

Journal of the House

Thursday, March 1, 2012

At one o'clock in the afternoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Rev. Peter Plagge of the Waterbury Congregational Church, Waterbury, VT.

Message from the Senate No. 22

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has considered a bill originating in the House of the following title:

H. 755. An act relating to extending the deadline for adoption of certain health department rules.

And has passed the same in concurrence.

Message from the Senate No. 23

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has considered a bill originating in the House of the following title:

H. 630. An act relating to reforming Vermont's mental health system.

And has passed the same in concurrence with proposals of amendment in the adoption of which the concurrence of the House is requested.

The Senate has on its part adopted Senate concurrent resolution of the following title:

S.C.R. 39. Senate concurrent resolution honoring former Representative and Senator Robert T. Gannett on his 95th birthday.

Committee Bill Introduced**H. 763**

Rep. Ancel of Calais, for the committee on Ways and Means, introduced a bill, entitled

An act relating to the billing and collection of the statewide education property tax by the department of taxes

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

Joint Resolution Referred to Committee**J.R.H. 26**

Joint resolution encouraging the Vermont fish and wildlife board to consider opening additional rivers and streams to year-round fishing

Offered by: Representatives Atkins of Winooski, Acinapura of Brandon, Aswad of Burlington, Bartholomew of Hartland, Bissonnette of Winooski, Botzow of Pownal, Bouchard of Colchester, Burditt of West Rutland, Burke of Brattleboro, Buxton of Tunbridge, Champion of Bennington, Christie of Hartford, Clark of Vergennes, Conquest of Newbury, Consejo of Sheldon, Courcelle of Rutland City, Deen of Westminster, Degree of St. Albans City, Devereux of Mount Holly, Donaghy of Poultney, Eckhardt of Chittenden, Evans of Essex, Fagan of Rutland City, Fisher of Lincoln, Frank of Underhill, French of Shrewsbury, French of Randolph, Gilbert of Fairfax, Greshin of Warren, Head of South Burlington, Hebert of Vernon, Helm of Fair Haven, Higley of Lowell, Hubert of Milton, Jerman of Essex, Krebs of South Hero, Lanpher of Vergennes, Larocque of Barnet, Lenes of Shelburne, Lewis of Derby, Macaig of Williston, Martin of Wolcott, McCullough of Williston, McFaun of Barre Town, McNeil of Rutland Town, Miller of Shaftsbury, Mook of Bennington, Moran of Wardsboro, Munger of South Burlington, O'Brien of Richmond, Partridge of Windham, Pearce of Richford, Peltz of Woodbury, Pugh of South Burlington, Reis of St. Johnsbury, Russell of Rutland City, Savage of Swanton, Shaw of Pittsford, Stevens of Waterbury, Strong of Albany, Stuart of Brattleboro, Sweaney of Windsor, Till of Jericho, Toll of Danville, Townsend of Randolph, Waite-Simpson of Essex, Webb of Shelburne, Wilson of Manchester, Winters of Williamstown, Yantachka of Charlotte and Zagar of Barnard

Whereas, Vermonters recognize that the fish, wildlife, and plant resources of the state are a great asset and that these resources greatly contribute to Vermonters' quality of life, and

Whereas, Vermont currently ranks third in the nation in participation in wildlife-associated recreation activities, and

Whereas, 62 percent of Vermonters participate in high-quality hunting, fishing, trapping, and wildlife opportunities, and in 2006, Vermonters and visitors to our state spent more than \$376 million participating in these activities, and

Whereas, it would be to the economic advantage of the state of Vermont to increase the percentage of Vermonters participating in these outdoor recreational activities, and

Whereas, providing more year-round fishing opportunities would enable the Vermont fish and wildlife board to attain its management goals of providing regulated and sustained fishing opportunities, and

Whereas, similarly expanding the year-round fishing options in the state would enable the board to collect information from a wider range of anglers regarding their fishing preferences and fishing successes and to share information regarding the anglers' satisfaction levels, and

Whereas, year-round fishing could assist in monitoring the fish population and the habitat of sport fishing species and allow for the evaluation of current and prospective fishing harvest regulations, and

Whereas, Vermont is trying to encourage people to consider this state as a year-round destination, and people could ski in the morning, fish in the afternoon, and snowshoe in the evening, weather permitting, and

Whereas, hard water fishing enthusiasts could move to open feeder streams and rivers to use regular rods and reels, and

Whereas, an increase in year-round fishing opportunities in Vermont would not harm fish populations since administrative rules could be adopted providing for catch-and-release policies and prohibiting the use of live bait, as such rules exist now for certain streams and rivers that are open all year, and

Whereas, chambers of commerce in Vermont could advertise this destination initiative featuring increased year-round fishing opportunities and seek assistance from state agencies and sporting activity shows in their promotional campaigns, and

Whereas, the periodically rising cost of fishing licenses, especially for nonresidents, would be more justifiable since the licensees' time of usage would be extended, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly encourages the Vermont fish and wildlife board to consider opening additional rivers and streams to year-round fishing, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vermont fish and wildlife board.

Which was read and, in the Speaker's discretion, treated as a bill and referred to the committee on Fish, Wildlife & Water Resources.

