

PHILIP B. SCOTT
Governor



State of Vermont
OFFICE OF THE GOVERNOR

April 16, 2018

The Honorable John Bloomer, Jr.
Secretary of the Senate
115 State House
Montpelier, VT 05633-5401

Dear Mr. Bloomer:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I am returning S.103, *An act relating to the regulation of toxic substances and hazardous materials*, without my signature because of my objections described herein:

During the second half of this Legislative Biennium, I have been consistent in my commitment to support legislation that makes Vermont more affordable, grows the economy, and protects the most vulnerable. My concerns with this bill center around these priorities, because – while it aims to protect Vermonters – it is duplicative to existing measures that already achieve its desired protections. In my view S.103 will jeopardize jobs and make Vermont less competitive for businesses. However, as I detail below, we have a path forward to work together to enact this bill if the Legislature desires.

The State has taken clear and decisive action since the discovery of PFOA in the drinking water of Bennington and North Bennington in 2016 to address this public health crisis, hold the responsible parties accountable, and provide stronger protections from this happening again. This includes the enactment of Act 55 of 2017, which I proudly signed in to law last June. Act 55 has helped strengthen the State's response to PFOA contamination by establishing a process to hold parties that contaminate groundwater responsible for connecting impacted Vermonters to municipal water. We will continue to stand with the affected communities, and act forcefully, until we reach a complete resolution for those affected. This has resulted in one settlement agreement which provides a substantial although partial resolution. This case will be completely resolved either through an additional settlement agreement or as a result of litigation. Either way, we will ensure the polluter is held responsible for the contamination and the cleanup.

No community should have to endure what the impacted communities are going through. The patience and perseverance of these communities, as we work together to resolve this crisis, has been amazing. We will continue to ensure all Vermonters have clean drinking water, however S.103 does nothing to enhance our ability to hold violators accountable, reconnect water lines, or

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directly address our ongoing response to the Per- and Polyfluoroalkyl Substances (PFAS) contamination. The bill ultimately has many negative unintended consequences, threatening our manufacturers' ability to continue to do business in Vermont, and therefore, our ability to retain and recruit more and better paying jobs.

In July of 2017, I established, via Executive Order, the Interagency Committee on Chemical Management (ICCM) and the Citizens Advisory Panel (CAP). My primary intent behind establishing these bodies was to better coordinate chemical management and identify gaps in management. Through the ICCM we continue to work to prevent future contamination and minimize the risk of harmful chemicals. This is one of several reasons many of the State's manufacturing employers have expressed opposition to this legislation. The ICCM and CAP in EO 13-17 have similar membership and responsibilities to those envisioned by S.103, making these sections duplicative. Instead of creating a redundant body, I propose we work together to align Sections 1 and 2 of S.103 to the existing ICCM and CAP membership and charge. That way the ICCM, which has been meeting for the better part of a year, can continue this important work unabated.

Further, to the extent this Executive branch entity has been given the resources of the Legislature's Council for legislative drafting and Joint Fiscal Office for fiscal and economic analyses with the goal of recommending legislation to the Legislature, this bill presents a separation of powers issue by improperly allocating legislative resources to the Executive branch and charging the Executive branch with doing the work of the Legislature. Pursuant to Chapter II, Section 20 of the Vermont Constitution, the Governor has independent authority to bring such business before the Legislature as he deems necessary. Pursuant to Chapter II, Section 6, the Legislature has separate Constitutional authority to prepare bills and enact them into laws. The Legislature does not have the authority to enlist the Executive branch to provide services necessary to the Legislature for purposes of developing its own legislative initiatives. Also, since the bill originally created an "intergovernmental" hybrid Committee, which the Legislature must have recognized was constitutionally suspect under our tripartite system of government, the bill still includes unnecessary language on meeting structure and operations, which hampers the ability of the committee to effectively carry on its work.

The existing ICCM has already conducted a thorough review of current state chemical management, evaluated what it would take to create a unified chemical reporting system and which programs make sense to participate. It has also identified proposed changes to the Toxics Use and Hazardous Waste Use Reduction Act, and has identified a proposed process to conduct ongoing review of chemical management to ensure dynamic responses to changing health and use information. That work has been proposed to the CAP, and the CAP is scheduled to provide written comments by April 25. The ICCM is due to report its first round of recommendations to me on July 1, which if we align and codify the Committee in statute, can also be presented to the Legislature.

