

Senate Calendar

THURSDAY, MARCH 28, 2019

SENATE CONVENES AT: 1:00 P.M.

TABLE OF CONTENTS

Page No.

ACTION CALENDAR

CONSIDERATION INTERRUPTED BY ADJOURNMENT

Second Reading

S. 96 An act relating to establishing a Clean Water Assessment to fund State water quality programs..... 880

Pending Question: Shall the bill be amended as recommended by the Committee on Natural Resources and Energy, as amended?

UNFINISHED BUSINESS OF MARCH 22, 2019

Committee Bill for Second Reading

Favorable

S. 149 An act relating to miscellaneous changes to laws related to vehicles and the Department of Motor Vehicles

By the Committee on Transportation (Sen. Ashe for the Committee)

Finance Report - Sen. Brock 880

UNFINISHED BUSINESS OF MARCH 27, 2019

Committee Bill for Second Reading

Favorable with Recommendation of Amendment

S. 163 An act relating to housing safety and rehabilitation

By the Committee on Econ. Dev., Housing and General Affairs (Sen. Clarkson for the Committee)

Finance Report - Sen. Sirotkin 880

Appropriations Report - Sen. McCormack 881

Second Reading

Favorable with Recommendation of Amendment

S. 106 An act relating to establishing the Municipal Self-Governance Program

Government Operations Report - Sen. White 882

Appropriations Report - Sen. McCormack 888

Amendment - Sens. White, et al 888

S. 113 An act relating to the prohibition of plastic carryout bags, expanded polystyrene, and single-use plastic straws	
Natural Resources and Energy Report - Sen. Bray	889
Finance Report - Sen. Pearson	896
Appropriations Report - Sen. Nitka	896
Amendment - Sen. Bray	896
S. 131 An act relating to insurance and securities	
Finance Report - Sen. Cummings	897
Appropriations Report - Sen. Sears	915
Amendment - Sen. Cummings	915

NEW BUSINESS

Third Reading

S. 160 An act relating to agricultural development.....	917
--	-----

NOTICE CALENDAR

Second Reading

Favorable

H. 58 An act relating to approval of amendments to the charter of the Town of Barre	
Government Operations Report - Sen. Pollina	917
H. 59 An act relating to the codification of the charter of the Rutland County Solid Waste District	
Government Operations Report - Sen. Collamore	918
H. 73 An act relating to approval of amendments to the charter of the City of Barre	
Government Operations Report - Sen. Pollina	918
H. 532 An act relating to fiscal year 2019 budget adjustments	
Appropriations Report - Sen. Kitchel	918
Finance Report - Sen. Cummings	918

Favorable with Proposal of Amendment

H. 394 An act relating to the disposition of the remains of veterans	
Government Operations Report - Sen. Collamore	918

Proposed Amendment to the Vermont Constitution

Prop 5 Declaration of rights; right to personal reproductive liberty.....	919
Health and Welfare Report - Sen Lyons.....	920

CONCURRENT RESOLUTIONS FOR NOTICE

H.C.R. 99 - 120 (For text of Resolutions, see Addendum to House Calendar for March 28, 2019).....	920
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ORDERS OF THE DAY

ACTION CALENDAR

CONSIDERATION INTERRUPTED BY ADJOURNMENT

Second Reading

S. 96.

An act relating to establishing a Clean Water Assessment to fund State water quality programs.

Pending Question: Shall the bill be amended as recommended by the Committee on Natural Resources and Energy, as amended?

UNFINISHED BUSINESS OF FRIDAY, MARCH 22, 2019

Committee Bill for Second Reading

Favorable

S. 149.

An act relating to miscellaneous changes to laws related to vehicles and the Department of Motor Vehicles.

By the Committee on Transportation (Senator Ashe for the Committee)

Reported favorably by Senator Brock for the Committee on Finance.

(Committee vote: 7-0-0)

UNFINISHED BUSINESS OF WEDNESDAY, MARCH 27, 2019

Committee Bill for Second Reading

Favorable with Recommendation of Amendment

S. 163.

By the Committee on Economic Development, Housing and General Affairs. (Senator Clarkson for the Committee.)

An act relating to housing safety and rehabilitation.

Reported favorably by Senator Sirotkin for the Committee on Finance.

(Committee vote: 6-1-0)

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

The Committee recommends that the bill be amended as follows:

First: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read as follows:

Sec. 7. DUTIES CONTINGENT UPON FUNDING

(a) The following duties imposed on the Department of Housing and Community Development are contingent upon the appropriation of funds in fiscal year 2020 for the purposes specified:

(1) to design and implement a rental housing data management system pursuant to Sec. 4 of this act;

(2) to update and maintain the RentalCodes.org website, or a similar resource, that provides easy access to information for consumers, landlords, municipal officials, and the public concerning rental housing health and safety laws; and

(3) to design and implement a Vermont Rental Housing Incentive Program pursuant to Sec. 12 of this act.

(b) The following duties imposed on the Department of Health are contingent upon the appropriation of funds in fiscal year 2020 for the purposes specified:

(1) to create and manage an electronic system to collect and maintain health inspection reports pursuant to Sec. 5 of this act;

(2) to develop recommendations for the design and implementation of a comprehensive system for the professional enforcement of State rental housing health and safety laws pursuant to Sec. 6 of this act; and

(3) to perform services associated with one additional full-time equivalent position, the duties of which include:

(A) collecting and maintaining data concerning inspection reports;

(B) providing additional training to town health officers concerning best practices, the health officer role and responsibilities, and rental housing health and safety issues;

(C) providing additional guidance and support to municipalities concerning difficult rental housing enforcement issues; and

(D) other duties related to developing and planning for a more professionalized health and safety code enforcement system.

Second: By striking out Sec. 13 in its entirety and re-designating Sec. 14 to be Sec. 13.

(Committee vote: 6-0-1)

Second Reading

Favorable with Recommendation of Amendment

S. 106.

An act relating to establishing the Municipal Self-Governance Program.

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. 24 V.S.A. chapter 140 is added to read:

CHAPTER 140. MUNICIPAL SELF-GOVERNANCE PROGRAM

§ 5801. FINDINGS AND INTENT

The General Assembly finds that:

(1) State law, policies, and procedures at times inhibit or delay the ability of Vermont's cities and towns to adopt and implement innovative solutions to local problems.

(2) Often, State law, policies, and procedures limit the ability of cities and towns to creatively work with the State in a timely and efficient manner to address the many issues facing Vermont, including economic health, housing needs, and environmental conservation.

(3) Vermont's cities and towns lack the ability to make the best decisions to meet their unique, truly local needs.

(4) Establishing a pilot program that authorizes a limited number of cities and towns to engage in self-governance within defined parameters will:

(A) allow the State to determine the current gaps in municipal power and agency;

(B) provide a laboratory for cities and towns to develop local solutions to particularized issues; and

(C) allow cities and towns within the program to more efficiently respond to the needs of their residents.

§ 5802. DEFINITIONS; ELIGIBILITY

As used in this chapter:

- (1) “Commission” means the Municipal Self-Governance Commission.
- (2) “Municipality” means an incorporated city or town.
- (3) “Program” means the Municipal Self-Governance Program.
- (4) “Proposal” means a plan that describes the following:

(A) the enumerated powers that the municipality requires for the adoption of proposed ordinances that are not in conflict with the U.S. Constitution, the Vermont Constitution, federal laws, and the State laws listed in subsection (c) of section 5805 of this chapter and that provide for the health, safety, and welfare of the population within the territorial limits of the municipality; and

(B) the measures a municipality expects to pursue, including the adoption of any ordinances, acts, resolutions, rules, and regulations.

§ 5803. PROPOSAL ADOPTION PROCEDURE; SUBMISSION

(a) A municipality that seeks to participate in the Program shall submit a proposal to the legal voters of the municipality present and voting at an annual or special meeting warned for that purpose in accordance with the following procedure:

(1) An official copy of the proposal shall be filed with the clerk of the municipality at least 10 days before the first public hearing. The clerk shall certify the date that he or she received the official copy, and the dated copies shall be open to public inspection and copying.

(2)(A) The legislative body of the municipality shall hold at least two public hearings on the proposal before the vote at the annual or special meeting.

(B) The first public hearing shall be held at least 20 days before the vote at the annual or special meeting.

(3)(A) The legislative body may revise the proposal in light of recommendations made at a public hearing, but in no event shall the revisions be made fewer than 10 days before the date of the meeting to vote on the proposal.

(B) If revisions are made, the legislative body shall post a notice of these revisions in the same places as the warning for the meeting not less than

10 days before the date of the meeting and shall file an official copy of the revisions with the clerk of the municipality who shall certify the copy.

(4) The second public hearing shall be held not later than 10 days after the first public hearing.

(5) After the warning and hearing requirements of this section are satisfied, the proposal shall be submitted to the voters at an annual or special meeting in its certified form, except that the legislative body may make technical corrections.

(b) A municipality may seek to amend an approved proposal by submitting the amendment to the voters according to the procedure contained in subsection (a) of this section.

