

Senate Calendar

FRIDAY, MARCH 3, 2023

SENATE CONVENES AT: 11:30 A.M.

TABLE OF CONTENTS

Page No.

ACTION CALENDAR

NEW BUSINESS

Third Reading

- S. 5** An act relating to affordably meeting the mandated greenhouse gas reductions for the thermal sector through electrification, decarbonization, efficiency, and weatherization measures..... 178
- S. 9** An act relating to the authority of the State Auditor to examine the books and records of State contractors..... 178

Senate Resolutions For Action

- S.R. 8** Senate resolution to concurrently conducted electronic committee meetings..... 178
- S.R. 9** Senate resolution relating to electronic participation in Senate Sessions..... 178

NOTICE CALENDAR

Second Reading

Favorable with Recommendation of Amendment

- S. 14** An act relating to Justice Reinvestment II reporting requirements Judiciary Report - Sen. Vyhovsky 178
- S. 95** An act relating to banking and insurance Finance Report - Sen. Cummings 182

CONCURRENT RESOLUTIONS FOR ACTION

- H.C.R. 42 - 47** (For text of Resolutions, see Addendum to House Calendar for March 2, 2023)..... 187

ORDERS OF THE DAY

ACTION CALENDAR

NEW BUSINESS

Third Reading

S. 5.

An act relating to affordably meeting the mandated greenhouse gas reductions for the thermal sector through electrification, decarbonization, efficiency, and weatherization measures.

S. 9.

An act relating to the authority of the State Auditor to examine the books and records of State contractors.

Senate Resolutions For Action

S.R. 8.

Senate resolution to concurrently conducted electronic committee meetings.

PENDING QUESTION: Shall the resolution be adopted?

(For Text of resolution, see Senate Journal for Thursday, March 2, 2023, page 246)

S.R. 9.

Senate resolution relating to electronic participation in Senate Sessions.

PENDING QUESTION: Shall the resolution be adopted?

(For Text of resolution, see Senate Journal for Thursday, March 2, 2023, page 246)

NOTICE CALENDAR

Second Reading

Favorable with Recommendation of Amendment

S. 14.

An act relating to Justice Reinvestment II reporting requirements.

Reported favorably with recommendation of amendment by Senator Vyhovsky for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 28 V.S.A. § 125 is amended to read:

§ 125. JUSTICE REINVESTMENT II INITIATIVES CRIMINAL JUSTICE INVESTMENTS AND TRENDS; REPORT

(a) Definitions. As used in this section:

(1) “Arrest” means when a person is seized by law enforcement, charged with the commission of an offense, and referred for prosecution.

(2) “Clearance” means the process by which a law enforcement agency closes an offense by arrest or exceptional means in accordance with the Federal Bureau of Investigation’s Uniform Crime Reporting Program.

(3) “Desistance” means the process by which criminality, or the individual risk for antisocial conduct, declines over the life-course of the individual, generally after adolescence.

(4) “Exceptional means” means the death of the offender, the victim’s refusal to cooperate with the prosecution after the offender is identified, the denial of extradition because the offender committed a crime in another jurisdiction and is being prosecuted for that offense, or other circumstance in accordance with the Federal Bureau of Investigation’s Uniform Crime Reporting Program.

(5) “Recidivism” has the same meaning as in section 4 of this title.

(b) Report.

~~(1) On or before January~~ November 15 each year, 2024 and every three years thereafter, the Commissioner of Corrections Vermont Statistical Analysis Center (SAC), in consultation with the Commissioners of Corrections, of Health, of Mental Health, of Public Safety, of Labor, and for Children and Families and; the Attorney General; the Chief Superior Judge of the Superior Court; the Division of Racial Justice Statistics; and the Parole Board Director, shall submit a report to the House Committees on Appropriations and on Corrections and Institutions ~~and, the Senate Committees on Appropriations and on Judiciary detailing the expenditures on Justice Reinvestment II and the following related initiatives:~~

~~(1) funding for domestic violence intervention programming in the Department of Corrections;~~

~~(2) funding for offender transitional housing capacity with the Department of Corrections and other departments;~~

~~(3) funding for the Department of Correction’s data collection Offender Management System;~~

~~(4) funding for community-based mental health and substance use services for individuals under Department of Corrections supervision;~~

~~(5) funding provided for diversion and restorative justice programs including community justice centers, court diversion, and balanced and restorative justice (BARJ); and~~

