**Montpelier Notes**, An occasional email for Pownal and Woodford residents. If you would prefer not to receive these notes please reply to botzow@sover.net and I'll remove you from the list. If you would like to be added please let me know. I do not give your email address to others. --Bill Botzow

April 17, 2011

Hello All,

Last weekend it was almost spring, this weekend closer to winter, though the first daffodil is close to blooming here at our house. So it goes this time of year. It was cold and windy at the Transfer Station Saturday morning, but good to see those who came by. Ray Rodrigues asked when the spring hazardous materials day was scheduled for this year. Pownal takes its material to Shaftsbury and Woodford to Bennington.

Here’s the Pownal information. And here’s a web link with more information on what materials are accepted. <http://www.bcrcsolidwaste.com/Shaftsbury%202011.pdf>

**FREE HOUSEHOLD HAZARDOUS WASTE COLLECTION DAY**

**SATURDAY MAY 14, 2011**

**RAIN or SHINE**

9:00 AM – 1:00 PM

SHAFTSBURY SOLID WASTE FACILITY

536 NORTH ROAD, SHAFTSBURY, VERMONT

FOR

**SHAFTSBURY, STAMFORD and POWNAL RESIDENTS**

Current Landfill permits are needed to utilize this free service. This applies to **Shaftsbury**, **Stamford**

and **Pownal** residents.

Here’s the information I have for Woodford (and Bennington) – The  transfer station on Houghton Lane will be collecting hazardous waste on May 30 from 8 a.m. to 1 p.m.

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                The next few weeks will be very full in Montpelier as the legislature works to wrap up its work for the first year of the biennium. Last week our time was split between the floor and committee as many bills were debated, amended and passed while we began work on important Senate bills in committee. Here’s this week’s list of bills that came up for action in the House.

**H. 24** **An act relating to the maintenance and conveyance of Maidstone Lake Road**

Sometimes an act of the legislature is needed to solve a local problem. This bill authorized acceptance of six miles of road leading to Maidstone State Park as a Class 3 road  “even though the road does not meet the road and bridge standards adopted by the town of Maidstone pursuant to 19 V.S.A. § 309b.”

**H. 448** **An act relating to contributions to the state and municipal employees’ retirement systems**

The Government Operation Committee reviews and makes necessary adjustments to state and town employees’ retirement systems. This year changes were made to the contribution provisions to bring the fund into balance. The bill also modified the procedure for settling disputes through the labor relations board and the process for making necessary financial adjustments by the legislature for the board’s final decision on any grieved decision. The bill also laid out a plan for review of contributions in the future.

**H. 450** **An act relating to limited immunity from liability for job performance information disclosed to employers of individuals who work with minors or vulnerable adults**

This bill would “grant immunity from liability to an employer who discloses information in good faith about an employee’s job performance to a prospective employer if the prospective employer employs persons who work with minors or vulnerable adults.” Last year the legislature worked on this issue to make sure schools and similar work places could adequately screen prospective employees. The law would have taken place this spring. After hearing from employers that businesses could be exposed to suits by former employees, the legislature acted to grant immunity to former employers as long as their information wasn’t false or misleading.

**H. 258** **An act relating to public participation in environmental enforcement Proceedings**

The Secretary of the Agency of Natural Resources recommended this law which was reviewed by the Natural Resources Committee. Here are Sec. Markowitz’s written comments on the bill.

“Government transparency in enforcements is good public policy and it is required by federal law. H.258 was initiated because Vermont is not in compliance with federal law. We do not provide the public with an opportunity to know about and comment on proposed enforcement settlements prior to the Environmental Court approval of the settlement. This is not just my opinion but is a conclusion reached by the agency before I joined ANR and is shared by EPA, the Vermont Environmental Court and the Vermont Attorney General’s Office. Under the current law, right now if there was a polluter in your town ANR could enter into a settlement with the polluter without the town’s participation or knowledge. If the town thought the proposed settlement was inadequate it would have no right to have its concerns considered by the court.  Allowing the public to comment on enforcement orders and proposed settlements before they become final ensures that the Department’s enforcement decisions are transparent and consistent with the law.

The legislation does not allow unbridled participation. In order to prevent abuses, the legislation is narrowly drawn to allow citizens to comment on enforcement actions to ANR but to limit their participation in the Environmental Court action by permission of the court. The citizens would have to provide that the proposed enforcement would be “insufficient to carry out the purposes of the [enforcement action].” Note that this legislation does not apply to permitting actions but is limited to enforcement actions. Enforcement actions are rarely a prerequisite for development or construction, but are most often a response to a failure to comply with the law. It does not add nor change the right of citizens to participate in permitting decisions so it will not interfere with or delay development within Vermont communities nor affect local government efforts to build or improve infrastructure.

