquatic plants, aquatic plant parts, and aquatic nuisance species. The training program shall include online training, recorded material, training manuals, or other material that allows a person to complete training remotely.

(b) The Secretary of Natural Resources shall establish a training program regarding how to decontaminate vessels, motor vehicles, trailers, and other equipment to prevent the spread of aquatic plants, aquatic plant parts, and aquatic nuisance species.

(c) In order to establish an aquatic nuisance species inspection station for the purposes of the vessel inspection and decontamination requirements of

subsection 1454(c) of this title, a lake association, municipality, or the Commissioner of Environmental Conservation shall apply to the Secretary for approval. As a condition of approval, a representative of an lake association or municipality shall complete the training programs established under subsections (a) and (b) of this section. A lake association or municipality seeking to operate an aquatic nuisance species inspection station shall designate a representative to complete the training programs established under subsections (a) and (b) of this section.

(d) A lake association or municipality approved to operate an aquatic nuisance species inspection station under subsection (b) of this section shall provide persons who will operate the aquatic nuisance species inspection station with training materials furnished by the Secretary regarding how to conduct inspection of vessels, motor vehicles, trailers, and other equipment for the presence of aquatic plants, aquatic plant parts, and aquatic nuisance species.

Sec. 5. 4 V.S.A. § 1102(b) is amended to read:

(b) The Judicial Bureau shall have jurisdiction of the following matters:

* * *

(27) Violations of 10 V.S.A. § 1454(a)-(d) relating to the transport of aquatic plants and aquatic nuisance species.

Sec. 6. 23 V.S.A. § 3317(b) is amended to read:

(b) A person who violates a requirement under 10 V.S.A. § 1454 shall be subject to enforcement under 10 V.S.A. ~~chapter 201~~ § 8007 or 8008 or a fine under this chapter, provided that the person shall be assessed a penalty or fine of not more than \$1,000.00 for each violation. A person who violates a rule adopted under 10 V.S.A. § 1424 shall be subject to enforcement under 10 V.S.A. chapter 201, provided that the person shall be assessed a penalty of not more than \$300.00 for each violation. A person who violates any of the following sections of this title shall be subject to a penalty of not more than \$300.00 for each violation:

§ 3306(e) marine toilet

§ 3312a operation of personal watercraft

Sec. 7. AQUATIC NUISANCE CONTROL GENERAL PERMIT

On or before February 1, 2018, the Secretary of Natural Resources shall issue a general permit for aquatic nuisance control activities. The general permit shall allow for nonchemical aquatic nuisance control activities and any other management or control measures that the Secretary considers appropriate and for which the Secretary has general permit authority under 10 V.S.A.

chapter 50. The general permit shall authorize rapid response activities that an individual or lake association may take to control aquatic nuisance species. The provisions of 10 V.S.A. § 1456(a) and (c)–(f) related to the rapid response permits for aquatic nuisance control shall apply to the rapid response activities authorized in the permit required under this section.

Sec. 8. ANR PUBLIC OUTREACH REGARDING AQUATIC NUISANCE SPECIES TRANSPORT AND INSPECTION REQUIREMENTS

Beginning on July 1, 2017, the Secretary of Natural Resources shall provide education and outreach to the public regarding the transport and inspection requirements in 10 V.S.A chapter 50 for the reduction of the spread of aquatic nuisance species. The education and outreach shall include a notification in the Department of Fish and Wildlife guides to hunting and fishing in Vermont regarding the aquatic nuisance transport prohibition and the requirements to inspect vessels for aquatic nuisance species when entering or leaving a water.

Sec. 9. ANR REPORT; AQUATIC NUISANCE TRANSPORT; LAKE CHAMPLAIN

(a) On or before November 15, 2017, the Secretary of Natural Resources shall submit to the Senate Committee on Natural Resources and Energy and the House Committee on Natural Resources, Fish and Wildlife a report regarding how to control the transport of aquatic nuisances to and from Lake Champlain. The report shall include:

(1) an inventory of the boat decontamination facilities or other aquatic nuisance control measures currently employed at boat launches, marinas, or other areas on Lake Champlain;

(2) a summary of whether the current measures to control aquatic nuisance transport to and from Lake Champlain are adequate;

(3) a proposal for siting boat decontamination facilities or other comparable aquatic nuisance control measures at boat launches, marinas, or other areas on Lake Champlain, including where proposed facilities or other aquatic nuisance control measures would be located;

(4) a summary of how proposed boat decontamination facilities or comparable aquatic nuisance control measures would be staffed, including whether staff would possess sufficient authority to inspect a vessel entering or leaving Lake Champlain in order to require boat decontamination or another aquatic nuisance control measure;

(5) an estimate of the cost to implement proposed boat decontamination facilities or other aquatic nuisance control measures on Lake Champlain; and

(6) a recommendation of whether and how vessels leaving Lake

Champlain should be quarantined from entering other waters of the State for a defined time period or until a specific condition is satisfied;

(7) draft legislation that the Secretary determines is necessary to implement any boat decontamination facility or other aquatic nuisance control measure proposed in the report.

(b) As used in this section, “aquatic nuisance” and “vessel” shall have the same meanings as set forth in 10 V.S.A. § 1452.

Sec. 10. REPEAL

10 V.S.A. § 1455(n) (bottom barriers for aquatic nuisance control) shall be repealed on March 1, 2018.

Sec. 11. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

S. 88.

An act relating to increasing the smoking age from 18 to 21 years of age.

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

The Committee recommends that the bill be amended in Sec. 1, findings, by striking out subsection (f) in its entirety and inserting in lieu thereof a new subsection (f) to read as follows:

(f) A 2015 National Academy of Medicine report found that increasing the minimum age of legal access to tobacco products from 18 to 21 years of age would reduce the rate of tobacco use by 12 percent and would decrease smoking-related deaths by 10 percent.

(Committee vote: 5-0-0)

S. 92.

An act relating to interchangeable biological products.

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

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. 18 V.S.A. § 4601 is amended to read:

§ 4601. DEFINITIONS

~~For the purposes of this chapter, unless the context otherwise clearly~~

requires As used in this chapter:

(1) “Brand name” means the registered trademark name given to a drug product by its manufacturer or distributor; “Biological product” means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein (except any chemically synthesized polypeptide), or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of a disease or condition in human beings.