(c) Upon approval of a proposal or amendment by the voters, the local legislative body shall submit the proposal or amendment to the Commission.

§ 5804. MUNICIPAL SELF-GOVERNANCE COMMISSION

(a) There is created the Municipal Self-Governance Commission to review proposals for expanded municipal self-governance.

(b) The Commission shall consist of 12 members, appointed as follows:

(1) Four members shall be appointed by the Governor, not more than two of whom shall be from the same political party.

(2)(A) Eight members shall be appointed by the General Assembly, four by the Senate Committee on Committees, and four by the Speaker of the House.

(B) Not more than two appointees shall be members of the General Assembly, and each appointing authority shall appoint not more than two members from the same political party.

(c) The terms of members shall be two years. Appointments of members to fill vacancies or expired terms shall be made by the authority that made the initial appointment to the vacated or expired term.

(d) The Commission shall have the following powers:

(1) to review, evaluate, and make recommendations concerning a proposal submitted by a municipality;

(2) to establish criteria for the evaluation of proposals that includes consideration of each municipality's population, geographic location, and governance structure;

(3) to consult with State agencies affected by the proposal; and

(4) to recommend to the General Assembly the municipalities that should be approved to participate in the Program.

(e) The Office of Legislative Council shall provide administrative and legal assistance to the Commission, including the scheduling of meetings and the preparation of recommended legislation.

(f)(1) The Speaker of the House shall call the first meeting to occur on or before November 1, 2019. The Commission shall select a chair from among its members at the first meeting.

(2) Eight members shall constitute a quorum.

(g)(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Commission shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406. These payments shall be made from monies appropriated to the General Assembly.

(2) Other members of the Commission shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010. Payments shall be made from monies appropriated to the Commission.

(h)(1) On or before January 15, 2020, the Commission shall submit to the General Assembly a report recommending at least one but not more than 10 municipalities to participate in the Program. The Commission shall recommend municipalities that represent the range of populations, geographic locations, and governance structures in the State.

(2) At any time after January 15, 2020, the Commission may submit a report recommending additional municipalities be admitted to the Program, but at no time shall more than 10 municipalities be admitted.

(i) On or before January 15, 2024, the Commission shall conduct a performance review of the Program and submit to the House and Senate Committees on Government Operations a report containing:

(1) an evaluation of the effectiveness of expanded self-governance on the participating municipalities;

(2) a recommendation as to whether the Program should be continued, reduced, expanded, or terminated;

(3) a recommendation as to whether additional legislation is necessary, including any recommended additions to subsection (c) of section 5805 of this chapter; and

(4) any other relevant matters.

(j) Commencing on January 15, 2021 and each year thereafter, the Commission shall submit to the House and Senate Committees on Government Operations a summary report containing all municipal progress reports submitted to the Commission pursuant to subsection (e) of section 5805 of this chapter.

(k)(1) The Commission shall hold Program meetings and may require the attendance of representatives from each participating municipality. Program meetings shall be held at the call of the Chair. Notice shall be given to each municipal representative at least 10 days before the meeting date.

(2) The legislative body of a participating municipality shall appoint a representative to attend Program meetings.

§ 5805. PROGRAM MUNICIPALITIES; POWERS AND DUTIES

(a) The General Assembly shall approve proposals and any proposal amendments and admit municipalities for participation in the Program.

(b) A municipality that is approved by the General Assembly for participation in the Program shall have the authority to adopt or amend any ordinance pursuant to the powers granted in the municipality's approved proposal.

(c) A municipality's proposal shall not include the authority to adopt or amend an ordinance that is inconsistent or in conflict with:

(1) the U.S. Constitution, the Vermont Constitution, or federal law;

(2) the Vermont Public Records Act or the Open Meeting Law;

(3) 10 V.S.A. § 5227, 24 V.S.A. § 2291(8), or 24 V.S.A. § 2295;

(4) State law governing:

(A) firearms;

(B) the environment, conservation and development, or fish and wildlife;

(C) crimes and criminal procedure;

(D) cannabis;

(E) the State Lottery and games of chance;

(F) alcoholic beverages, except that a municipality may propose to increase local license fees subject to the requirements of 7 V.S.A. § 204(b);

(G) health insurance;

(H) banking, securities, and insurance;

(I) electric utilities;

(J) workers' compensation, minimum wage, benefits, and employment protections; or

(K) elections, except that a municipality may propose to regulate local elections.

(d) A municipality shall only have the power to adopt an ordinance or bylaw that applies within the territorial limits of the municipality. A municipality shall not have the power to adopt an ordinance requiring or prohibiting action by any other municipal corporation.

(e) Commencing October 1, 2020 and each year thereafter, each participating municipality shall submit a progress report to the Commission. The municipal progress report shall contain the following information:

(1) a narrative description of how the authority granted under this chapter has been exercised in the municipality and any resulting positive or negative impacts;

(2) a list of the ordinances adopted pursuant to an approved proposal during the preceding year, including a description of each;

(3) the estimated fiscal impact of the ordinances;

(4) a summary of any pending or active suits, proceedings, or petitions challenging the ordinances; and

(5) any information that the Commission may require for the purposes of this chapter.

§ 5806. EXPIRATION

(a) The Program shall terminate on July 1, 2024 unless extended by the General Assembly. An ordinance adopted pursuant to this chapter shall continue in full force and effect until repealed by the municipality or preempted, superseded, or repealed by an act of the General Assembly.

(b) No ordinances may be enacted by a municipality after July 1, 2024 unless otherwise authorized by the General Assembly.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

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

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

First: In Sec. 1, 24 V.S.A. § 5804, in subdivision (b)(2), by striking out subparagraph (B) in its entirety and inserting in lieu thereof subparagraphs (B) and (C) to read as follows:

(B) Of the members appointed by the Senate Committee on Committees, not more than one may be a legislator and not more than two may be from the same political party.

(C) Of the members appointed by the Speaker of the House, not more than one may be a legislator and not more than two may be from the same political party.

Second: In Sec. 1, 24 V.S.A. § 5804, by striking out subsection (g) in its entirety and inserting in lieu thereof a new subsection (g) to read as follows:

(g)(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Commission serving in his or her capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than five meetings.

(2) Other members of the Commission shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than five meetings.

(3) Payments to members of the Commission authorized under this subsection shall be made from monies appropriated to the General Assembly.

(Committee vote: 6-0-1)

Amendment to the recommendation of amendment of the Committee on Government Operations to S. 106 to be offered by Senators White, Bray, Clarkson, Collamore and Pollina

Senators White, Bray, Clarkson, Collamore and Pollina move to amend the recommendation of amendment of the Committee on Government Operations as follows:

First: In Sec. 1, 24 V.S.A. chapter 140, in § 5805, in subsection (a), prior to "General Assembly", by striking out the word "The" and inserting in

lieu thereof Consistent with Chapter II, §§ 6 and 69 of the Vermont Constitution, the

Second: In Sec. 1, 24 V.S.A. chapter 140, in § 5805, in subdivision (c)(4)(J), by striking out the word “or” immediately after the semicolon.

Third: In Sec. 1, 24 V.S.A. chapter 140, in § 5805, in subdivision (c)(4)(K), immediately following the words “to regulate local elections”, by inserting the following before the period:

;

(L) State highways;

(M) State sign law requirements of 10 V.S.A. chapter 21;

(N) standards for classifying town highways under 19 V.S.A. § 302;

(O) procedures for laying out, discontinuing, and reclassifying town highways under 19 V.S.A. chapter 27;

(P) motor vehicle requirements of Title 23, except for provisions of 23 V.S.A. chapter 19;

(Q) aviation; or

(R) railroads

S. 113.

An act relating to the prohibition of plastic carryout bags, expanded polystyrene, and single-use plastic straws.

Reported favorably with recommendation of amendment by Senator Bray 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. chapter 159, subchapter 5 is added to read:

Subchapter 5. Single-Use Carryout Bags; Expanded Polystyrene Food Service Products; Single-use Plastic Straws

§ 6691. DEFINITIONS

As used in this subchapter:

(1) “Agency” means the Agency of Natural Resources.

(2) “Carryout bag” means a bag provided by a store or food service establishment to a customer at the point of sale for the purpose of carrying groceries or retail goods, except that a “carryout bag” shall not mean a bag provided by a pharmacy to a customer purchasing a prescription medication.

(3) “Expanded polystyrene” means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by a number of techniques, including: fusion of polymer spheres, known as expandable bead 20 polystyrene; injection molding; foam molding; and extrusion–blow molding , also known as extruded foam polystyrene.

(4)(A) “Expanded polystyrene food service product” means a product made of expanded polystyrene that is:

(i) used for selling or providing food or beverages and intended by the manufacturer to be used once for eating or drinking; or

(ii) generally recognized by the public as an item to be discarded after one use.

(B) “Expanded polystyrene food service product” shall include:

(i) food containers;

(ii) plates;

(iii) hot and cold beverage cups;

(iv) trays; and

(v) cartons for eggs or other food.