Joint Resolution Referred to Committee

J.R.H. 27

Joint resolution supporting the Vermont State Hospital employees

Offered by: Representatives Moran of Wardsboro and Davis of Washington

Whereas, on August 28, 2011, the severe flooding resulting from Tropical Storm Irene forced the immediate closing of the Vermont State Hospital in Waterbury, and

Whereas, this sudden disaster required quick and decisive decisions to be implemented, and

Whereas, the Vermont State Hospital employees safely evacuated every patient, and the patients were all relocated to alternative locations across the state, and

Whereas, the employees continued to provide outstanding care to the patients wherever they were temporarily assigned, including hospital psychiatric units, step-down facilities, and even correctional units, and

Whereas, at great personal sacrifice to themselves and their families, the employees voluntarily moved to 12-hour shifts and stayed at hotels near where their patients were being treated, and

Whereas, the employees' heroic efforts have been widely credited for preventing tragedy and a complete breakdown of Vermont's mental health system, and

Whereas, the department of mental health's announcement on February 24, 2012 that approximately 80 of these excellent state employees will soon be separated from state service is a devastating blow to these extremely conscientious and dedicated individuals, and

Whereas, the working Vermonters legislative caucus is gravely concerned about the future of the entire mental health system, including the welfare of the patients and the fair treatment of state employees, and

Whereas, every reasonable effort to provide continuing employment for these individuals must be made, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly strongly urges the department of mental health and the department of human resources to agree to the following:

First: That should an interim state mental health care facility be opened, the laid-off state employees will be given the first rights to accept the jobs required to operate this temporary mental health care facility;

Second: That for one year after a new permanent state hospital is opened, the laid-off state employees will be granted reduction in force (RIF) rights, even if they have been working outside state government in the interim, and

Third: That the department of human resources and the Vermont State Employees Association will collaborate on potential alternatives to employee layoffs including possible retirement options, and

Fourth: That the employees will be provided with job counseling and assistance in finding immediate employment either in or outside state government, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to Governor Peter Shumlin, Commissioner of Mental Health Patrick Flood, and Commissioner of Human Resources Kate Duffy.

Which was read and, in the Speaker's discretion, treated as a bill and referred to the committee on Government Operations.

Rules Suspended; Bill Committed

H. 523

On motion of **Rep. Koch of Barre Town**, the rules were suspended and House bill, entitled

An act relating to revising the state highway condemnation law

Appearing on the Calendar for notice, was taken up for immediate consideration.

Pending the reading of the report of the committee on Judiciary, on motion of **Rep. Koch of Barre Town**, the bill was committed to the committee on Transportation.

Bill Amended; Third Reading Ordered

H. 485

Rep. Jerman of Essex, for the committee on Natural Resources and Energy, to which had been referred House bill, entitled

An act relating to establishing universal recycling of solid waste

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 6602 is amended to read:

§ 6602. DEFINITIONS

For the purposes of this chapter:

(1) “Secretary” means the secretary of the agency of natural resources, or his or her duly authorized representative.

(2) “Solid waste” means any discarded garbage, refuse, septage, sludge from a waste treatment plant, water supply plant, or pollution control facility and other discarded material including solid, liquid, semi-solid, or contained gaseous materials resulting from industrial, commercial, mining, or agricultural operations and from community activities but does not include animal manure and absorbent bedding used for soil enrichment; high carbon bulking agents used in composting; or solid or dissolved materials in industrial discharges which are point sources subject to permits under the Water Pollution Control Act, chapter 47 of this title.

* * *

(12) “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any ground or surface waters.

(13) “Waste” means a material that is discarded or is being accumulated, stored, or physically, chemically or biologically treated prior to being discarded or has served its original intended use and is normally discarded or is a manufacturing or mining by-product and is normally discarded.

* * *

(19) “Implementation plan” means that plan which is adopted to be consistent with the state solid waste management plan and to conform with any municipal and regional plan adopted pursuant to 24 V.S.A. chapter 117. This plan must include all the elements required for consistency with the state plan and shall be approved by the secretary. This implementation plan is the basis for state certification of facilities under subsection 6605(c) of this title.

* * *

(27) “Closed-loop recycling” means a system in which a product made from one type of material is reclaimed and reused in the production process or the manufacturing of a new or separate product.

(28) “Mandated recyclable” means aluminum and steel cans; aluminum foil and aluminum pie plates; glass bottles and jars from foods and beverages; polyethylene terephthalate (PET) plastic bottles or jugs; high density polyethylene (HDPE) plastic bottles and jugs; corrugated cardboard; white and colored paper; newspaper; magazines; catalogues; paper mail and envelopes; boxboard; and paper bags.

(29) “Leaf and yard residual” means compostable untreated vegetative matter, including grass clippings, leaves, kraft paper bags, and brush, which is free from noncompostable materials. It does not include such materials as pre- and postconsumer food residuals, food processing residuals, or soiled paper.

(30) “Organic material” means compostable material derived from processing or discarding of food. Organic material may include preconsumer and postconsumer food scraps.

(31) “Wood waste” means trees, untreated wood, and other natural woody debris, including tree stumps, brush and limbs, root mats, and logs.

Sec. 2. 10 V.S.A. § 6604 is amended to read:

§ 6604. SOLID WASTE MANAGEMENT PLANS PLAN

(a) No later than ~~April 30, 1988~~ November 1, 2013, the secretary shall ~~publish and adopt, after notice and public hearing pursuant to 3 V.S.A. chapter 25 of Title 3, a solid waste management plan which sets forth a comprehensive statewide strategy for the management of waste, including whey. No later than July 1, 1991, the secretary shall publish and adopt, after notice and public hearing pursuant to chapter 25 of Title 3, a hazardous waste management plan, which sets forth a comprehensive statewide strategy for the management of hazardous waste.~~

(1)(A) The ~~plans plan~~ shall ~~be based upon~~ promote the following priorities, ~~in descending order~~:

~~(i)(A)~~ the greatest feasible reduction in the amount of waste generated;

~~(ii)(B)~~ the reuse and closed-loop recycling of waste to reduce to the greatest extent feasible the volume remaining for processing and disposal;

~~(iii)(C)~~ the reduction of the state’s reliance on waste disposal to the greatest extent feasible;

(D) the creation of an integrated waste management system that promotes energy conservation, reduces greenhouse gases, and limits adverse environmental impacts;

(E) waste processing to reduce the volume or toxicity of the waste stream necessary for disposal;

~~(iv) land disposal of the residuals.~~

~~(B) Processing and disposal alternatives shall be preferred which do not foreclose the future ability of the state to reduce, reuse, and recycle waste. In determining feasibility, the secretary shall evaluate alternatives in terms of their expected life cycle costs.~~

