

# Senate Calendar

FRIDAY, FEBRUARY 17, 2012

SENATE CONVENES AT: 1:00 P.M.

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**ACTION CALENDAR**

**UNFINISHED BUSINESS OF THURSDAY, FEBRUARY 16, 2012**

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 116.**

An act relating to probate proceedings.

**Reported favorably with recommendation of amendment by Senator Sears 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. Rule 4(e) of the Vermont Rules of Probate Procedure is amended to read:

(e) Service by publication. When service by publication is required by this rule or by order of the court, the person directed by the court shall cause the substance of the notice prescribed by subdivision (a) of this rule, and a brief statement of the object of the petition, to be published ~~once a week for two successive weeks and at least seven days apart~~ in a designated newspaper of general circulation in the probate district where the petition was filed, or such other location as the court may direct. The ~~first~~ publication of the notice shall be made within 20 days after the petition is filed or the order is granted. Service by publication is complete on the day of ~~the last~~ publication.

Sec. 2. Rule 17 of the Vermont Rules of Probate Procedure is amended to read:

Rule 17. PARTIES GENERALLY

(a) Parties at commencement. At the commencement of a probate proceeding all interested persons shall be considered parties and shall be served with notice pursuant to Rule 4.

(1) Decedent's estates. At commencement of a probate proceeding involving a decedent's estate, the term "interested person" includes heirs, devisees, legatees, children, spouses, and such other persons as the court directs. The term "interested person" also includes the trustees of any trusts to which assets of the decedent's estate may be distributed. Notice to a trustee shall be sufficient to notify the trust's beneficiaries. It also includes persons having priority for appointment as executor or administrator, and other fiduciaries representing interested persons. Notwithstanding this rule, in a

proceeding involving a testate decedent's estate, the court shall have discretion to determine that an interested party need not be served with notice pursuant to Rule 4 if the court finds that not providing such notice is in the best interests of the decedent and the estate.

\* \* \*

Sec. 3. 14 V.S.A. § 3504 is amended to read:

§ 3504. SCOPE OF AUTHORITY

(a)(1) The agent shall have the authority to act on the principal's behalf as to all lawful subjects and purposes, but only to the extent such authority is given under the terms of the power of attorney, subject to section 3506 of this title and subsections (b) through (g) of this section.

(2) A general power of attorney created under this subchapter may be construed to grant powers that are not expressly delineated in the terms of the power of attorney if it appears from the relevant facts and circumstances that the principal intended the agent to have general authority to act on the principal's behalf with respect to all lawful subjects and purposes.

\* \* \*

Sec. 4. 24 V.S.A. § 133 is amended to read:

§ 133. COUNTY TAX; AMOUNT; ASSESSMENT

\* \* \*

(e) The proposed budget shall contain any cost estimates and preliminary plans for capital construction in the county pursuant to subchapter 2 of chapter 3 of this title, estimates of the indebtedness of the county, estimates of the probable ordinary expenses of the county for the ensuing year, and any and all other expenses and obligations of the county. The budget may contain provision for additions to a an operations reserve fund and the accumulated total reserve fund shall not at any time exceed an amount equal to ~~ten~~ 15 percent of the current budget presented. Pursuant to a capital program, as described in section 4426 of this title, the budget may also include a provision for a separate reserve fund for capital construction, reconstruction, remodeling, repairs, renovation, design, or redesign which shall not at any time exceed an amount equal to ~~50~~ 75 percent of the current budget presented. However, if capital construction, reconstruction, remodeling, repairs, renovation, design, or redesign is necessitated by an insured loss or damage to a county building, the separate reserve fund may also include the amount of insurance proceeds received as a result of the loss or damage. All county budgets shall be presented on the form prescribed by the auditor of accounts, after consultation with the association of assistant judges, and shall include the amounts currently budgeted for each item included in the proposed budget.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

**UNFINISHED BUSINESS OF TUESDAY, FEBRUARY 14, 2012**

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 217.**

An act relating to closely held benefit corporations.

**Reported favorably with recommendation of amendment by Senator Ashe 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. 11A V.S.A. chapter 21 is amended to read:

**CHAPTER 21. BENEFIT CORPORATIONS**

\* \* \*

§ 21.03. DEFINITIONS

(a) As used in this chapter:

\* \* \*

(2) "Benefit director" means:

(A) a director designated as a benefit director of a benefit corporation as provided in section 21.10 of this title; or

(B) a person with one or more of the powers, duties, or rights of a benefit director to the extent provided in the articles of incorporation or shareholder agreement of a close corporation pursuant to section 21.10(e) of this title.

