

# Senate Calendar

THURSDAY, APRIL 11, 2013

SENATE CONVENES AT: 1:00 P.M.

## TABLE OF CONTENTS

Page No.

### ACTION CALENDAR

#### UNFINISHED BUSINESS OF APRIL 10, 2013

##### Second Reading

##### Favorable with Proposal of Amendment

|  |     |
|--|-----|
| <b>H. 511</b> An act relating to “zappers” and automated sales suppression devices |     |
| Judiciary Report - Sen. Sears .....  | 867 |
| Substitute Amendment - Sen. Sears .....  | 869 |

##### NEW BUSINESS

##### Third Reading

|  |     |
|--|-----|
| <b>S. 86</b> Miscellaneous changes to election laws..... | 871 |
|--|-----|

### NOTICE CALENDAR

##### Second Reading

##### Favorable

|   |     |
|---|-----|
| <b>H. 13</b> An act relating to statutory revision .....    | 871 |
| Government Operations Report - Sen. French .....            | 871 |
| <b>H. 531</b> An act relating to Building 617 in Essex..... | 872 |
| Institutions Report - Sen. Mazza .....                      | 872 |

##### Favorable with Recommendation of Amendment

|   |     |
|---|-----|
| <b>S. 160</b> A study committee on the regulation and taxation of marijuana |     |
| Government Operations Report - Sen. White .....                             | 872 |

**Favorable with Proposal of Amendment**

**H. 377** An act relating to neighborhood planning and development for municipalities with designated centers

Econ. Dev., Housing and General Affairs Report - Sen. Cummings .....873

**House Proposal of Amendment**

**S. 144** The St. Albans state office building

House Proposal .....875

**ORDERED TO LIE**

**S. 82** Campaign finance law .....875

**PENDING QUESTION:** Shall the bill be amended as recommended by the Committee on Government Operations, as amended?

**CONCURRENT RESOLUTIONS FOR NOTICE**

**S.C.R. 21** (For text of Resolution, see Addendum to Senate Calendar for April 11, 2013).....875

**H.C.R. 97-104** (For text of Resolutions, see Addendum to House Calendar for April 11, 2013) .....875

---

---

**ORDERS OF THE DAY**

---

---

**ACTION CALENDAR**

**UNFINISHED BUSINESS OF WEDNESDAY, APRIL 10, 2013**

**Second Reading**

**Favorable with Proposal of Amendment**

**H. 511.**

An act relating to “zappers” and automated sales suppression devices.

**Reported favorably with recommendation of proposal of amendment by Senator Sears for the Committee on Judiciary.**

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 2032 is added to read:

§ 2032. SALES SUPPRESSION DEVICES

(a) As used in this section:

(1) “Automated sales suppression device,” also known as a “zapper,” means a software program, carried on a memory stick or removable compact disc, accessed through an Internet link, or accessed through any other means, that falsifies transaction data, transaction reports, or any other electronic records of electronic cash registers and other point-of-sale systems.

(2) “Electronic cash register” means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in any manner.

(3) “Phantom-ware” means a hidden programming option, whether preinstalled or installed at a later time, embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that:

(A) can be used to create a virtual second till; or

(B) may eliminate or manipulate transaction records.

(4) “Transaction data” includes items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase,

the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.

(5) "Transaction reports" means a report documenting, but not limited to, the sales, taxes collected, media totals, and discount voids at an electronic cash register that is printed on cash register tape at the end of a day or shift, or a report documenting every action at an electronic cash register that is stored electronically.

(b)(1) A person shall not knowingly sell, purchase, install, or transfer or possess an automated sales suppression device or phantom-ware.

(2) A person who violates subdivision (1) of this subsection shall, except as provided in subdivision (3) of this subsection, be imprisoned for not less than one year and not more than five years and fined not more than \$100,000.00, or both.

(3) A person who has not previously violated this section who uses an automated sales suppression device or phantom-ware with the intent to evade a tax liability shall, if the amount of tax evaded is not more than \$500.00, be assessed a civil penalty of not more than \$1000.00. A person who violates this subdivision shall not be convicted of violating subdivision (1) of this subsection.

(c) A person who violates subsection (b) of this section shall be liable to the State for:

(1) all taxes, interest, and penalties due as the result of the person's use of an automated sales suppression device or phantom-ware; and

(2) all profits associated with the person's sale of an automated sales suppression device or phantom-ware.

(d) An automated sales suppression device or phantom-ware and any device containing such device or software shall be deemed contraband and shall be subject to seizure by the Commissioner of Taxes or by a law enforcement officer when directed to do so by the Commissioner of Taxes.

Sec. 2. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(b) The judicial bureau shall have jurisdiction of the following matters:

\* \* \*

(24) Violations of 13 V.S.A. § 2032(b)(3) relating to using an automated sales suppression device or phantom-ware with the intent to evade a tax liability of not more than \$500.00.

