

House Calendar

Friday, April 08, 2011

94th DAY OF THE BIENNIAL SESSION

House Convenes at 9:30 A.M.

TABLE OF CONTENTS

Page No.

ACTION CALENDAR

Third Reading

H. 259 Increasing the number of members on the liquor control board 1147

H. 442 Amending the charter of the city of Rutland..... 1147

Favorable with amendment

H. 258 Public participation in environmental enforcement proceedings 1147

Rep. Ellis for Natural Resources and Energy

Rep. French for Judiciary 1153

NOTICE CALENDAR

Committee Bill for Second Reading

H. 450 Limited immunity from liability for job performance information disclosed to employers of individuals who work with minors or vulnerable adults..... 1155

Rep. Grad for Judiciary

Favorable with Amendment

H. 24 The maintenance and conveyance of Maidstone Lake Road 1155

Rep. South for Corrections and Institutions

H. 448 Contributions to the state and municipal employees' retirement systems 1156

Rep. Atkins for Government Operations

Rep. Heath for Appropriations

Senate Proposal of Amendment

H. 236 Limitation of prosecutions for sexual abuse of a vulnerable adult.. 1156

Consent Calendar

H.C.R. 120 Congratulating the students of Monument Elementary School in Bennington for their special effort to assist the victims of the recent natural and nuclear disasters in Japan	1157
H.C.R. 121 Commemorating the 250th anniversary of the town of Hartford	1157
H.C.R. 122 Congratulating the Stafford Technical Center SADD chapter on winning the 2010 National SADD Chapter of the Year Award.....	1157
H.C.R. 123 Commemorating the sesquicentennial of the Civil War.....	1157
H.C.R. 124 Congratulating the 2011 Missisquoi Valley Union High School Thunderbirds Division II championship boys' basketball team.....	1157
H.C.R. 125 Acknowledging the many Vermonters living with Alzheimer's disease and designating April 1 as Alzheimer's Awareness Day.....	1157
H.C.R. 126 In memory of Jack Gabriel Hannan, champion freeskiier	1157
H.C.R. 127 Congratulating the Vermont Children's Trust Foundation on its 20th anniversary and designating April 13, 2011 as Vermont Children's Trust Foundation Day at the State House	1158
H.C.R. 128 Congratulating the Peace Corps on half a century of exemplary public service.....	1158
H.C.R. 129 Congratulating James Kochalka on his designation as the first Vermont cartoonist laureate	1158
H.C.R. 130 Designating April 27, 2011, as National Walk@Lunch Day in Vermont.....	1158

ORDERS OF THE DAY

ACTION CALENDAR

Third Reading

H. 259

An act relating to increasing the number of members on the liquor control board

H. 442

An act relating to amending the charter of the city of Rutland

Favorable with amendment

H. 258

An act relating to public participation in environmental enforcement proceedings

Rep. Ellis of Waterbury, for the Committee on **Natural Resources and Energy**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 8002 is amended to read:

§ 8002. DEFINITIONS

As used in this chapter:

* * *

(4) “Person” means any individual, partnership, company, corporation, association, unincorporated association, joint venture, trust, municipality, the state of Vermont or any agency, department or subdivision of the state, federal agency, or any other legal or commercial entity.

* * *

(12) “Environmental court” or “environmental division” means the environmental division of the superior court established by 4 V.S.A. § 30.

(13) “Federally authorized or delegated program” means an area of environmental regulation where the U.S. Environmental Protection Agency has authorized or delegated to Vermont primary regulatory responsibility, including the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act.

(14) “Post” means the placing of the required information on the website of the secretary or the board.

Sec. 2. 10 V.S.A. § 8012 is amended to read:

§ 8012. REQUEST FOR HEARING

* * *

(b) The environmental division shall have authority to:

* * *

(2) affirm, or vacate and remand to the secretary an order issued under subdivision 8008(b)(5) of this title. The environmental division shall vacate and remand an order under this subdivision when a violation is found to exist but the procedure contained in the order is ~~not reasonably likely to achieve the intended result~~ insufficient to carry out the purposes of this chapter;