\* \* \*

§ 21.09. STANDARD OF CONDUCT FOR DIRECTORS

(a) Each director of a benefit corporation, in discharging his or her duties as a director, including the director's duties as a member of a committee:

(1) shall, in determining what the director reasonably believes to be in the best interests of the benefit corporation, consider the effects of any action or inaction upon:

(A) the shareholders of the benefit corporation;

(B) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(C) the interests of customers to the extent they are beneficiaries of the general or specific public benefit purposes of the benefit corporation;

(D) community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(E) the local and global environment; and

(F) the long-term and short-term interests of the benefit corporation, including the possibility that those interests may be best served by the continued independence of the benefit corporation;

(2) may consider any other pertinent factors or the interests of any other group that the director determines are appropriate to consider;

(3) shall not be required to give priority to the interests of any particular person or group referred to in subdivisions (1) or (2) of this subsection over the interests of any other person or group unless the benefit corporation has stated in its articles of incorporation its intention to give priority to interests related to the accomplishment of its general or specific public benefit purpose in its articles of incorporation purposes; and

(4) shall not be subject to a different or higher standard of care when an action or inaction might affect control of the benefit corporation.

\* \* \*

~~(e) A director of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. A director of a benefit corporation shall not have any fiduciary duty to a person who is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary. If a benefit corporation has adopted a provision in its articles of incorporation authorized by section 2.02(b)(4) of this title, the provision shall also apply to a failure by a director to discharge his or her duties in accordance with this chapter.~~

#### § 21.10. BENEFIT DIRECTOR

(a) ~~The~~ Except as provided in subsection (e) of this section, the board of directors of a benefit corporation shall include at least one director who shall be designated a "benefit director" and shall have, in addition to all of the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

\* \* \*

(e) If the articles of incorporation of a benefit corporation that is a close corporation dispense with a or restrict the discretion or powers of the board of directors pursuant to sections 20.08 and 20.09 of this title, then the articles of incorporation ~~shall provide that~~ or the shareholder agreement shall specify the persons who perform the duties of a board of directors shall include at least one person with shall exercise the powers, duties, and rights, and immunities of a of the board of directors and the benefit director, as provided in this chapter. A person who exercises one or more of the powers, duties, or rights of a benefit director pursuant to this subsection:

(1) is not required to be independent of the benefit corporation;

(2) shall have the immunities of a benefit director;

(3) may share the powers, duties, and rights of a benefit director with one or more other persons; and

(4) shall not be subject to the procedures for election or removal of directors provided in subchapter 1 of chapter 8 of this title unless the person is also a director of the benefit corporation or the articles of incorporation or shareholder agreement make those procedures applicable.

\* \* \*

#### § 21.11. STANDARD OF CONDUCT FOR OFFICERS

\* \* \*

~~(e) An officer of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. An officer of a benefit corporation shall not have any fiduciary duty to a person that is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary.~~

(f) The articles of incorporation of a benefit corporation may set forth a provision eliminating or limiting the liability of an officer to the benefit corporation or its shareholders for money damages for any action taken, or any failure to take any action, solely as an officer, based on a failure to discharge his or her own duties in accordance with this chapter, except liability for:

(1) the amount of a financial benefit received by an officer to which the officer is not entitled;

(2) an intentional or reckless infliction of harm on the benefit corporation or its shareholders; or

(3) an intentional or reckless criminal act.

\* \* \*

§ 21.14. ANNUAL BENEFIT REPORT

\* \* \*

(e) If a benefit corporation is a close corporation that has dispensed with or restricted the discretion or powers of the board of directors, the annual benefit report shall describe the person or persons who exercise the powers, duties, and rights and have the immunities of the board of directors and the benefit director.

(Committee vote: 6-0-1)

**UNFINISHED BUSINESS OF THURSDAY, FEBRUARY 16, 2012**

**Joint Resolution for Action**

**J.R.S. 47.**

Joint resolution urging the United States Postal Service not to implement its proposed major reductions and urging Congress to enact the Postal Service Protection Act.

(For text of resolution, see Senate Journal of February 14, 2012, page 173.)

**NEW BUSINESS**

**Third Reading**

**S. 122.**

An act relating to human trafficking and prostitution.

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 189.**

An act relating to expanding confidentiality of cases accepted by the court diversion project.

**Reported favorably with recommendation of amendment by Senator Snelling 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. 3 V.S.A. § 164(c)(1) is amended to read:

(c) All adult court diversion projects receiving financial assistance from the attorney general shall adhere to the following provisions:

(1) The diversion project shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. The state's attorney shall notify, in writing, the diversion program

and the court of his or her intention to refer the person to diversion. If the prosecuting attorney refers a case to diversion, the information and affidavit files held by the court, the state's attorney, and the law enforcement agency related to the charges shall be confidential and shall remain confidential unless:

- (A) the board declines to accept the case;
- (B) the person declines to participate in diversion; ~~or~~
- (C) the board accepts the case, but the person does not successfully complete diversion;
- (D) the state's attorney recalls the referral to diversion.

