

Senate Calendar

WEDNESDAY, MARCH 25, 2009
78th DAY OF BIENNIAL SESSION

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ACTION CALENDAR

UNFINISHED BUSINESS OF TUESDAY, MARCH 24, 2009

Third Reading

S. 109

An act relating to brominated flame retardants.

NEW BUSINESS

Third Reading

S. 5

An act relating to accidents involving an on-duty law enforcement officer, firefighter, or emergency medical personnel.

S. 47

An act relating to salvage yards.

**AMENDMENT TO S. 47 TO BE OFFERED BY SENATORS SEARS,
CARRIS AND ILLUZZI BEFORE THIRD READING**

Senators Sears, Carris and Illuzzi move to amend the bill by adding a new section to be numbered Sec. 19 to read as follows:

**Sec. 19. REPEAL OF SUNSET OF SCRAP METAL PROCESSOR
REQUIREMENTS**

Sec. 12 of No. 195 of the Acts of the 2007 Adj. Sess. (2008) (sunset of scrap metal processor requirements for identification of persons selling scrap metal) is repealed.

S. 99

An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.

H. 11

An act relating to the disposition of property upon death, transfer of interest in vehicle upon death, and homestead exemption.

Second Reading
Favorable with Recommendation of Amendment
S. 38

An act relating to requiring the Department of Finance and Management to annually publish on its website a report on grants issued by executive branch agencies.

Reported favorably with recommendation of amendment by Senator Brock for the Committee on Government Operations.

The Committee recommends that the bill be amended by striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 and Secs. 3, 4, and 5 to read:

Sec. 2. 32 V.S.A. § 313 is added to read:

§ 313. GRANT REPORT

(a) Annually, beginning January 31, 2010, the department of finance and management shall publish on its website a report on all grants of federal monies made by each executive branch agency in the preceding calendar year. The report shall be formatted as a table and shall include, for each grant issued after October 1, 2008:

(1) An identification number or code for each federal grant issued by an agency;

(2) The name and address of the subrecipient of the federal grant;

(3) A description of the purpose or use of the grant;

(4) The amount of the grant; and

(5) The Catalog of Federal Domestic Assistance (CFDA) number for each federal grant.

(b) Grant reports issued under this section shall be public records available for inspection and review.

(c) For the purposes of this section, “grant” means a legally enforceable agreement between an agency (grantor) and a recipient or subrecipient (grantee) to carry out a purpose as defined in that agreement.

Sec. 3. 32 V.S.A. § 314 is added to read:

§ 314. GRANT REPORT

(a) Annually, beginning January 31, 2015, the department of finance and management shall publish on its website a report on all grants of federal and

state monies made by each executive branch agency in the preceding calendar year. The report shall be formatted as a table and shall include, for each grant:

(1) An identification number or code for each federal or state grant issued by an agency;

(2) The name and address of the recipient or subrecipient of the state or federal grant;

(3) A description of the purpose or use of the grant;

(4) The amount of the grant; and

(5) The Catalog of Federal Domestic Assistance (CFDA) number for each federal grant.

(b) Grant reports issued under this section shall be public records available for inspection and review.

(c) For the purposes of this section, “grant” means a legally enforceable agreement between an agency (grantor) and a recipient or subrecipient (grantee) to carry out a purpose as defined in that agreement.

Sec. 4. REPEAL

Sec. 2, 32 V.S.A. § 313 (department of finance and management report on federal grants), shall be repealed on July1, 2014.

Sec. 5. EFFECTIVE DATE

Sec. 3 shall take effect on July 1, 2014.

(Committee vote: 3-0-2)

S. 94

An act relating to licensing state forestland for maple sugar production.

Reported favorably with recommendation of amendment by Senator Choate for the Committee on Agriculture.