H.258 does not give citizens the right to initiate enforcement actions. H.258 is narrowly drawn to allow the public to comment on enforcement and to allow the environmental court to decide to consider a citizen or local government’s concerns when deciding an enforcement case.  This is not a law that creates a “citizen suit.”  The enforcement action must be brought by the public agency – it cannot be initiated by the citizen. Whether or not to take an enforcement action is left to the discretion of the state.

H.258 applies to all ANR enforcements for fairness, predictability and clarity. In many situations an enforcement action is brought under multiple authorities – some federal and some state. If the rights of the public vary depending upon the basis of the enforcement action it will create unnecessary confusion, litigation and delay. For this reason, H.258 is written to apply to all enforcement actions, not just enforcement actions under federally delegated laws. This approach allows the Department to standardize our procedures so that department staff, the regulated community, and the general public are better able to understand what to expect. It will ensure efficiency and predictability in the enforcement process.

H.258 has broad support.H.258 has bipartisan support, and was recently and unanimously approved by the House Natural Resources and Energy Committee and the House Fish, Wildlife and Water Resources Committee of the Vermont legislature. Vermont’s Governor and the Attorney General support the proposed legislation, and its current version was the result of collaboration with representatives of the business community.

In an editorial on March 18th, the Burlington Free Press said, ‘A process that allows the state to enter into an agreement with polluters while locking out all other Vermonters -- even those directly harmed -- undermines the credibility of the state's environmental watchdog agencies. There is no reason why the public should be robbed of its voice for any such settlement. This move toward a more transparent system for settling environmental violations is wholly consistent with the principles of open government that this state must vigorously embrace.’ I wholeheartedly agree.”

Several floor amendments were offered that I thought would weaken the intent of the bill and I opposed them. In a final vote to pass the bill I voted yes and it passed 109 to 25.

**H. 21** **An act relating to the Uniform Limited Cooperative Association Act**

Through Commerce Committee review and after hearing from small consumer cooperatives, this proposal became the Mutual Benefit Enterprise (MBE) bill. The legislation would allow for corporations based on the cooperative model to include investor members while keeping voting control of the business. They could do this by setting up an MBE. The bill sets out the policies MBEs would adapt and include required registering with the Secretary of State along with standard governance protections.  This should help our agriculture producer cooperatives attract the capital needed to grow their businesses. It would also help small retail cooperatives if they wish to set up a MBE to expand their business while maintaining traditional coop principals and values and protecting their trade names.

**H. 438** **An act relating to the department of banking, insurance, securities, and health care administration**

Every year the Commerce Committee reviews a “housekeeping” bill from the department of banking, insurance, securities, and health care administration (BISHCA). The bill makes adjustments to our laws in the areas the department regulates. This year’s bill made numerous minor adjustments to Vermont law such as registration requirements for loan adjusters and for independent trust companies. It provides for regulatory fees for merchant banks and authorizes expanded financial services education by BISHCA. Formerly this was limited to education about investing in securities. We also modified law on review of appeals by an independent panel for health and mental health issues to make sure there would be a person with knowledge of the issues on the review panel.

The bill also updates law on the Captive Insurance industry. Captive Insurance companies are companies that self-insure. They see Vermont as one of the best places in the world to incorporate because of our competitive position and regulatory environment.  Captives return about 24 million in premium taxes to the state annually. Companies are attracted to Vermont because of our tax structure and because they have consistent and predictable relationships with our regulators.

Both H.21 and H.438 passed on unanimous voice votes.

**H. 42** **An act relating to employment decisions based on credit information**

This bill makes clear when it is appropriate and when it isn’t to use credit checks in employment decisions. Here are the findings in the bill.

The general assembly finds that:

(1) Studies on middle and low income households have found that most indebted families go into debt to pay for basic expenses, such as groceries, utilities, child care, and health care. A study has shown that families with medical debt had 43 percent more credit card debt than those without medical debt.

(2) Employer surveys conducted by the Society of Human Resources Management suggest that over the last 15 years, employers’ use of credit reports in the hiring process has increased from a practice used by fewer than one in five employers in 1996 to six of every 10 employers in 2010.

