

House Calendar

Tuesday, February 07, 2012

36th DAY OF THE ADJOURNED SESSION

House Convenes at 10:00 A.M.

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ORDERS OF THE DAY

ACTION CALENDAR

Senate Proposal of Amendment

H. 258

An act relating to public participation in environmental enforcement proceedings

The Senate proposes to the House to amend the bill as follows:

First: In Sec. 1, 10 V.S.A. § 8002, by striking out subdivisions 13 and 14 in their entirety and inserting in lieu thereof the following:

(13) “Civil complaint” means an environmental citation issued by the secretary or the board for a violation of a statute listed under subsection 8003(a) of this title.

(14) “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.

(15) “Post” means:

(A) placing a draft administrative order, assurance of discontinuance, or civil complaint or a final administrative order, assurance of discontinuance, or civil complaint on the website of the secretary if he or she initiates an enforcement action under this chapter or on the website of the board if it initiates an enforcement action; and

(B) providing public notice about the opportunity to:

(i) submit written comments regarding a draft administrative order, assurance of discontinuance, or civil complaint; or

(ii) request intervention in a final administrative order, assurance of discontinuance, or civil complaint.

Second: By Striking out Sec. 6 in its entirety and inserting in lieu thereof the following:

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

§ 8020. PUBLIC PARTICIPATION IN ENFORCEMENT

(a) Aggrieved person. 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.

(b) Draft and final action. Prior to issuing an administrative order, assurance of discontinuance, or civil complaint under this chapter and sending it to the environmental division, the secretary or the board shall post a draft copy of 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. At the conclusion of the 30-day notice period, if no comments have been received, the secretary or the board shall file the draft as a final administrative order, assurance of discontinuance, or civil complaint with the environmental division, and the environmental division may review and approve as an order of the court the administrative order, assurance of discontinuance, or civil complaint as set out elsewhere in this chapter. 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 with the environmental division, the secretary or board shall post the final proposed action for public notice for 14 days.

(c) Filing with court. 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 who has filed written comments under subsection (b), who is not satisfied with the final action of the agency or the board, and who meets the definition of “aggrieved person” under subsection (a) of this section to file a motion for permissive intervention pursuant to the procedure in Rule 24(c) of the Vermont Rules of Civil Procedure.

(d) Court action without motion to intervene. At the conclusion of the 14-day period, if no motion to intervene has been filed, the environmental

division shall take into consideration any comments received and in its discretion, with or without a hearing, shall issue an order to affirm, vacate, or remand the administrative order, assurance of discontinuance, or civil complaint.

(e) Condition precedent to intervention. In order for a person to intervene permissively in an administrative order, assurance of discontinuance, or civil complaint, the person shall have filed written comments with the agency or board setting out the specific objection to the proposed action during the 30-day comment period required under subsection (b) of this section.

(f) Court action upon motion to intervene. 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.

(g) Emergency administrative order. When the secretary issues an emergency administrative order, the prefiling public notice and comment provisions contained in this section shall not apply. The environmental division, without comment or hearing, shall act on the emergency administrative order as required by section 8009 of this title and may issue its own order. 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.

(h) Standard of review on motion to intervene. 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. 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.

(i) Authority of secretary to object. The secretary or board shall not oppose any motion filed for permissive intervention. When the environmental division permits a person to intervene, the secretary, the board, or the respondent may oppose the intervenor's claim that the proposed action is insufficient to carry out the purposes of this chapter.

(j) Response to citizen complaints. 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.

Third: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read as follows:

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

§ 8021. COST RECOVERY

(a) In addition to any existing authority, the secretary, in issuing an administrative order, emergency order, or assurance of discontinuance under this chapter, may recover monies expended from a special fund for a cleanup related to an environmental violation, provided that such recovered monies not exceed \$20,000.00.

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

Fourth: By striking out Sec. 11 and 12 in their entirety and inserting in lieu thereof the following:

Sec. 11. EFFECTIVE DATE

This act shall take effect on July 1, 2012

(For text see House Journal 4/13/2011)

Action Under Rule 52

J.R.S. 42

Joint resolution relating to establishing a procedure for the conduct of the election of two legislative trustees of the Vermont State Colleges Corporation by plurality vote by the General Assembly in 2012

(For text see House Journal 2/3/2012)

NOTICE CALENDAR

Committee Bill for Second Reading

H. 752

An act relating to permitting stormwater discharges in impaired watersheds.