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. MAPLE SUGAR LICENSES ON STATE FOREST LAND

The commissioner of forests, parks and recreation shall consult with the Vermont maple sugar makers association to develop a procedure under which the commissioner shall issue additional licenses for the use of state forestland for the tapping of maple trees, the collection of maple sap, and the right to transport such sap to a processing site located off state forest land or to sites located on state forest land if approved by the commissioner. In addition, the

commissioner of forests, parks and recreation shall consult with the Vermont maple sugar makers association to develop guidelines for tapping maple trees.

(Committee vote: 5-0-0)

Committee Bills for Notice

S. 125

An act relating to expanding the sex offender registry.

By the Committee on Judiciary.

S. 126

An act relating to digital forensic specialists.

By the Committee on Economic Development, Housing and General Affairs.

S. 127

An act relating to small school districts that pay tuition for their resident students.

By the Committee on Education.

AMENDMENT TO S. 127 TO BE OFFERED BY SENATOR McCORMACK

Senator McCormack moves to amend the bill by striking out Sec. 7 [Effective Date] in its entirety and inserting in lieu thereof three new sections to read as follows:

Sec. 7. 16 V.S.A. § 563 is amended to read:

§ 563. ~~POWERS OF SCHOOL BOARDS; FORM OF VOTE IF BUDGET EXCEEDS BENCHMARK AND DISTRICT SPENDING IS ABOVE AVERAGE~~

The school board of a school district, in addition to other duties and authority specifically assigned by law:

* * *

(11)(A) Shall prepare and distribute annually a proposed budget for the next school year according to such major categories as may from time to time be prescribed by the commissioner.

~~(B) If the proposed budget contains education spending in excess of the Maximum Inflation Amount, and the district's education spending per equalized pupil in the fiscal year preceding the year for which the budget is proposed was in excess of the statewide average district education spending~~

~~per equalized pupil in that same fiscal year, as determined by the commissioner of education, then in lieu of any other statutory or charter form of budget adoption or budget vote, the board shall present the budget to the voters by means of a divided question, in the form of vote provided in subdivision (ii) of this subsection.~~

~~(i) “Maximum Inflation Amount” in this section means:~~

~~(I) the statewide average district education spending per equalized pupil, as defined in subdivision 4001(6) of this title, in the fiscal year preceding the year for which the budget is proposed, as determined by the commissioner of education, multiplied by the New England Economic Project Cumulative Price Index percentage change, as of November 15 preceding distribution of the proposed budget, for state and local government purchases of goods and services for the fiscal year for which the budget is proposed, plus one percentage point; plus the district’s education spending per equalized pupil in the fiscal year preceding the year for which the budget is proposed, as determined by the commissioner of education;~~

~~(II) multiplied by the higher of the following amounts as determined by the commissioner of education:~~

~~(aa) the district’s equalized pupil count in the fiscal year preceding the year for which the budget is proposed; or~~

~~(bb) the district’s equalized pupil count in the fiscal year for which the budget is proposed.~~

~~(ii) Form of vote.~~

~~“School Budget Question #1:~~

~~Shall the voters of the _____ School District approve a total budget in the amount of [\$ _____], which includes the Maximum Inflation Amount of education spending?~~

~~“School Budget Question #2:~~

~~If Question #1 is approved, shall the voters of the School District also approve additional education spending of [\$ _____]?”~~

~~(C)(B)~~ At a school district’s annual meeting, the electorate may vote to provide notice of availability of the school budget required by this subdivision to the electorate in lieu of distributing the budget. If the electorate of the school district votes to provide notice of availability, it must specify how notice of availability shall be given, and such notice of availability shall be provided to the electorate at least 30 days before the district’s annual meeting. The proposed budget shall be prepared and distributed at least ten days before

a sum of money is voted on by the electorate. Any proposed budget shall show the following information in a format prescribed by the commissioner of education:

(i) all revenues from all sources and expenses, including as separate items any assessment for a union school district or a supervisory union of which it is a member, and any tuition to be paid to a technical center;

(ii) the specific amount of any deficit incurred in the most recently closed fiscal year and how the deficit was or will be remedied;

(iii) the anticipated homestead tax rate and the percentage of household income used to determine income sensitivity in the district as a result of passage of the budget; including those portions of the tax rate attributable to the union school and supervisory union assessments; and

(iv) in the case of a school district:

(I) other than a union school district, the definition of "education spending," the number of pupils and number of equalized pupils in the school district, and the district's education spending per equalized pupil in the proposed budget and in each of the prior three years; or

(II) in the case of a union school district, the amount of the assessment to each of the member districts and the amount of the assessments per equalized pupil in the proposed budget and for the past three years.