(C) “Expanded polystyrene food service product” shall not include:

(i) food or beverages that have been packaged in expanded polystyrene outside the State before receipt by a food service establishment or store;

(ii) a product made of expanded polystyrene that is used to package raw, uncooked, or butchered meat, fish, poultry, or seafood; or

(iii) nonfoam polystyrene food service products.

(5) “Food service establishment” has the same meaning as in 18 V.S.A. § 4301.

(6) “Plastic” means a synthetic material made from linking monomers through a chemical reaction to create a polymer chain that can be molded or extruded at high heat into various solid forms that retain their defined shapes during their life cycle and after disposal.

(7) “Reusable carryout bag” means a carryout bag that is specifically designed and manufactured for multiple reuse and that is:

(A) made of cloth or other machine-washable fabric that has handles;

(B) a nonwoven polypropylene bag that has handles; or

(C) a durable plastic bag that has handles and is at least 2.25 mils thick.

(8) “Secretary” means the Secretary of Natural Resources.

(9) “Single-use paper carryout bag” means a carryout bag made of paper or other material that is not plastic that has a thickness of less than 2.25 mils and that is not a reusable grocery bag.

(10) “Single-use plastic carryout bag” means a carryout bag made of plastic, that has a thickness of less than 2.25 mils and that is not a reusable grocery bag.

(11) “Single-use plastic straw” means a tube made of plastic that is:

(A) used to transfer liquid from a container to the mouth of a person drinking the liquid;

(B) designed and intended to be used only once; and

(C) generally recognized by the public as an item that is to be discarded after one use.

(12) “Store” means a grocery store, supermarket, convenience store, liquor store, drycleaner, pharmacy, drug store, or other retail establishment that has over 1,000 square feet of retail space and that provides carryout bags to its customers.

§ 6692. SINGLE-USE PLASTIC CARRYOUT BAGS; PROHIBITION

A store or food service establishment shall not provide a single-use plastic carryout bag to a customer.

§ 6693. SINGLE-USE PAPER CARRYOUT BAG

(a) A store or food service establishment retail may provide a single-use paper carryout bag at the point of sale, if the single-use paper carryout bag is provided to the consumer at a cost of not less than \$0.10 per bag.

(b) All monies collected by a store or food service establishment under this section for provision of a single-use paper carryout bag shall be retained by the store or food service establishment.

§ 6694. SINGLE-USE PLASTIC STRAWS

A food service establishment shall not sell or provide a single-use plastic straw to a customer, except that a food service establishment shall provide a single-use plastic straw to a person upon request.

§ 6695. EXPANDED POLYSTYRENE FOOD SERVICE PRODUCTS

(a) A person shall not sell or offer for sale in the State an expanded polystyrene food service product.

(b) A store or food service establishment shall not sell or provide food or beverages in an expanded polystyrene food service product.

(c) This section shall not prohibit a person from storing or packaging a food or beverage in an expanded polystyrene food service product for distribution out of State.

§ 6696. CIVIL PENALTIES; WARNING

(a) A person who violates the requirements of this subchapter shall:

(1) receive a written warning for a first offense

(2) be subject to a civil penalty of \$25.00 for a second offense; and

(3) be subject to a civil penalty of \$100.00 for a third or subsequent offense.

(b) For the purposes of enforcement under this subchapter, an offense shall be each day a person is violating the requirement of this subchapter.

§ 6697. RULEMAKING

The Secretary may adopt rules to implement the requirements of this subchapter.

Sec. 2. SINGLE-USE PRODUCTS WORKING GROUP; REPORT

(a) Definitions. As used in this section:

(1) "Carryout bag" means a bag provided by a store or food service establishment to a customer at the point of sale for the purpose of carrying groceries or retail goods.

(2) "Disposable plastic food service ware" means nonrecyclable containers, plates, clamshells, serving trays, meat and vegetable trays, hot and cold beverage cups, and utensils that are made of plastic or plastic-coated paper, including products marketed as biodegradable products but a portion of the product is not compostable.

(3) "Expanded polystyrene food service product" means a product made of expanded polystyrene that is:

(A) used for selling or providing food or beverages and intended by the manufacturer to be used once for eating or drinking; or

(B) generally recognized by the public as an item to be discarded after one use.

(4) “Extended producer responsibility” means a requirement for a producer of a product to provide for and finance the collection, transportation, reuse, recycling, processing, and final management of the product.

(5) “Food service establishment” has the same meaning as in 18 V.S.A. § 4301.

(6) “Packaging” means materials that are used for the containment, protection, handling, delivery, and presentation of goods sold or delivered in Vermont.

(7) “Plastic” means a synthetic material made from linking monomers through a chemical reaction to create a polymer chain that can be molded or extruded at high heat into various solid forms that retain their defined shapes during their life cycle and after disposal.

(8) “Printed materials” means material that is not packaging, but is printed with text or graphics as a medium for communicating information, including telephone books but not including other bound reference books, bound literary books, or bound textbooks.

(9) “Single-use” means a product that is designed and intended to be used only once and is generally recognized by the public as an item that is to be discarded after one use.

(10) “Single-use products” means single-use carryout bags, single-use packaging, single-use disposable plastic food service ware, expanded polystyrene food service products, printed materials, and other single-use plastics or single-use products that are provided to consumers by stores, food service establishments, or other retailers.

(11) “Store” means grocery store, supermarket, convenience store, liquor store, pharmacy, drycleaner, drug store, or other retail establishment.

(12) “Unwanted” means when a person in possession of a product intends to abandon or discard the product.

(b) Creation. There is created the Single-Use Products Working Group to:

(1) evaluate current State and municipal policy and requirements for the management of unwanted single-use products; and

(2) recommend to the Vermont General Assembly policy or requirements that the State should enact to improve statewide management of single-use products, divert single-use products from disposal in landfills, and prevent contamination of natural resources by discarded single-use products.

(c) Membership. The Single-Use Products Working Group shall be composed of the following members:

(1) a member of the Senate appointed by the Committee on Committees;

(2) a member of the House of Representatives appointed by the Speaker of the House;

(3) the Secretary of Natural Resources or designee;

(4) a representative from a single-stream materials recovery facility located in Vermont appointed by the Governor;

(5) two representatives from solid waste management entities in the State appointed by the Committee on Committees;

(6) one representative from the Vermont League of Cities and Towns appointed by the Speaker of the House;

(7) one representative of an association or group representing manufacturers or distributors of single-use products appointed by the Governor;

(8) one representative of an environmental advocacy group located in the State appointed by the Speaker of the House; and

(9) two representatives of stores or food service establishments in the State appointed by the Committee on Committees.

(d) Powers and duties. The Single-Use Products Working Group shall:

(1) Evaluate the success of existing State and municipal requirements for the management of unwanted single-use products, including a lifecycle analysis of the management of single-use products from production to ultimate disposition.

(2) Estimate the cost to the State and municipalities of management of unwanted single-use products.

(3) Estimate other costs of the management or failure to manage unwanted single-use products, including the effects on landfill capacity.

(4) Summarize the effects on the environment and natural resources of failure to manage single-use products appropriately, including the propensity to create litter and the effects on human health from toxic substances that originate in unwanted single-use products.

(5) Recommend methods or mechanisms for improving the lifecycle management of single-use products in the State, including whether the State

should establish extended producer responsibility requirements for manufacturers, distributors, or brand owners of single-use products.

(6) If extended producer responsibility requirements for single-use products are recommended under subdivision (5) of this subsection, recommend:

(A) The single-use products to be included under the requirements.

(B) A financial incentive for manufacturers, distributors, or brand owners of single-use products to minimize the environmental impacts of the products in Vermont. The environmental impacts considered shall include review of the effect on climate change of the production, use, transport, and recovery of single-use products.

(C) How to structure a requirement for manufacturers, distributors, or brand owners to provide for or finance the collection, processing, and recycling of single-use products using existing infrastructure in the collection, processing, and recycling of products where feasible.

(7) An estimate of the costs and benefits of any recommended method or mechanism for improving the management of single-use products in the State.

(e) Assistance. The Single-Use Products Working Group shall have the administrative, technical, financial, and legal assistance of the Agency of Natural Resources, the Department of Health, the Office of Legislative Council, and the Joint Fiscal Office.

(f) Report. On or before December 1, 2019, the Single-Use Products Working Group shall submit to the Senate Committee on Natural Resources and Energy and the House Committee on Natural Resources, Fish, and Wildlife the findings and recommendations required under subsection (d) of this section.

(g) Meetings.

(1) The Office of Legislative Council shall call the first meeting of the Single-Use Products Working Group to occur on or before July 1, 2019.

(2) The Committee shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Working Group shall cease to exist on February 1, 2020.

(h) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Working Group serving in his or her capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than six meetings.

(2) Other members of the Working Group shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than six meetings.

(3) Payments to members of the Working Group authorized under this subsection shall be made from monies appropriated to the General Assembly.

