

House Calendar

Wednesday, February 13, 2013

36th DAY OF THE BIENNIAL SESSION

House Convenes at 1:30 p.m.

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ACTION CALENDAR

Third Reading

H. 67

An act relating to the transport of election ballots by town clerks after a recount

H. 131

An act relating to harvesting guidelines and procurement standards

Committee Bill for Second Reading

H. 240

An act relating to Executive Branch fees.

(Rep. Branagan of Georgia will speak for the Committee on **Ways and Means.**)

NOTICE CALENDAR

Favorable with Amendment

H. 39

An act relating to the Public Service Board and the Department of Public Service

Rep. Carr of Brandon, for the Committee on **Commerce and Economic Development**, recommends the bill be amended as follows:

First: By striking out Sec. 4 in its entirety and inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. 30 V.S.A. § 111(b) is amended to read:

(b) The citation shall be served upon each person having any legal interest in the property, ~~including each municipality and each planning body where the property is situate like a summons~~, or on absent persons in such manner as the ~~supreme court~~ Supreme Court may by rule provide for service of process in civil actions. The Board shall also give notice of the hearing to each municipality and each planning body where the property is located. ~~The board~~ Board, in its discretion, may schedule a joint hearing of some or all petitions relating to the same project and concerning properties or rights located in the same town or abutting towns.

Second: In Sec. 6, subsection 30 V.S.A. § 248(f), in the first sentence, by striking out the word “must” and by inserting in lieu thereof the word “shall”

(**Committee Vote: 8-0-3**)

H. 41

An act relating to civil forfeiture of retirement payments to public officials convicted of certain crimes

Rep. Evans of Essex, for the Committee on **Government Operations**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 32 V.S.A. chapter 7, subchapter 7 is added to read:

Subchapter 7. Forfeiture of Public Employee Retirement Benefits

§ 621. STATEMENT OF PURPOSE

It is the purpose of this subchapter to establish a procedure by which the pension benefits of a public employee convicted of certain crimes may be forfeited. Honorable public service is a condition precedent for a public employee to receive retirement benefits, and any public employee who is convicted of or pleads nolo contendere to any of the designated crimes relating to his or her public office shall be considered to have served dishonorably, and his or her retirement benefits may be subject to civil forfeiture.

§ 622. DEFINITIONS

As used in this subchapter:

(1) “Contribution” shall have the same meaning as “accumulated contribution” set forth in 3 V.S.A. § 455(a)(1), 16 V.S.A. § 1931(1), and 24 V.S.A. § 5051(1), and shall include the sum of all amounts deducted from the compensation of a member of any defined contribution plan under 3 V.S.A. § 500 or 24 V.S.A. § 5070, and any earnings on those contributions, and the sum of all amounts deducted from the compensation of a member of any other retirement plan of a municipality authorized under the Internal Revenue Code, 26 U.S.C. § 401, and any earnings on those contributions.

(2) “Crime related to public office” means any of the following criminal offenses if the offense is a felony and is committed in connection with the member’s service or employment as a public official:

(A) any offense under 13 V.S.A. chapter 21;

(B) false personation as defined in 13 V.S.A. § 2001;

(C) false pretenses or tokens as defined in 13 V.S.A. § 2002;

(D) grand larceny as defined in 13 V.S.A. § 2501;

(E) person holding property in official capacity or belonging to the state or a municipality as defined in 13 V.S.A. § 2537;

(F) false claim as defined in 13 V.S.A. § 3016; or

(G) a felony under the laws of the United States or any other state, including a territory, commonwealth, the District of Columbia, or military, federal, or tribal court, an element of which involves:

(i) a larceny;

(ii) an embezzlement;

(iii) the fraudulent conversion of money, property, or other valuable things for personal or other use; or

(iv) an intent to defraud.