* * *

Sec. 8. REPEAL

Sec. 6 (effective date; a divided question is required when voting for school budgets that exceed the maximum inflation amount for fiscal years 2010 ((school year 2009-2010)) through 2014 ((school year 2013-2014))) of No. 82 of the Acts of 2007 is repealed.

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage and shall apply to all proposed school budgets on which the electorate will vote after the effective date of this act.

S. 128

An act relating to workers' compensation benefits and misclassification.

By the Committee on Economic Development, Housing and General Affairs.

(Third Reading per Chapter II §72 Vermont Constitution)

Proposed Amendment to the Constitution

PROPOSAL 5

Pursuant to Rule 83 of the Senate Rules, the proposed amendment to the Constitution, Proposal 5, set forth below, will be read the third time and acted upon. The question is: "Shall the Senate concur in the proposal and request the concurrence of the House?" [majority of whole Senate is required for passage]

SUBJECT: Elections; voter's oath; self-administration

PENDING ACTION: Third reading of the proposal (second biennium)

PROPOSAL 5

Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont to provide that a person who will attain the age of 18 by the date of the general election shall have the right to vote in the primary election.

Sec. 2. Section 42 of Chapter II of the Vermont Constitution is amended to read:

§ 42. [VOTER'S QUALIFICATIONS AND OATH]

Every person of the full age of eighteen years who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who is of a quiet and peaceable behavior, and will take the following oath or affirmation, shall be entitled to all the privileges of a voter of this state:

You solemnly swear (or affirm) that whenever you give your vote or suffrage, touching any matter that concerns the State of Vermont, you will do it so as in your conscience you shall judge will most conduce to the best good of the same, as established by the Constitution, without fear or favor of any person.

Every person who will attain the full age of eighteen years by the date of the general election who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who is of a quiet and peaceable behavior, and will take the oath or affirmation set forth in this section, shall be entitled to vote in the primary election.

Sec. 3. EFFECTIVE DATE

This proposal of amendment shall take effect from the date of its approval by a majority vote of the voters of the state.

NOTICE CALENDAR

Favorable

H. 31

An act relating to approval of amendments to the charter of the town of Williston.

Reported favorably by Senator Flanagan for the Committee on Finance.

(Committee vote: 5-0-0)

H. 95

An act relating to the approval of an amendment to the charter of the city of Burlington.

Reported favorably by Senator Flanagan for the Committee on Finance.

(Committee vote: 5-0-0)

Favorable with Recommendation of Amendment

S. 19

An act relating to extension of filing deadlines for homestead declarations and property tax adjustment claims.

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

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. DEADLINE FOR CERTAIN 2008 HOMESTEAD DECLARATIONS AND PROPERTY TAX ADJUSTMENT CLAIMS

Notwithstanding any other provision of law, a claimant residing in a town that sent its 2008 property tax bill on September 15, 2008 and who, within 21 days of such date, filed a declaration of homestead and a property tax adjustment claim for that homestead shall be entitled to any refund resulting from the corrected property classification and education property tax adjustment claim. The commissioner of taxes shall pay any refund due under this section with respect to an education property tax adjustment to a claimant who applies in writing to the commissioner on or before July 17, 2009. A

refund due a claimant due to reclassification of property as homestead property under this section shall be refunded by the town.

(Committee vote: 7-0-0)

S. 58

An act relating to electronic payment of wages.

Reported favorably with recommendation of amendment by Senator Carris for the Committee on Economic Development, Housing and General Affairs.