(2) The ~~plans~~ plan shall be revised at least once every five years and shall include:

(A) an analysis of the volume and nature of wastes generated in the state, the source of the waste, and the current fate or disposition of the waste. Such an analysis shall include a waste composition study conducted in accordance with generally accepted practices for such a study;

(B) an assessment of the feasibility and cost of diverting each waste category from disposal. As used in this subdivision (a)(2), "waste category" means:

(i) marketable recyclables;

(ii) leaf and yard residuals;

(iii) organic material;

(iv) construction and demolition residuals;

(v) household hazardous waste; and

(vi) additional categories or subcategories of waste that the secretary identifies that may be diverted to meet the priorities set forth under subdivision (a)(1) of this section;

(C) a survey of existing and potential markets for each waste category that can be diverted from disposal;

(D) measurable goals and targets for waste diversion for each waste category.

(E) methods to reduce and remove material from the waste stream, including commercially generated and other organic wastes, used clothing, and construction and demolition debris, and to separate, collect, and recycle, treat or dispose of specific waste materials that create environmental, health, safety, or management problems, including, ~~but not limited to,~~ tires, batteries, obsolete

electronic equipment, and unregulated hazardous wastes. These portions of the plans shall include strategies to assure recycling in the state, and to prevent the incineration or other disposal of marketable recyclables. ~~They shall consider both the current solid waste stream and its projected changes, and shall be based on:~~

~~(i) an analysis of the volume and nature of wastes generated in the state, the sources of those wastes, and the current fate or disposition of those wastes;~~

~~(ii) an assessment of the feasibility and cost of recycling each type of waste, including an assessment of the feasibility of providing the option of single source recycling;~~

~~(iii) a survey of existing and potential markets for each type of waste that can be recycled;~~

(F) a coordinated education and outreach component that advances the objectives of the plan, including the source separation requirements, generator requirements to remove organic material, and the landfill disposal bans contained within this chapter.

(G) performance and accountability measures to ensure that implementation plans are effective in meeting the requirements of this section.

~~(B)(H) a proposal for the development an assessment of facilities and programs necessary at the state, regional or local level to achieve the priorities identified in subdivision (a)(1) of this section and the goals established in the plan. Consideration shall be given to the need for additional regional or local composting facilities, the need to expand the collection of commercially generated organic wastes, and the cost effectiveness of developing single stream waste management infrastructure adequate to serve the entire population, which may include material recovery centers. These portions of the plan shall be based, in part, on an assessment of the status, capacity, and life expectancy of existing ~~treatment and disposal~~ solid waste facilities, and they shall include siting criteria for waste management facilities, and shall establish requirements for full public involvement.~~

~~(b) The secretary may manage the hazardous wastes generated, transported, treated, stored or disposed in the state by administering a regulatory and management program which, at a minimum, meets the requirements of subtitle C of the Resource Conservation and Recovery Act of 1976, and amendments thereto, codified as 42 U.S.C. chapter 82, subchapter 3, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.~~

~~(1) Removal of hazardous waste from the waste stream. The secretary is authorized to carry out studies, evaluations and pilot projects to remove significant quantities of unregulated hazardous wastes from the waste stream, when in the secretary's opinion the public health and safety will not be adversely affected. One or more of these projects shall investigate the feasibility and effectiveness of separating from the rest of the waste stream those nonhazardous materials which require disposal in landfills, but which may not require the use of liners and leachate collection systems.~~

~~(2) Report on disposal of hazardous wastes. The secretary shall consult with interested persons on the disposal of hazardous waste, including persons with relevant expertise and representatives from state and local government, industry, the agricultural sector, the University of Vermont, and the general public. The secretary shall conduct public hearings, take relevant testimony, perform appropriate analysis and report to the general assembly and the governor by January 1, 1990, on the following:~~

~~(A) the nature, origin and amount of hazardous waste generated in the state;~~

~~(B) the cost and environmental impact of current disposal practices;~~

~~(C) options for the treatment and disposal of leachate collected from sanitary landfills;~~

~~(D) steps that can be taken to reduce waste flows, or recycle wastes;~~

~~(E) the need for recycling, treatment and disposal facilities to be located within the state; and~~

~~(F) a proposed process and proposed criteria for use in siting and constructing needed facilities within the state, and for obtaining the maximum amount of public input in any such process.~~

~~(e) The secretary shall hold public hearings, perform studies as required, conduct ongoing analyses, conduct analyses and make recommendations to the general assembly with respect to the reduction house and senate committees on natural resources and energy regarding the volume, amount, and toxicity of the waste stream. In this process, the secretary shall consult with manufacturers of commercial products and of packaging used with commercial products, retail sales enterprises, health and environmental advocates, waste management specialists, the general public, and state agencies. The goal of the process is to ensure that packaging used and products sold in the state are not an undue burden to the state's ability to manage its waste. The secretary shall seek voluntary changes on the part of the industrial and commercial sector in both their practices and the products they sell, so as to serve the purposes of this section. In this process, the secretary may obtain voluntary compliance~~

schedules from the appropriate industry or commercial enterprise, and shall entertain recommendations for alternative approaches. The secretary shall report at the beginning of each biennium to the ~~general assembly house and senate committees on natural resources and energy~~, with any recommendations or options for legislative consideration. At least 45 days prior to submitting its report, the secretary shall post any recommendations within the report to its website for notice and comment.

(1) In carrying out the provisions of this subsection, the secretary first shall consider ways to keep hazardous material; toxic substances, as that term is defined in subdivision 6624(7) of this title; and nonrecyclable, nonbiodegradable material out of the waste stream, as soon as possible. In this process, immediate consideration shall be given to the following:

(A) evaluation of products and packaging that contain large concentrations of chlorides, such as packaging made with polyvinyl chloride (PVC);

(B) evaluation of polystyrene packaging, particularly that used to package fast food on the premises where the food is sold;

(C) evaluation of products and packaging that bring heavy metals into the waste stream, such as disposable batteries, paint and paint products and containers, and newspaper supplements and similar paper products;

(D) identification of unnecessary packaging, which is nonrecyclable and nonbiodegradable.