~~(6) funding and a description of any other General Fund expenditures for Justice Reinvestment II initiatives, the Joint Legislative Justice Oversight Committee, and the Executive Director of the Office of Racial Equity examining the trends associated with Vermont's criminal justice-related investments and expenditures since the last report was submitted pursuant to this section.~~

(2) The report required pursuant to subdivision (1) of this section shall include data showing:

(A) recidivism rates;

(B) clearance rates;

(C) evidence of desistance, including successful completion of community supervision;

(D) returns to incarceration from community supervision with the following relevant data points:

(i) community supervision type, classified by probation, parole, and furlough;

(ii) an indication if a return was for a violation or a new charge, including the crime type;

(iii) an indication if a violation was classified as "significant/not violent" or "significant and violent" for any applicable statuses; and

(iv) all available demographic information.

(E) bail rates, including detainees held without bail, detainees held with bail and the associated monetary amounts, and bailees who post bail and are released;

(F) pretrial detainees held in Vermont correctional facilities, including the crime type and jurisdiction for which they are held;

(G) the funding for, and utilization of, substance use, mental health, educational, and vocational initiatives for incarcerated individuals; and

(H) the funding for, and utilization by, individuals served through Justice Reinvestment II and related initiatives, including:

(i) domestic violence intervention programming in the Department of Corrections, including the results from the evaluation framework between the Vermont Network Against Domestic and Sexual Violence and the University of Nebraska;

(ii) offender transitional housing capacity with the Department of Corrections and other departments;

(iii) advancements to the Department of Corrections' data collection Offender Management System;

(iv) agencies, departments, municipalities, programs, and services employing restorative justice principles, including community justice centers;

(v) other General Fund expenditures for Justice Reinvestment II initiatives;

(vi) the Department of Corrections' out-of-state beds contracted by the Department and the average cost per bed in fiscal year 2019 and for each fiscal year thereafter; and

(vii) the Department of Corrections' in-state beds, separated by gender, including specialty units and units closed or unavailable in fiscal year 2019 and for each fiscal year thereafter.

~~(b) The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this section.~~

(c) Informational availability.

(1) The information required pursuant to subsection (b) of this section shall include race, gender, age, and other demographic variables whenever possible.

(2) The report required pursuant to subsection (b) of this section shall explain any obstacles or impediments to the availability and collectability of data required pursuant to this section, including whether collecting certain data would put particular populations at risk, along with the substance use and mental health needs and educational and vocational status of justice-involved individuals.

(d) Data sharing. Notwithstanding any provision of law to the contrary, all State and local agencies and departments that possess the data necessary to compile the report required pursuant to this section shall, upon request, provide SAC with any data that it determines is relevant to the report. The obligation to disclose shall supersede any other legal obligation with respect to the data required pursuant to this section, and a department, agency, or other

entity shall not decline to disclose data required based on any other purported legal obligation.

(e) Confidentiality. Any data or records transmitted to or obtained by SAC are exempt from public inspection and copying under the Public Records Act and shall be confidential to the extent required by law unless and until the data or records are included in the report required by this section. A State or local agency or department that transmits data or records to SAC shall be the sole records custodian for purposes of responding to requests for the data or records. SAC may direct any request for these data or records to the transmitting agency or department for response.

Sec. 2. SUNSET OF REPORT

28 V.S.A. § 125 is repealed on July 1, 2028.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

And that after passage the title of the bill be amended to read:

An act relating to a report on criminal justice-related investments and trends.

(Committee vote: 5-0-0)

S. 95.

An act relating to banking and insurance.

Reported favorably with recommendation of amendment by Senator Cummings for the Committee on Finance.

The Committee recommends that the bill be amended as follows:

First: In Sec. 9, 8 V.S.A. chapter 112, §§ 4171–4190, in section 4173, in subsection (b), by striking out subdivision (1) in its entirety and inserting in lieu thereof a new subdivision (1) to read as follows:

(1) This chapter shall provide coverage to a person specified in subsection (a) of this section for a policy or contract of direct, nongroup life insurance, health insurance, which for purposes of this chapter includes health maintenance organization subscriber contracts and certificates, an annuity, or a certificate under a direct group policy or contract, and supplemental policies or contracts to any of these, and for an unallocated annuity contract, in each case, issued by a member insurer, except as limited by this chapter. An annuity contract or certificate under a group annuity contract includes a guaranteed investment contract, guaranteed interest contract, guaranteed accumulation

contract, deposit administration contract, unallocated funding agreement, allocated funding agreement, structured settlement annuity, annuity issued to or in connection with a government lottery, and any immediate or deferred annuity contract.