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. 21 V.S.A. §§ 342 and 343 are amended to read:

§ 342. WEEKLY PAYMENT OF WAGES

(a) Any person having employees ~~in his service~~ doing and transacting business within the state shall ~~pay~~:

(1) Pay to those employees each week, in lawful money or checks,~~each of his employees,~~ the wages earned by ~~such each~~ employee to a day not more than six days prior to the date of ~~such~~ payment.

~~(b)(2) After giving written notice to his the employees, any person having employees in his service doing and transacting business within the state may, notwithstanding subsection (a) of this section, pay bi-weekly or semi-monthly in lawful money or checks; each of his employees, employee~~ the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.

~~(c)(1)(b)~~ An employee who ~~voluntarily~~:

(1) Voluntarily leaves his employment shall be paid on the last regular pay day, or if there is no regular pay day, on the following Friday.

(2) ~~An employee who is~~ Is discharged from employment shall be paid within 72 hours of his discharge.

(3) ~~If an employee is~~ Is absent from his or her regular place of employment on the employer's regular scheduled date of wages or salary payment ~~such employee~~ shall be entitled to ~~such~~ payment upon demand.

~~(d)(c)~~ With the written authorization of an employee, an employer may pay wages due the employee by ~~deposit~~ any of the following methods:

(1) Deposit through electronic funds transfer or other direct deposit systems to a checking, savings, or other deposit account maintained by or for the employee in any financial institution within or without the state.

(2) Credit to a payroll card account directly or indirectly established by an employer in a financial institution to which electronic fund transfers of the employee's wages, salary, or other employee compensation are made on a recurring basis, other than a checking, savings, or other deposit account described in subdivision (1) of this subsection, provided all the following:

(A) The employer provides the employee written disclosure in plain language, in at least 10-point type of both the following:

(i) All the employee's wage payment options.

(ii) The terms and conditions of the payroll card account option, including a complete list of all known fees that may be deducted from the employee's payroll card account by the employer or the card issuer and whether third parties may assess fees in addition to the fees assessed by the employer or issuer.

(B) The employee voluntarily consents in writing to payment of wages by payroll card account after receiving the disclosures described in subdivision (A) of this subdivision (2), and this consent is not a condition of hire or continued employment.

(C) The employer provides that during each pay period the employee has at least three free withdrawals from the payroll card, one of which permits withdrawal of the full amount of the balance, at a financial institution, credit union, or other location convenient to the place of employment.

(D) None of the employer's costs associated with the payroll card account are passed on to the employee, and the employer shall not receive any financial remuneration for using the pay card at the employee's expense.

(E) At least 21 days before any change takes effect, the employer provides the employee with written notice in plain language, in at least 10 point type, of any change to any of the terms and conditions of the payroll card account, including any changes in the itemized list of fees. The employer may not charge the employee any additional fees until the employer has notified the employee in writing of the changes.

(F) The employer provides the employee the option to discontinue receipt of wages by a payroll card account at any time and without penalty to the employee.

(G) The payroll card issued to the employee shall be a branded-type payroll card that complies with all the following:

(i) Can be used at a PIN-based or a signature-based outlet.

(ii) The payroll card agreement prevents withdrawals in excess of the account balance and to the extent possible protects against the account being overdrawn.

(iii) The payroll card has no expiration date, unless the employer agrees to provide a replacement payroll card at no cost to the employee before the expiration date.

(H) A nonbranded payroll card may be issued for temporary purposes and shall be valid for no more than 60 days.

§ 343. FORM OF PAYMENT

~~Such~~ An employer shall not pay its employees with any form of evidence of indebtedness, including, ~~without limitation,~~ all scrip, vouchers, due bills, or store orders, unless the employer is in compliance with one or both of the following:

(1) ~~the~~ The employer is a cooperative corporation in which the employee is a stockholder. ~~However, such , in which case, the~~ cooperative corporation shall, upon request of any ~~such~~ shareholding employee, pay ~~him~~ the shareholding employee as provided in section 342 of this title; ~~or~~ .

