

Journal of the House

Tuesday, February 7, 2012

At ten o'clock in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Rev. Amy Pitton of Bethany Church, Montpelier, VT.

Pledge of Allegiance

Page Elijah Ransom of Bethel led the House in the Pledge of Allegiance.

Message from the Senate No. 11

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has on its part adopted joint resolution of the following title:

J.R.S. 44. Joint resolution relating to weekend adjournment.

In the adoption of which the concurrence of the House is requested.

The Senate has considered joint resolution originating in the House of the following title:

J.R.H. 22. Joint resolution urging each university and college in Vermont to establish offices to assist students who are United States military veterans.

And has adopted the same in concurrence.

The Senate has on its part adopted concurrent resolutions originating in the House of the following titles:

H.C.R. 252. House concurrent resolution recognizing the essential health care role of licensed pharmacists in Vermont.

H.C.R. 253. House concurrent resolution congratulating the Community College of Vermont on the opening of its new Rutland City campus.

House Bills Introduced

House bills of the following titles were severally introduced, read the first time and referred to committee or placed on the Calendar as follows:

H. 754

By the committee on Ways and Means,

An act relating to the education property tax rate and base education amount for fiscal year 2013;

Under the rule, placed on the Calendar for notice.

H. 755

By the committee on Human Services,

An act relating to extending the deadline for adoption of certain health department rules;

Under the rule, placed on the Calendar for notice.

H. 756

By Reps. Greshin of Warren and Condon of Colchester,

House bill, entitled

An act relating to the sales and use tax exemption for packaging equipment;

To the committee on Ways and Means.

H. 757

By Reps. Young of Glover and Scheuermann of Stowe,

House bill, entitled

An act relating to a temporary moratorium on the enforcement of the sales tax on prewritten software that is accessed remotely;

To the committee on Ways and Means.

**Committee Relieved of Consideration
and Bill Committed to Other Committee****H. 745**

Rep. Fisher of Lincoln moved that the committee on Health Care be relieved of House bill, entitled

An act relating to the Vermont prescription monitoring system

And that the bill be committed to the committee on Human Services, which was agreed to.

Bill Referred to Committee on Appropriations**H. 753**

House bill, entitled

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

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

Senate Proposal of Amendment Concurred in**H. 258**

The Senate proposed to the House to amend House bill, entitled

An act relating to public participation in environmental enforcement proceedings

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.

Which proposal of amendment was considered and concurred in.

Joint Resolution Adopted in Concurrence**J.R.S. 42**

Joint resolution, entitled

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

Was taken up and adopted in concurrence.

Adjournment

At ten o'clock and thirty-five minutes in the forenoon, on motion of **Rep. Turner of Milton**, the House adjourned until tomorrow at one o'clock in the afternoon.