(3) “Member” shall have the same meaning as in 3 V.S.A. § 455(a)(11), 16 V.S.A. § 1931(10), and 24 V.S.A. § 5051(13), and shall include anyone participating in a defined contribution plan under 3 V.S.A. § 500 or 24 V.S.A. § 5070, and any other retirement plan of a municipality authorized under Section 401a of the Internal Revenue Code.

(4) “Retirement benefits” shall include “pensions” as defined in 3 V.S.A. § 455(a)(14), 16 V.S.A. § 1931(12), and 24 V.S.A. § 5051(16), as well as benefits derived from employer contributions to defined contribution plans under 3 V.S.A. § 500, 24 V.S.A. § 5070, and benefits derived from employer contributions to any other retirement plan of a municipality authorized under the Internal Revenue Code, 26 U.S.C. § 401.

§ 623. FORFEITURE OF PUBLIC EMPLOYEE RETIREMENT BENEFITS

(a) Honorable public service is a condition precedent to receiving retirement benefits. Each time a member is hired, reassigned, promoted, demoted, enters into a new collective bargaining contract, or otherwise changes his or her employment relationship, he or she shall be deemed to consent and agree to be subject to the provisions of this subchapter, including to this condition precedent.

(b) Notwithstanding any other provision of law to the contrary, any member who is convicted of or pleads nolo contendere to any crime related to public office shall be considered to have served dishonorably, and his or her retirement benefits may be subject to civil forfeiture.

(c) If a member is convicted of or pleads nolo contendere to a crime related to public office, the Attorney General or State’s Attorney shall file an action in

the Civil Division of the Superior Court to revoke or reduce the member's retirement benefits.

(d) A copy of the complaint shall be served on the member and any known spouse, dependent, or designated beneficiary of the member.

(e) Hearings under this subchapter shall be conducted by the Court without a jury, and the Attorney General or State's Attorney shall have the burden of proof.

(f) The Court shall grant the petition if it finds by a preponderance of the evidence that:

(1) the person is a member as defined in this subchapter; and

(2) the person was convicted of or pleads nolo contendere to a crime related to public office.

(g) If the Court grants the petition, it shall then determine the degree, if any, to which the member's retirement benefits shall be forfeited. In making the determination, the Court shall consider and make findings on the following factors:

(1) the severity of the crime related to public office for which the member has been convicted or to which the member has pled nolo contendere;

(2) the amount of monetary loss suffered by the State, a county, a municipality, or by any other person as a result of the crime related to public office;

(3) the degree of public trust reposed in the member; and

(4) any other factors as, in the judgment of the Court, justice may require.

(h) If the Court determines that a member's retirement benefits should be forfeited to any degree, it may order that some or all of the retirement benefits be paid to any innocent spouse, dependent, or beneficiary as justice may require. In determining whether to make an award under this section, the Court shall consider:

(1) the degree of knowledge, if any, possessed by the member's spouse, dependent, or designated beneficiary in connection with the offense; and

(2) the financial needs and resources of the member's spouse, dependent, or designed beneficiary.

(i) If the Court determines that a member's retirement benefits should not be forfeited to any degree, it shall order that retirement benefits be made to the member.

§ 624. VENUE, PROCEDURE, AND APPEALS

(a) Proceedings to revoke or reduce retirement benefits under this subchapter shall be heard in the Civil Division of the Superior Court. Venue may be in the Washington unit, the unit where the conviction for the crime related to public office occurred, or in any unit where the member or any known spouse, dependent, or designated beneficiary resides.

(b) The Supreme Court, pursuant to 12 V.S.A. § 1, may enact rules and develop procedures consistent with this subchapter to govern proceedings to revoke or reduce retirement payments.

(c) An order under this subchapter may be appealed as a matter of right to the Supreme Court by the Attorney General or State's Attorney that filed the petition, the member, or the member's spouse, dependent, or designated beneficiary.

§ 625. RETURN OF CONTRIBUTIONS; EXEMPTIONS; QUALIFIED DOMESTIC RELATIONS ORDERS

(a) Any member whose retirement benefits are revoked pursuant to section 623 of this title shall be entitled to a return of his or her contribution.

