

House Calendar

Wednesday, January 27, 2010

23rd DAY OF ADJOURNED SESSION

House Convenes at 1:00 P.M.

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ORDERS OF THE DAY

ACTION CALENDAR

Third Reading

H. 485

An act relating to the use value appraisal program

Amendment to be offered by Rep. Ainsworth of Royalton to H. 485

In Sec. 2 subsection (a) of 32 V.S.A. §3757 and inserting in lieu thereof a new subsection (a) to read as follows:

(a) Land which has been classified as agricultural land or managed ~~forest land~~ forestland pursuant to this chapter shall be subject to a land use change tax upon the development of that land, as defined in section 3752 of this chapter. ~~Said~~ The tax shall be at the rate of ~~20~~ 10 percent of the full fair market value of the changed land determined without regard to the use value appraisal; ~~or the tax shall be at the rate of 10 percent if the owner demonstrates to the satisfaction of the director that the parcel has been enrolled continuously more than 10 years.~~ If changed land is a portion of a parcel, which portion does not to exceed two acres, transferred for the purpose of developing a housesite to an immediate family member, as that term is defined in 8 V.S.A. § 2200(7), or transferred to any relative, as that term is defined in 14 V.S.A. § 2661(5), of the owner, provided that the relative earns at least one-half of his or her income directly from farm employment by the owner, the fair market value of the changed land shall be the fair market value of the changed land prorated on the basis of acreage, ~~divided by the common level of appraisal.~~ Such For purposes of the land use change tax, fair market value shall be determined as of the date the land is no longer eligible for use value appraisal. This tax shall be in addition to the annual property tax imposed upon such property. Nothing in this section shall be construed to require payment of an additional land use change tax upon the subsequent development of the same land, nor shall it be construed to require payment of a land use change tax merely because previously eligible land becomes ineligible, provided no development of the land has occurred.

Action Postponed Until May 28, 2010

Governors Veto

H. 436

An act relating to decommissioning funds of nuclear energy generation plants.

Pending Question: Shall the House sustain the Governor's veto?

NOTICE CALENDAR

Favorable with Amendment

H. 533

An act relating to military parents' rights

Rep. Grad of Moretown, for the Committee on **Judiciary**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The Vermont general assembly finds that:

(1) The military population in our state exceeds 5,000 Vermonters, a majority of whom serve a traditional part-time role. Many of these service members are parents to children under the age of 18.

(2) The mobilization of these military parents, with sometimes little advance notice, can have a disruptive effect on custody or visitation arrangements involving minor children.

(3) It is in the best interests of these children to minimize the loss of parental contact and disruption of the family that results from the service member's absence pursuant to military orders due to temporary duty performed outside the state, deployment, or mobilization.

(4) It is important to maintain parent-child contact as much as feasible when the child's parent is absent due to military orders.

(5) It is in the best interests of these children for the courts to address the military membership of one or both parents at the time of the initial custodial order or anytime thereafter, regardless of whether the service member has temporary duty orders or a deployment or mobilization order.

(6) The regular scheduling of hearings may be harmful to the interest of service members who, due to military orders, may need an expedited hearing

or may need to use electronic means to give testimony when they cannot appear in person in court.

(7) The use of expedited hearings and testimony by electronic means, at the request of the service member who is absent or about to depart, would aid and promote fair, efficient, and prompt judicial processes for the resolution of family law matters.

Sec. 2. 15 V.S.A. chapter 11, subchapter 4a is added to read:

Subchapter 4a. Military Parents' Rights Act

§ 681. DEFINITIONS

As used in this subchapter:

(1) "Deploy" and "deployment" mean military service in compliance with military orders received by a member of the United States Armed Forces, including any reserve component thereof to report for combat operations, contingency operations, peacekeeping operations, a remote tour of duty, or other active service for which the deploying parent is required to report unaccompanied by any family member. Deployment includes a period during which a military parent remains subject to deployment orders and remains deployed on account of sickness, wounds, leave, or other lawful cause.

(2) "Deploying parent" means a military parent who has been notified by military leadership that he or she will deploy or mobilize with the United States Armed Forces, including any reserve component thereof, or who is currently deployed or mobilized with the United States Armed Forces, including any reserve component thereof. "Nondeploying parent" means a parent who is either not a member of the United States Armed Forces, including any reserve component thereof, or is a military parent who is currently not a deploying parent.

(3) "Military parent" means a natural parent, adoptive parent, legal parent, or guardian of a child under the age of 18 whose parental rights have not been terminated by a court of competent jurisdiction, and who is a member of the United States Armed Forces, including any reserve component thereof.

(4) "Mobilization" and "mobilize" mean the call-up of National Guard or Reserve service members to extended active service. For purposes of this definition, "mobilization" does not include National Guard or reserve annual training, inactive duty days, drill weekends, temporary duty, or state active duty.

(5) "State active duty" means the call-up by a governor for the performance of any military duty in state status.

(6) “Temporary duty” means the transfer of a service member to a geographic location outside Vermont for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.