Second: In Sec. 9, 8 V.S.A. chapter 112, §§ 4171–4190, in section 4173, in subdivision (b)(2)(K), by striking out the words “an affiliated member insurer” and inserting in lieu thereof the words an affiliate of a member insurer

Third: In Sec. 9, 8 V.S.A. chapter 112, §§ 4171–4190, in section 4176, in subsection (b), in the second sentence, by striking out the word “or” and inserting in lieu thereof the word of

Fourth: In Sec. 9, 8 V.S.A. chapter 112, §§ 4171–4190, in section 4178, in subdivision (n)(1)(C)(i), in the second sentence, by striking out the word “receiver” and inserting in lieu thereof the word liquidator

Fifth: In Sec. 9, 8 V.S.A. chapter 112, §§ 4171–4190, in section 4184, in subdivision (e)(1), in the second sentence, by striking out the word “policyholders” and inserting in lieu thereof the word policyowners

Sixth: By adding a new Sec. 10 and Secs. 11 and 12 to read as follows:

Sec. 10. 8 V.S.A. § 7033 is amended to read:

§ 7033. INJUNCTIONS AND ORDERS

(a) A receiver appointed in a proceeding under this chapter may at any time apply for, and any court of general jurisdiction may grant, restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent:

- (1) the transaction of further business;
- (2) the transfer of property;
- (3) interference with the receiver or with a proceeding under this chapter;
- (4) waste of the insurer’s assets;
- (5) dissipation and transfer of bank accounts;
- (6) the institution or further prosecution of any actions or proceedings;
- (7) the obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets or its policyholders;
- (8) the levying of execution against the insurer, its assets or its policyholders;

(9) the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

(10) the withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or

(11) any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under this chapter.

(b) The receiver may apply to a court outside the State for the relief described in subsection (a) of this section.

(c) Notwithstanding subsections (a) and (b) of this section, subsection 7054(a) of this title, or any other provision of this chapter to the contrary, no person, for more than 10 days, shall be restrained, stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action under any pledge, security, credit, collateral, loan, advances, reimbursement, or guarantee agreement or arrangement, or any similar agreement, arrangement, or other credit enhancement to which a federal home loan bank is a party.

(d) A federal home loan bank exercising its rights regarding collateral pledged by an insurer-member shall, within seven days after receiving a redemption request made by the insurer-member, repurchase any of the insurer-member's outstanding capital stock in excess of the amount the insurer-member must hold as a minimum investment. The federal home loan bank shall repurchase the excess outstanding capital stock only to the extent that it determines in good faith that the repurchase is both of the following:

(1) permissible under federal laws and regulations and the federal home loan bank's capital plan; and

(2) consistent with the capital stock practices currently applicable to the federal home loan bank's entire membership.

(e) Not later than 10 days after the date of appointment of a receiver in a proceeding under this chapter involving an insurer-member of a federal home loan bank, the federal home loan bank shall provide to the receiver a process and timeline for the following:

(1) the release of any collateral held by the federal home loan bank that exceeds the amount that is required to support the secured obligations of the insurer-member and that is remaining after any repayment of loans, as determined under the applicable agreements between the federal home loan bank and the insurer-member;

(2) the release of any collateral of the insurer-member remaining in the federal home loan bank's possession following repayment in full of all outstanding secured obligations of the insurer-member;

(3) the payment of fees owed by the insurer-member and the operation, maintenance, closure, or disposition of deposits and other accounts of the insurer-member, as mutually agreed upon by the receiver and the federal home loan bank; and

(4) any redemption or repurchase of federal home loan bank stock or excess stock of any class that the insurer-member is required to own under agreements between the federal home loan bank and the insurer-member.

(f) Upon the request of a receiver appointed in a proceeding under this chapter involving a federal home loan bank insurer-member, the federal home loan bank shall provide to the receiver any available options for the insurer-member to renew or restructure a loan. In determining which options are available, the federal home loan bank may consider market conditions, the terms of any loans outstanding to the insurer-member, the applicable policies of the federal home loan bank, and the federal laws and regulations applicable to federal home loan banks.