(b) Notwithstanding the provisions of subsection (a) of this section, returns of contributions shall not be made or ordered unless and until the Civil Division of the Superior Court determines that the member whose retirement benefits have been revoked or reduced pursuant to section 623 of this title has satisfied in full any judgments or orders rendered by any court of competent jurisdiction for the payment of restitution for losses incurred as a result of the crime related to public office. If the Court determines that the member whose retirement benefits have been revoked or reduced under section 623 has failed to satisfy any outstanding judgment or order of restitution rendered by any court of competent jurisdiction, it may order that any funds otherwise due such member as a return of contribution, or any portion thereof, be paid in satisfaction of the judgment or order.

(c) A provision of section 623 of this title or this section shall not be construed to prohibit or limit any payment made pursuant to a qualified domestic relations order issued prior to any such conviction or plea by:

(1) any member who is convicted of or pleads guilty or nolo contendere to any crime related to public office; or

(2) any state, county, or municipal agency responsible for the administration of such payment on behalf of such public official.

(d) Notwithstanding the provisions of section 623 of this title, retirement

benefits shall not be reduced or revoked if the Internal Revenue Service determines that such reduction or revocation will negatively affect or invalidate the status of a retirement plan under the Internal Revenue Code, 26 U.S.C. § 401, or any subsequent corresponding Internal Revenue Code of the United States, as may be amended.

§ 626. APPLICATION; COLLECTIVE BARGAINING

AGREEMENTS

(a) This subchapter shall not apply to retirement benefits that accrued prior to the effective date of this subchapter or to crimes committed before the effective date of this subchapter.

(b) Any collective bargaining agreement entered into on or after the effective date of this subchapter shall not contain any provision that limits the application of the provisions of this subchapter.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

(Committee Vote: 9-0-2)

Rep. Waite-Simpson of Essex, for the Committee on **Judiciary**, recommends that the amendment offered by the Committee on **Judiciary** be substituted for the amendment offered by the Committee on **Government Operations** and the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 32 V.S.A. chapter 7, subchapter 7 is added to read:

Subchapter 7. Forfeiture of Public Employee Retirement Benefits

§ 621. STATEMENT OF PURPOSE

It is the purpose of this subchapter to establish a procedure by which the pension benefits of a public employee convicted of certain crimes may be forfeited. Honorable public service is a condition precedent for a public employee to receive retirement benefits, and any public employee who is convicted of any of the designated crimes relating to his or her public office shall be considered to have served dishonorably, and his or her retirement benefits may be subject to forfeiture.

§ 622. DEFINITIONS

As used in this subchapter:

(1) “Contribution” shall have the same meaning as “accumulated contribution” set forth in 3 V.S.A. § 455(a)(1), 16 V.S.A. § 1931(1), and

24 V.S.A. § 5051(1), and shall include the sum of all amounts deducted from the compensation of a member of any defined contribution plan under 3 V.S.A. § 500 or 24 V.S.A. § 5070, and any earnings or losses on those contributions, and the sum of all amounts deducted from the compensation of a member of any other retirement plan of a municipality authorized under the Internal Revenue Code, 26 U.S.C. § 401, and any earnings or losses on those contributions.

(2) “Crime related to public office” means any of the following criminal offenses if the offense is a felony and is committed in connection with employment as a member:

(A) any offense under 13 V.S.A. chapter 21;

(B) false personation as defined in 13 V.S.A. § 2001;

(C) false pretenses or tokens as defined in 13 V.S.A. § 2002;

(D) grand larceny as defined in 13 V.S.A. § 2501;

(E) person holding property in official capacity or belonging to the state or a municipality as defined in 13 V.S.A. § 2537;

(F) false claim as defined in 13 V.S.A. § 3016;

(G) a felony under the laws of the United States or any other state, including a territory, commonwealth, the District of Columbia, or military, federal, or tribal court, an element of which involves:

(i) a larceny;

(ii) an embezzlement;

(iii) the fraudulent conversion of money, property, or other valuable things for personal or other use; or

(iv) an intent to defraud; or

(H) an attempt to commit, or aiding in the commission of, any offense listed in this subdivision (2).

