

Senate Calendar

WEDNESDAY, FEBRUARY 22, 2012

SENATE CONVENES AT: 3:30 PM.

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ORDERS OF THE DAY

**ACTION CALENDAR
UNFINISHED BUSINESS**

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)

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)

NEW BUSINESS

Third Reading

S. 116.

An act relating to probate proceedings.

~~(b)~~ In senatorial districts, the senatorial district clerk shall be the county clerk for those towns within the district aggregating the largest population.

~~(e)~~~~(b)~~ Petitions for nominating candidates for senator in the general assembly by primary under chapter 9 of this title or certificates of nomination of candidates for that office by convention, caucus, committee or voters under chapter 11 of this title may be filed in the office of any county clerk in a senatorial district. On the day after the last day for filing those petitions or certificates for that office, the other county clerk shall notify the senatorial district clerk of the facts concerning those petitions or certificates. The senatorial district clerk shall be responsible for determining the names of candidates and other facts required by law to appear on the ballot for the office of senator, and for obtaining and distributing the ballots to the other clerks in the district. In senatorial districts, the ballots for senator in the general assembly shall be separate from those for other county officers.

~~(d)~~~~(c)~~ The clerk of the less populous county in a senatorial district shall report the results of voting in his or her county immediately after they are determined to the senatorial district clerk, who shall issue the certificates of nomination or election required by law as to the office of senator.

~~(e)~~~~(d)~~ The canvassing of votes in a senatorial district shall be done in each county in the district as in the case of single counties, but the clerk of the less populous county in a senatorial district shall send a copy of the appropriate certificate to the clerk of the senatorial district who shall issue necessary certificates for the senatorial district.

Sec. 3b. 17 V.S.A. § 1903(b) is amended to read:

(b) The standard for creating districts for the election of representatives to the general assembly shall be to form representative districts with minimum percentages of deviation from the apportionment standard for the house of representatives. The standard for creating districts for the election of senators ~~on a county basis~~ to the general assembly shall be by assigning towns to form senatorial districts with minimum percentages of deviation from the apportionment standard for the senate. The representative and senatorial districts shall be formed consistent with the following policies insofar as practicable:

* * *

Sec. 3c. 17 V.S.A. § 1907 is amended to read:

§ 1907. SENATE APPORTIONMENT

On or before July 1 of each year following the taking of a decennial census under the authority of ~~congress~~ Congress, the board shall prepare a proposal

for reapportionment of the senate, apportioning the 30 senatorial seats ~~among counties or combinations of counties,~~ by assigning towns to form senatorial districts in such manner as to achieve substantial equality in the choice of members as guaranteed by the equal protection clause of the ~~fourteenth amendment~~ Fourteenth Amendment to the United States Constitution. The chair of the board shall transmit such proposal to the secretary of the senate and it shall be referred to the appropriate committee. The general assembly shall then accept the proposal and enact it into law or substitute another plan for reapportionment of the senate.

Second Reading

Favorable

H.C.R. 255.

House concurrent resolution urging the restoration of intercity bus service to Rutland City.

Reported favorably by Senator Flory for the Committee on Transportation.

(Committee vote: 5-0-0)

(No House amendments)

NOTICE CALENDAR

Favorable with Recommendation of Amendment

S. 237.

An act relating to the genuine progress indicator.

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

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. PURPOSE AND INTENT

(a) Purpose. The purpose of the genuine progress indicator (“GPI”) is to measure the state of Vermont’s economic, environmental, and societal well-being as a supplement to the measurement derived from the gross state product.

(b) Intent. It is the intent of the general assembly that once established, the GPI will assist state government in decision-making by providing an additional basis for budgetary decisions, including outcomes-based budgeting; measuring

progress in the application of policy and programs; and as a tool to identify public policy priorities.

Sec. 2. GENUINE PROGRESS INDICATOR

(a) Establishment; maintenance.

(1) The secretary of administration shall accept the offer of the Gund Institute for Ecological Economics of the University of Vermont (the “Gund Institute”) to work in cooperation to establish, and shall thereafter make use of and maintain, the genuine progress indicator (GPI). In establishing the GPI, the secretary of administration, in cooperation with the Gund Institute, shall create a Vermont data committee to inventory existing datasets and to make recommendations that may be useful to all data users in Vermont’s state government, nonprofits, and businesses.

(2) The GPI shall add positive factors and subtract negative factors that are not counted by standard gross state product accounting practices.

(3) The GPI shall use standard genuine progress indicator methodology and additional factors to enhance the indicator, including basic human rights principles.

(b) Accessibility. Once established, the GPI and its underlying datasets that are submitted by the Gund Institute to the secretary of administration shall be posted on the state of Vermont website.

(c) Updating data. The secretary of administration shall cooperate in providing data to the Gund Institute as necessary in order to update and maintain the GPI.

Sec. 3. REPORT

By January 1, 2019, the secretary of administration shall report to the house and senate committees on government operations regarding the usefulness of the genuine progress indicator.

Sec. 4. DATASETS

Any datasets submitted by the Gund Institute to the secretary of administration pursuant to this act shall be considered a public record under chapter 5 of Title 1.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 4-1-0)

And that when so amended the bill ought to pass.

CONCURRENT RESOLUTIONS FOR ACTION

H.C.R. 260-271 (For text of Resolutions, see Addendum to House Calendar for February 16, 2012)

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. Snelli8ng 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.

REPORTS ON FILE

Reports 2012

Pursuant to the provisions of 2 V.S.A. §20(c), one (1) hard copy of the following reports is on file in the office of the Secretary of the Senate. Effective January 2010, pursuant to Act No. 192, Adj. Sess. (2008) §5.005(g) some reports will automatically be sent by electronic copy only and can be found on the State of Vermont webpage.

6. Vermont State Housing Authority 2011 Annual Report. (February 2012)