(2) With respect to the above, the secretary shall consider the following:

(A) product and packaging bans, products or packaging which ought to be exempt from such bans, the existence of less burdensome alternatives, and alternative ways that a ban may be imposed;

(B) tax incentives, including the following options:

(i) product taxes, based on a sliding scale, according to the degree of undue harm caused by the product, the existence of less harmful alternatives, and other relevant factors;

(ii) taxes on all nonrecyclable, nonbiodegradable products or packaging;

(C) deposit and return legislation for certain products.

~~(d)~~(c) A portion of the state's solid waste management plan shall set forth a comprehensive statewide program for the collection, treatment, beneficial use, and disposal of septage and sludge. The secretary shall work cooperatively with the department of health and the agency of agriculture, food and markets

in developing this portion of the plan and the rules to carry it out, both of which shall be consistent with or more stringent than that prescribed by section 405 of the Clean Water Act (33 U.S.C. § 1251, et seq.). In addition, the secretary shall consult with local governmental units and the interested public in the development of the plans. The sludge management plan and the septage management plan shall be developed and adopted by January 15, 1987. In the development of these portions of the plan, consideration shall be given to, but shall not be limited to, the following:

- (1) the varying characteristics of septage and sludge;
- (2) its value as a soil amendment;
- (3) the need for licensing or other regulation of septage and sludge handlers;
- (4) the need for seasonal storage capability;
- (5) the most appropriate burdens to be borne by individuals, municipalities, and industrial and commercial enterprises;
- (6) disposal site permitting procedures;
- (7) appropriate monitoring and reporting requirements;
- (8) actions which can be taken through existing state programs to facilitate beneficial use of septage and sludge;
- (9) the need for regional septage facilities;
- (10) an appropriate public information program; and
- (11) the need for and proposed nature and cost of appropriate pilot projects.

~~(e)~~(d) Although the ~~plans~~ plan adopted under this section and any amendments to ~~these plans~~ the plan shall be adopted by means of a public process that is similar to the process involved in the adoption of administrative rules, the ~~plans~~ plan, as initially adopted or as amended, shall not be a rule.

Sec. 3. 10 V.S.A. § 6603 is amended to read:

§ 6603. SECRETARY; POWERS

In addition to any other powers conferred on him or her by law, the secretary shall have the power to:

- (1) Adopt, amend and repeal rules pursuant to 3 V.S.A. chapter 25 ~~of Title 3~~ implementing the provisions of this chapter;

(2) Issue compliance orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings;

(3) Encourage local units of government to manage solid waste problems within their respective jurisdictions, or by contract on a cooperative regional or interstate basis;

(4) Provide technical assistance to municipalities;

(5) Contract in the name of the state for the service of independent contractors under bond, or with an agency or department of the state, or a municipality, to perform services or to provide facilities necessary for the implementation of the state plan, including but not limited to the transportation and disposition of solid waste;

(6) Accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this chapter. This would include the ability to convey such grants or other funds to municipalities, or other instruments of state or local government.

(7) Prepare a report which proposes methods and programs for the collection and disposal of household quantities of hazardous waste. The report shall compare the advantages and disadvantages of alternate programs and their costs. The secretary shall undertake a voluntary pilot project to determine the feasibility and effectiveness of such a program when in the secretary's opinion such can be undertaken without undue risk to the public health and welfare. Such pilot program may address one or more forms of hazardous waste.

(8) Provide financial assistance to municipalities.

(9) Manage the hazardous wastes generated, transported, treated, stored, or disposed in the state by administering a regulatory and management program which, at a minimum, meets the requirements of subtitle C of the Resource Conservation and Recovery Act of 1976, and amendments thereto, codified as 42 U.S.C. chapter 82, subchapter 3, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

Sec. 4. 10 V.S.A. § 6605 is amended to read:

§ 6605. SOLID WASTE MANAGEMENT FACILITY CERTIFICATION

(a)(1) No person shall construct, substantially alter, or operate any solid waste management facility without first obtaining certification from the secretary for such facility, site, or activity, except for sludge or septage

treatment or storage facilities located within the fenced area of a domestic wastewater treatment plant permitted under chapter 47 of this title. This exemption for sludge or septage treatment or storage facilities shall exist only if:

(A) the treatment facility does not utilize a process to further reduce pathogens in order to qualify for marketing and distribution; and

(B) the facility is not a drying bed, lagoon, or nonconcrete bunker; and

(C) the owner of the facility has submitted a sludge and septage management plan to the secretary and the secretary has approved the plan. Noncompliance with an approved sludge and septage management plan shall constitute a violation of the terms of this chapter, as well as a violation under chapters 201 and 211 of this title.

(2) Certification shall be valid for a period not to exceed ten years, except that a certification issued to a sanitary landfill ~~or a household hazardous waste facility~~ under this section shall be for a period not to exceed five years.

(b) Certification for a solid waste management facility, where appropriate, shall:

(1) Specify the location of the facility, including limits on its development;

(2) Require proper operation and development of the facility in accordance with the engineering plans approved under the certificate;

(3) Specify the projected amount and types of waste material to be disposed of at the facility, which, in case of landfills and incinerators, shall include the following:

(A) if the waste is being delivered from a municipality that has an approved implementation plan, hazardous materials and recyclables shall be removed from the waste according to the terms of that implementation plan;

(B) if the waste is being delivered from a municipality that does not have an approved implementation plan, ~~yard waste~~ leaf and yard residuals shall be removed from the waste stream, ~~as shall a minimum of approximately 75 and 100 percent of each of the following~~ shall be removed from the waste stream: marketable mandated recyclables, hazardous waste from households, and hazardous waste from small quantity generators;

(4) Specify the type and numbers of suitable pieces of equipment that will operate the facility properly;

(5) Contain provisions for air, groundwater, and surface water monitoring throughout the life of the facility and provisions for erosion control, capping, landscaping, drainage systems, and monitoring systems for leachate and gas control;

(6) Contain such additional conditions, requirements, and restrictions as the secretary may deem necessary to preserve and protect the public health and the air, groundwater and surface water quality. This may include, ~~but is not limited to,~~ requirements concerning reporting, recording, and inspections of the operation of the site.