§ 682. FINAL ORDER; MODIFICATION

(a) If a deploying parent is required to be separated from a child, a court shall not enter a final order modifying parental rights and responsibilities and parent-child contact in an existing order until 90 days after the deployment ends, unless such modification is agreed to by the deploying parent.

(b) Absence created by deployment or mobilization or the potential for future deployment or mobilization shall not be the sole factor supporting a real, substantial, and unanticipated change in circumstances pursuant to section 668 of this title or grounds sufficient to support a permanent modification of the parental rights and responsibilities or parent-child contact established in an existing order.

§ 683. TEMPORARY MODIFICATION

(a) Upon motion of a deploying or nondeploying parent, the court shall enter a temporary order modifying parental rights and responsibilities or parent-child contact during the period of deployment or mobilization when:

(1) a military parent who has shared, sole, or primary legal or physical parental rights and responsibilities for a child or who has parent-child contact pursuant to an existing court order has received notice from military leadership that he or she will deploy or mobilize in the near future; and

(2) the deployment or mobilization would have a material effect upon his or her ability to exercise such parental rights and responsibilities or parent-child contact.

(b) Motions for modification because of deployment shall be heard by the court as expeditiously as possible, and shall be a priority for this purpose.

(c)(1) All temporary modification orders shall include a specific transition schedule to facilitate a return to the predeployment order over the shortest reasonable time period after the deployment ends, taking into consideration the child’s best interests.

(2) The temporary order shall set a date certain for the end of deployment and the start of the transition period. If deployment is extended, the temporary order shall remain in effect during the extended deployment, and the transition schedule shall take effect at the end of the extended deployment. In that case, the nondeployed parent shall notify the court of the extended deployment. Failure of the nondeployed parent to notify the court in accordance with this subdivision shall not prejudice the deployed parent’s right

to return to the prior order once the temporary order expires as provided in subdivision (3) of this subsection.

(3) The temporary order shall expire upon the completion of the transition, and the prior order for parental rights and responsibilities and parent-child contact shall be in effect.

(d) Upon motion of the deploying parent, the court may delegate his or her parent-child contact rights, or a portion of them, to a family member, a person with whom the deploying parent cohabits, or another person with a close and substantial relationship to the minor child or children for the duration of the deployment, upon a finding that it is in the child's best interests. Such delegated contact does not create separate rights to parent-child contact for a person other than a parent once the temporary order is no longer in effect.

(e) A temporary modification order issued pursuant to this section shall designate the deploying parent's parental rights and responsibilities for and parent-child contact with a child during a period of leave granted to the deploying parent, in the best interests of the child.

(f) A temporary order issued under this section may require any of the following if the court finds that it is in the best interests of the child:

(1) The nondeploying parent shall make the child reasonably available to the deploying parent when the deploying parent has leave.

(2) The nondeploying parent shall facilitate opportunities for telephonic, electronic mail, and other such contact between the deploying parent and the child during deployment.

(3) The deploying parent shall provide timely information regarding his or her leave schedule to the nondeploying parent. Actual leave dates are subject to change with little notice due to military necessity and shall not be used by the nondeploying parent to prevent parent-child contact.

(g) A court order modifying a previous order for parental rights and responsibilities or parent-child contact because of deployment shall specify that the deployment is the basis for the order, and it shall be entered by the court as a temporary order. The order shall further require the nondeploying parent to provide the court and the deploying parent with 30 days' advance written notice of any change of address and any change of telephone number.

§ 684. EMERGENCY MOTION TO MODIFY; PERMANENT
MODIFICATION

(a) Upon the return of the deploying parent, either parent may file a motion to modify the temporary order on the grounds that compliance with the order

will result in immediate danger of irreparable harm to the child, and may request that the court issue an ex parte order. The deploying parent may file such a motion prior to his or her return. The motion shall be accompanied by an affidavit in support of the requested order. Upon a finding of irreparable harm based on the facts set forth in the affidavit, the court may issue an ex parte order modifying parental rights and responsibilities and parent-child contact. If the court issues an ex parte order, the court shall set the matter for hearing within ten days from the issuance of the order.

(b) Nothing in this chapter shall preclude the court from hearing a motion for permanent modification of parental rights and responsibilities or parent-child contact prior to or upon return of the deploying parent. The moving party shall bear the burden of showing a real, substantial, and unanticipated change in circumstances and that resumption of the parental rights and responsibilities or parent-child order in effect before the deployment is no longer in the child's best interests. The absence created by deployment or mobilization and any resulting temporary disruption to the child shall not be considered the sole factors in determining whether there has been a real, substantial, and unanticipated change of circumstances in regard to the motion to modify.

§ 685. TESTIMONY AND EVIDENCE

Upon motion of a deploying parent, provided reasonable advance notice is given and good cause shown, the court shall allow such parent to present testimony and evidence by electronic means with respect to parental rights and responsibilities or parent-child contact matters instituted under this section when the deployment of that parent has a material effect on his or her ability to appear in person at a regularly scheduled hearing. The phrase "electronic means" includes communication by telephone or video teleconference.