Sec. 3. SAFE HARBOR

(a) A person shall not be subject to prosecution under section 2032 of Title 13 if by October 1, 2013 the person:

(1) notifies the Department of Taxes of the person's possession of an automated sales suppression device;

(2) provides any information requested by the Department of Taxes, including but not limited to transaction records, software specifications, encryption keys, passwords and other data; and

(3) corrects any underreported sales tax records and fully pays the Department any amounts previously owed.

(b) This section shall not be construed to limit the person's civil or criminal liability under section 9814a of Title 32 (submitting fraudulent sales tax return) or any other provision of law.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

And that after passage the title of the bill be amended to read: "An act relating to automated sales suppression devices, also known as 'zappers'"

(Committee vote: 5-0-0)

(No House amendments.)

**SUBSTITUTE AMENDMENT FOR THE PROPOSAL OF  
AMENDMENT OF THE COMMITTEE ON JUDICIARY TO H. 511, TO  
BE OFFERED BY SENATOR SEARS, ON BEHALF OF THE  
COMMITTEE ON JUDICIARY**

Senator Sears, on behalf of the Committee on Judiciary, moves to substitute the following for the proposal of amendment of the Committee on Judiciary:

That the Senate propose to the House that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 2032 is added to read:

§ 2032. SALES SUPPRESSION DEVICES

(a) As used in this section:

(1) "Automated sales suppression device," also known as a "zapper," means a software program, carried on a memory stick or removable compact disc, accessed through an Internet link, or accessed through any other means, that falsifies transaction data, transaction reports, or any other electronic records of electronic cash registers and other point-of-sale systems.

(2) “Electronic cash register” means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in any manner.

(3) “Phantom-ware” means a hidden programming option, whether preinstalled or installed at a later time, embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that:

(A) can be used to create a virtual second till; or

(B) may eliminate or manipulate transaction records.

(4) “Transaction data” includes items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.

(5) “Transaction reports” means a report documenting, but not limited to, the sales, taxes collected, media totals, and discount voids at an electronic cash register that is printed on cash register tape at the end of a day or shift, or a report documenting every action at an electronic cash register that is stored electronically.

(b)(1) A person shall not knowingly sell, purchase, install, or transfer or possess an automated sales suppression device or phantom-ware.

(2) A person who violates subdivision (1) of this subsection shall be imprisoned for not less than one year and not more than five years and fined not more than \$100,000.00, or both.

(c) A person who violates subdivision (b)(1) of this section shall be liable to the State for:

(1) all taxes, interest, and penalties due as the result of the person’s use of an automated sales suppression device or phantom-ware; and

(2) all profits associated with the person’s sale of an automated sales suppression device or phantom-ware.

(d) An automated sales suppression device or phantom-ware and any device containing such device or software shall be deemed contraband and shall be subject to seizure by the Commissioner of Taxes or by a law enforcement officer when directed to do so by the Commissioner of Taxes.

Sec. 2. SAFE HARBOR

(a) A person shall not be subject to prosecution under 13 V.S.A. 2032 if, by October 1, 2013, the person:

(1) notifies the Department of Taxes of the person's possession of an automated sales suppression device;

(2) provides any information requested by the Department of Taxes, including transaction records, software specifications, encryption keys, passwords, and other data; and

(3) corrects any underreported sales tax records and fully pays the Department any amounts previously owed.

(b) This section shall not be construed to limit the person's civil or criminal liability under 32 V.S.A. § 9814a (submitting fraudulent sales tax return) or any other provision of law.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

And that after passage the title of the bill be amended to read: "An act relating to automated sales suppression devices, also known as 'zappers'"

**NEW BUSINESS**

**Third Reading**

**S. 86.**

An act relating to miscellaneous changes to election laws.

**NOTICE CALENDAR**

**Second Reading**

**Favorable**

**H. 13.**

An act relating to statutory revision.

**Reported favorably by Senator French for the Committee on Government Operations.**

(Committee vote: 4-0-1)

(No House amendments)

**H. 531.**

An act relating to Building 617 in Essex.

**Reported favorably by Senator Mazza for the Committee on Institutions.**

(Committee vote: 5-0-0)

(No House amendments)

**Favorable with Recommendation of Amendment**

**S. 160.**

An act relating to a study committee on the regulation and taxation of marijuana.

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

The Committee recommends that the bill be amended as follows:

First: In Sec. 1, subsection (c) (Powers and Duties) by striking out subdivision (9) in its entirety and inserting in lieu thereof:

(9) How marijuana used for therapeutic purposes should be treated, and what protocols for screening and intervention should be developed if marijuana use or dependence is suspected by a provider, in relation to legalized marijuana under the law and through regulation.

Second: In Sec. 1, subsection (c) by adding subdivisions (12)–(14) to read:

(12) What the potential impact legalization of marijuana will be on youth consumption of marijuana and the public health impact to local communities.