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It is possible to continue to keep Vermonters safe without harming the economy or costing the state good jobs. We cannot afford to give manufacturers another reason to look elsewhere for their location or expansion needs. In Vermont, this sector has not rebounded as well from the Great Recession as compared to other parts of the country, and other states are more aggressively recruiting good paying manufacturing jobs. We must pursue policies that enhance and encourage the possibility for more production and jobs for Vermonters, not fewer. Section 8 of this bill puts the growth of this sector at risk by creating more uncertainty and unpredictability for business operations by disturbing a process laid out in Act 188 of 2014. Act 188 creates a robust regulatory process that requires manufacturers of children's products disclose to the Department of Health whether a product contains any of the 66 chemicals listed in the law. The Department has collected millions of lines of data since the enactment of Act 188 and asks for more information than any other state. This information is maintained in a public database for interested consumers and parents. While it took Washington State eight years to get such a program up and running, it took Vermont only two and a half years; manufacturers started reporting on January 1, 2017.

In addition, Act 188 addresses how to review other chemicals that may be added to the list by rule. The law directs the Commissioner of Health to provide to an established Working Group no fewer than two listed chemicals every year, for review, to determine whether that chemical should be labeled and/or banned from sale in children's or consumer products in Vermont. It would be virtually unprecedented when compared to other states with similar authority for there not to be a secondary review from a technical and practicality standpoint providing a check and balance when evolving the list. This Working Group met for the first time in July of 2017; its work is underway with a collaborative approach to responsible regulation. The regulatory process is working and should proceed as originally envisioned. With a robust process in place, children will not be any safer as a result of the proposed changes contained in this bill.

Additionally, the changes contained in Section 8 to the "weight of credible scientific evidence" and exposure requirements will make Vermont an outlier. Vermont will be a less friendly place for the manufacturers to locate and sell their products here. Furthermore, there are many federal laws and safety standards which are relevant to the regulation of chemicals. Our economy is diverse but still very small. We must not put ourselves at another competitive disadvantage versus other states in the region and nation.

In 2016 the manufacturing sector alone accounted \$1.67 billion in Vermont wages. As of the last reported quarter (3rdq17), it accounted for \$418 million in wages with 29,584 Vermonters employed in the manufacturing sector. If we add the natural resources and mining, and construction sectors to the above it would represent \$658 million in wages and 50,300 persons total working in the goods producing domain.

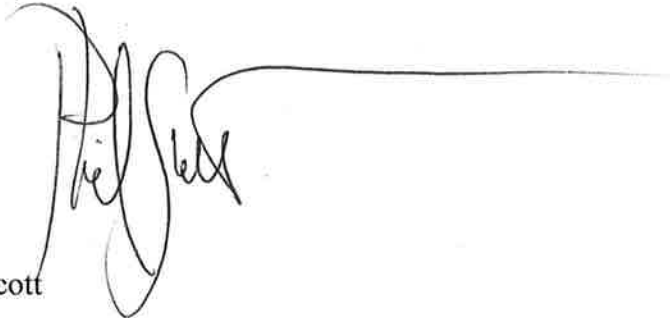
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There is an economic multiplier for these sectors since most of the manufactured product is exported out of state thereby bringing more dollars into Vermont than a limited local market for the goods. To put these producers at risk without giving the ICCM, CAP and Act 188 Working Group time to do their work and formulate recommendations puts the employees engaged in those activities, and the state's overall economy, at greater risk.

If the Legislature agrees to make the changes I am seeking – simple codification of EO 13-17 in Sections 1 and 2, and removal of Section 8 – we can together enact legislation that will continue to contribute to public health and safety. Sections 3 through 6 will enable consumers to have greater information about potential contaminants that may affect their health while at the same time not impacting the marketability of people's homes. I believe greater knowledge and understanding of threats to people's drinking water will help protect the most vulnerable Vermonters.

As noted, based on the outstanding objections outlined above I cannot support this legislation as written and must return it without my signature pursuant to Chapter II, §11 of the Vermont Constitution.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip B. Scott", with a long horizontal line extending to the right.

Philip B. Scott
Governor

PBS/kp