Sec. 2. 3 V.S.A. § 164a is added to read:

§ 164a. RESTITUTION

A diversion program may refer an individual who has suffered a pecuniary loss as a direct result of a delinquent act or crime alleged to have been committed by a juvenile or adult accepted to its program to the restitution unit established by 13 V.S.A. § 5362 for the purpose of application for an advance payment pursuant to 13 V.S.A. § 5363(d)(1). The restitution unit may enter into a repayment contract with a juvenile or adult accepted into diversion and shall have the authority to bring a civil action to enforce the repayment contract in the event that the juvenile or adult defaults in performing the terms of the contract.

(b) The restitution unit and the diversion program shall develop a process for documenting victim loss, information sharing between the unit and diversion programs regarding the amount of restitution paid by the unit and diversion participants' contractual agreements to reimburse the unit, transmittal of payments from participants to the unit, and maintenance of the confidentiality of diversion information.

Sec. 3. 13 V.S.A. § 5362 is amended to read:

§ 5362. RESTITUTION UNIT

\* \* \*

(c) The restitution unit shall have the authority to:

\* \* \*

(7) Enter into a repayment contract with a juvenile or adult accepted into a diversion program and to bring a civil action to enforce the contract when a diversion program has referred an individual pursuant to 3 V.S.A. § 164a.

Sec. 4. 13 V.S.A. § 5363 is amended to read:

§ 5363. CRIME VICTIMS' RESTITUTION SPECIAL FUND



(a) There is hereby established in the state treasury a fund to be known as the crime victims' restitution special fund, to be administered by the restitution unit established by section 5362 of this title, and from which payments may be made to provide restitution to crime victims.

(b)(1) There shall be deposited into the fund:

(A) All monies collected by the restitution unit pursuant to section 7043 and subdivision 5362(c)(7) of this title.

(B) All fees imposed by the clerk of court and designated for deposit into the fund pursuant to section 7282 of this title.

(C) All monies donated to the restitution unit or the crime victims' restitution special fund.

(D) Such sums as may be appropriated to the fund by the general assembly.

\* \* \*

(d)(1) The restitution unit is authorized to advance up to \$10,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

(A) was first ordered by the court to receive restitution on or after July 1, 2004;

(B) is a natural person or the natural person's legal representative; and

(C) has not been reimbursed under subdivision (2) of this subsection.

(D) is a natural person and has been referred to the restitution unit by a diversion program pursuant to section 164a of Title 3.

\* \* \*

Sec. 5. 13 V.S.A. § 7043(n) is amended to read:

(n) After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure of an offender aged 18 or older shall include copies of the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee vote: 5-0-0)

**Reported favorably by Senator Snelling for the Committee on Appropriations.**

(Committee vote: 5-0-2)

**NOTICE CALENDAR**

**Without Recommendation**

**H. 629.**

An act relating to reapportioning the initial districts of the house of representatives.

**Reported without recommendation by Senator White for the Committee on Reapportionment.**

(Committee vote: 7-0-0)

**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.

David Luce of Waterbury Center – Member of the Community High School of Vermont Board- By Sen. Kittell for the Committee on Education. (1/13/12)

Patrick Flood of East Calais – Commissioner of the Department of Mental Health – By Sen. Mullin for the Committee on Health and Welfare. (2/8/12)

John Snow of Charlotte – Member of the Vermont Economic Development Authority – By Sen. Fox for the Committee on Finance. (2/8/12)

Martin Maley of Colchester – Superior Court Judge – By Sen. Sears for the Committee on Judiciary. (2/9/12)

Alison Arms of South Burlington – Superior Court Judge – By Sen. Snelli8lng for the Committee on Judiciary. (2/16/12)

Thomas Walsh of Charlotte – Environmental Judge – By Sen. Nitka for the Committee on Judiciary. (2/16/12)

Robert Bishop of St. Johnsbury – Member of the State Infrastructure Bank Board – By Sen. MacDonald for the Committee on Finance. (2/21/12)

John Valente of Rutland – Member of the Vermont Municipal Bond Bank –

By Sen. McCormack for the Committee on Finance. (2/21/12)

James Volz of Plainfield – Chair of the Public Service Board – By Sen. Cummings for the Committee on Finance. (2/21/12)

### **PUBLIC HEARINGS**

**Wednesday, February 22, 2012** – Room 11 – 9:00-11:00 A.M. – Re: Tourism in Vermont – By the House Committee on Commerce and Economic Development.

**Tuesday, February 28, 2012** – Room 11 – 7:00 P.M. – Re Judicial Retention of Superior Court Judge Karen Carroll, Superior Court Judge Dennis Pearson, and Superior Court Judge Barry Peterson – By the Joint Committee on Judicial Retention.