(c) The secretary shall not issue a certification for a new facility or renewal for an existing facility, except for a sludge or septage land application project, unless it is included in an implementation plan adopted pursuant to 24 V.S.A. § 2202a, for the area in which the facility is located. ~~The implementation plan must be consistent with the state plan and in conformance with any municipal or regional plan adopted in accordance with 24 V.S.A. chapter 117. After July 1, 1990, the secretary shall not recertify a facility except for a sludge or septage land application project unless it is included in an implementation plan adopted pursuant to 24 V.S.A. § 2202a, for the area in which the facility is located. The implementation plan must be consistent with the state plan, unless the secretary determines that recertification promotes the public interest, considering the policies and priorities established in this chapter. After July 1, 1990, the secretary shall not recertify a facility, unless it is in conformance with any municipal or regional plan adopted in accordance with 24 V.S.A. chapter 117.~~

* * *

(j) A facility certified under this section that offers the collection of municipal solid waste shall:

(1) Beginning July 1, 2014, collect mandated recyclables separate from other solid waste and deliver mandated recyclables to a facility maintained and operated for the management and recycling of mandated recyclables;

(2) Beginning July 1, 2015, collect leaf and yard residuals separate from other solid waste and deliver leaf and yard residuals to a location that manages leaf and yard residuals in a manner consistent with the priority uses established under subdivisions 6605k(a)(3)–(5) of this title.

(3) Beginning July 1, 2017, collect organic material separate from other solid waste and deliver organic material to a location that manages organic materials in a manner consistent with the priority uses established under subdivisions 6605k(a)(2)–(5) of this title.

(k) The secretary may, by rule, adopt exemptions to the requirements of subsection (j) of this section, provided that the exemption is consistent with the purposes of this chapter and the objective of the state plan.

(l) A facility certified under this section that offers the collection of municipal solid waste shall not charge a separate fee for the collection of mandated recyclables. A facility certified under this section may incorporate the cost of the collection of mandated recyclables into the cost of the collection of municipal solid waste and may adjust the charge for the collection of municipal solid waste. A facility certified under this section may charge a separate fee for the collection of leaf and yard residuals or organic material.

Sec. 5. 10 V.S.A. § 6605c is amended to read:

§ 6605c. SOLID WASTE CATEGORICAL CERTIFICATIONS

* * *

(b) The secretary may, by rule, list certain solid waste categories as eligible for certification pursuant to this section:

(1) Solid waste categories to be deposited in a disposal facility shall not be a source of leachate harmful to human health or the environment.

(2) Solid waste categories to be managed in a composting facility shall not present an undue threat to human health or the environment.

(3) ~~Solid waste managed~~ Recyclable materials either recycled or prepared for recycling at a recycling facility ~~shall be restricted to facilities that manage 400 tons per year or less of recyclable solid waste.~~

* * *

Sec. 6. 10 V.S.A. § 6605k is added to read:

§ 6605k. ORGANIC MATERIAL; MANAGEMENT HIERARCHY

(a) It is the policy of the state that organic material collected under the requirements of this chapter shall be managed according to the following order of priority uses:

(1) Reduction of the amount generated at the source;

(2) Diversion for food consumption by humans;

(3) Diversion for agricultural use, including consumption by animals;

(4) Composting, nutrient management, and digestion; and

(5) Energy recovery.

(b) A person who produces more than an amount identified under subsection (c) of this section in organic materials and is located within 20 miles of a certified organics management facility that has available capacity and that is willing to accept the materials shall:

(1) Separate organic materials from other solid waste, provided that a de minimis amount of organic material may be disposed of in municipal solid waste when a person has established a program to separate organic materials and the program includes a component for the education of program users regarding the need to separate organic materials; and

(2) Arrange for the transfer of organic materials to a location that manages organic materials in a manner consistent with the priority uses established under subdivisions (a)(2)–(5) of this section or shall manage organic materials on site.

(c) The following persons shall be subject to the requirements of subsection (b) of this section:

(1) Beginning July 1, 2014, a person whose acts or processes produce more than 104 tons per year of organic materials;

(2) Beginning July 1, 2015, a person whose acts or processes produce more than 52 tons per year of organic materials;

(3) Beginning July 1, 2016, a person whose acts or processes produce more than 26 tons per year of organic materials;

(4) Beginning July 1, 2017, a person whose acts or processes produce more than 18 tons per year of organic materials; and

(5) Beginning July 1, 2020, any person who generates any amount of organic materials.

Sec. 7. 10 V.S.A. § 66051 is added to read:

§ 66051. PUBLIC COLLECTION CONTAINERS FOR SOLID WASTE

(a) As used in this section:

(1) “Public building” means a state, county, or municipal building, airport terminal, bus station, railroad station, school building, or school.

(2) “Public land” means all land that is owned or controlled by a municipal or state governmental body.

(b) Beginning July 1, 2015, when a container or containers in a public building or on public land are provided to the public for use for solid waste destined for disposal, an equal number of containers shall be provided for the collection of mandatory recyclables. The containers shall be labeled to clearly

show the containers are for recyclables and shall be placed as close to each other as possible in order to provide equally convenient access to users. Bathrooms in public buildings and on public land shall be exempt from the requirement of this section to provide an equal number of containers for the collection of mandatory recyclables.