* * *

~~(d) The environmental division may grant party status to an aggrieved person for the purpose of providing evidence and legal arguments only in relation to the sufficiency of an order issued under the authority of section 8008 of this title. As used in this subsection, an "aggrieved person" means a person who demonstrates that the interest of that person is not adequately represented by any other party and who at the time of the alleged violation had:~~

~~(1) an ownership, leasehold or contractual interest in real property directly affected by the violation described in the order; or~~

~~(2) an interest in the outcome of the proceeding which is distinct from the interest of the public at large because of the person's place of residence, place of employment or place of business.~~

~~(e)~~(d) Notice of a request for hearing shall stay the order and payment of the penalty, if imposed, pending the hearing. The secretary may issue an emergency order with regard to the alleged violation that is the subject of the hearing, if grounds for such an order develop during the hearing process.

~~(f)~~(e) Any claim a person may have under a private right of action which is not determined in a proceeding under this chapter shall be preserved.

Sec. 3. 10 V.S.A. § 8013 is amended to read:

§ 8013. CONDUCT OF HEARINGS; APPEAL; STAY

(a) The secretary shall have the burden of proof by a preponderance of the evidence.

(b) Parties may be represented by counsel in hearings before the environmental division. The agency of natural resources may represent itself.

A party may conduct cross-examination required for a full and true disclosure of the facts.

(c) An appeal from a decision of the environmental division may be taken by the secretary, ~~the board~~, or the respondent to the supreme court. The attorney general also may appeal if the attorney general has appeared as a party.

(d) An appeal by a respondent or the attorney general to the supreme court shall not stay an order, but shall stay payment of a penalty. A respondent may petition the supreme court for a stay of an order.

Sec. 4. 10 V.S.A. § 8014(a) is amended to read:

(a) The secretary may seek enforcement of a final administrative order, final orders pursuant to an assurance of discontinuance, or civil complaints pursuant to section 8019 of this title, or a landfill extension order in the civil, criminal, or environmental division of the superior court.

Sec. 5. 10 V.S.A. § 8019 is amended to read:

§ 8019. ENVIRONMENTAL TICKETING CIVIL COMPLAINTS

(a) The secretary and the board each shall have the authority to adopt rules for the issuance of civil complaints for violations of their respective enabling statutes or rules adopted under those statutes that are enforceable in the ~~judicial bureau pursuant to the provisions of chapter 29 of Title 4~~ environmental division. Any proposed rule under this section shall include ~~both~~ the full, minimum, and waiver penalty amounts for each violation. The maximum civil penalty for any violation brought under this section shall not exceed \$3,000.00 exclusive of court fees.

(b) A civil complaint issued under this section shall preclude the issuing entity from seeking an additional monetary penalty for the violation specified in the complaint when any one of the following occurs: the waiver penalty is paid, judgment is entered after trial or appeal, or a default judgment is entered. Notwithstanding this preclusion, the agency and the board may issue additional complaints or initiate an action under chapter 201 of this title, including a monetary penalty when a violation is continuing or is repeated, and may also bring an enforcement action to obtain injunctive relief or remediation and, in such additional action, may recover the costs of bringing the additional action and the amount of any economic benefit the respondent obtained as a result of the underlying violation in accordance with subdivisions 8010(b)(7) and (c)(1) of this title.

(c) The secretary or board chair and his or her duly authorized representative shall have the authority to amend or dismiss a complaint by so

marking the complaint and returning it to the ~~judicial bureau~~ environmental division or by notifying the hearing officer or judge at the hearing.

(d) Subsequent to the issuance of a civil complaint under this section and the conclusion of any hearing and appeal regarding that complaint, the following shall be considered part of the respondent's record of compliance when calculating a penalty under section 8010 of this title:

(1) The respondent's payment of the full or waiver penalty stated in the complaint.

(2) The respondent's commission of a violation after the hearing before the ~~judicial bureau~~ environmental division on the complaint.

(3) The respondent's failure to appear or answer the complaint resulting in the entry of a default judgment.

(4) A finding, after appeal, that the respondent committed a violation.

Sec. 6. 10 V.S.A. § 8020 is added to read:

§ 8020. PUBLIC PARTICIPATION IN ENFORCEMENT

(a) Prior to sending an administrative order, assurance of discontinuance, or civil complaint issued under this chapter to the environmental division, the secretary or the board shall post the administrative order, assurance of discontinuance, or civil complaint for public notice and written comment for 30 days. At the conclusion of the 30-day notice and written comment period, the secretary or the board shall evaluate the proposed action pursuant to the written comments received. After the evaluation of the written comments, the secretary or the board may withdraw an administrative order, assurance of discontinuance, or civil complaint.