(2) ~~payment~~ Payment is made by check as defined in Title 9A or by electronic fund transfer as provided in section 342 of this title.

Sec. 2. 8 V.S.A. § 2707(6) is added to read:

(6) A payroll card account issued pursuant to and in full compliance with 21 V.S.A. § 342(c).

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

(Committee vote: 5-0-0)

S. 89

An act relating to a maximum retail price for milk.

Reported favorably with recommendation of amendment by Senator Starr for the Committee on Agriculture.

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. VERMONT MILK COMMISSION; MILK PREMIUM; PRODUCER PRICE STABILIZATION

(a) The general assembly finds that the recent precipitous drop in producer prices is causing a tremendous burden on Vermont dairy producers and the industry at large, and that this burden must be alleviated as quickly as possible by regulatory action. Accordingly, the general assembly directs the Vermont milk commission to conduct without delay the proceedings necessary to determine whether a “retail fluid milk premium,” including its distribution to producers, should be enacted in accordance with 6 V.S.A. § 2924(e) and the regulations adopted under chapter 161 of Title 6.

(b) To facilitate these expedited proceedings, not later than five days after the enactment of this act, the chair of the commission shall direct the issuance of a further notice of hearing on the latest version of the commission’s “proposed order to establish a retail fluid milk premium” first issued on September 9, 2008. The commission is further directed to conduct this hearing as quickly as procedurally allowable, and to so proceed as expeditiously as possible with all subsequent regulatory actions required by law for its determination of whether to establish a retail fluid milk premium.

Sec. 2. 6 V.S.A. § 2924 is amended to read:

§ 2924. POWERS AND DUTIES; PRICING AUTHORITY; PUBLIC HEARINGS

(a) Authority over milk prices. The commission may establish an equitable minimum or maximum price, or both, and the manner of payments, which shall be paid producers or associations of producers by handlers, and the prices charged consumers and others for milk used in dairy products by distributors or handlers. The cost of the contracts and employment pursuant to section 2923 of this title and of administering the collection and distribution of monies collected under this section shall not exceed \$100,000.00 annually, and shall be collected independently from any assessment imposed under this section. The commission may impose a one-time assessment to cover the initial costs of establishing a pricing order as authorized by this section.

(b) Equitable minimum producer prices. The commission may establish by order after notice and hearing an equitable minimum price to be paid to dairy producers for milk produced in Vermont on the basis of the use thereof in the various classes, grades, and forms. Prices so established which exceed federal order prices shall be collected by the commission from the handlers for distribution to dairy producers as a blend price. ~~The cost of the contracts and employment pursuant to section 2923 of this title and of administering the collection and distribution of these moneys shall be covered by such moneys, not to exceed \$100,000.00.~~

* * *

Sec. 3. PREMIUM START-UP FUNDING

(a) The commission shall impose a one-time assessment to cover the administrative costs of its regulatory activities required by Sec. 1 of this act. The assessment required by this section shall not exceed \$35,000.00.

(b) The agency of agriculture, food and markets may borrow from its own general fund to cover these administrative expenses and the milk commission shall reimburse the agency of agriculture, food and markets' general fund upon receipt of the proceeds of the assessment authorized by subsection (a) of this section.

Sec. 4. PRODUCER REFERENDUM

(a) If adopted pursuant to this act, a final order by the Vermont milk commission to establish a retail fluid milk premium shall be submitted by Vermont dairy producers to a producer referendum in accordance with part II, section 7 of the "Vermont Milk Commission Procedure, Development and Issuance of an Order to Establish a Retail Fluid Milk Premium, Or Amendment of Such Order." Notwithstanding the provisions of part III, section 8 of this commission procedure, however, the referendum shall not be conducted as a "qualified cooperative representative vote," but shall instead provide for individual ballot and vote by each Vermont producer.

(b) The referendum shall be carried out and certified not more than 30 days after the adoption of a final order.