Sec. 3. EFFECTIVE DATES

(a) This section and Sec. 2 (working group) shall take effect on passage.

(b) Sec. 1 (single-use products) shall take effect July 1, 2020.

And that after passage the bill be amended to read:

An act relating to the management of single-use products.

(Committee vote: 4-1-0)

Reported favorably with by Senator Pearson for the Committee on Finance.

(Committee vote: 5-1-1)

Reported without recommendation by Senator Nitka for the Committee on Appropriations.

(Committee voted: 6-0-1)

Amendment to the recommendation of amendment of the Committee on Natural Resources and Energy to S. 113 to be offered by Senator Bray

Senator Bray moves to amend the recommendation of amendment of the Committee on Natural Resources and Energy in Sec. 2 (Single-Use Products Working Group), in subsection (d), by adding a new subdivision (2) to read as follows:

(2) Evaluate the availability and utility of compostable, single-use products.

And by renumbering the remaining subdivisions to be numerically correct

S. 131.

An act relating to insurance and securities.

Reported favorably with recommendation of amendment by Senator Cummings 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:

* * * Insurance Regulatory Sandbox; Sunset * * *

Sec. 1. 8 V.S.A. § 15a is added to read:

§ 15a. INSURANCE REGULATORY SANDBOX; INNOVATION
WAIVER; SUNSET

(a) Subject to the limitations specified in subsection (g) of this section, the Commissioner may grant a variance or waiver (innovation waiver or waiver) with respect to the specific requirements of any insurance law, regulation, or bulletin if a person subject to that law, regulation, or bulletin demonstrates to the Commissioner's satisfaction that:

(1) the application of the law, regulation, or bulletin would prohibit the introduction of a new, innovative, or more efficient insurance product or service that the applicant intends to offer during the period for which the proposed waiver is granted;

(2) the public policy goals of the law, regulation, or bulletin will be or have been achieved by other means;

(3) the waiver will not substantially or unreasonably increase any risk to consumers; and

(4) the waiver is in the public interest.

(b) An application for an innovation waiver shall include the following information:

(1) the identity of the person applying for the waiver;

(2) a description of the product or service to be offered if the waiver is granted, including how the product or service functions and the manner and terms on which it will be offered;

(3) an explanation of the potential benefits to consumers of the product or service;

(4) an explanation of the potential risks to consumers posed by the product or service and how the applicant proposes to mitigate such risks;

(5) an identification of the statutory or regulatory provision that prohibits the introduction, sale, or offering of the product or service; and

(6) any additional information required by the Commissioner.

(c)(1) An innovation waiver shall be granted for an initial period of up to 12 months, as deemed appropriate by the Commissioner.

(2) Prior to the end of the initial waiver period, the Commissioner may grant a one-time extension for up to an additional 12 months. An extension request shall be made to the Commissioner at least 30 days prior to the end of the initial waiver period and shall include the length of the extension period requested and specific reasons why the extension is necessary. The Commissioner shall grant or deny an extension request before the end of the initial waiver period.

(d) An innovation waiver shall include any terms, conditions, and limitations deemed appropriate by the Commissioner, including limits on the amount of premium that may be written in relation to the underlying product or service and the number of consumers that may purchase or utilize the underlying product or service; provided that in no event shall a product or service subject to an innovation waiver be purchased or utilized by more than 10,000 Vermont consumers.

(e) A product or service offered pursuant to an innovation waiver shall include the following written disclosures to consumers in clear and conspicuous form:

(1) the name and contact information of the person providing the product or service;

(2) that the product or service is authorized pursuant to an innovation waiver for a temporary period of time and may be discontinued at the end of the waiver period, the date of which shall be specified;

(3) contact information for the Department, including how a consumer may file a complaint with the Department regarding the product or service; and

(4) any additional disclosures required by the Commissioner.

(f) The Commissioner's decision to grant or deny a waiver or extension shall not be subject to the contested-case provisions of the Vermont Administrative Procedures Act.

(g) Pursuant to the authority granted by this section, the Commissioner may not grant a waiver with respect to any of the following:

(1) section 3304, 3366, or 6004(a)–(b) of this title or any other requirement as to the minimum amount of paid-in capital or surplus required to be possessed or maintained by any person;

(2) chapter 107, 112, 129, or 131 of this title or any regulations or bulletins directly relating thereto;

(3) any law, regulation, or bulletin required for the Department to maintain its accreditation by the National Association of Insurance Commissioners unless said law or regulation permits variances or waivers;

(4) the application of any taxes or fees; and

(5) any other law or regulation deemed ineligible by the Commissioner.

(h) A person who receives a waiver under this section shall be required to make a deposit of cash or marketable securities with the State Treasurer in an amount subject to such conditions and for such purposes as the Commissioner determines necessary for the protection of consumers.

(i)(1) At least 30 days prior to granting an innovation waiver, the Commissioner shall provide public notice of the draft waiver by publishing the following information:

(A) the specific statute, regulation, or bulletin to which the draft waiver applies;

(B) the proposed terms, conditions, and limitations of the draft waiver;

(C) the proposed duration of the draft waiver; and

(D) any additional information deemed appropriate by the Commissioner.

(2) The notice requirement of this subsection may be satisfied by publication on the Department's website.

(j)(1) If a waiver is granted pursuant to this section, the Commissioner shall provide public notice of the existence of the waiver by providing the following information:

(A) the specific statute, regulation, or bulletin to which the waiver applies;

(B) the name of the person who applied for and received the waiver;

(C) the duration of and any other terms, conditions, or limitations of the waiver; and

(D) any additional information deemed appropriate by the Commissioner.

(2) The notice requirement of this subsection may be satisfied by publication on the Department's website.

(k) The Commissioner, by regulation, shall adopt uniform procedures for the submission, granting, denying, monitoring, and revocation of petitions for a waiver pursuant to this section. The procedures shall set forth requirements for the ongoing monitoring, examination, and supervision of, and reporting by, each person granted a waiver under this section and shall permit the Commissioner to attach reasonable conditions or limitations on the conduct permitted pursuant to a waiver. The procedures shall provide for an expedited application process for a product or service that is substantially similar to one for which a waiver has previously been granted by the Commissioner.

(l) Upon expiration of an innovation waiver, the person who obtained the waiver shall cease all activities that were permitted only by the waiver and comply with all generally applicable laws and regulations.

(m) The ability to grant a waiver under this section shall not be interpreted to limit or otherwise affect the authority of the Commissioner to exercise discretion to waive or enforce requirements as permitted under any other section of this title or any regulation or bulletin adopted pursuant thereto.

(n) Biannually, beginning January 15, 2020, the Commissioner shall submit a report to the General Assembly providing the following information:

(1) the total number of petitions for waivers that have been received, granted, and denied by the Commissioner;

(2) for each waiver granted by the Commissioner, the information specified under subsection (f) of this section;

(3) a list of any regulations or bulletins that have been adopted or amended as a result of or in connection with a waiver granted under this section;

(4) with respect to each statute to which a waiver applies, the Commissioner's recommendation as to whether such statute should be continued, eliminated, or amended in order to promote innovation and establish a uniform regulatory system for all regulated entities; and

(5) a list of any waivers that have lapsed or been revoked and, if revoked, a description of other regulatory or disciplinary actions, if any, that resulted in, accompanied, or resulted from such revocation.

(o) No new waivers or extensions shall be granted after July 1, 2021.

(p) This section shall be repealed on July 1, 2023.

* * * Capital and Surplus Requirements * * *

Sec. 2. 8 V.S.A. § 3304 is amended to read:

§ 3304. CAPITAL AND SURPLUS REQUIREMENTS

(a)(1) To qualify for authority to transact the business of insurance, a stock insurer seeking such authorization shall possess and thereafter maintain unimpaired paid-in capital of not less than \$2,000,000.00 and, when first so authorized, shall possess and maintain free surplus of not less than \$3,000,000.00. ~~Such~~

(2) The capital and surplus shall be in the form of cash or marketable securities, a portion of which may be held on deposit with the State Treasurer, such securities as designated by the insurer and approved by the Commissioner, in an amount and subject to ~~such~~ conditions determined by the Commissioner. ~~Such~~ The conditions shall include a requirement that any interest or other earnings attributable to such cash or marketable securities shall inure to the benefit of the insurer until such time as the Commissioner determines that the deposit must be used for the benefit of the policyholders of the insurer or some other authorized public purpose relating to the regulation of the insurer.

(3) The Commissioner may prescribe additional capital or surplus for all stock insurers authorized to transact the business of insurance based upon the type, volume, and nature of insurance business transacted. The Commissioner may reduce or waive the capital and surplus amounts required by this section pursuant to a plan of dissolution for the company approved by the Commissioner.

(b) The express purpose of subsection (a) of this section and the Commissioner's power to require the deposit of cash or marketable securities set forth therein is to protect the interests of Vermont policyholders in the event of the insolvency of the insurer. Except to the extent it would contravene applicable provisions of 9A V.S.A. Article 9, the State of Vermont shall be deemed to control the funds on deposit and to have a lien on the funds for the benefit of the Vermont policyholders affected by the insolvency. The lien so created shall be superior to any lien filed by a general creditor of the insurer.

