

Report of Committee of Conference

S.113

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

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

S.113. An act relating to the management of single-use products.

Respectfully report that they have met and considered the same and recommend that the Senate accede to the House proposal of amendment and that the bill be further amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. PURPOSE

It is the purpose of this act to:

(1) mitigate the harmful effects of single-use products on Vermont's municipalities and natural resources; and

(2) relieve the pressure for landfills to manage the disposition of single-use products.

Sec. 2. 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; and Single-use Plastic Stirrers

§ 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 transporting groceries or retail goods, except that a “carryout bag” shall not mean:

(A) a bag made of paper when the paper has a basis weight of 30 pounds or less;

(B) a bag provided by a pharmacy to a customer purchasing a prescription medication;

(C) a bag used by customers inside a store to:

(i) package loose items, such as fruits, vegetables, nuts, coffee, grains, bakery goods, candy, greeting cards, or small hardware items;

(ii) contain or wrap frozen foods, meat, or fish; or

(iii) contain or wrap flowers;

(D) a laundry, dry cleaning, or garment bag, including bags provided by a store to protect large garments, such as suits, jackets, or dresses.

(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 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, including material derived from either petroleum or a biologically based polymer, such as corn or other plant sources.

(7) “Point of sale” means a check-out stand, cash register, or other point of departure from a store or food service establishment, including the location where remotely ordered food or products are delivered to a purchaser.

(8) “Recyclable paper carryout bag” means a carryout bag that is made of paper and that is recyclable.

(9) “Reusable carryout bag” means a carryout bag that is designed and manufactured for multiple uses and is:

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

(B) a polypropylene bag that has stitched handles.

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

(11) “Single-use plastic carryout bag” means a carryout bag that is:

(A) made of plastic;

(B) a single-use product; and

(C) not a reusable carryout bag.

(12) “Single-use plastic stirrer” means a device that is:

(A) used to mix beverages;

(B) made predominantly of plastic; and

(C) a single-use product.

(13) “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; and

(B) is a single-use product.

(14) “Single-use product” or “single use” means a product that is generally recognized by the public as an item to be discarded after one use.

(15) “Store” means a grocery store, supermarket, convenience store, liquor store, drycleaner, pharmacy, drug store, or other retail establishment 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. RECYCLABLE PAPER CARRYOUT BAG

(a) A store or food service establishment may provide a consumer a recyclable paper carryout bag at the point of sale if the bag is provided to the consumer for a charge 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 recyclable paper carryout bag shall be retained by the store or food service establishment.

§ 6694. SINGLE-USE PLASTIC STRAWS

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

(b) The prohibition on sale or provision of a single-use plastic straw under subsection (a) of this section shall not apply to:

(1) a hospital licensed under 18 V.S.A. chapter 43;

(2) a nursing home, residential care home, assisted living residence, home for the terminally ill, or therapeutic community, as those terms are defined in 33 V.S.A. chapter 71; or

(3) an independent living facility as that term is defined in 32 V.S.A. chapter 225.

(c) This section shall not alter the requirements of 9 V.S.A. chapter 139 regarding the provision of services by a place of public accommodation.

§ 6695. SINGLE-USE PLASTIC STIRRERS

A food service establishment shall not provide a single-use plastic stirrer to a customer.

§ 6696. 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.

§ 6697. CIVIL PENALTIES; WARNING

(a) A person, store, or food service establishment that 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, store, or food service establishment is violating the requirement of this subchapter.

§ 6698. INVENTORY EXCEPTION

A store or food service establishment shall not violate a prohibition under this subchapter regarding the provision of a carryout bag, single-use plastic

straw, single-use stirrer, or expanded polystyrene food service product if the store or food service establishment:

(1) purchased the carryout bag, single-use plastic straw, single-use stirrer, or expanded polystyrene food service product prior to May 15, 2019;
and

(2) provides the carryout bag, single-use plastic straw, single-use stirrer, or expanded polystyrene food service product to a consumer on or before July 1, 2021.

§ 6699. APPLICATION TO MUNICIPAL BYLAWS, ORDINANCES, OR

CHARTERS; PREEMPTION

(a) The General Assembly finds that the requirements of this subchapter are of statewide interest and, beginning on July 1, 2020, shall be applied uniformly in the State and shall occupy the entire field of regulation of single-use plastic carryout bags; single-use, recyclable paper carryout bags; single-use plastic straws; single-use plastic stirrers; and expanded polystyrene food service products.