(2) “Generic name” means the official name of a drug product as established by the United States Adopted Names Council (USAN) or its successor, if applicable; “Brand name” means the registered trademark name given to a drug product by its manufacturer or distributor.

(3) “Pharmacist” means a natural person licensed by the state board of pharmacy to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons;

(4) “Generic drug” means a drug listed by generic name and considered to be chemically and therapeutically equivalent to a drug listed by brand name, as both names are identified in the most recent edition of or supplement to the federal U.S. Food and Drug Administration’s “Orange Book” of approved drug products; Approved Drug Products with Therapeutic Equivalence Evaluations (the Orange Book).

(4) “Generic name” means the official name of a drug product as established by the U. S. Adopted Names Council (USAN) or its successor, if applicable.

(5) “Interchangeable biological product” means a biological product that the U.S. Food and Drug Administration has:

(A) licensed and determined, pursuant to 42 U.S.C. § 262(k)(4), to be interchangeable with the reference product against which it was evaluated;
or

(B) determined to be therapeutically equivalent as set forth in the latest edition of or supplement to the U.S. Food and Drug Administration’s Approved Drug Products with Therapeutic Equivalence Evaluations (the Orange Book).

(6) “Pharmacist” means a natural person licensed by the State Board of Pharmacy to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons.

(5)(7) “Prescriber” means any duly licensed physician, dentist, veterinarian, or other practitioner licensed to write prescriptions for the

treatment or prevention of disease in man or animal.

(8) “Proper name” means the non-proprietary name of a biological product.

(9) “Reference product” means the single biological product licensed pursuant to 42 U.S.C. § 262(a) against which the interchangeable biological product was evaluated by the U.S. Food and Drug Administration pursuant to 42 U.S.C. § 262(k).

Sec. 2. 18 V.S.A. § 4605 is amended to read:

§ 4605. ALTERNATIVE DRUG OR BIOLOGICAL PRODUCT SELECTION

(a)(1) When a pharmacist receives a prescription for a drug which is listed either by generic name or brand name in the most recent edition of or supplement to the U.S. Department of Health and Human Services’ publication Approved Drug Products With Therapeutic Equivalence Evaluations (the “Orange Book”) of approved drug products, the pharmacist shall select the lowest priced drug from the list which is equivalent as defined by the “Orange Book,” unless otherwise instructed by the prescriber, or by the purchaser if the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser’s health benefit plan if allowed under the legal requirements applicable to the plan, or otherwise to pay the full cost for the higher priced drug.

(2) When a pharmacist receives a prescription for a biological product, the pharmacist shall select the lowest priced interchangeable biological product unless otherwise instructed by the prescriber, or by the purchaser if the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser’s health benefit plan if allowed under the legal requirements applicable to the plan, or otherwise to pay the full cost for the higher priced biological product.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, when a pharmacist receives a prescription from a Medicaid beneficiary, the pharmacist shall select the preferred brand-name or generic drug or biological product from the Department of Vermont Health Access’s preferred drug list.

(b) The purchaser shall be informed by the pharmacist or his or her representative that an alternative selection as provided under subsection (a) of this section will be made unless the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser’s health benefit plan if allowed under the legal requirements applicable to the plan, or otherwise to pay the full cost for the higher priced drug or biological product.

(c) When refilling a prescription, pharmacists shall receive the consent of

the prescriber to dispense a drug or biological product different from that originally dispensed, and shall inform the purchaser that a generic substitution shall be made pursuant to this section unless the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, or otherwise to pay the full cost for the higher priced drug or biological product.

(d) Any pharmacist substituting a generically equivalent drug or interchangeable biological product shall charge no more than the usual and customary retail price for that selected drug or biological product. This charge shall not exceed the usual and customary retail price for the prescribed brand.

(e)(1) Except as described in subdivision (4) of this subsection, within five business days following the dispensing of a biological product, the dispensing pharmacist or designee shall communicate the specific biological product provided to the patient, including the biological product's name and manufacturer, by submitting the information in a format that is accessible to the prescriber electronically through one of the following:

- (A) an interoperable electronic medical records system;
- (B) an electronic prescribing technology;
- (C) a pharmacy benefit management system; or
- (D) a pharmacy record.

(2) Entry into an electronic records system as described in subdivision (1) of this subsection shall be presumed to provide notice to the prescriber.

(3)(A) If a pharmacy does not have access to one or more of the electronic systems described in subdivision (1) of this subsection, the pharmacist or designee shall communicate to the prescriber the information regarding the biological product dispensed using telephone, facsimile, electronic transmission, or other prevailing means.

(B) If a prescription is communicated to the pharmacy by means other than electronic prescribing technology, the pharmacist or designee shall communicate to the prescriber the information regarding the biological product dispensed using the electronic process described in subdivision (1) of this subsection unless the prescriber requests a different means of communication on the prescription.

(4) Notwithstanding any provision of this subsection to the contrary, a pharmacist shall not be required to communicate information regarding the biological product dispensed in the following circumstances:

- (A) the U.S. Food and Drug Administration has not approved any interchangeable biological products for the product prescribed; or

(B) the pharmacist dispensed a refill prescription in which the product dispensed was unchanged from the product dispensed at the prior filling of the prescription.

(f) The Board of Pharmacy shall maintain a link on its website to the current lists of all biological products that the U.S. Food and Drug Administration has determined to be interchangeable biological products.

Sec. 3. 18 V.S.A. § 4606 is amended to read:

§ 4606. BRAND CERTIFICATION

If the prescriber has determined that the generic equivalent of a drug or the interchangeable biological product for the biological product being prescribed has not been effective or with reasonable certainty is not expected to be effective in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient, the prescriber shall indicate "brand necessary," "no substitution," "dispense as written," or "DAW" in the prescriber's own handwriting on the prescription blank or shall indicate the same using electronic prescribing technology and the pharmacist shall not substitute the generic equivalent or interchangeable biological product. If a prescription is unwritten and the prescriber has determined that the generic equivalent of the drug or the interchangeable biological product for the biological product being prescribed has not been effective or with reasonable certainty is not expected to be effective in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient, the prescriber shall expressly indicate to the pharmacist that the brand-name drug or biological product is necessary and substitution is not allowed and the pharmacist shall not substitute the generic equivalent drug or interchangeable biological product.