(3) Social science research thus far has shown that information contained in a credit report has no correlation to job performance. The Palmer-Koppes study conducted in 2004 found that those employees who were late on payments were more likely to be associated with a positive job performance.

(4) Further, there is no common standard among employers as to how to interpret credit reports, which reinforces the fact that credit reports do not provide meaningful insight into a candidate’s character, responsibility, or prospective job performance. An employee of Transunion was quoted as saying: “We don’t have any statistical correlation between what’s in somebody’s credit report and their job performance or their likelihood to commit fraud.”

(5) The Equal Employment Opportunity Commission has stated that: “Inquiry into an applicant’s current or past assets, liabilities, or credit rating . . . generally should be avoided because they tend to impact more adversely on minorities and females.”

Members of the Commerce Committee worked with the House General Committee to make sure that exemptions for public safety as required by federal law remain in place as well as exemptions for positions of fiduciary responsibility within a business or organization.

**H. 185** **An act relating to regulating fees and charges for propane gas**

H.185 responded to a huge increase in consumer complaints on propane fees and business practices this last winter. The Commerce Committee held a hearing on four separate propane bills that were submitted this year and took testimony from consumers and fuel dealers on the many problems we heard about how hard it was for a consumer to switch companies if they were dissatisfied with their current provider. We heard how special fees for tank removal and that late reimbursements to customers for the gas remaining in tanks suppressed competition. People expressed outrage over very high minimum usage fees that were a disincentive to efficiency efforts. We also heard complaints within the industry between large and small companies. In response, the Commerce Committee, the Attorney General’s office and the fuel dealer’s association developed a balanced proposal that we hope will stimulate competition and reward companies who compete on customer service and satisfaction. The bill disallows minimum usage fees, fees for propane not delivered to a consumer, requirements for minimum purchases and for tank removal if a consumer has rented a tank from a dealer for a year or more. If less than a year the removal fee can only be for labor and materials. The bill also says that a dealer has to deliver to consumer owned tanks if they are safe.  If a tank is removed the dealer has to reimburse the consumer for the value of the propane in the tank within 20 days or face penalties. We also made clear when service may be discontinued by a dealer for non-payment.

The bill passed unanimously on a voice vote. We hope that a fair and open consumer driven market will be the best way to moderate prices for this important energy source.

**S. 31** **An act relating to the Agreement Among the States to Elect the President by National Popular Vote**

This bill was debated at length as it would change how Vermont’s electoral votes are counted in Presidential elections. The bill would have Vermont commit to casting its electoral votes based on who received the most votes nationally instead of by who received the most votes in the state. This would happen only if enough other states agreed to join a compact and if the compact had enough members  to be a majority of the Electoral College. This path way to a national popular vote would mean a constitutional amendment would not be necessary as compacts are allowed under the constitution. The bill passed 84 to 50. I voted no because I think the Vermont electors should represent the majority of Vermont voters. Our current system, though imperfect on occasion, has offered stability and resiliency.

**H. 453** **An act relating to the annual tax expenditure budget**

The legislature reviews taxes for fairness and efficiency and it is important that we look at not only the taxes we collect but also at all the exemptions to taxes. These exemptions are tax expenditures as they represent taxes not collected.  We should be looking at this part of the tax budget in a systematic and fair way. H.453 would “require that an annual tax expenditure budget be divided into three parts and to have one part be considered each year.”

The bill says, “It is the intent of the general assembly in reviewing the tax expenditure budgets recommended by the governor to ensure that any changes to Vermont’s tax expenditures are done openly and equitably and are subject to public review. Vermont tax expenditures are intended to reflect and support Vermont values and policies.”

There was a roll call vote on the bill and it passed 131 to 0.

**H. 198** **An act relating to a transportation policy to accommodate all users**

This bill states, “The purpose of this bill is to ensure that the needs of all users of Vermont’s transportation system—including motorists, bicyclists, public transportation users, and pedestrians of all ages and abilities—are considered in all state and locally managed transportation project phases, including planning, development, construction, and maintenance, except in the case of projects or project components involving unpaved highways. These ‘complete streets’ principles shall be integral to state and local transportation policy in Vermont.”

Since our transportation corridors are used by many forms of transportation including public transportation, foot traffic, bicycles, etc., the Transportation committee recommended and the legislature approved basic policy on how this approach would be carried out.

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Please let me know if you have any questions on legislation and I’ll try to get answers for you. I hope it will be a very good week for you and your family.

Stay in touch,

Bill

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