Sec. 8. 10 V.S.A. § 6607a is amended to read:

§ 6607a. WASTE TRANSPORTATION

(a) A commercial hauler desiring to transport waste within the state shall apply to the secretary for a permit to do so, by submitting an application on a form prepared for this purpose by the secretary and by submitting the disclosure statement described in section 6605f of this title. These permits shall have a duration of five years. ~~The secretary shall establish a system whereby one-fifth of the permits issued under this section, or that were issued prior to July 1, 1996, and shall be renewed annually. The secretary may extend the expiration date of permits issued under this section as of July 1, 1996, for up to four years.~~ The application shall indicate the nature of the waste to be hauled and the area to be served by the hauler. The secretary may specify conditions that the secretary deems necessary to assure compliance with state law. ~~If an area to be served is subject to a duly adopted flow control ordinance, the entity that adopted the flow control ordinance may notify the secretary of that fact on forms provided by the secretary, and shall specify the facility or facilities which must be the recipient of the waste from that area. The secretary shall issue to the applicant a permit which specifies those facilities to which the applicant must deliver waste collected from an area that is subject to a duly adopted flow control ordinance, and which otherwise contains the solid waste management conditions established by the secretary, sufficient to assure compliance with state law.~~

* * *

(g)(1) Except as set forth in subdivisions (2) and (3) of this subsection, a transporter certified under this section that offers the collection of municipal solid waste shall:

(A) Beginning July 1, 2015, offer to collect mandated recyclables separated from other solid waste and deliver mandated recyclables to a facility maintained and operated for the management and recycling of mandated recyclables.

(B) Beginning July 1, 2016, offer to collect leaf and yard residuals separate from other solid waste and deliver leaf and yard residuals to a location that manages leaf and yard residuals in a manner consistent with the priority uses established under subdivisions 6605k(a)(3)–(5) of this title.

(C) Beginning July 1, 2017, offer collection of organic materials separate from other solid waste and deliver to a location that manages organic materials in a manner consistent with the priority uses established under subdivisions 6605k(a)(2)–(5) of this title.

(2) In a municipality that has adopted a solid waste management ordinance addressing the collection of mandated recyclables, leaf and yard residuals, or organic materials, a transporter in that municipality is not required to comply with the requirements of subdivision (g)(1) of this subsection and subsection (h) of this section for the material addressed by the ordinance if the ordinance:

(A) is applicable to all residents of the municipality;

(B) prohibits a resident from opting out of municipally provided solid waste services; and

(C) does not apply a variable rate for the collection for the material addressed by the ordinance.

(3) A transporter is not required to comply with the requirements of subdivision (1)(B) or (C) of this subsection in a specified area within a municipality if:

(A) the secretary has approved a solid waste implementation plan for the municipality;

(B) the approved plan delineates an area where solid waste management services required by subdivision (1)(B) or (C) of this subsection are not required; and

(C) in the delineated area, alternatives to the services required under subdivision (1)(B) or (C) are offered, the alternative services have capacity to serve the needs of all residents in the delineated area, and the alternative services are convenient to residents of the delineated area.

(h) A transporter certified under this section that offers the collection of municipal solid waste shall not charge a separate fee for the collection of mandated recyclables from a residential customer. A transporter certified under this section may incorporate the cost of the collection of mandated recyclables into the cost of the collection of municipal solid waste and may adjust the charge for the collection of municipal solid waste. A transporter certified under this section that offers the collection of municipal solid waste may charge a separate fee for the collection of leaf and yard residuals or organic waste from a residential customer.

Sec. 9. 10 V.S.A. § 6613 is amended to read:

§ 6613. VARIANCES

(a) A person who owns or is in control of any plant, building, structure, process, or equipment may apply to the secretary for a variance from the rules adopted under this chapter. The secretary may grant a variance if he or she finds that:

(1) The variance proposed does not endanger or tend to endanger human health or safety.

(2) Compliance with the rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(3) The variance granted does not enable the applicant to generate, transport, treat, store, or dispose of hazardous waste in a manner which is less stringent than that required by the provisions of Subtitle C of the Resource Conservation and Recovery Act of 1976, and amendments thereto, codified in 42 U.S.C. Chapter 82, subchapter 3, and regulations promulgated under such subtitle.

(b) A person who owns or is in control of any facility may apply to the secretary for a variance from the requirements of subdivision 6605(j)(2) or (3) of this title if the applicant demonstrates alternative services are available in the area served by the facility, the alternative services have capacity to serve the needs of all persons served by the facility requesting the variance, and the alternative services are convenient to persons served by the facility requesting the variance.

(c) No variance shall be granted pursuant to this section except after public notice and an opportunity for a public meeting and until the secretary has considered the relative interests of the applicant, other owners of property likely to be affected, and the general public.

~~(e)~~(d) Any variance or renewal thereof shall be granted within the requirements of subsection (a) of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the air and water pollution involved, it shall be only until the necessary practicable means for prevention, abatement, or control become known and available, and subject to the taking of any substitute or alternate measures that the secretary may prescribe.

(2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will

necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the secretary, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a time schedule for the taking of action in an expeditious manner and shall be conditioned on adherence to the time schedule.

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subdivisions (1) and (2) of this subsection, it shall be for not more than one year, except that in the case of a variance from the siting requirements for a solid waste management facility, the variance may be for as long as the secretary determines necessary, including a permanent variance.

~~(d)~~(e) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods, which would be appropriate on initial granting of a variance. If a complaint is made to the secretary on account of the variance, no renewal thereof shall be granted, unless following public notice and an opportunity for a public meeting on the complaint, the secretary finds that renewal is justified. No renewal shall be granted except on application therefore. The application shall be made at least 60 days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the secretary shall give public notice of the application.

~~(e)~~(f) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the secretary.

~~(f)~~(g) This section does not limit the authority of the secretary under section 6610 of this title concerning imminent hazards from solid waste, nor under section 6610a of this title concerning hazards from hazardous waste and violations of statutes, rules or orders relating to hazardous waste.