Sec. 4. 18 V.S.A. § 4607 is amended to read:

§ 4607. INFORMATION; LABELING

(a) Every pharmacy in the state State shall have posted a sign in a prominent place that is in clear unobstructed view which shall read: "Vermont law requires pharmacists in some cases to select a less expensive generic equivalent drug or interchangeable biological product for the drug or biological product prescribed unless you or your physician direct otherwise. Ask your pharmacist."

(b) The label of the container of all drugs and biological products dispensed by a pharmacist under this chapter shall indicate the generic or proper name using an abbreviation if necessary, the strength of the drug or biological product, if applicable, and the name or number of the manufacturer or distributor.

Sec. 5. 18 V.S.A. § 4608 is amended to read:

§ 4608. LIABILITY

(a) Nothing in this chapter shall affect a licensed hospital with the development and maintenance of a hospital formulary system in accordance with that institution's policies and procedures that pertain to its drug distribution system developed by the medical staff in cooperation with the hospital's pharmacist and administration.

(b) The substitution of a generic drug or interchangeable biological product by a pharmacist under the provisions of this chapter does not constitute the practice of medicine.

Sec. 6. 8 V.S.A. § 4089i is amended to read:

§ 4089i. PRESCRIPTION DRUG COVERAGE

* * *

(g) A health insurance or other health benefit plan offered by a health insurer or by a pharmacy benefit manager on behalf of a health insurer that provides coverage for prescription drugs shall apply the same cost-sharing requirements to interchangeable biological products as apply to generic drugs under the plan.

(h) As used in this section:

* * *

(6) "Interchangeable biological products" shall have the same meaning as in 18 V.S.A. § 4601.

~~(h)~~(i) The Department of Financial Regulation shall enforce this section and may adopt rules as necessary to carry out the purposes of this section.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2017.

(Committee vote: 5-0-0)

S. 96.

An act relating to a news media privilege.

Reported favorably with recommendation of amendment by Senator White 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. 12 V.S.A. § 1616 is added to read:

§ 1616. JOURNALIST’S PRIVILEGE

(a) Definitions. As used in this section:

(1) “Journalist” means:

(A) an individual or organization engaging in journalism or assisting an individual or organization engaging in journalism at the time the news or information sought to be compelled pursuant to subsection (b) of this section was obtained; or

(B) any supervisor, employer, parent company, subsidiary, or affiliate of an individual or organization engaging in journalism at the time the news or information sought to be compelled pursuant to subsection (b) of this section was obtained.

(2) “Journalism” means:

(A) investigating issues or events of public interest for the primary purpose of reporting, publishing, or distributing news or information to the public, whether or not the news or information is ultimately published or distributed; or

(B) preparing news or information concerning issues or events of public interest for publishing or distributing to the public, whether or not the news or information is ultimately published or distributed.

(b) Compelled disclosure.

(1) No court or legislative, administrative, or other body with the power to issue a subpoena shall compel:

(A) a journalist to disclose news or information obtained or received in confidence, including:

(i) the identity of the source of that news or information; or

(ii) news or information that is not published or disseminated, including notes, outtakes, photographs, photographic negatives, video or audio recordings, film, or other data.

(B) a person other than a journalist to disclose news or information obtained or received from a journalist if a journalist could not be compelled to disclose the news or information pursuant to subdivision (A) of this subdivision (1).

(2) No court or legislative, administrative, or other body with the power to issue a subpoena shall compel:

(A) a journalist to disclose news or information that was not obtained or received in confidence unless it finds that the party seeking the news or

information establishes by clear and convincing evidence that:

(i) the news or information is highly material or relevant to a significant legal issue before the court or other body;

(ii) the news or information could not, with due diligence, be obtained by alternative means; and

(iii) there is a compelling need for disclosure.

(B) a person other than a journalist to disclose news or information obtained or received from a journalist if a journalist could not be compelled to disclose the news or information pursuant to subdivision (A) of this subdivision (2).

(c) No implication of waiver. The publication or dissemination of news or information shall not constitute a waiver of the protection from compelled disclosure as provided in subsection (b) of this section.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

NOTICE CALENDAR

Committee Bill for Second Reading

S. 134.

An act relating to court diversion and pretrial services.

By the Committee on Judiciary. (Senator Sears for the Committee.)

Committee Resolution for Second Reading

J.R.S. 25.

Joint resolution authorizing the Commissioner of Forests, Parks and Recreation to amend conservation easements related to the former Hancock Lands and adjacent Averill Inholdings in Essex County and to sell the Bertha Tract in Mendon and the Burch Tract in Killington to the Trust for Public Land.

By the Committee on Institutions. (Senator Flory for the Committee.)

Second Reading

Favorable with Recommendation of Amendment

S. 52.

An act relating to the Public Service Board and its proceedings.

Reported favorably with recommendation of amendment by Senator Lyons for the Committee on Finance.

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

* * * Preapplication Submittals; Energy Facilities * * *

Sec. 1. 30 V.S.A. § 248(f) is amended to read:

(f) However, plans for the construction of such a facility within the State must be submitted by the petitioner to the municipal and regional planning commissions no less than 45 days prior to application for a certificate of public good under this section, unless the municipal and regional planning commissions shall waive such requirement.

(1) ~~Such~~ The municipal or regional planning commission may take one or more of the following actions:

(A) ~~hold~~ Hold a public hearing on the proposed plans. The planning commission may request that the petitioner or the Department of Public Service, or both, attend the hearing. The petitioner and the Department each shall have an obligation to comply with such a request. The Department shall consider the comments made and information obtained at the hearing in making recommendations to the Board on the application and in determining whether to retain additional personnel under subdivision (1)(B) of this subsection.

(B) Request that the Department of Public Service exercise its authority under section 20 of this title to retain experts and other personnel to review the proposed facility. The Department may commence retention of these personnel once the petitioner has submitted proposed plans under this subsection. The Department may allocate the expenses incurred in retaining these personnel to the petitioner in accordance with section 21 of this title. Granting a request by a planning commission pursuant to this subdivision shall not oblige the Department or the personnel it retains to agree with the position of the commission.

(C) ~~Such commissions shall make~~ Make recommendations, ~~if any, to the Public Service Board and to the petitioner at least seven days prior to filing of the petition with the Public Service Board.~~

(D) Once the petition is filed with the Public Service Board, make recommendations to the Board by the deadline for submitting comments or testimony set forth in the applicable provision of this section, Board rule, or scheduling order issued by the Board.