Sec. 3. 8 V.S.A. § 3366 is amended to read:

§ 3366. ASSETS OF COMPANIES

(a)(1) ~~Such~~ A foreign or alien insurer authorized to do business in this State shall possess and thereafter maintain unimpaired paid-in capital or basic surplus of not less than \$2,000,000.00 and, when first so authorized, shall possess and maintain free surplus of not less than \$3,000,000.00. ~~Such~~

(2) The capital and surplus shall be in the form of cash or marketable securities, a portion of which may be held on deposit with the State Treasurer, such securities as designated by the insurer and approved by the Commissioner, in an amount and subject to such conditions determined by the Commissioner. ~~Such~~ The conditions shall include a requirement that any interest or other earnings attributable to such cash or marketable securities shall inure to the benefit of the insurer until such time as the Commissioner determines that the deposit must be used for the benefit of the policyholders of the insurer or some other authorized public purpose relating to the regulation of the insurer.

(3) The Commissioner may prescribe additional capital or surplus for all insurers authorized to transact the business of insurance based upon the type, volume, and nature of insurance business transacted. The Commissioner may reduce or waive the capital and surplus amounts required by this section pursuant to a plan of dissolution for the company approved by the Commissioner.

(b) The express purpose of subsection (a) of this section and the Commissioner's power to require the deposit of cash or marketable securities set forth therein is to protect the interests of Vermont policyholders in the event of the insolvency of the insurer. Except to the extent it would contravene applicable provisions of 9A V.S.A. Article 9, the State of Vermont shall be deemed to control the funds on deposit and to have a lien on the funds for the benefit of the Vermont policyholders affected by the insolvency. The lien so created shall be superior to any lien filed by a general creditor of the insurer.

* * * Domestic Surplus Lines Insurer; Home State Surplus Lines
Premium Taxation * * *

Sec. 4. 8 V.S.A. § 5022 is amended to read:

§ 5022. DEFINITIONS

* * *

(b) As used in this chapter:

(1) “Admitted insurer” means an insurer possessing a certificate of authority licensed to transact business in this State issued by the Commissioner pursuant to section 3361 of this title. For purposes of this chapter, “admitted insurer” shall not include a domestic surplus lines insurer.

* * *

(3) “Domestic insurer” means any insurer that has been chartered by, incorporated, organized, or constituted within or under the laws of this State.

(4) “Domestic risk” means a subject of insurance ~~which~~ that is resident, located, or to be performed in this State.

(5) “Domestic surplus lines insurer” means a domestic insurer with which insurance coverage may be placed under this chapter.

~~(4)~~(6) “To export” means to place surplus lines insurance with a non-admitted insurer.

~~(5)~~(7) “Home state” means, with respect to an insured:

(A)(i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(ii) if 100 percent of the insured risk is located outside the state referred to in subdivision (A)(i) of this subsection, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) If more than one insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term “home state” means the home state, as determined pursuant to subdivision (A) of this subdivision ~~(5)~~(7), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

~~(6)~~(8) “NAIC” means the National Association of Insurance Commissioners.

~~(7)~~(9) “Surplus lines broker” means an individual licensed under this chapter and chapter 131 of this title.

~~(8)~~(10) “Surplus lines insurance” means coverage not procurable from admitted insurers.

~~(9)~~(11) “Surplus lines insurer” means a non-admitted insurer with which insurance coverage may be placed under this chapter.

Sec. 5. 8 V.S.A. § 5023a is added to read:

§ 5023a. DOMESTIC SURPLUS LINES INSURER; AUTHORIZED

(a) Surplus lines insurance may be procured from a domestic surplus lines insurer if all of the following criteria are met:

(1) The board of directors of the insurer has adopted a resolution seeking certification as a domestic surplus lines insurer and the Commissioner has approved such certification.

(2) The insurer is already eligible to offer surplus lines insurance in at least one other state besides Vermont.

(3) The insurer meets the requirements of section 5026 of this title.

(4) All other requirements of this chapter are met.

(b) The requirements of 8 V.S.A. § 80 shall not apply to domestic surplus lines insurers. A domestic surplus lines insurer shall be deemed to be a non-admitted insurer for purposes of chapter 138 of this title.

Sec. 6. 8 V.S.A. § 5024 is amended to read:

§ 5024. CONDITIONS FOR PLACEMENT OF INSURANCE

(a) Insurance coverage, except as described in section 5025 of this chapter, shall not be placed with a ~~non-admitted~~ surplus lines insurer unless the full amount of insurance required is not reasonably procurable from admitted insurers actually transacting that kind and class of insurance in this State; and the amount of insurance exported shall be only the excess over the amount procurable from admitted insurers actually transacting and insuring that kind and class of insurance.

* * *

Sec. 7. 8 V.S.A. § 5026 is amended to read:

§ 5026. SOLVENT INSURERS REQUIRED

(a) Where Vermont is the home state of the insured, surplus lines brokers shall not knowingly place or continue surplus lines insurance with ~~non-admitted~~ surplus lines insurers who are insolvent or unsound financially, and in no event shall any surplus lines broker place any insurance with a non-admitted insurer unless such insurer:

* * *

(b) Notwithstanding the capital and surplus requirements of this section, a ~~non-admitted~~ surplus lines insurer may receive approval upon an affirmative finding of acceptability by the Commissioner. The finding shall be based upon such factors as quality of management, capital, and surplus of any parent company, company underwriting profit and investment-income trends, market availability, and company record and reputation within the industry. In no event, however, shall the Commissioner make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$4,500,000.00.

* * *

Sec. 8. 8 V.S.A. § 5027 is amended to read:

§ 5027. EVIDENCE OF THE INSURANCE; CHANGES; PENALTY

(a) Where Vermont is the home state of the insured, the surplus lines broker, upon placing a domestic risk with a surplus lines insurer, either domestic or foreign, shall promptly deliver to the insured the policy issued by the surplus lines insurer, or if such policy is not then available, a certificate, cover note, or other confirmation of insurance, showing the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and surplus lines insurer. If the risk is assumed by more than one insurer, the document or documents shall state the name and address and proportion of the entire risk assumed by each insurer.

* * *

Sec. 9. 8 V.S.A. § 5028 is amended to read:

§ 5028. INFORMATION REQUIRED ON CONTRACT

Where Vermont is the home state of the insured, each surplus lines broker through whom a surplus lines insurance coverage is procured shall endorse on the outside of the policy and on any confirmation of the insurance, his or her name, address and license number, and the name and address of the producer, if any, through whom the business originated. Where such coverage is placed with an eligible surplus lines insurer there shall be stamped or written conspicuously in no smaller than 10 point boldface type of a contrasting color upon the first page of the policy and the confirmation of insurance if any, “The company issuing this policy ~~has not been licensed by the State of Vermont~~ is a surplus lines insurer and the rates charged have not been approved by the Commissioner of Financial Regulation. Any default on the part of the insurer is not covered by the Vermont Insurance Guaranty Association.”

Sec. 10. 8 V.S.A. § 5029 is amended to read:

§ 5029. SURPLUS LINES INSURANCE VALID

(a) Insurance contracts procured as surplus lines insurance from ~~non-~~admitted surplus lines insurers in accordance with this chapter shall be valid and enforceable to the same extent as insurance contracts procured from admitted insurers.

(b) The insurance trade practices provisions of sections 4723 and 4724(1)–(7) and (9)–(18) of this title, and the cancellation provisions of sections 3879–3883 (regarding fire and casualty policies) and 4711–4715 (regarding commercial risk policies) of this title shall apply to surplus lines insurers, both domestic and foreign.

(c) Other provisions of this title not specifically applicable to surplus lines insurers shall not apply.

Sec. 11. 8 V.S.A. § 5030 is amended to read:

§ 5030. LIABILITY OF ~~NON-ADMITTED~~ SURPLUS LINES INSURER
FOR LOSSES AND UNEARNED PREMIUMS

If a ~~non-admitted~~ surplus lines insurer has assumed a surplus lines coverage through the intervention of a licensed surplus lines broker of this State, and if the premium for that coverage has been received by that broker, then in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer shall be deemed to have received that premium and the insurer shall be liable to the insured for losses covered by such insurance and for any return premiums due on that insurance to the insured whether or not the broker is indebted to the insurer for such insurance or for any other cause.