Sec. 10. 10 V.S.A. § 6621a is amended to read:

§ 6621a. LANDFILL DISPOSAL REQUIREMENTS

(a) In accordance with the following schedule, no person shall knowingly dispose of the following materials in municipal solid waste ~~in landfills~~:

- (1) Lead-acid batteries, after July 1, 1990.
- (2) Waste oil, after July 1, 1990.

(3) White goods, after January 1, 1991. “White goods” include discarded refrigerators, washing machines, clothes ~~driers~~ dryers, ranges, water heaters, dishwashers, and freezers. Other similar domestic and commercial large appliances may be added, as identified by rule of the secretary.

(4) Tires, after January 1, 1992.

(5) Paint (whether water based or oil based), paint thinner, paint remover, stains, and varnishes. This prohibition shall not apply to solidified water based paint in quantities of less than one gallon, nor shall this prohibition apply to solidified water based paint in quantities greater than one gallon if those larger quantities are from a waste stream that has been subject to an effective paint reuse program, as determined by the secretary.

~~(6) Nickel-cadmium batteries, small sealed lead acid batteries, and nonconsumer mercuric oxide batteries, after July 1, 1992, in any district or municipality in which there is an ongoing program to accept these wastes for treatment~~ All batteries, except alkaline batteries.

(7)(A) Labeled mercury-added products on or before July 1, 2007.

(B) Mercury-added products, as defined in chapter 164 of this title, after July 1, 2007, except as other effective dates are established in that chapter.

(8) Banned electronic devices. After January 1, 2011, computers; peripherals; computer monitors; cathode ray tubes; televisions; printers; personal electronics such as personal digital assistants and personal music players; electronic game consoles; printers; fax machines; wireless telephones; telephones; answering machines; videocassette recorders; digital versatile disc players; digital converter boxes; stereo equipment; and power supply cords (as used to charge electronic devices).

(9) Mandated recyclable materials after July 1, 2015.

(10) Leaf and yard residuals and wood waste after July 1, 2016.

(11) Organic material after July 1, 2020.

(b) This section shall not prohibit the designation and use of separate areas at landfills for the storage or processing, or both, of material specified in this section.

(c) Insofar as it applies to the operator of a solid waste management facility, the secretary may suspend the application of this section to material specified in subdivisions (a)(2), (3), (4), (5), or (6) of this section, or any combination of these, upon finding that insufficient markets exist and adequate uses are not reasonably available to serve as an alternative to disposal.

Sec. 11. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes:

* * *

(21) 10 V.S.A. chapter 166, relating to collection and recycling of electronic waste; ~~and~~

(22) 10 V.S.A. chapter 164A, collection and disposal of mercury-containing lamps; and

(23) 24 V.S.A. § 2202a, relating to a municipality's adoption and implementation of a municipal solid waste implementation plan that is consistent with the state solid waste plan.

Sec. 12. 10 V.S.A. § 8503(g) is added to read:

(g) This chapter shall govern all appeals of an act or decision of the secretary of natural resources that a municipal solid waste implementation plan proposed under 24 V.S.A. § 2202a conforms with the state solid waste implementation plan adopted pursuant to section 6604 of this title.

Sec. 13. 24 V.S.A. § 2202a is amended to read:

§ 2202a. MUNICIPALITIES-RESPONSIBILITIES FOR SOLID WASTE

(a) Municipalities are responsible for the management and regulation of the storage, collection, processing, and disposal of solid wastes within their jurisdiction in conformance with the state solid waste management plan authorized under 10 V.S.A. chapter 159 of Title 10. Municipalities may issue exclusive local franchises and may make, amend, or repeal rules necessary to manage the storage, collection, processing, and disposal of solid waste materials within their limits and impose penalties for violations thereof, provided that the rules are consistent with the state plan and rules ~~promulgated~~ adopted by the secretary of the agency of natural resources under 10 V.S.A. chapter 159. A fine may not exceed \$1,000.00 for each violation. This section shall not be construed to permit the existence of a nuisance.

(b) Municipalities may satisfy the requirements of the state solid waste management plan and the rules of the secretary of the agency of natural resources through agreement between any other unit of government or any operator having a permit from the secretary, as the case may be.

(c)(1) No later than July 1, 1988 each municipality, as defined in subdivision 4303(12) of this title, shall join or participate in a solid waste management district organized pursuant to chapter 121 of this title no later than January 1, 1988 or participate in a regional planning commission's planning effort for purposes of solid waste implementation planning, as implementation planning is defined in 10 V.S.A. § 6602.

(2) No later than July 1, 1990 each regional planning commission shall work on a cooperative basis with municipalities within the region to prepare a solid waste implementation plan for adoption by all of the municipalities within the region which are not members of a solid waste district, that conforms to the state waste management plan and describes in detail how the region will achieve the priorities established by 10 V.S.A. § 6604(a)(1). A solid waste implementation plan adopted by a municipality that is not a member of a district shall not in any way require the approval of a district. No later than July 1, 1990 each solid waste district shall adopt a solid waste implementation plan that conforms to the state waste management plan, describes in detail how the district will achieve the priorities established by 10 V.S.A. § 6604(a)(1), and is in conformance with any regional plan adopted pursuant to chapter 117 of this title. Municipalities or solid waste management districts that have contracts in existence as of January 1, 1987, which contracts are inconsistent with the state solid waste plan and the priorities established in 10 V.S.A. § 6604(a)(1), shall not be required to breach those contracts, provided they make good faith efforts to renegotiate those contracts in order to comply. The secretary may extend the deadline for completion of a plan upon finding that despite good faith efforts to comply, a regional planning commission or solid waste management district has been unable to comply, due to the unavailability of planning assistance funds under 10 V.S.A. § 6603b(a) or delays in completion of a landfill evaluation under 10 V.S.A. § 6605a.