(2) The petitioner's application shall address the substantive written comments related to the criteria of subsection (b) of this section received by the petitioner within 45 days of the submittal made under this subsection and the substantive oral comments related to those criteria made at a public hearing under subdivision (1) of this subsection.

* * * Energy and Telecommunications Facilities; Service of Application
When Determined Complete * * *

Sec. 2. 30 V.S.A. § 246 is amended to read:

§ 246. TEMPORARY SITING OF METEOROLOGICAL STATIONS

(a) As used in this section, a "meteorological station" consists of one temporary tower, which may include guy wires, and attached instrumentation to collect and record wind speed, wind direction, and atmospheric conditions.

(b) The Public Service Board shall establish by rule or order standards and procedures governing application for, and issuance or revocation of, a certificate of public good for the temporary installation of one or more meteorological stations under the provisions of section 248 of this title. A meteorological station shall be deemed to promote the public good of the State if it is in compliance with the criteria of this section and the Board rules or orders. An applicant for a certificate of public good for a meteorological station shall be exempt from the requirements of subsection 202(f) of this title.

(c) In developing rules or orders, the Board:

(1) ~~Shall develop a simple application form and shall require that completed applications be filed~~ the applicant first file the application with the Board, ~~and that, within two business days of notification from the Board that the application is complete, the applicant serve copies of the complete application on~~ the Department of Public Service, the Agency of Natural Resources, the Agency of Transportation, and the municipality in which the meteorological station is proposed to be located.

(2) ~~Shall require that if no objections are filed within 30 days of the Board's receipt of a complete application~~ date of service of the complete application under subdivision (1) of this subsection, and the Board determines that the applicant has met all of the requirements of section 248 of this title, the certificate of public good shall be issued for a period that the Board finds reasonable, but in no event for more than five years. Upon request of an applicant, the Board may renew a certificate of public good. Upon expiration

of the certificate, the meteorological station and all associated structures and material shall be removed, and the site shall be restored substantially to its preconstruction condition.

(3) May waive the requirements of section 248 of this title that are not applicable to meteorological stations, including criteria that are generally applicable to public service companies as defined in this title. The Board shall not waive review regarding whether construction will have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety.

(4) Shall seek to simplify the application and review process, as appropriate, in conformance with this section.

* * *

Sec. 3. 30 V.S.A. § 248(a)(4) is amended to read:

(4)(A) With respect to a facility located in the State, the Public Service Board shall hold a nontechnical public hearing on each petition for such finding and certificate in at least one county in which any portion of the construction of the facility is proposed to be located. From the comments made at the public hearing, the Board shall derive areas of inquiry that are relevant to the findings to be made under this section and shall address each such area in its decision. If the record does not contain evidence on such an area, the Board shall direct the parties to provide evidence on the area. This subdivision does not require the Board to respond to each individual comment.

(B) The Public Service Board shall hold technical hearings at locations which it selects.

(C) ~~At the time of filing its application with the Board, copies shall be given by the petitioner to~~ Within two business days of notification from the Board that the petition is complete, the petitioner shall serve copies of the complete petition on the Attorney General and the Department of Public Service, and, with respect to facilities within the State, the Department of Health, Agency of Natural Resources, Historic Preservation Division, Agency of Transportation, Agency of Agriculture, Food and Markets, and to the chair or director of the municipal and regional planning commissions and the municipal legislative body for each town and city in which the proposed facility will be located.

(D) Notice of the public hearing shall be published and maintained on the Board's website for at least 12 days before the day appointed for the hearing. Notice of the public hearing shall be published once in a newspaper of general circulation in the county or counties in which the proposed facility will be located, and the notice shall include an Internet address where more

information regarding the proposed facility may be viewed.

* * *

Sec. 4. 30 V.S.A. § 248(j)(2) is amended to read:

(2) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its petition. The Within two business days of notification by the Board that the filing is complete, the party shall serve copies of the complete filing on the parties specified in subdivision (a)(4)(C) of this section and the Board shall give written notice of the proposed certificate and its determination that the filing is complete to the those parties specified in subdivision (a)(4)(C) of this section, to any public interest organization that has in writing requested notice of applications to proceed under this subsection, and to any other person found by the Board to have a substantial interest in the matter. Such notice also shall be published on the Board's website within two days of issuing the determination that the filing is complete and shall request comment within ~~28~~ 30 days of the ~~initial publication date of service of the complete filing~~ on the question of whether the petition raises a significant issue with respect to the substantive criteria of this section. If the Board finds that the petition raises a significant issue with respect to the substantive criteria of this section, the Board shall hear evidence on any such issue.

Sec. 5. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS FACILITIES

* * *

(j) Telecommunications facilities of limited size and scope.

* * *

(2)(A) Any ~~party~~ person seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its application, ~~and provide.~~ Within two business days of notification from the Board that the filing is complete, the applicant shall serve notice and a copy of the application, proposed certificate of public good, and proposed findings of fact ~~to~~ on the Commissioner of Public Service and its Director for Public Advocacy, the Secretary of Natural Resources, the Division for Historic Preservation, the Natural Resources Board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities.

~~At the same time the applicant files the documents specified in this subdivision with the Board~~ Within two business days of notification from the Board that the filing is complete, the applicant also shall give serve written notice of the proposed certificate ~~to~~ on the landowners of record of property adjoining the project site or sites unless the Board has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Such notice shall request comment to the Board within ~~21~~ 30 days of the ~~notice~~ date of service on the question of whether the application raises a significant issue with respect to the substantive criteria of this section. If the Board finds that an application raises a significant issue with respect to the substantive criteria of this section, the Board shall hear evidence on any such issue.

* * *

(C) If the Board accepts a request to consider an application under the procedures of this subsection, then unless the Public Service Board subsequently determines that an application raises a significant issue, the Board shall issue a final determination on an application filed pursuant to this subsection ~~within 45 days of its filing or, if the original filing did not substantially comply with the Public Service Board's rules, within 45~~ 60 days of the date on which the Clerk of the Board notifies the applicant that the filing is complete. If, subsequent to acceptance of an application under this subsection, the Board rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this subsection ~~within 90 days of its filing or, if the original filing did not substantially comply with the Public Service Board's rules, within 90~~ days of the date on which the Clerk of the Board notifies the applicant that the filing is complete.