Sec. 12. 8 V.S.A. § 5035 is amended to read:

§ 5035. SURPLUS LINES TAX

(a) Where Vermont is the home state of the insured, gross premiums charged, less any return premiums, for surplus lines coverages placed with ~~non-admitted~~ surplus lines insurers are subject to a premium receipts tax of three percent, which shall be collected from the insured by the surplus lines broker at the time of delivery of policy or other confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance shall be returned to the policyholder by the surplus lines broker. Nothing contained in this section will preclude a surplus lines broker from charging a fee to the purchaser of the contract sufficient to recover the amount of this tax. ~~Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this State, the sum payable shall be computed based on gross premiums charged, less any return premiums, as follows:~~

~~(1) An amount equal to three percent on that portion of the premiums applicable to properties, risks, or exposures located or to be performed in Vermont; plus~~

~~(2) An amount equal to a percentage on that portion of the premiums applicable to properties, risks, or exposures located or to be performed outside Vermont. Such percentage shall be determined based on the laws of the jurisdiction within which the property, risk, or exposure is located or to be performed.~~

* * *

Sec. 13. 8 V.S.A. § 5036 is amended to read:

§ 5036. DIRECT PLACEMENT OF INSURANCE

* * *

~~(b) If any such insurance also covers a subject located or to be performed outside this State, a proper pro rata portion of the entire premium shall be allocated to the subjects of insurance located or to be performed in this State.~~

~~(e) Any insurance with a non-admitted insurer procured through negotiations or by application in whole or in part made within this State, where this State is the home state of the insured, or for which premium in whole or in part is remitted directly or indirectly from within this State, shall be deemed insurance subject to subsection (a) of this section.~~

~~(d)~~(c) A tax at the rate of three percent of the gross amount of premium, less any return premium, ~~in respect of risks located in this State,~~ shall be levied upon an insured who procures insurance subject to subsection (a) of this section. Before March 1 of the year after the year in which the insurance was procured, continued, or renewed, the insured shall remit to the Commissioner the amount of the tax. The Commissioner before June 1 of each year shall certify and transmit to the Commissioner of Taxes the sums so collected.

~~(e)~~(d) The tax shall be collectible from the insured by civil action brought by the Commissioner.

Sec. 14. 8 V.S.A. § 5038 is amended to read:

§ 5038. ACTIONS AGAINST INSURER; SERVICE OF PROCESS

* * *

(b) Each ~~non-admitted~~ surplus lines insurer ~~assuming that assumes~~ a surplus lines coverage shall be deemed thereby to have subjected itself to this chapter.

* * *

* * * HIV-Related Tests * * *

Sec. 15. 8 V.S.A. § 4724 is amended to read:

§ 4724. UNFAIR METHODS OF COMPETITION OR UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED

The following are hereby defined as unfair methods of competition or unfair or deceptive acts or practices in the business of insurance:

* * *

(7) Unfair discrimination; arbitrary underwriting action.

* * *

(C)(i) Inquiring or investigating, directly or indirectly as to an applicant's, an insured's or a beneficiary's sexual orientation, or gender identity in an application for insurance coverage, or in an investigation conducted by an insurer, reinsurer, or insurance support organization in connection with an application for such coverage, or using information about gender, marital status, medical history, occupation, residential living arrangements, beneficiaries, zip codes, or other territorial designations to determine sexual orientation or gender identity;

* * *

(iii) Making adverse underwriting decisions because medical records or a report from an insurance support organization reveal that an applicant or insured has demonstrated ~~AIDS-related~~ HIV-related concerns by seeking counseling from health care professionals;

* * *

(20) HIV-related tests. Failing to comply with the provisions of this subdivision regarding HIV-related tests. "HIV-related test" means a test approved by the United States Food and Drug Administration ~~and the Commissioner~~, included in the current Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm for serum or plasma specimens, used to determine the existence of HIV antibodies or antigens in the blood, ~~urine, or oral mucosal transudate (OMT)~~.

* * *

(B)(i) No person shall request or require that an individual submit to an HIV-related test unless he or she has first obtained the individual's written informed consent to the test. Before written, informed consent may be granted, the individual shall be informed, by means of a printed information statement ~~which that~~ shall have been read aloud to the individual by any agent of the insurer at the time of application or later and then given to the individual for review and retention, of the following:

(I) an explanation of the test or tests to be given, including: the tests' relationship to AIDS, the insurer's purpose in seeking the test, potential uses and disclosures of the results, limitations on the accuracy of and the meaning of the test's results, the importance of seeking counseling about the individual's test results after those results are received, and the availability of information from and the telephone numbers of the Vermont Department of Health AIDS hotline and the Centers for Disease Control and Prevention; and

(II) an explanation that the individual is free to consult, at personal expense, with a personal physician or counselor or the State Vermont Department of Health, which shall remain confidential, or to obtain an anonymous test at the individual's choice and personal expense, before deciding whether to consent to testing and that such delay will not affect the status of any application or policy; and

* * *

~~(ii) In addition, before drawing blood or obtaining a sample of the urine or OMT for the HIV-related test or tests, the person doing so shall give the individual to be tested an informed consent form containing the information required by the provisions of this subdivision (B), and shall then obtain the individual's written informed consent. If an OMT test is administered in the presence of the agent or broker, the individual's written informed consent need only be obtained prior to administering the test, in accordance with the provisions of this subdivision (B).~~

~~(C)(i) The forms for informed consent, information disclosure, and test results disclosure used for HIV-related testing shall be filed with and approved by the Commissioner pursuant to section 3541 of this title; and~~

~~(ii) Any testing procedure shall be filed and approved by the Commissioner in consultation with the Commissioner of Health.~~

~~(D) No laboratory may be used by an insurer or insurance support organization for the processing of HIV-related tests unless it is approved by the Vermont Department of Health. Any requests for approval under this subdivision shall be acted upon within 120 days. The Department may approve a laboratory without on-site inspection or additional proficiency data if the laboratory has been certified under the Clinical Laboratory Improvement Act, 42 U.S.C. § 263a or if it meets the requirements of the federal Health Care Financing Administration under the Clinical Laboratory Improvement Amendments.~~

~~(E) The test protocol shall be considered positive only if test results are two positive ELISA tests, and a Western Blot test confirms the results of the two ELISA tests, or upon approval of any equally or more reliable confirmatory test or test protocol which has been approved by the Commissioner and the U.S. Food and Drug Administration. If the result of any test performed on a sample of urine or OMT is positive or indeterminate, the insurer shall provide to the individual, no later than 30 days following the date of the first urine or OMT test results, the opportunity to retest once, and the individual shall have the option to provide either a blood sample, a urine sample, or an OMT sample for that retest. This retest shall be in addition to the~~

opportunities for retest provided in subdivisions (F) and (G) of this subdivision (20).

~~(F) If an individual has at least two positive ELISA tests but an indeterminate Western Blot test result, the Western Blot test may be repeated on the same sample. If the Western Blot test result is indeterminate, the insurer may delay action on the application, but no change in preexisting coverage, benefits, or rates under any separate policy or policies held by the individual may be based upon such indeterminacy. If action on an application is delayed due to indeterminacy as described herein, the insurer shall provide the individual the opportunity to retest once after six but not later than eight months following the date of the first indeterminate test result. If the retest Western Blot test result is again indeterminate or is negative, the test result shall be considered as negative, and a new application for coverage shall not be denied by the insurer based upon the results of either test. Any underwriting decision granting a substandard classification or exclusion based on the individual's prior HIV-related test results shall be reversed, and the company performing a retest which had forwarded to a medical information bureau reports based upon the individual's prior HIV-related test results shall request the medical information bureau to remove any abnormal codes listed due to such prior test results.~~

(D) HIV-related tests required by insurers or insurance support organizations must be processed in a laboratory certified under the Clinical Laboratory Improvement Act, 42 U.S.C. § 263a, or that meets the requirements of the federal Health Care Financing Administration under the Clinical Laboratory Improvement Amendments.

(E) The test protocol shall be considered positive only if testing results meet the most current Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm or more reliable confirmatory test or test protocol that has been approved by the United States Food and Drug Administration.

(F) If the HIV-1/2 antibody differentiation test result is indeterminate, the insurer may delay action on the application, but no change in preexisting coverage, benefits or rates under any separate policy or policies held by the individual may be based upon such indeterminacy. If the HIV-1 NAT test result is negative, a new application for coverage shall not be denied by the insurer. If the HIV-1 NAT test is invalid, the full testing algorithm shall be repeated. No application for coverage may be denied based on an indeterminate or invalid result. Any underwriting decision granting a substandard classification or exclusion based on the individual's prior HIV-related test results shall be reversed, and the company performing any previous

HIV-related testing that had forwarded to a medical information bureau reports based upon the individual's prior HIV-related test results shall request the medical information bureau to remove any abnormal codes listed due to such prior test results.

(G)(i) Upon the written request of an individual for a retest, an insurer shall retest, at the insurer's expense, any individual who was denied insurance, or offered insurance on any other than a standard basis, because of the positive results of an HIV-related test:

* * *

(II) in any event, upon the approval by the Commissioner of an alternative test or test protocol for the presence of HIV antibodies or antigens updates to the Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm for serum or plasma specimens.