(b) When the secretary or board issues a final administrative order, assurance of discontinuance, or civil complaint, it shall be sent to the environmental division along with any written comments received during the 30-day comment period. Concurrent with filing, the secretary or board shall post the final proposed action for public notice for 14 days. The environmental division shall hold the administrative order, assurance of discontinuance, or civil complaint for 14 days from the date of filing to allow any person to file a motion for permissive intervention pursuant to the procedure in Rule 24(c) of the Vermont Rules of Civil Procedure. At the conclusion of the 14-day period, if no motion to intervene has been filed, the environmental division shall process the administrative order, assurance of discontinuance, or civil complaint as set out elsewhere in this chapter.

(c) In order for a person to permissively intervene in an administrative order, assurance of discontinuance, or civil complaint, the person shall have

filed a written comment with the agency or board setting out the specific objection to the proposed action during the 30-day comment period required under subsection (a) of this section.

(d) When the secretary issues an emergency administrative order, the pre-filing public notice and comment provisions contained in this section shall not apply. The environmental division shall act on the emergency administrative order as required by section 8009 of this title. The secretary shall publish the emergency administrative order concurrent with filing it with the environmental division. A person shall have 14 days from the date the emergency administrative order is filed to file a motion for permissive intervention. A motion to intervene shall not stay an emergency administrative order.

(e) The environmental division shall evaluate a motion from an aggrieved person for permissive intervention in light of Rule 24(b)(1) of the Vermont Rules of Civil Procedure. A motion for permissive intervention shall clearly state the basis for the claim that the administrative order, assurance of discontinuance, or civil complaint is insufficient to carry out the purposes of this chapter. A hearing may be held on the motion for permissive intervention in the discretion of the environmental division. When the environmental division determines that a motion to intervene fails to meet the requirements for permissive intervention, the court shall deny the motion.

(f) When the environmental division permits an aggrieved person to intervene, it shall be for the sole purpose of establishing that the terms of an administrative order, emergency administrative order, assurance of discontinuance, or civil complaint are insufficient to carry out the purposes of this chapter. The intervenor shall have the burden of proof by a preponderance of the evidence that the administrative order, emergency administrative order, assurance of discontinuance, or civil complaint is insufficient to carry out the purposes of this chapter. A hearing may be held on the claim that the administrative order, emergency administrative order, assurance of discontinuance, or civil complaint is insufficient to carry out the purposes of this chapter in the discretion of the environmental division. The environmental division upon finding that the proposed action is insufficient to carry out the purposes of this chapter shall inform the parties in writing and shall include the basis of its decision and shall vacate the proposed action.

(g) The secretary or board shall not oppose any motion filed for permissive intervention, but when the environmental division permits a person to intervene, the secretary or board may oppose the intervenor's claim that the proposed action is insufficient to carry out the purposes of this chapter. The secretary shall investigate all citizen complaints of a violation of a federally

authorized or delegated program and shall respond to known complainants in writing.

(h) As used in this section, an “aggrieved person” means a person who alleges an injury to a particularized interest protected by a statute listed under subsection 8003(a) of this section, and the alleged injury is attributable to a violation addressed by an assurance of discontinuance, administrative order, emergency order, or civil complaint issued under this chapter. An organization or association is an aggrieved person under this section when one or more of its members would be an aggrieved person in his or her own right, the interests at stake are germane to the purposes of the organization or association, and neither the claim asserted nor the relief requested by the organization or association requires participation of the individual member.

Sec. 7. 10 V.S.A. § 8021 is added to read:

§ 8021. COST RECOVERY

(a) When the secretary expends monies from a special fund to remediate an environmental violation, the secretary may recover such monies through an administrative order, emergency administrative order, or assurance of discontinuance issued under this chapter.

(b) When costs are recovered under this section, they shall be deposited into the special fund from which they were expended.