* * *

(k) De minimis modifications. An applicant intending to make a de minimis modification of a telecommunications facility shall provide written notice of its intent, including a description of the de minimis modification, its plans for the de minimis modification, and its certification that the project constitutes a de minimis modification under this section, to the following: the landowner of record of the property on which the facility is located; the legislative body of the municipality in which the applicant proposes to undertake such limited modifications to the facility; and the Commissioner of Public Service and his or her Director for Public Advocacy. Unless an objection to the classification of a proposed project as a de minimis modification is filed with the Board within ~~21~~ 30 days of this notice, a certificate of public good shall be issued. Objections may be filed only by persons entitled to notice of this proposed project pursuant to this subsection. If an objection of the classification of the proposed project as a de minimis

modification is timely filed with the Board, the Board may determine whether the intended project meets the definition of de minimis modification established in subdivision (b)(2) of this section.

* * *

(o) Retention; experts. The Department of Public Service may retain experts and other personnel as identified in section 20 of this title to provide information essential to a full consideration of an application for a certificate of public good under this section. The Department may allocate the expenses incurred in retaining these personnel to the applicant in accordance with section 21 of this title. The Department may commence retention of these personnel once the applicant has filed the ~~45-day~~ 60-day notice under subsection (e) of this section. A municipal legislative body or planning commission may request that the Department retain these personnel. Granting such a request shall not oblige the Department or the personnel it retains to agree with the position of the municipality.

* * *

* * * Notice of Petitions for a CPG to Do Business * * *

Sec. 6. 30 V.S.A. § 231 is amended to read:

§ 231. CERTIFICATE OF PUBLIC GOOD; ABANDONMENT OF SERVICE; HEARING

(a) A person, partnership, unincorporated association, or previously incorporated association, ~~which~~ that desires to own or operate a business over which the Public Service Board has jurisdiction under the provisions of this chapter shall first petition the Board to determine whether the operation of such business will promote the general good of the State, and shall at that time file a copy of any such petition with the Department. The Department, within 12 days, shall review the petition and file a recommendation regarding the petition in the same manner as is set forth in subsection 225(b) of this title. Such recommendation shall set forth reasons why the petition shall be accepted without hearing or shall request that a hearing on the petition be scheduled. If the Department requests a hearing on the petition, or, if the Board deems a hearing necessary, it shall appoint a time and place in the county where the proposed corporation is to have its principal office for hearing the petition, ~~and shall make an order for the publication of the substance thereof and the time and place of hearing two weeks successively in a newspaper of general circulation in the county to be served by the petitioner, the last publication to be at least seven days before the day appointed for the hearing.~~ At least 12 days before this hearing, notice of the hearing shall be published on the Board's website and once in a newspaper of general circulation in the county

in which the hearing will occur. The website notice shall be maintained through the date of the hearing. The newspaper notice shall include an Internet address where more information regarding the petition may be viewed. The Director for Public Advocacy shall represent the public at ~~such~~ the hearing. If the Board finds that the operation of such business will promote the general good of the State, it shall give such person, partnership, unincorporated association, or previously incorporated association a certificate of public good specifying the business and territory to be served by such petitioners. For good cause, after opportunity for hearing, the Board may amend or revoke any certificate awarded under the provisions of this section. If any such certificate is revoked, the person, partnership, unincorporated association, or previously incorporated association shall no longer have authority to conduct any business which is subject to the jurisdiction of the Board whether or not regulation thereunder has been reduced or suspended, under section 226a or 227a of this title.

* * *

* * * Enforcement * * *

Sec. 7. 30 V.S.A. § 2 is amended to read:

§ 2. DEPARTMENT POWERS

* * *

(h) The Department shall investigate when it receives a complaint that there has been noncompliance with section 246, 248, 248a, or 8010 of this title, any rule adopted pursuant to those sections, or any certificate of public good issued pursuant to those sections, including a complaint of such noncompliance received pursuant to section 208 of this title or the complaint protocol established under 2016 Acts and Resolves No. 130, Sec. 5c.

Sec. 8. 30 V.S.A. § 30 is amended to read:

§ 30. PENALTIES; AFFIDAVIT OF COMPLIANCE

* * *

(h) In accordance with the process set forth in this subsection, the Department may issue an administrative citation to a person the Department believes violated section 246, 248, 248a, or 8010 of this title, any rule adopted pursuant to those sections, or any certificate of public good issued pursuant to those sections.

(1) An administrative citation, whether draft or final, shall:

(A) state each provision of statute and rule and each condition of a certificate of public good alleged to have been violated;

(B) include a concise statement of the facts giving rise to the alleged violation and the evidence supporting the existence of those facts;

(C) request that the person take the remedial action specified in the notice or pay a civil penalty of not more than \$5,000.00 for the violation, or both; and

(D) if remedial action is requested, state the reasons for seeking the action.

(2) The Department shall initiate the process by issuing a draft administrative citation to the person and sending a copy to each municipality in which the person's facility is located, each adjoining property owner to the facility, the complainant if any, and, for alleged violations of the facility's certificate of public good, each party to the proceeding in which the certificate was issued.

(A) At the time the draft citation is issued, the Department shall file a copy with the Board and post the draft citation on its website.

(B) Commencing with the date of issuance, the Department shall provide an opportunity of 30 days for public comment on the draft citation. The Department shall include information on this opportunity in the draft citation.

(C) Once the public comment period closes, the Department:

(i) Shall provide the Board with a copy of each comment received.

(ii) May file a revised draft citation with the Board. The revised draft citation may be accompanied by a stipulation or agreed settlement with a request for Board approval.

(D) The Board may on its own initiative open a proceeding to investigate the violation alleged in the draft citation. The Board shall take any such action within 15 days of the close of the public comment period, or the filing of a revised draft citation, whichever is later. Such a Board proceeding shall supersede the draft citation.

(3) If the Board has not opened a proceeding pursuant to subdivision (2)(D) of this subsection, the Department may issue a final administrative citation to the person. Within 30 days of receipt of a final administrative citation, the person shall respond in one of the following ways:

(A) Request a hearing before the Board on the existence of the alleged violation, the proposed penalty, and the proposed remedial action.

(B) Pay any civil penalty set forth in the notice and agree to

undertake such remedial action as is set forth in the notice and submit to the Department for its approval a plan for compliance. In such a case, the final administrative citation shall be enforceable in the same manner as an order of the Board.

(C) Decline to contest the existence of the alleged violation and request a hearing on either the proposed penalty or remedial action, or both. When exercising this option, a person may agree to either the proposed penalty or remedial action and seek a hearing only on the penalty or action with which the person disagrees.