§ 686. NO EXISTING ORDER

If there is no existing order establishing the terms of parental rights and responsibilities or parent-child contact and it appears that deployment or mobilization is imminent, upon motion by either parent, the court shall expedite a hearing to establish temporary parental rights and responsibilities and parent-child contact to ensure the deploying parent has access to the child, to ensure disclosure of information, to grant other rights and duties set forth herein, and to provide other appropriate relief. Any initial pleading filed to establish parental rights and responsibilities for or parent-child contact with a child of a deploying parent shall be so identified at the time of filing by stating in the text of the pleading the specific facts related to deployment.

§ 687. DUTY TO COOPERATE AND DISCLOSE INFORMATION

(a) Because military necessity may preclude court adjudication before deployment, the parties shall cooperate with each other in an effort to reach a mutually agreeable resolution of parental rights and responsibilities, parent-child contact, and child support. Each party shall provide information to one another in an effort to facilitate agreement on these issues.

(b) Within 14 days of receiving notification of deployment or mobilization in the near future from his or her military leadership, the military parent shall provide written notice to the nondeploying parent of the same. If less than 14 days' notice is received by the military parent then notice must be given immediately upon receipt of notice to the nondeploying parent.

§ 688. FAILURE TO EXERCISE PARENT-CHILD CONTACT RIGHTS

In determining whether a parent has failed to exercise parent-child contact, the court shall not count any time periods during which the parent did not exercise such contact due to the material effect of that parent's military duties on the contact schedule.

§ 689. ATTORNEY FEES

In making determinations pursuant to this subchapter, the court may award attorney's fees and costs based on the court's consideration of:

(1) unreasonable failure of either party to accommodate the other party in parental rights and responsibilities or parent-child contact matters related to a deploying parent;

(2) unreasonable delay caused by either party in resolving parental rights and responsibilities or parent-child contact related to a deploying parent;

(3) failure of either party to provide timely information about income and earnings information to the other party; and

(4) other factors as the court may consider appropriate and as may be required by law.

Sec. 3. EFFECTIVE DATE AND APPLICABILITY

This act shall take effect upon passage.

(Committee Vote: 10-0-1)

Ordered to Lie

H.R. 19

House resolution urging the agency of natural resources to retain delegated authority to administer the federal Clean Water Act in Vermont.

Pending Question: Shall the House adopt the resolution?

Information Notice
Joint Public Hearing on Fiscal Year 2011 budget
on Vermont Interactive Television
Appropriations Committees

Monday, February 8, 2010, 4:30 - 7:00 p.m. – The House and Senate Appropriations Committees will hold a joint public hearing on Vermont Interactive Television (V.I.T.) to give Vermonters throughout the state an opportunity to express their views about the state budget for fiscal year 2011. All V.I.T. sites will be available for the hearing: Bennington, Brattleboro, Castleton, Johnson, Lyndonville, Middlebury, Montpelier, Newport, Randolph Center, Rutland, Springfield, St. Albans, Waterbury, White River Junction and Williston. V.I.T.'s web site has an up-to-date location listing, including driving directions, addresses and telephone numbers, <http://www.vitlink.org/>.

For information about the format of this event, interested parties may call the House Appropriations Committee office at 802/828-5767. Requests for interpreters should be made to the office by 12:00 noon on Friday, January 29, 2010.

PUBLIC HEARING

Wednesday, January 27, 2010, Senate Chamber - 9 AM - 12:00 Noon -
Senate Committee on Transportation - 'Texting While Driving'

INFORMATION NOTICE

The following items were recently received by the Joint Fiscal Committee:

JFO #2425 — \$468,953 grant from the U.S. Department of Agriculture Forest Service to Agriculture, Food and Markets. These funds will be used to support the Agriculture Innovation Center (AIC). AIC provides technical assistance and business development services to agricultural producers engaged in valued-added agriculture.

[JFO received 1/13/10]

JFO #2426 — \$35,000 grant from the Vermont Woodlands Association to Forests, Parks and Recreation. These funds will be used to align Vermont's Use Value Appraisal (UVA) Standards and the U.S. Forest Service State & Private Forestry Forest Stewardship Program with the American Tree Farm and the Program for the Endorsement of Forest Certification programs, including updating the UVA database.

[JFO received 1/13/10]

JFO #2427 — \$200,000 grant from the U.S. Department of Justice to the Vermont Department of Children and Families. These funds will be used to augment annual grants made to Vermont communities and state partners through the Children and Family Council for Prevention Programs and the Children's Trust Fund. Projects will serve children and their families by focusing on early prevention, education, parenting and positive youth development.

[JFO received 1/13/10]

JFO #2428 — \$1,000,000 grant from the U.S. Department of Health and Human Services to the Vermont Department of Children and Families. These funds will be used to improve collaboration with VT Coalition of Runaway and Homeless Youth and the N.E. Network for Children, Youth and families to strengthen services to homeless youths and youths who are aging out of Vermont's foster care system.

[JFO received 1/13/10]