Sec. 8. SALVAGE YARD OPERATIONAL STANDARDS

Sec. 6 of No. 93 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

Sec. 6. REPEAL

24 V.S.A. § 2248(a) (statutory operational standards for salvage yards) is repealed ~~March 31, 2011~~ on the effective date of the rules required by 24 V.S.A. § 2248.

Sec. 9. EFFECTIVE DATE

This act shall take effect on July 1, 2011, except for Sec. 8 which shall take effect on passage.

(Committee Vote: 10-0-1)

Rep. French of Shrewsbury, for the Committee on **Judiciary**, recommends the bill ought to pass when amended as recommended by the Committee on **Natural Resources and Energy** and when further amended as follows:

First: In Sec. 5, 10 V.S.A. § 8019 by adding subsection (e) to read as follows:

(e) Penalties assessed under this section shall be deposited in the general fund.

Second: In Sec. 6, 10 V.S.A. § 8020, by inserting the following at the end of subsection (a):

At the conclusion of the 30-day notice period, if no comments have been received, the secretary or the board shall file the administrative order, assurance of discontinuance, or civil complaint with the environmental division, and the environmental division shall process the administrative order, assurance of discontinuance, or civil complaint as set out elsewhere in this chapter.

Third: By adding new Secs. 8, 9, and 10 to read:

Sec. 8. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(a) A judicial bureau is created within the judicial branch under the supervision of the supreme court.

(b) The judicial bureau shall have jurisdiction of the following matters:

* * *

(6) Violations of 24 V.S.A. § 2201, relating to littering, burning of solid waste, and illegal dumping.

* * *

~~(17) Violations of the statutes listed in 10 V.S.A. § 8003, any rules or permits issued under those statutes, and any assurances of discontinuance or orders issued under chapter 201 of Title 10, provided that a rule has been adopted and a civil complaint issued concerning such a violation under 10 V.S.A. § 8019.~~

* * *

(d) Three hearing officers appointed by the court administrator shall determine waiver penalties to be imposed for violations within the judicial bureau's jurisdiction, except:

(1) Municipalities shall adopt full and waiver penalties for civil ordinance violations pursuant to 24 V.S.A. § 1979. For purposes of municipal violations, the issuing law enforcement officer shall indicate the appropriate full and waiver penalty on the complaint.

~~(2) The agency of natural resources and the natural resources board shall include full and waiver penalties in each rule that is adopted under 10 V.S.A. § 8019. For purposes of environmental violations, the issuing entity shall indicate the appropriate full and waiver penalties on the complaint.~~

Sec. 9. 4 V.S.A. § 1106 is amended to read:

§ 1106. HEARING

* * *

(b) The hearing shall be held before a hearing officer and conducted in an impartial manner. The hearing officer may, by subpoena, compel the attendance and testimony of witnesses and the production of books and records. All witnesses shall be sworn. The burden of proof shall be on the state or municipality to prove the allegations by clear and convincing evidence. As used in this section, “clear and convincing evidence” means evidence which establishes that the truth of the facts asserted is highly probable. Certified copies of records supplied by the department of motor vehicles, or the agency of natural resources, ~~or the natural resources board~~ and presented by the issuing officer or other person shall be admissible without testimony by a representative of the department of motor vehicles, or the agency of natural resources, ~~or the natural resources board~~.

* * *

~~(e) A state’s attorney may dismiss or amend a complaint, except that dismissal or amendment of a complaint subject to subdivision 1102(b)(17) of this title shall be governed by 10 V.S.A. § 8019(e).~~

* * *

Sec. 10. 4 V.S.A. § 1107 is amended to read:

§ 1107. APPEALS

(a) A decision of the hearing officer may be appealed to the criminal division of the superior court, ~~except for a decision in a proceeding under subdivision 1102(b)(17) of this title~~. The proceeding before the criminal division of the superior court shall be on the record, or at the option of the defendant, de novo. The defendant shall have the right to trial by jury. An appeal shall stay payment of a penalty and the imposition of points.