(c) The commission shall file with the secretary of state and the legislative committee on administrative rules a letter explaining that a qualified cooperative representative vote pursuant to part III, section 8 of the "Vermont Milk Commission Procedure, Development and Issuance of an Order to Establish a Retail Fluid Milk Premium, Or Amendment of Such Order" will not apply to an order adopted under this act. The commission shall also submit a copy of this act to the secretary of state and the legislative committee on administrative rules.

Sec. 5. ANTI-TRUST INQUIRY; REPORT BY THE ATTORNEY GENERAL

(a) Findings. The general assembly is concerned that the highly concentrated market structure of the New England dairy industry, throughout all sectors, is operating to the disservice of Vermont dairy farmers and milk consumers alike. The raw milk sector of the industry is increasingly dominated by one large, nationally based dairy farm cooperative, and Vermont dairy farmers now have very few options for the initial marketing of their milk. The downstream processing sector is dominated by just two fluid milk

processing concerns, which control both the procurement of raw milk from dairy farms and the sale of packaged milk to retail outlets. Finally, the dominant supermarket segment of the Vermont retail market is controlled by a few large firms, many of whom are nationally based or multinational companies.

(b) Therefore, the attorney general shall undertake a study of the Northeast fluid milk market, and the Vermont segment of that market, and further work with the United States Congress and the United States attorney general to investigate possible anticompetitive practices of dairy cooperatives, processors, and retail firms operating in the Vermont marketplace.

(c) As part of the study, the attorney general shall determine whether operation of the Capper-Volstead Act of 1922 continues to serve its intended purpose and function in the public interest.

(d) By January 15, 2010, the attorney general shall report back to the house and senate committees on agriculture with the findings and recommendations of the study required by this section.

Sec. 6. EFFECTIVE DATE

This act shall take effect upon passage.

and that the title of the bill be amended to read:

“An act relating to stabilization of prices paid to Vermont dairy farmers”

(Committee vote: 5-0-0)

Committee Bill for Notice

S. 130

An act relating to premium changes to allow enhanced Medicaid match in fiscal year 2009.

By the Committee on Appropriations.

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 Service Board shall be fully and separately acted upon.

Susan D. Plaustainer of Brownsville – Member of the Vermont Economic Development Authority – By Sen. Maynard for the Committee on Finance. (1/21)

Rachel Schumacher of North Bennington – Member of the Vermont Economic Development Authority – By Sen. Hartwell for the Committee on Finance. (1/21)

Steven J. Bourgeois of Swanton – Member of the Vermont Economic Development Authority – By Sen. Carris for the Committee on Finance. (1/28)

Thomas Pelletier of Montpelier – Member of the Vermont Housing Finance Agency – By Sen. Cummings for the Committee on Finance. (1/28)

Neale F. Lunderville of Burlington – Secretary of the Agency of Administration – By Sen. Flanagan for the Committee on Government Operations. (2/17)

Neale F. Lunderville of Burlington – Secretary of the Agency of Administration – By Sen. Flanagan for the Committee on Government Operations. (2/17)

Michael Welch of St. Johnsbury – Member of the Valuation Appeals Board – By Sen. McCormack for the Committee on Finance. (2/18/09)

David R. Coates of Colchester – Member of the Vermont Municipal Bond Bank – By Sen. Carris for the Committee on Finance. (2/18/09)

Sonia D. Alexander of Wilmington – Member of the Valuation Appeals Board – By Sen. Hartwell for the Committee on Finance. (2/25/09)

Paulette Thabault of South Burlington – Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration – By Sen. Cummings for the Committee on Finance. (3/3/09)

Kathryn T. Boardman of Shelburne – Member of the Vermont Municipal Bond Bank – By Sen. Maynard for the Committee on Finance. (3/4/09)

John D. Burke of Castleton – Member of the Public Service Board – By Sen. Maynard for the Committee on Finance. (3/24/09)

Kenneth Linsley of Danville – Member of the Vermont Educational and Health Buildings Financing Agency – By Sen. Maynard for the Committee on Finance. (3/26/09)