* * *

Sec. 16. 18 V.S.A. § 501b is amended to read:

§ 501b. CERTIFICATION OF LABORATORIES

* * *

(d) Laboratory certification and approval	Annual fee shall be:
Drug laboratory approval	\$500.00
Drug laboratory alternate approval	\$300.00
Drug laboratory approval renewal	\$300.00
HIV laboratory approval	\$300.00
HIV laboratory alternate approval	\$100.00
HIV laboratory approval renewal	\$100.00
HIV laboratory (insurance) approval	\$500.00
HIV laboratory (insurance) alternate approval	\$300.00
HIV laboratory (insurance) approval renewal	\$300.00

* * *

* * * Victim Restitution Fund * * *

Sec. 17. 9 V.S.A. § 5616 is added to read:

§ 5616. VERMONT VICTIM RESTITUTION FUND

(a) Purpose. The purpose of this section is to provide restitution assistance to victims of securities violations who:

(1) were awarded restitution in a final order issued by the Commissioner or were awarded restitution in the final order in a legal action initiated by the Commissioner;

(2) have not received the full amount of restitution ordered before the application for restitution assistance is due; and

(3) demonstrate to the Commissioner's satisfaction that there is no reasonable likelihood that they will receive the full amount of restitution in the future.

(b) Definitions. As used in this section,

(1) "Claimant" means a person who files an application for restitution assistance under this section on behalf of a victim. The claimant and the victim may be the same but do not have to be the same. The term includes the named party in a restitution award in a final order, the executor of a named party in a restitution award in a final order, and the heirs and assigns of a named party in a restitution award in a final order.

(2) "Final order" means a final order issued by the Commissioner or a final order in a legal action initiated by the Commissioner.

(3) "Fund" means the Victim Restitution Special Fund created by this section.

(4) "Securities violation" means a violation of this chapter and any related administrative rules.

(5) "Victim" means a person who was awarded restitution in a final order.

(6) "Vulnerable person" means:

(A) a person who meets the definition of vulnerable person under 33 V.S.A. § 6902(14); or

(B) a person who is at least 60 years of age.

(c) Eligibility.

(1) A natural person who was a resident of Vermont at the time of the alleged fraud is eligible for restitution assistance.

(2) The Commissioner may not award securities restitution assistance under this section:

(A) to more than one claimant per victim;

(B) unless the person ordered to pay restitution has not paid the full amount of restitution owed to the victim before the application for restitution assistance from the fund is due;

(C) if there was no award of restitution in the final order; or

(D) to a claimant who has not exhausted his or her appeal rights.

(d) Denial of Assistance. The Commissioner may not award restitution assistance if the victim:

(1) sustained the monetary injury as a result of:

(A) participating or assisting in the securities violation; or

(B) attempting to commit or committing the securities violation;

(2) profited or would have profited from the securities violation; or

(3) is related to the person who committed the securities violation.

(e) Application for Restitution Assistance and Maximum Amount of Restitution Assistance Award.

(1) The Commissioner may adopt procedures and forms for application for restitution assistance under this section.

(2) An application must be received by the Department within two years after the deadline for payment of restitution established in the final order.

(3) Except as provided in subdivision (4) of this subsection, the maximum award from the fund for each claimant shall be the lesser of \$25,000.00 or 25 percent of the amount of unpaid restitution awarded in a final order.

(4) If the claimant is a vulnerable person, the maximum award from the fund shall be the lesser of \$50,000.00 or 50 percent of the amount of unpaid restitution awarded in the final order

(f) Victim Restitution Fund. The Victim Restitution Special Fund, pursuant to 32 V.S.A. chapter 7, subchapter 5, is created to provide funds for the purposes specified in this section. All monies received by the State by reason of grant or donation for use in providing uncompensated victims restitution shall be deposited into the Victim Restitution Special Fund. Interest earned on the fund shall be retained in the Fund.

(g) Award Not Subject to Execution, Attachment, or Garnishment. An award made by the Commissioner under this section is not subject to execution, attachment, garnishment, or other process.

(h) State's Liability for Award. The Commissioner shall have the discretion to suspend applications and awards based on the solvency of the fund. The State shall not be liable for any determination made under this section.

(i) Subrogation of Rights of State.

(1) The State is subrogated to the rights of the person awarded restitution under this chapter to the extent of the award.

(2) The subrogation rights are against the person who committed the securities violation or a person liable for the pecuniary loss.

(j) Rulemaking Authority. The Commissioner may adopt rules to implement this section.

* * * New England Equity Crowdfunding * * *

Sec. 18. 9 V.S.A. § 5305 is amended to read:

§ 5305. SECURITIES REGISTRATION FILINGS

* * *

(b) A person filing a registration statement shall pay a filing fee of \$600.00. A person filing a registration statement in connection with the New England Crowdfunding Initiative shall be exempt from the filing fee requirement. Open-end investment companies shall pay a registration fee and an annual renewal fee for each portfolio as long as the registration of those securities remains in effect. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under section 5306 of this title, the Commissioner shall retain the fee.

* * *

* * * Surplus Lines Insurance Compact; Repeal * * *

Sec. 19. REPEAL

8 V.S.A. chapter 138A (Surplus Lines Insurance Multi-state Compliance Compact) is repealed.

* * * Insurance Producers; Licensing Requirements; Definitions * * *

Sec. 20. 8 V.S.A. § 4791 is amended to read:

§ 4791. DEFINITIONS

As used in this chapter:

* * *

(3) “Adjuster” means any person who investigates claims and or negotiates settlement of claims arising under policies of insurance in behalf of insurers under such policies, or who advertises or solicits business from insurers as an adjuster. Lawyers settling claims of clients shall not be considered an adjuster. A license as an adjuster shall not be required of an

official or employee of a domestic fire or casualty insurance company or of a duly licensed resident insurance producer of a domestic or duly licensed foreign insurer who is authorized by such insurer to appraise losses under policies issued by such insurer.

(4) "Public adjuster" means any person who investigates claims ~~and~~ or negotiates settlement of claims arising under policies of insurance in behalf of the insured under such policies or who advertises or solicits business as such adjuster. Lawyers settling claims of clients shall not be deemed to be insurance public adjusters.

* * *

* * * Effective Date * * *

Sec. 21. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

(Committee vote: 4-3-0)

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

The Committee recommends that the recommendation of amendment of the Committee on Finance be amended by striking out Sec. 17 (establishing a Victim Restitution Fund) in its entirety

And by renumbering the remaining sections to be numerically correct.

(Committee vote: 6-0-1)

Amendment to S. 131 to be offered by Senator Cummings

Senator Cummings moves to amend the report of the Committee on Finance with the following amendments thereto:

First: In Sec. 1, 8 V.S.A. § 15a, by striking out subsection (g) in its entirety and by inserting in lieu thereof a new subsection (g) to read as follows:

(g)(1) Pursuant to the authority granted by this section, the Commissioner may not grant a waiver with respect to any of the following:

(A) Any law, regulation, bulletin, or other provision that is not subject to the Commissioner's jurisdiction under Title 8;

(B) section 3304, 3366, or 6004(a)–(b) of this title or any other requirement as to the minimum amount of paid-in capital or surplus required to be possessed or maintained by any person;

(C) chapter 107 (concerning health insurance), 112 (concerning the Vermont Life and Health Insurance Guaranty Association Act), 117 (concerning workers' compensation insurance), 129 (concerning insurance trade practices), or 131 (concerning licensing requirements), and chapter 154 (concerning long-term care insurance) of this title or any regulations or bulletins directly relating thereto;

(D) section 4211 (concerning volunteer drivers) of this title;

(E) any law, regulation, or bulletin required for the Department to maintain its accreditation by the National Association of Insurance Commissioners unless said law or regulation permits variances or waivers;

(F) the application of any taxes or fees; and

(G) any other law or regulation deemed ineligible by the Commissioner.

(2) The authority granted to the Commissioner under this section shall not be construed to allow the Commissioner to grant or extend a waiver that would abridge the recovery rights of Vermont policyholders.

Second: In Sec. 1, 8 V.S.A. § 15a, by striking out subsection (k) in its entirety and by inserting in lieu thereof a new subsection (k) to read as follows:

(k) The Commissioner, by regulation, shall adopt uniform procedures for the submission, granting, denying, monitoring, and revocation of petitions for a waiver pursuant to this section. The procedures shall set forth requirements for the ongoing monitoring, examination, and supervision of, and reporting by, each person granted a waiver under this section and shall permit the Commissioner to attach reasonable conditions or limitations on the conduct permitted pursuant to a waiver. The procedures shall provide for an expedited application process for a product or service that is substantially similar to one for which a waiver has previously been granted by the Commissioner. The procedures shall include an opportunity for public comment on draft waivers under consideration by the Commissioner.

Third: In Sec. 1, 8 V.S.A. § 15a, by striking out subsection (n) in its entirety and by inserting in lieu thereof a new subsection (n) to read as follows:

(n)(1) Biannually, beginning on January 15, 2020, the Commissioner shall submit a report to the General Assembly providing the following information:

(A) the total number of petitions for waivers that have been received, granted, and denied by the Commissioner;

(B) for each waiver granted by the Commissioner, the information specified under subsection (f) of this section;

(C) a list of any regulations or bulletins that have been adopted or amended as a result of or in connection with a waiver granted under this section;

(D) with respect to each statute to which a waiver applies, the Commissioner's recommendation as to whether such statute should be continued, eliminated, or amended in order to promote innovation and establish a uniform regulatory system for all regulated entities; and

(E) a list of any waivers that have lapsed or been revoked and, if revoked, a description of other regulatory or disciplinary actions, if any, that resulted in, accompanied, or resulted from such revocation.