(4) When a person requests a hearing under subdivision (3) of this subsection, the Board shall open a proceeding and conduct a hearing in accordance with the provisions of this section on the alleged violation and such remedial action and penalty as are set forth in the notice. Notwithstanding any contrary provision of this section, a penalty under this subdivision (4) shall not exceed \$5,000.00.

(5) If a person pays the civil penalty set forth in a final administrative citation, then the Department shall be precluded from seeking and the Board from imposing additional civil penalties for the same alleged violation unless the violation is continuing or is repeated.

(6) If a person agrees to undertake the remedial action set forth in a final administrative citation, failure to undertake the action or comply with a compliance plan approved by the Department shall constitute a separate violation.

(7) The Board may approve disposition of a final administrative citation by stipulation or agreed settlement submitted before entry of a final order.

(8) Penalties assessed under this subsection shall be deposited in the General Fund.

* * * Name Change to Public Utility Commission * * *

Sec. 9. 30 V.S.A. § 3 is amended to read:

§ 3. PUBLIC SERVICE BOARD UTILITY COMMISSION

(a) The Vermont Public Service Board Utility Commission shall consist of a Chair and two members. The Chair and each member shall not be required to be admitted to the practice of law in this State.

(b) The Chair shall be nominated, appointed, and confirmed in the manner of a Superior judge.

(c) Members of the Board Commission other than the Chair shall be appointed in accordance with this subsection. Whenever a vacancy occurs,

public announcement of the vacancy shall be made. The Governor shall submit at least five names of potential nominees to the Judicial Nominating Board for review. The Judicial Nominating Board shall review the candidates in respect to judicial criteria and standards only and shall recommend to the Governor those candidates the Board considers qualified. The Governor shall make the appointment from the list of qualified candidates. The appointment shall be subject to the consent of the Senate.

(d) The term of each member shall be six years. Any appointment to fill a vacancy shall be for the unexpired portion of the term vacated. A member wishing to succeed himself or herself in office may seek reappointment under the terms of this section.

(e) Notwithstanding 3 V.S.A. § 2004, or any other provision of law, members of the ~~Board~~ Commission may be removed only for cause. When a ~~Board~~ Commission member who hears all or a substantial part of a case retires from office before such case is completed, he or she shall remain a member of the ~~Board~~ Commission for the purpose of concluding and deciding such case, and signing the findings, orders, decrees, and judgments therein. A retiring Chair shall also remain a member for the purpose of certifying questions of law if appeal is taken. For such service, he or she shall receive a reasonable compensation to be fixed by the remaining members of the ~~Board~~ Commission and necessary expenses while on official business.

(f) A case shall be deemed completed when the ~~Board~~ Commission enters a final order therein even though such order is appealed to the Supreme Court and the case remanded by that court to the ~~Board~~ Commission. Upon remand the ~~Board~~ Commission then in office may in its discretion consider relevant evidence including any part of the transcript of testimony in the proceedings prior to appeal.

(g) The Chair shall have general charge of the offices and employees of the ~~Board~~ Commission.

Sec. 10. 30 V.S.A. § 7001(1) is amended to read:

(1) ~~“Board”~~ “Commission” means the Public Service ~~Board~~ Utility Commission under section 3 of this title.

Sec. 11. 30 V.S.A. § 8002(1) is amended to read:

(1) ~~“Board”~~ “Commission” means the Public Service ~~Board~~ Utility Commission under section 3 of this title, ~~except when used to refer to the Clean Energy Development Board.~~

Sec. 12. REVISION AUTHORITY

When preparing the Vermont Statutes Annotated for publication, the Office

of Legislative Council shall make the following revisions throughout the statutes as needed for consistency with Secs. 9–11 of this act, as long as the revisions have no other effect on the meaning of the affected statutes:

(1) replace “Public Service Board” with “Public Utility Commission”; and

(2) replace “Board” with “Commission” when the existing term “Board” refers to the Public Service Board.

Sec. 13. RULES; NAME CHANGE

(a) The rules of the Public Service Board in effect on July 1, 2017 shall become rules of the Vermont Public Utility Commission (the Commission).

(b) In those rules, the Commission is authorized to change all references to the Public Service Board so that they refer to the Commission. Unless accompanied by one or more other revisions to the rules, such a change need not be made through the rulemaking process under the Administrative Procedure Act.

* * * Remote Location Access by Citizens to PSB Hearings * * *

Sec. 14. PLAN; CITIZENS’ ACCESS TO PSB HEARINGS FROM REMOTE LOCATIONS; SPENDING AUTHORITY

(a) On or before December 15, 2017, the Division for Telecommunications and Connectivity within the Department of Public Service, in consultation with relevant organizations such as the Vermont Access Network and Vermont access management organizations, shall submit to the House Committee on Energy and Technology and the Senate Committees on Finance and on Natural Resources and Energy a plan to achieve citizen access to hearings and workshops of the Public Service Board from remote locations across the State. The access shall include interactive capability and the ability to use multiple remote locations simultaneously. The plan may build on the Department’s Vermont Video Connect proposal described in the Report to the General Assembly by the Vermont Interactive Technologies Working Group dated Dec. 9, 2015, submitted pursuant to 2015 Acts and Resolves No. 58, Sec. E.602.1.

(b) The plan shall include each of the following:

(1) assessment of cost-effective interactive video technologies;

(2) identification of at least five locations across Vermont that are willing and able to host the access described in subsection (a) of this section;

(3) the estimated capital costs of providing such access; and

(4) the estimated operating costs for hosting and connecting.

(c) For the purpose of this section, the Department is authorized to spend \$10,000.00 from its approved budget for fiscal year 2018.

* * * Citizen Access to Public Service Board; Implementation Report * * *

Sec. 15. REPORT; IMPLEMENTATION OF WORKING GROUP
RECOMMENDATIONS

On or before December 15, 2017, the Public Service Board shall submit to the House Committee on Energy and Technology and the Senate Committees on Finance and on Natural Resources and Energy a report on the progress made in implementing the recommendations of the Access to Public Service Board Working Group created by 2016 Acts and Resolves No. 174, Sec. 15, including those recommendations that the Group identified as not requiring statutory change.

* * * Effective Dates * * *

Sec. 16. EFFECTIVE DATES

This section and Secs. 14 and 15 shall take effect on passage. The remainder of this act shall take effect on July 1, 2017.