(3) “Member” shall have the same meaning as in 3 V.S.A. § 455(a)(11), 16 V.S.A. § 1931(10), and 24 V.S.A. § 5051(13), and shall include anyone participating in a defined contribution plan under 3 V.S.A. § 500 or 24 V.S.A. § 5070, and any other retirement plan of a municipality authorized under the Internal Revenue Code, 26 U.S.C. § 401.

(4) “Retirement benefits” shall have the same meaning as “pensions” as defined in 3 V.S.A. § 455(a)(14), 16 V.S.A. § 1931(12), and 24 V.S.A. § 5051(16), and shall also mean benefits derived from employer contributions to

defined contribution plans under 3 V.S.A. § 500, 24 V.S.A. § 5070, and benefits derived from employer contributions to any other retirement plan of a municipality authorized under the Internal Revenue Code, 26 U.S.C. § 401.

§ 623. FORFEITURE OF PUBLIC EMPLOYEE RETIREMENT BENEFITS

(a) Honorable public service is a condition precedent to receiving retirement benefits. Each time a member is hired, reassigned, promoted, demoted, enters into a new collective bargaining contract, or otherwise changes his or her employment relationship or status, he or she shall be deemed to consent and agree to be subject to the provisions of this subchapter, including to this condition precedent.

(b) Notwithstanding any other provision of law to the contrary, any member who is convicted of any crime related to public office shall be considered to have served dishonorably, and his or her retirement benefits may be subject to forfeiture.

(c) If a member is convicted of a crime related to public office, the Attorney General or State's Attorney shall file an action in the Civil Division of the Superior Court to forfeit the member's retirement benefits in whole or in part.

(d) A copy of the complaint shall be served on the member and any known spouse, dependent, or designated beneficiary of the member.

(e) Hearings under this subchapter shall be conducted by the Court without a jury, and the Attorney General or State's Attorney shall have the burden of proof.

(f) The Court shall grant the petition if it finds by a preponderance of the evidence that:

(1) the person is a member as defined in this subchapter; and

(2) the person was convicted of a crime related to public office.

(g) If the Court grants the petition, it shall then determine the degree, if any, to which the member's retirement benefits shall be forfeited. In making the determination, the Court shall consider and make findings on the following factors:

(1) the severity of the crime related to public office for which the member has been convicted;

(2) the amount of monetary loss suffered by the State, a county, a municipality, or by any other person as a result of the crime related to public office;

(3) the degree of public trust reposed in the member; and

(4) any other factors as, in the judgment of the Court, justice may require.

(h) If the Court determines that a member's retirement benefits should be forfeited to any degree, it may order that some or all of the retirement benefits be paid to any innocent spouse, dependent, or beneficiary as justice may require. In determining whether to make an award under this section, the Court may consider:

(1) the degree of knowledge, if any, possessed by the member's spouse, dependent, or designated beneficiary in connection with the offense;

(2) the financial needs and resources of the member's spouse, dependent, or designated beneficiary; and

(3) any other factors as, in the judgment of the Court, justice may require.

(i) If the Court determines that a member's retirement benefits should not be forfeited to any degree, it shall order that retirement benefits be made to the member.

§ 624. VENUE, PROCEDURE, AND APPEALS

(a) Proceedings to forfeit retirement benefits under this subchapter shall be heard in the Civil Division of the Superior Court. Venue may be in the Washington unit, the unit where the conviction for the crime related to public office occurred, or in any unit where the member or any known spouse, dependent, or designated beneficiary resides.