(2) In the report submitted to the General Assembly on or before January 15, 2020, the Commissioner shall include a recommendation on whether there are any opportunities for the State to monetize its role in developing innovative insurance products and services that are subsequently offered in other jurisdictions. The Commissioner's recommendation shall ensure that any regulatory financial incentives under a monetization proposal would not conflict with the best interests of Vermont policyholders or the public good of the State.

NEW BUSINESS

Third Reading

S. 160.

An act relating to agricultural development.

NOTICE CALENDAR

Second Reading

Favorable

H. 58.

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

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

(Committee vote: 5-0-0)

(No House amendments)

H. 59.

An act relating to the codification of the charter of the Rutland County Solid Waste District.

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

(Committee vote: 5-0-0)

(No House amendments)

H. 73.

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

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

(Committee vote: 5-0-0)

(For House amendments, see House Journal of March 1, 2019, page 374)

H. 532.

An act relating to fiscal year 2019 budget adjustments.

Reported favorably by Senator Kitchel for the Committee on Appropriations.

(Committee vote: 7-0-0)

(For House amendments, see House Journal of March 22, 2019, pages 592-642)

Reported favorably by Senator Cummings for the Committee on Finance.

(Committee vote: 6-0-1)

Favorable with Proposal of Amendment

H. 394.

An act relating to the disposition of the remains of veterans.

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

The Committee recommends that the Senate propose to the House to amend the bill in Sec. 3, Effective Date, by striking out: "July 1, 2019" and inserting in lieu thereof the word passage.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 19, 2019, pages 547-549)

Proposed Amendment to the Vermont Constitution

PROPOSAL 5

(Second day on Notice Calendar pursuant to Rule 77)

Offered by: Senators Ashe, Balint, Lyons and Sears

Subject: Declaration of rights; right to personal reproductive liberty

PENDING ACTION: Second reading of the proposed amendment

Text of Proposal 5:

PROPOSAL 5

Sec. 1. PURPOSE

(a) This proposal would amend the Constitution of the State of Vermont to ensure that every Vermonter is afforded personal reproductive liberty. The Constitution is our founding legal document stating the overarching values of our society. This amendment is in keeping with the values espoused by the current Vermont Constitution. Chapter I, Article 1 declares “That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights.” Chapter I, Article 7 states “That government is, or ought to be, instituted for the common benefit, protection, and security of the people.” The core value reflected in Article 7 is that all people should be afforded all the benefits and protections bestowed by the government, and that the government should not confer special advantages upon the privileged. This amendment would reassert the principles of equality and personal liberty reflected in Articles 1 and 7 and ensure that government does not create or perpetuate the legal, social, or economic inferiority of any class of people. This proposed constitutional amendment is not intended to limit the scope of rights and protections afforded by Article 7 or any other provision in the Vermont Constitution.

(b) The right to reproductive liberty is central to the exercise of personal autonomy and involves decisions people should be able to make free from compulsion of the State. Enshrining this right in the Constitution is critical to ensuring equal protection and treatment under the law and upholding the right of all people to health, dignity, independence, and freedom.

Sec. 2. Article 22 of Chapter I of the Vermont Constitution is added to read:

Article 22. [Personal reproductive liberty]

That the people are guaranteed the liberty and dignity to determine their own life’s course. The right to personal reproductive autonomy is central to the liberty protected by this Constitution and shall not be denied or infringed

unless justified by a compelling State interest achieved by the least restrictive means.

Sec. 3. EFFECTIVE DATE

The amendment set forth in Sec. 2 shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2022 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

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

The Committee on Health and Welfare recommends that Proposal 5 be amended by striking out Sec. 2 in its entirety and inserting in lieu thereof the following:

Sec. 2. Article 22 of Chapter I of the Vermont Constitution is added to read:

Article 22. [Personal reproductive liberty]

That an individual's right to personal reproductive autonomy is central to the liberty and dignity to determine one's own life course as protected by this Constitution, and shall not be denied or infringed unless justified by a compelling State interest achieved by the least restrictive means.

(Committee vote: 5-0-0)

CONCURRENT RESOLUTIONS FOR NOTICE

Concurrent Resolutions For Notice Under Joint Rule 16

The following joint concurrent resolutions have been introduced for approval by the Senate and House. They will be adopted by the Senate unless a Senator requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration should be communicated to the Secretary's Office.

H.C.R. 99 - 120 (For text of Resolutions, see Addendum to House Calendar for March 28, 2019)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and

with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Utility Commission shall be fully and separately acted upon.

Michael P. Touchette of Colchester – Commissioner, Department of Corrections – By Senator Benning for the Committee on Institutions. (2/28/19)

Wanda Minoli of Montpelier – Commissioner, Department of Motor Vehicles (term 10/2/18 – 2/28/19) – By Sen. Mazza for the Committee on Transportation. (3/19/19)

Wanda Minoli of Montpelier – Commissioner, Department of Motor Vehicles (term 3/1/19 – 2/28/21) – By Sen. Mazza for the Committee on Transportation. (3/19/19)

Kaj Samsom of Montpelier – Commissioner, Department of Taxes – By Sen. Brock for the Committee on Finance. (3/22/19)

Rebekah Irwin of Middlebury – Member, Board of Libraries – By Senator Hardy for the Committee on Education. (3/13/19)

Noah Fishman of Waterbury Center – Member, Travel Information Council (term 7/20/18 – 2/28/19) – By Sen. Kitchel for the Committee on Transportation. (3/15/19)

Noah Fishman of Waterbury Center – Member, Travel Information Council (term 3/1/19 – 2/28/21) – By Sen. Kitchel for the Committee on Transportation. (3/15/19)

James Fitzgerald of St. Albans – Member, Transportation Board – By Sen. McNeil for the Committee on Transportation. (3/15/19)

Wendy Harrison of Brattleboro – Member, Transportation Board – By Sen. McNeil for the Committee on Transportation. (3/15/19)

Philip H. Zalinger, Jr. of Montpelier – Member, Transportation Board – By Sen. Perchlik for the Committee on Transportation. (3/15/19)

Pamela Loranger of Colchester – Member, Transportation Board – By Sen. Mazza for the Committee on Transportation. (3/19/19)

Jacqueline Dement of Burlington – Member, Travel Information Council (term 7/20/18 – 2/28/19) – By Sen. Ashe for the Committee on Transportation. (3/20/19)

Jacqueline Dement of Burlington – Member, Travel Information Council (term 3/1/19 – 2/28/21) – By Sen. Ashe for the Committee on Transportation. (3/20/19)

Carolyn Dwyer of Essex Junction - Member, Board of Trustees of the University of Vermont and State Agricultural College - By Sen. Baruth for the Committee on Education. (3/21/19)

Adam Grinold of Wilmington - Member, Vermont State Colleges Board of Trustees - By Sen. Perchlik for the Committee on Education. (3/21/19)

Margaret Flory of Rutland – Member, Vermont State Colleges Board of Trustees – By Sen. McNeil for the Committee on Education. (3/29/19)

PUBLIC HEARINGS

April 2, 2019 - 5:00 - 7:00 P.M. - House Chamber - Re: S. 169 Firearms Procedures - House Committee on Judiciary.

FOR INFORMATION ONLY

CROSSOVER 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)) on or before **Friday, March 15, 2019**, and filed with the Secretary/Clerk so that 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 22, 2019**, and filed with the Secretary/Clerk so that 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.

FOR INFORMATIONAL PURPOSES

CONSTITUTIONAL AMENDMENTS

The 2019-2020 biennium is the second reading of a proposal of amendment; there is only a second reading this biennium. Third reading is during the 2021-2022 biennium.

Upon being reported by a committee, the proposal is printed in full in the Senate Calendar on the Notice Calendar for five legislative days. Senate Rule 77.

At second reading the proposal of amendment is read in full. Senate Rule 77.

The vote on any constitutional proposal of amendment and any amendment thereto is by yeas and nays. Senate Rules 77 and 80, and Vermont Constitutional §72 (requirement of 2/3 vote of members).

At second reading, the questions is: “Shall the Senate adopt the proposal of amendment to the Constitution of Vermont (as amended) as recommended by the Committee on ____ and request the concurrence of the House?” which requires 20 votes – 2/3 of the Senate. Vermont Constitution §72. Any amendments to the proposal of amendment require a majority. Senate Rule 80.

Amendments recommended by any senator shall be submitted to the committee of reference, in written form, where they shall be acted upon by the committee. Upon adoption or rejection of any amendment by the committee, the amendment and recommendation shall be printed in the calendar at least one legislative day before second reading. Senate Rule 78