(g) As used in this section, "federal home loan bank" means an institution chartered under the "Federal Home Loan Bank Act of 1932," 12 U.S.C. 1421, et seq. and "insurer-member" means a member of the federal home loan bank in question that is an insurer.

Sec. 11. 8 V.S.A. § 7065 is amended to read:

§ 7065. FRAUDULENT TRANSFERS PRIOR TO PETITION

(a) Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee, for a present fair equivalent value, and except that a purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The Court may, on due notice, order any such transfer or obligation to be preserved for the benefit of

the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

* * *

(e) Notwithstanding subsection (a) of this section, section 7066 of this title, or any other provision of this chapter to the contrary, no receiver or any other person shall avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any pledge, security, credit, collateral, loan, advances, reimbursement, or guarantee agreement or arrangement, or any similar agreement, arrangement, or other credit enhancement to which a federal home loan bank, as defined in section 7033 of this title, is a party, that is made, incurred, or assumed prior to or after the filing of a successful petition for rehabilitation or liquidation under this chapter, or otherwise would be subject to avoidance under this section or section 7066 of this title; provided, however, that a transfer may be avoided under this section or section 7066 of this title if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

Sec. 12. 8 V.S.A. § 7067 is amended to read:

§ 7067. VOIDABLE PREFERENCES AND LIENS

(a)(1) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then such transfers shall be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) A preference may be avoided by the liquidator if:

(A) the insurer was insolvent at the time of the transfer of property;

(B) the transfer of property was made within four months before the filing of the petition;

(C) the creditor receiving it or to be benefited by it or the creditor's agent acting with reference to it had, at the time when the transfer of property was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(D) the creditor receiving transferred property was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he or she held such position, or any shareholder holding directly or indirectly more than five per centum of any class of any equity security issued by the insurer, or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property; except where a bona fide purchaser or lienor has given less than fair equivalent value, ~~he or she~~ the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given by ~~him or her~~ the purchaser or lienor. Where a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

(4) Notwithstanding subdivision (2) of this section, or any other provision of this chapter to the contrary, no receiver or any other person shall avoid any preference arising under or in connection with any pledge, security, credit, collateral, loan, advances, reimbursement, or guarantee agreement or arrangement, or any similar agreement, arrangement, or other credit enhancement to which a federal home loan bank, as defined in section 7033 of this title, is a party.

* * *

And by renumbering the remaining section to be numerically correct.

(Committee vote: 6-0-1)

CONCURRENT RESOLUTIONS FOR ACTION

Concurrent Resolutions For Action Under Joint Rule 16

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

H.C.R. 42 - 47 (For text of Resolutions, see Addendum to House Calendar for March 2, 2023)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for

confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Utility Commission shall be fully and separately acted upon.

John Hollar of Montpelier – Member of the Capitol Complex Commission – By Senator Wrenner for the Committee on Institutions (2/21/23)

Mark Nicholson of West Danville – Member of the Transportation Board – By Senator Ingalls for the Committee on Transportation (2/24/23)

JFO NOTICE

Grants and Positions that have been submitted to the Joint Fiscal Committee by the Administration, under 32 V.S.A. §5(b)(3):

JFO #3138: One (1) limited-service position, Statewide Grants Administrator, to the Agency of Administration, Department of Finance and Management to cover increased grant activity due to the Covid-19 pandemic. The position is funded through Act 185 of 2022. Sec G.801 of the Act appropriates ARPA funds for administrative costs related to the pandemic. This position is funded through 12/31/2026.

[Received 2/9/2023]

FOR INFORMATION ONLY

CROSSOVER DATES

The Joint Rules Committee established the following crossover deadlines:

(1) All **Senate/House** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance/Ways and Means, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 17, 2023**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day – Committee bills must be voted out of Committee by **Friday, March 17, 2023**.

(2) All **Senate/House** bills referred pursuant to Senate Rule 31 or House Rule 35(a) to the Committees on Appropriations and Finance/Ways and Means must be reported out by the last of those committees on or before **Friday, March 24, 2023**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

Note: The Senate will not act on bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

Exceptions to the foregoing deadlines include the major money bills (the general Appropriations bill (“The Big Bill”), the Transportation Capital bill, the Capital Construction bill and the Fee/Revenue bills)