(Committee vote: 7-0-0)

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

The Committee recommends that the bill be amended as recommended by the Committee on Finance with the following amendment thereto:

In Sec. 14 (plan; citizens' access to PSB hearings from remote locations; spending authority), in subsection (c), after "spend" by inserting an amount not to exceed

(Committee vote: 6-0-1)

S. 103.

An act relating to the regulation of toxic substances and hazardous materials.

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

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

* * * Toxics Use Reduction and Reporting * * *

Sec. 1. 10 V.S.A. § 6633 is added to read:

§ 6633. INTERAGENCY COMMITTEE ON CHEMICAL MANAGEMENT

(a) Creation. There is created the Interagency Committee on Chemical Management in the State to:

- (1) evaluate chemical inventories in the State on an annual basis;
- (2) identify potential risks to human health and the environment from chemical inventories in the State; and
- (3) propose measures or mechanisms to address the identified risks from chemical inventories in the State.

(b) Membership. The Interagency Committee on Chemical Management shall be composed of the following five members:

- (1) the Secretary of Agriculture, Food and Markets or designee;
- (2) the Secretary of Natural Resources or designee;
- (3) the Commissioner of Health or designee;
- (4) the Commissioner of Labor or designee; and
- (5) the Commissioner of Public Safety or designee.

(c) Powers and duties. The Interagency Committee on Chemical Management shall:

(1) Convene a citizen advisory panel to provide input and expertise to the Committee. The citizen advisory panel shall consist of persons with expertise in;

- (A) toxicology;
- (B) environmental law;
- (C) manufacturing products;
- (D) environmental health;
- (E) public health;
- (F) risk analysis;
- (G) maternal and child health care;
- (H) occupational health;
- (I) industrial hygiene;
- (J) public policy;
- (K) the operation of academic institutions; and
- (L) retail sales.

(2) Monitor actions taken by the U.S. Environmental Protection Agency

(EPA) to regulate chemicals under the Toxic Substances Control Act, 15 U.S.C. chapter 53, and notify relevant State agencies of any EPA action relevant to the jurisdiction of the agency.

(3) Annually review chemical inventories in the State in relation to emerging scientific evidence in order to identify chemicals of high concern not regulated by the State.

(d) Assistance. The Interagency Committee on Chemical Management shall have the administrative, technical, and legal assistance of the Agency of Natural Resources; the Agency of Agriculture, Food and Markets; the Department of Health; the Department of Public Safety; and the Department of Labor.

(e) Report. On or before January 15, and annually thereafter, the Interagency Committee on Chemical Management shall report to the Senate Committees on Natural Resources and Energy; on Health and Welfare; and on Economic Development, Housing and General Affairs and the House Committees on Natural Resources, Fish and Wildlife; on Health Care; and on Commerce and Economic Development regarding the actions of the Committee. The provisions of 2 V.S.A. § 20(d) regarding expiration of required reports shall not apply to the report to be made under this section. The report shall include:

(1) an estimate or summary of the known chemical inventories in the State;

(2) a summary of any change under federal statute or rule affecting the regulation of chemicals in the State;

(3) recommended legislative or regulatory action to address the risks posed by new or emerging chemicals of high concern; and

(4) recommend legislative or regulatory action to reduce health risks from exposure to chemicals of high concern and reduce risks of harm to the natural environment.

(f) Meetings.

(1) The Secretary of Natural Resources shall be the chair of the Interagency Committee on Chemical Management.

(2) The Secretary of Natural Resources call the first meeting of the Interagency Committee on Chemical Management to occur on or before July 1, 2017.

(3) A majority of the membership of the Interagency Committee on Chemical Management shall constitute a quorum.

(g) Authority of agencies. The establishment of the Interagency Committee on Chemical Management shall not limit the independent authority of a State agency to regulate chemical use or management under existing State or applicable federal law.

Sec. 2. INTERAGENCY COMMITTEE ON CHEMICAL MANAGEMENT;
REPORT ON TOXIC USE REDUCTION AND REPORTING

On or before January 15, 2018, after consultation with the citizen advisory panel and as part of the first report required under 10 V.S.A. § 6633(e), the Interagency Committee on Chemical Management shall:

(1) Recommend how the State shall establish a centralized or unified electronic reporting system to facilitate compliance by businesses and other entities with chemical reporting and other regulatory requirements in the State. The recommendation shall:

(A) identify a State agency or department to establish and administer the reporting system;

(B) estimate the staff and funding necessary to administer the reporting system;

(C) propose how businesses and the public can access information submitted to or maintained as part of the reporting systems, including whether access to certain information or categories of information should be limited due to statutory requirements, regulatory requirements, trade secret protection, or other considerations;

(D) propose how information maintained as part of the reporting system can be accessed, including whether the information should be searchable by: chemical name, common name, brand name, product model, Global Product Classification (GPC) product brick description, standard industrial classification, chemical facility, geographic area, zip code, or address;

(E) propose how manufacturers of consumer products or subsets of consumer products shall report or notify the State of the presence of designated chemicals of concern in a consumer product and how information reported by manufacturers is made available to the public;

(F) propose a method for displaying information or filtering or refining search results so that information maintained on the reporting system can be accessed or identified in serviceable or functional manner for all users of the system, including governmental agencies or departments, commercial and industrial businesses reporting to the system, nonprofit associations, and citizens; and

(G) estimate a time line for establishment of the reporting system.

(2) Recommend statutory amendments and regulatory revisions to existing State recordkeeping and reporting requirements for chemicals, hazardous materials, and hazardous wastes in order to facilitate assessment of risks to human health and the environment posed by the use of chemicals in the State. The recommendations shall include:

(A) the thresholds or amounts of chemicals used, manufactured, or distributed, and hazardous materials and hazardous wastes generated or managed, in the State that require recordkeeping and reporting;

(B) the persons or entities using, manufacturing, or distributing chemicals and generating or managing hazardous materials and hazardous wastes that are subject to recordkeeping and reporting requirements; and

(C) any changes required to streamline and modernize existing recordkeeping and reporting requirements to facilitate compliance by business and other entities.