(b) The Supreme Court, pursuant to 12 V.S.A. § 1, may enact rules and develop procedures consistent with this subchapter to govern proceedings to forfeit retirement payments.

(c) An order under this subchapter may be appealed as a matter of right to the Supreme Court by the Attorney General or State's Attorney that filed the petition, the member, or the member's spouse, dependent, or designated beneficiary.

§ 625. RETURN OF CONTRIBUTIONS; EXEMPTIONS; QUALIFIED

DOMESTIC RELATIONS ORDERS

(a) Any member whose retirement benefits are forfeited to any degree pursuant to section 623 of this title shall be entitled to a return of his or her contribution in the same manner as provided by the relevant retirement system.

(b) Notwithstanding the provisions of subsection (a) of this section, returns of contributions shall not be made or ordered unless and until the Civil Division of the Superior Court determines that the member whose retirement benefits have been forfeited to any degree pursuant to section 623 of this title has satisfied in full any judgments or orders rendered by any court of competent jurisdiction for the payment of restitution for losses incurred as a result of the crime related to public office. If the Court determines that the member whose retirement benefits have been forfeited to any degree under section 623 has failed to satisfy any outstanding judgment or order of restitution rendered by any court of competent jurisdiction, it may order that any funds otherwise due such member as a return of contribution, or any portion thereof, be paid in satisfaction of the judgment or order.

(c) A provision of section 623 of this title or this section shall not be construed to prohibit or limit any payment made pursuant to a qualified domestic relations order issued prior to any such conviction and applicable to:

(1) any member who is convicted of any crime related to public office; or

(2) any state, county, or municipal agency responsible for the administration of such payment on behalf of such member.

(d) Notwithstanding the provisions of section 623 of this title, retirement benefits shall not be forfeited to any degree if the Internal Revenue Service determines that such forfeiture will negatively affect or invalidate the status of a retirement plan under the Internal Revenue Code, 26 U.S.C. § 401, or any subsequent corresponding Internal Revenue Code of the United States, as may be amended.

§ 626. APPLICATION; COLLECTIVE BARGAINING AGREEMENTS

(a) This subchapter shall not apply to retirement benefits that accrued prior to the effective date of this subchapter or to crimes committed before the effective date of this subchapter.

(b) No collective bargaining agreement or other employment agreement entered into on or after the effective date of this subchapter shall contain any provision that limits the application of the provisions of this subchapter.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

(Committee Vote: 9-1-1)

H. 57

An act relating to self-employment assistance

Rep. Cross of Winooski, for the Committee on **Commerce and Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 1340a is added to read:

§ 1340a. SELF-EMPLOYMENT ASSISTANCE PROGRAM

(a) As used in this section:

(1) “Full-time basis” means that the individual is devoting an amount of time as determined by the Commissioner to be necessary to establish a business that will serve as a full-time occupation for that individual.

(2) “Regular benefits” has the same meaning as in subdivision 1421(5) of this title.

(3) “Self-employment assistance activities” means activities approved by the Commissioner in which an individual participates for the purpose of establishing a business and becoming self-employed, including entrepreneurial training, business counseling, and technical assistance.

(4) “Self-employment assistance allowance” means an allowance payable in lieu of regular benefits from the Unemployment Compensation Fund to an individual who meets the requirements of this section.

(5) “Self-employment assistance program” means a program under which an individual who meets the requirements of subsection (d) of this section is eligible to receive an allowance in lieu of regular benefits for the purpose of assisting that individual in establishing a business and becoming self-employed.

(b) The weekly amount of the self-employment assistance allowance payable to an individual shall be equal to the weekly benefit amount for regular benefits otherwise payable under this title.

(c) The maximum amount of the self-employment assistance allowance paid under this section shall not exceed the maximum amount of benefits established under section 1340 of this title with respect to any benefit year.