(Rep. Deen of Westminster will speak for the Committee on Fish, Wildlife & Water Resources.)

H. 753

An act relating to encouraging school districts and supervisory unions to provide services cooperatively or to consolidate governance structures.

(Rep. Peltz of Woodbury will speak for the Committee on Education.)

Public Hearings

PUBLIC HEARING

Public Hearing on the Governor's proposed Fiscal Year 2013 state budget

For Advocates

House Committee on Appropriations

Tuesday, February 14, 2012, 2:30 - 3:30 p.m. or Wednesday, February 15, 2012, 9:30 – 10:30 a.m. – The House Committee on Appropriations will hold a public hearing for advocates in room 10 of the State House on the Governor's proposed FY2013 state budget. Please sign up in advance, if possible, with Theresa Utton-Jerman at (802) 828-5767 or tutton@leg.state.vt.us or room 40.

The Governor's budget proposal can be viewed at the Department of Finance's website: http://finance.vermont.gov/state_budget/rec.

Wednesday - February 8, 2012 - 4:30-6:30 PM - Senate Reapportionment - Comment on Proposal Map - Senate Committee on Reapportionment

Information Notice

Deadline for Introducing Bills

Pursuant to Rule 40(b) of the Rules and Orders of the Vermont House of Representatives, during the second year of the biennium, except with the prior consent of the Committee on Rules, no member may introduce a bill into the House drafted in standard form after the last day of January. Bills may be introduced in Short Form until the second Friday after Town Meeting Day.

In order to meet this deadline all sign out sheets must be submitted to the Legislative Council no later than the close of business on Friday, January 27, 2012. Requests for short form bills may be made until Wednesday, February 15, 2012.

Pursuant to Rule 40(c) during the second year of the biennium, except with the prior consent of the Committee on Rules, no committee, except the Committees on Appropriations, Ways and Means or Government Operations, may introduce a bill drafted in standard form after the last day of March. The Committees on Appropriations, Ways and Means bills may be drafted in standard form at any time, and Government Operations bills, pertaining to city or town charter changes, may be drafted in standard form at any time.

PUBLIC HEARING
Joint Public Hearing on Fiscal Year 2013 state budget
on Vermont Interactive Television
House and Senate Committees on Appropriations

Monday, February 13, 2012, 4:00 - 6:30 p.m. – The House and Senate Committees on Appropriations 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 2013. All 14 V.I.T. sites will be available for the hearing: Bennington, Brattleboro, Castleton, Johnson, Lyndonville, Middlebury, Montpelier, Newport, Randolph Center, Rutland, Springfield, St. Albans, 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 the first time, the budget hearing will be VIEWABLE via the internet if your computer has flash-based streaming capabilities.

Go to www.vtlink.org/streamingmedia/vtcvitopen.php

Some mobile devices may require additional software.

The Governor's budget proposal can be viewed at the Department of Finance's website: http://finance.vermont.gov/state_budget/rec. For information about the format of this event or to submit written testimony, call the House Appropriations Committee office at 802/828-5767 or email tutton@leg.state.vt.us. Requests for interpreters should be made to the office by 12:00 noon on Monday, January 30, 2012.

Joint Assembly

NOTICE OF JOINT ASSEMBLY

Thursday, February 16, 2012 - 10:30 A.M. - Election of two (2) trustees for the Vermont State Colleges Corporation.

Candidates for the positions of trustee must notify the Secretary of State **in writing** not later than Thursday, February 9, 2012, by 5:00 P.M. pursuant to the provisions of 2 V.S.A. §12(b). Otherwise their names will not appear on the ballots for these positions.

The following rules shall apply to the conduct of these elections:

First: All nominations for these offices will be presented in alphabetical order prior to voting.

Second: There will be only one nominating speech of not more than three (3) minutes and not more than two seconding speeches of not more than one (1) minute each for each nominee.