~~(b) A decision of the hearing officer in a proceeding under subdivision 1102(b)(17) of this title may be appealed to the environmental division of the superior court created under chapter 27 of this title. The proceedings before the environmental division shall be on the record. The defendant shall not have a right to a jury trial. An appeal shall stay the payment of a penalty.~~

~~(c) If a decision is appealed, the state's attorney of the county in which the violation occurred shall represent the state, and the state's attorney, grand juror, or municipal attorney shall represent the municipality. In an appeal to the environmental division of the superior court from a decision under subdivision 1102(b)(17) of this title, an attorney from the agency of natural resources or the natural resources board shall represent the state.~~

(d) No appeal as of right exists to the supreme court. On motion made to the supreme court by a party, the supreme court may allow an appeal to be taken to it from the criminal ~~or environmental~~ division of the superior court.

and by renumbering the subsequent sections of the bill to be numerically correct

Fourth: In Sec. 9, prior to renumbering, by striking "Sec. 8" where it appears and inserting in lieu thereof "Sec. 11"

(Committee Vote: 10-0-1)

NOTICE CALENDAR

Committee Bill for Second Reading

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.

(Rep. Grad of Moretown will speak for the Committee on **Judiciary.**)

Favorable with Amendment

H. 24

An act relating to the maintenance and conveyance of Maidstone Lake Road

Rep. South of St. Johnsbury, for the Committee on **Corrections and Institutions**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. MAIDSTONE LAKE ROAD

(a) Notwithstanding any law, including 19 V.S.A. § 309b, the town of Maidstone is authorized to accept that 5.93-mile portion of the existing road known as Maidstone Lake Road beginning at Route 102 and ending at the entrance to Maidstone State Park, including the segment located within the town of Brunswick, as a Class 3 town highway of the town of Maidstone, 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.

(b) Of the funds appropriated to the agency of natural resources in Sec. 20 of No. 43 of the Acts of the 2009 Adj. Sess. (2010), for the purpose of upgrading and maintaining the road, the balance remaining as of January 1, 2011 shall be transferred to the town of Maidstone and shall be used by the town for that purpose.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 11-0-0)

H. 448

An act relating to contributions to the state and municipal employees' retirement systems

(Rep. Atkins of Winooski will speak for the Committee on Government Operations.)

Rep. Heath of Westford, for the Committee on **Appropriations**, recommends the bill be amended as follows:

in Sec. 1, subdivision (b)(2), in the second sentence, by striking out "1.3 percent" and by inserting in lieu thereof the words "the total increased contributions", and, preceding "group C", by striking out the words "the total" and, preceding "on an aggregate", by striking out the words "per year"

(Committee Vote: 9-0-2)

Senate Proposal of Amendment

H. 236

An act relating to limitation of prosecutions for sexual abuse of a vulnerable adult

The Senate proposes to the House that after passage the title of the bill be amended to read: "An act relating to extending the limitation of prosecutions for sexual abuse of a vulnerable adult"

(For text see House Journal 2/18/11)

Consent Calendar

Concurrent Resolutions for Adoption Under Joint Rule 16a

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before today's adjournment. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar of April 7, 2011.

H.C.R. 120

House concurrent resolution congratulating the students of Monument Elementary School in Bennington for their special effort to assist the victims of the recent natural and nuclear disasters in Japan

H.C.R. 121

House concurrent resolution commemorating the 250th anniversary of the town of Hartford

H.C.R. 122

House concurrent resolution congratulating the Stafford Technical Center SADD chapter on winning the 2010 National SADD Chapter of the Year Award

H.C.R. 123

House concurrent resolution commemorating the sesquicentennial of the Civil War

H.C.R. 124

House concurrent resolution congratulating the 2011 Missisquoi Valley Union High School Thunderbirds Division II championship boys' basketball team

H.C.R. 125

House concurrent resolution acknowledging the many Vermonters living with Alzheimer's disease and designating April 1 as Alzheimer's Awareness Day

H.C.R. 126

House concurrent resolution in memory of Jack Gabriel Hannan, champion freeskier

H.C.R. 127

House concurrent resolution congratulating the Vermont Children's Trust Foundation on its 20th anniversary and designating April 13, 2011 as Vermont Children's Trust Foundation Day at the State House

H.C.R. 128

House concurrent resolution congratulating the Peace Corps on half a century of exemplary public service

H.C.R. 129

House concurrent resolution congratulating James Kochalka on his designation as the first Vermont cartoonist laureate

H.C.R. 130

House concurrent resolution designating April 27, 2011, as National Walk@Lunch Day in Vermont