(d)(1) An individual may receive a self-employment assistance allowance if that individual:

(A) is eligible to receive regular benefits or would be eligible to receive regular benefits except for the requirements described in subdivisions (A) and (B) of subdivision (2) of this subsection;

(B) is identified by a worker profiling system as an individual likely to exhaust regular benefits;

(C) has received the approval of the Commissioner to participate in a program providing self-employment assistance activities;

(D) is actively engaged in a full-time basis in activities, which may include training, related to establishing a business and becoming self-employed; and

(E) has filed a weekly claim for the self-employment assistance allowance and provided the information the Commissioner prescribes.

(2) A self-employment allowance shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits under this chapter, except:

(A) the requirements of section 1343 of this title, relating to availability for work, efforts to secure work, and refusal to accept work, are not applicable to the individual;

(B) the individual is not considered to be self-employed pursuant to subdivision 1301(24) of this title;

(C) an individual who meets the requirements of this section shall be considered to be unemployed under section 1338 of this title; and

(D) an individual who fails to participate in self-employment assistance activities or who fails to actively engage on a full-time basis in activities, including training, relating to the establishment of a business and becoming self-employed shall be disqualified from receiving an allowance for the week the failure occurs.

(e) The self-employment assistance allowance may be paid to up to 35 qualified individuals at any time.

(f)(1) The self-employment assistance allowance shall be charged to the unemployment trust fund.

(2) In the event that the self-employment assistance allowance cannot be charged to the unemployment trust fund pursuant to subdivision (1) of this subsection, the allowance shall be charged in accordance with section 1325 of this title.

(g) The Commissioner shall approve any program that will provide self-employment assistance activities to qualified individuals.

(h) The Commissioner shall adopt rules to implement this section.

(i) The Commissioner may suspend the self-employment assistance

program with approval of the Secretary of Administration and notice to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs in the event that it presents unintended adverse consequences to the unemployment trust fund.

Sec. 2. EFFECTIVE DATE

This section and 21 V.S.A. § 1340a(g) (rulemaking) shall take effect on passage. The remaining sections shall take effect on January 1, 2014.

Sec. 3. SUNSET

21 V.S.A. § 1340a (self-employment assistance program) shall be repealed on July 1, 2017.

(Committee Vote: 9-0-2)

Public Hearings

February 13, 2013 - 6:00-8:00 PM - Room 11 - House and Senate Natural Resources and Energy - Town Energy Committee

**Joint Public Hearing on Fiscal Year 2014 state budget
via Vermont Interactive Technologies
House and Senate Committees on Appropriations**

Monday, February 11, 2013, 4:00 - 6:30 p.m. – The House and Senate Committees on Appropriations will hold a joint public hearing on Vermont Interactive Technologies (V.I.T.) to give Vermonters throughout the state an opportunity to express their views about the state budget for fiscal year 2014. All 13 V.I.T. sites will be available for the hearing: Bennington, Brattleboro, 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/>. **The budget hearing will be VIEWABLE via the Internet if your computer has Flash-based streaming capabilities. Some mobile devices may require additional software. Go to www.vitlink.org/streamingmedia/vtcvitopen.php.** 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 3:00 p.m. on Monday, January 28, 2013.

Information Notice

CROSSOVER DEADLINES

The following bill reporting deadlines are established for the 2013 session:

(1) From the standing committee of last reference, excluding the Committees on Appropriations and Ways and Means, all House bills must be reported out of committee on or before March 15, 2013.

(2) House bills referred pursuant to House Rule 35a, must be reported out of the Committees on Appropriations and Ways and Means on or before March 22, 2013.

Joint Assembly

Thursday, February 21, 2013 – 10:30 A.M. – House Chamber –Election of a Sergeant at Arms, of an Adjutant and Inspector General, and of three (3) trustees for the University of Vermont, and Vermont and State Agricultural College.

Candidates for the positions of Sergeant at Arms and of Adjutant and Inspector General, and legislative candidates for UVM trustees must notify the Secretary of State **in writing** of their candidacies not later than Thursday, February 14, 2013, 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.