(3) A municipality that does not join or participate as provided in this subsection shall not be eligible for state funds to plan and construct solid waste facilities, nor can it use facilities certified for use by the region or by the solid waste management district.

(4) ~~By no later than July 1, 1992,~~ a A regional plan or a solid waste implementation plan shall include a component for the management of nonregulated hazardous wastes.

(A) At the outset of the planning process for the management of nonregulated hazardous wastes and throughout the process, solid waste management districts or regional planning commissions, with respect to areas not served by solid waste management districts, shall solicit the participation of owners of solid waste management facilities that receive mixed solid wastes, local citizens, businesses and organizations by holding informal working sessions that suit the needs of local people. At a minimum, an advisory committee composed of citizens and business persons shall be established to provide guidance on both the development and implementation of the nonregulated hazardous waste management plan component.

(B) The regional planning commission or solid waste management district shall hold at least two public hearings within the region or district after public notice on the proposed plan component or amendment.

(C) The plan component shall be based upon the following priorities, in descending order:

(i) The elimination or reduction, whenever feasible, in the use of hazardous, particularly toxic, substances.

(ii) Reduction in the generation of hazardous waste.

(iii) Proper management of household and exempt small quantity generator hazardous waste.

(iv) Reduction in the toxicity of the solid waste stream, to the maximum extent feasible in accordance with the priorities of 10 V.S.A. § 6604(a)(1).

(D) At a minimum, this plan component shall include the following:

(i) An analysis of preferred management strategies that identifies advantages and disadvantages of each option.

(ii) An ongoing educational program for schools and households, promoting the priorities of this subsection.

(iii) An educational and technical assistance program for exempt small quantity generators that provides information on the following: use and waste reduction; preferred management strategies for specific waste streams; and collection, management and disposal options currently or potentially available.

(iv) A management program for household hazardous waste.

(v) A priority management program for unregulated hazardous waste streams that present the greatest risks.

(vi) A waste diversion program element, that is coordinated with any owners of solid waste management facilities and is designed to remove unregulated hazardous waste from the waste stream entering solid waste facilities and otherwise to properly manage unregulated hazardous waste.

(vii) A waste management system established for all the waste streams banned from landfills under 10 V.S.A. § 6621a.

(E) For the purposes of this subsection, nonregulated hazardous wastes include hazardous wastes generated by households and exempt small quantity generators as defined in the hazardous waste management regulations adopted under 10 V.S.A. chapter 159.

(d) By no later than July 1, 2015, a municipality shall implement a variable rate pricing system that charges for the collection of municipal solid waste from a residential customer for disposal based on the volume or weight of the waste collected.

Sec. 14. ANR REPORT ON SOLID WASTE

On or before November 1, 2013, the secretary of natural resources shall submit to the house and senate committees on natural resources and energy a report addressing solid waste management in the state. At a minimum, the report shall include:

(1) Waste analysis. An analysis of the volume and nature of wastes generated in the state, the sources of those wastes, and the current fate or disposition of those wastes. This shall include the results of a waste composition study.

(2) Cost analysis.

(A) An estimate of the cost of implementation of the existing solid waste management system for the state;

(B) An estimate of the cost of managing individual categories of solid waste as that term is defined in 10 V.S.A. § 6604(a)(2)(B); and

(C) An estimate of the costs, cost savings, increased efficiencies, and economic opportunities attendant to the diversion of solid waste categories.

(3) Local governance analysis. The report shall provide an analysis of the services provided by municipalities responsible for the management and regulation of the storage, collection, processing, and disposal of solid waste under 24 V.S.A. § 2202a. The analysis shall summarize:

(A) The organizational structure municipalities use to provide solid waste services, including the number of solid waste districts in the state and the number of towns participating in a solid waste district;

(B) The type of solid waste services provided by municipalities, including the categories of solid waste collected and the disposition of collected solid waste;

(C) The effectiveness of those facilities and programs in achieving the priorities and goals established by the state solid waste plan; and

(D) The cost-effectiveness of solid waste services provided by municipalities.

(4) Infrastructure analysis.

(A) An assessment of facilities and programs necessary at the state, regional, or local level to achieve the priorities and the goals established in the state solid waste plan.

(B) An estimate of the landfill capacity available in Vermont and an estimated time at which there will be no landfill capacity remaining in the state.

(C) An assessment of the status, capacity, and life expectancy of existing solid waste management facilities.

(D) An estimate of the cost of infrastructure necessary for the mandatory recycling of categories of solid waste.

Sec. 15. REPEAL

10 V.S.A. § 7113 (advisory committee on mercury pollution) is repealed.

Sec. 16. AGENCY OF NATURAL RESOURCES REPORT OF WASTE

TIRE MANAGEMENT AND DISPOSAL

On or before January 15, 2013, the secretary of natural resources shall submit to the house and senate committees on natural resources and energy a report regarding the management of waste tires within the state. The report shall include:

(1) An inventory of sites in the state where the secretary determines, in his or her discretion, that the disposal, management, or disposition of waste tires is a problem.

(2) An estimate of the number of waste tires disposed of or stored at the problem sites identified under subdivision (1) of this section.

(3) An estimate of how much it would cost to properly dispose of or arrange for the final disposition of the number of waste tires estimated under subdivision (2) of this section.

(4) An estimate of the amount of time required for the proper disposal or final disposition of the number of waste tires estimated under subdivision (2) of this section.

Sec. 17. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Thereupon, **Rep. Donahue of Northfield** moved to amend the report of the committee on Natural Resources and Energy as follows:

In Sec. 13, 24 V.S.A. § 2202a(c)(4)(D), by inserting subdivision (viii) to read as follows:

(viii) A mechanism to provide transparency or explanation regarding how a rate structure approved under the plan addresses different categories of waste.

Which was agreed to.

Thereupon, the report of the committee on Natural Resources and Energy, as amended, was agreed to and third reading ordered.

Adjournment

At two o'clock and twenty minutes in the afternoon, on motion of **Rep. Turner of Milton**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.