(b) A municipal ordinance, bylaw, or charter adopted or enacted before July 1, 2020 that regulates or addresses the use, sale, or provision of single-use plastic carryout bags, single-use recyclable paper carryout bags, single-use plastic straws, single-use plastic stirrers, or expanded polystyrene food service products is preempted by the requirements of this subchapter, and a

municipality shall not enforce or otherwise implement the ordinance, bylaw, or charter.

§ 6700. RULEMAKING

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

Sec. 3. SINGLE-USE PRODUCTS WORKING GROUP; REPORT

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

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

(2) recommend to the Vermont General Assembly policy or requirements that the State should enact to:

(A) reduce the use of single-use products;

(B) reduce the environmental impact of single-use products;

(C) improve statewide management of single-use products;

(D) divert single-use products from disposal in landfills; and

(E) prevent contamination of natural resources by discarded single-use products.

(b) 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 transporting groceries or retail goods.

(2) “Disposable plastic food service ware” means containers, plates, clamshells, serving trays, meat and vegetable trays, hot and cold beverage cups, cutlery, and other 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 to be used once for eating or drinking; and

(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) “Point of sale” means a check-out stand, cash register, or other point of departure from a store or food service establishment, including the location where remotely ordered food or products are delivered to a purchaser.

(9) “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.

(10) “Single use” means a product that is generally recognized by the public as an item to be discarded after one use.

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

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

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

(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 of a single-stream materials recovery facility located in Vermont appointed by the Governor;

(5) two representatives from solid waste management entities in the State, one representing a rural district and one representing an urban district, 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 that advocates for the reduction of solid waste and the protection of the environment appointed by the Speaker of the House;

(9) one representative of stores in the State, appointed by the Committee on Committees; and

(10) one representative of food service establishments in the State, appointed by the Speaker of the House.

(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 effects on landfill capacity of single-use products that can be recycled but are currently being disposed.

(3) 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.

(4) Recommend methods or mechanisms to address the effects on landfill capacity of single-use products that can be recycled, but are currently being disposed, in order to improve the management of single-use products in

the State, including whether the State should establish extended producer responsibility or similar requirements for manufacturers, distributors, or brand owners of single-use products.

(5) If extended producer responsibility or similar requirements for single-use products are recommended under subdivision (4) 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.

(6) Recommend methods or incentives for increasing the availability and affordability of reusable carryout bags for all citizens in Vermont.

(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. 4. ANR REPORT ON LANDFILL OPERATION IN THE STATE

As part of the Biennial Report on Solid Waste required under 10 V.S.A. § 6604(b) to be submitted to the General Assembly in 2021, the Secretary of Natural Resources shall include a feasibility study addressing issues related to the opening of a second landfill in the State. The report shall include:

(1) An assessment of the capacity of the two sites in the State that are currently permitted and certified for landfill operation, but are not in operation, to receive solid waste.

(2) An evaluation of the environmental costs of continuing to truck solid waste to a single landfill located in the northeast corner of the State. This evaluation shall include the amount of greenhouse gases emitted over the course of a year from trucks making round trips to the existing landfill in Vermont. The evaluation shall also include an estimate of the impact that

trucking to the one landfill in the State is having annually on the State transportation infrastructure.

(3) An estimate of the time frame to physically activate either one or both of the sites in the State that are currently permitted and certified for landfill operation, but are not in operation, to receive solid waste.

(4) An estimate of the time frame to locate and operate an additional solid waste landfill in the State.

Sec. 5. EFFECTIVE DATES

(a) This section, Sec. 1 (purpose), Sec. 3 (single-use working group), and Sec. 4 (landfill report) shall take effect on passage.

(b) Sec. 2 (single-use products) shall take effect July 1, 2020.

COMMITTEE ON THE PART OF
THE SENATE

SEN. CHRISTOPHER A. BRAY

SEN. BRIAN A. CAMPION

SEN. JOHN S. RODGERS

COMMITTEE ON THE PART OF
THE HOUSE

REP. AMY D. SHELDON

REP. JAMES M. MCCULLOUGH

REP. PAUL D. LEFEBVRE