(3) Recommend amendments to the requirements for Toxic Use Reduction and Hazardous Waste Reduction under 10 V.S.A. chapter 159, subchapter 2 that shall include:

(A) The list of chemicals or materials subject to the reporting and planning requirements. The list of chemicals or materials shall include and be in addition to the chemicals or substances listed under Title III, Section 313 of the Superfund Amendments and Reauthorization Act of 1986 and 18 V.S.A. § 1773 (chemicals of high concern to children).

(B) The thresholds or amounts of chemicals used or hazardous waste generated by a person that require reporting and planning.

(C) The information to be reported, including:

(i) the quantity of hazardous waste generated and the quantity of hazardous waste managed during a year;

(ii) the quantity of toxic substances, or raw material resulting in hazardous waste, used during a year;

(iii) an assessment of the effect of each hazardous waste reduction measure and toxics use reduction measure implemented; and

(iv) a description of factors during a year that have affected toxics use, hazardous waste generation, releases into the environment, and onsite and offsite hazardous waste management.

(D) The persons or entities using chemicals or generating hazardous waste that are subject to reporting and planning;

(E) Proposed revisions to the toxic chemical or hazardous waste reduction planning requirements, including conditions or criteria that qualify a person to complete a plan.

(F) Any changes to streamline and modernize the program to improve its effectiveness.

(4) Draft legislation to implement the Committee's recommendations under subdivisions (1), (2), and (3) of this section.

* * * Testing Groundwater * * *

Sec. 3. 10 V.S.A. § 1982 is added to read:

§ 1982. TESTING OF GROUNDWATERSOURCES

(a) Definition. As used in this section, "groundwater source" means that portion of a potable water supply that draws water from the ground, including a drilled well, shallow well, driven well point, or spring.

(b) Testing prior to new use. Prior to use of a new groundwater source as a potable water supply, where testing is not otherwise required, the person who owns or controls the groundwater source shall test the groundwater source for the parameters set forth in subsection (d) of this section.

(c) Parameters of testing. A water sample collected under this section shall be analyzed for, at a minimum: arsenic, lead, uranium, gross alpha radiation, total coliform bacteria, total nitrate and nitrite, fluoride, manganese, and any other parameters required by the Agency by rule. The Agency by rule may require testing for a parameter by region or specific geographic area of concern.

(d) Submission of test results. Results of the testing required under subsection (b) shall be submitted, on a form provided by the Agency, to the Agency, and the Department of Health as required by rules adopted under subsection (e) of this section.

(e) Rulemaking. The Secretary, after consultation with the Department of Health, the Wastewater and Potable Water Supply Technical Advisory Committee, private laboratories, and other interested parties, shall adopt by rule requirements regarding:

(1) when, prior to use of a new groundwater source, the test required under subsection (b) of this section shall be conducted;

(2) who shall be authorized to sample the source for the test required under subsections (b) and (c) of this section, provided that the rule shall include the person who owns or controls the groundwater source and licensed well drillers among those authorized to conduct the test;

(3) how a water sample shall be collected in order to comply with the requirements of the analyses to be performed; and

(4) any other requirements necessary to implement this section.

Sec. 4. AGENCY OF NATURAL RESOURCES; GROUNDWATER
SOURCE TESTING

The Secretary of Natural Resources shall commence rulemaking under 10 V.S.A. § 1982 on or before July 1, 2017. The Secretary shall adopt rules under 10 V.S.A. § 1982 on or before January 1, 2018.

Sec. 5. 18 V.S.A. § 501b is amended to read:

§ 501b. CERTIFICATION OF LABORATORIES

(a) ~~The commissioner~~ Commissioner may certify a laboratory that meets the standards currently in effect of the National Environmental Laboratory Accreditation Conference and is accredited by an approved National Environmental Laboratory Accreditation Program accrediting authority or its equivalent to perform the testing and monitoring:

(1) required under 10 V.S.A. chapter 56 and the federal Safe Drinking Water Act; and

(2) of water from a potable water supply, as that term is defined in 10 V.S.A. § 1972(6).

(b)(1) ~~The commissioner~~ Commissioner may by order suspend or revoke a certificate granted under this section, after notice and opportunity to be heard, if the ~~commissioner~~ Commissioner finds that the certificate holder has:

(A) submitted materially false or materially inaccurate information; or

(B) violated any material requirement, restriction, or condition of the certificate; or

(C) violated any statute, rule, or order relating to this title.

(2) The order shall set forth what steps, if any, may be taken by the certificate holder to relieve the holder of the suspension or enable the certificate holder to reapply for certification if a previous certificate has been revoked.

(c) A person may appeal the suspension or revocation of the certificate to the ~~board~~ Board under section 128 of this title.

* * *

(f) A laboratory certified to conduct testing of groundwater sources or water supplies from under 10 V.S.A. § 1982 or other statute for use by a

potable water supply, as that term is defined in 10 V.S.A. § 1972(6), shall submit the results of groundwater analyses to the ~~department of health~~ Department of Health and the ~~agency of natural resources~~ Agency of Natural Resources in a format required by the ~~department of health~~ Department of Health.

* * * Effective Dates * * *

Sec. 6. EFFECTIVE DATES

(a) This section and Secs. 1 (Interagency Committee on Chemical Management), 2 (report on toxic use reduction and reporting), and 4 (groundwater testing rulemaking) shall take effect on passage.

(b) All other sections shall take effect on July 1, 2018, except that 10 V.S.A. § 1982(f) in Sec. 3 shall take effect on passage.

(Committee vote: 5-0-0)

Reported favorably by Senator Sirotkin for the Committee on Finance.

The Committee recommends that the bill be amended as recommended by the Committee on Natural Resources and Energy and when so amended ought to pass.

(Committee vote: 5-0-0)

NOTICE OF JOINT ASSEMBLY

March 23, 2017 - 4:00 P.M. - House Chamber - Retention of a Chief Justice and three Associate Justices of the Supreme Court and ten Superior Court Judges.

FOR INFORMATION ONLY

CROSS OVER DATES

The Joint Rules Committee established the following Crossover deadlines:

(1) All **Senate/House** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance/Ways and Means, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 17, 2017**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

(2) All **Senate/House** bills referred pursuant to Senate Rule 31 or House Rule 35(a) to the Committees on Appropriations and Finance/Ways and Means must be reported out by the last of those committees on or before **Friday, March 24, 2017**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

Note: The Senate will not act on bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

Exceptions to the foregoing deadlines include the major money bills (Appropriations “Big Bill”, Transportation Spending Bill, Capital Construction Bill, and Fee and Tax Bills).