(13) Whether the State should fund a community-based education program addressing health effects and risks of habitual marijuana use if legalization occurs.

(14) Whether a percentage of taxes collected for marijuana should be dedicated to education, abuse prevention, and treatment programs.

(Committee vote: 4-0-1)



## Favorable with Proposal of Amendment

### H. 377.

An act relating to neighborhood planning and development for municipalities with designated centers.

**Reported favorably with recommendation of proposal of amendment by Senator Cummings for the Committee on Economic Development, Housing and General Affairs.**

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 24 V.S.A. § 2791, in subdivision (3), by striking out the words “a regional” and inserting in lieu thereof the word the

Second: In Sec. 8, 24 V.S.A. § 2793e, in subsection (c), by striking out subdivision (5) in its entirety and inserting in lieu thereof the following:

(5) The proposed neighborhood development area consists of those portions of the neighborhood planning area that are appropriate for new and infill housing, excluding identified flood hazard and fluvial erosion areas. In determining what areas are most suitable for new and infill housing, the municipality shall balance local goals for future land use, the availability of land for housing within the neighborhood planning area, and the smart growth principles. Based on those considerations, the municipality shall select an area for neighborhood development area designation that:

(A) Avoids or that minimizes to the extent feasible the inclusion of “important natural resources” as defined in subdivision 2791(14) of this title. If an “important natural resource” is included within a proposed neighborhood development area, the applicant shall identify the resource, explain why the resource was included, describe any anticipated disturbance to such resource, and describe why the disturbance cannot be avoided or minimized.

(B) Is served by planned or existing transportation infrastructure that conforms with “complete streets” principles as described under 19 V.S.A. § 309d and establishes pedestrian access directly to the downtown, village center, or new town center.

(C) Is compatible with and will reinforce the character of adjacent National Register Historic Districts, national or state register historic sites, and other significant cultural and natural resources identified by local or state government.

Third: In Sec. 8, 24 V.S.A. § 2793e, in subsection (d), by striking out subdivision (1) in its entirety and inserting in lieu thereof the following:

(1) When approving a neighborhood development area, the State Board shall consult with the applicant about any changes the Board considers making to the boundaries of the proposed area. After consultation with the applicant, the Board may change the boundaries of the proposed area.

Fourth: In Sec. 8, 24 V.S.A. § 2793e, in subsection (d), in subdivision (2), before the words “the members”, by inserting the words at least 80 percent but no fewer than seven of, and by striking out the word “unanimously” and inserting in lieu thereof the word present

Fifth: In Sec. 8, 24 V.S.A. § 2793e, in subsection (h), after the last sentence, by adding Before reviewing such an application, the State Board shall request comment from the municipality.

Sixth: By adding a new section to be Sec. 14a to read:

Sec. 14a. 32 V.S.A. § 3850 is added to read:

§ 3850. BLIGHTED PROPERTY IMPROVEMENT PROGRAM

(a) At an annual or special meeting, a municipality may vote to authorize the legislative body of the municipality to exempt from municipal taxes for a period not to exceed five years the value of improvements made to dwelling units certified as blighted. As used in this section, “dwelling unit” means a building or the part of a building that is used as a primary home, residence, or sleeping place by one or more persons who maintain a household.

(b) If a municipality votes to approve the exemption described in subsection (a) of this section, the legislative body of the municipality shall appoint an independent review committee that is authorized to certify dwelling units in the municipality as blighted and exempt the value of improvements made to these dwelling units.

(c) As used in this section, a dwelling unit may be certified as blighted when it exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare.

(d) If a dwelling unit is certified as blighted under subsection (b) of this section, the exemption shall take effect on the April 1 following the certification of the dwelling unit.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 20, 2013, page 444.)

## House Proposal of Amendment

### Proposal of Amendment

#### S. 144.

An act relating to the St. Albans state office building.

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

#### Sec. 1. SALE OF ST. ALBANS STATE OFFICE BUILDING

(a) Notwithstanding 29 V.S.A. § 166(b), the Commissioner of Buildings and General Services is authorized to sell the state office building at 20 Houghton Street in St. Albans. The Commissioner is authorized to convey 20 Houghton Street by warranty deed.

(b) The Commissioner of Buildings and General Services is authorized to negotiate and enter into a lease or lease-purchase agreement to replace the state office building at 20 Houghton Street in St. Albans. It is the intent of the General Assembly that the replacement state office building remain in downtown St. Albans.

#### Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

### ORDERED TO LIE

#### S. 82.

An act relating to campaign finance law.

**PENDING QUESTION:** Shall the bill be amended as recommended by the Committee on Government Operations, as amended?

### CONCURRENT RESOLUTIONS FOR NOTICE

**S.C.R. 21** (For text of Resolutions, see Addendum to Senate Calendar for April 11, 2013)

**H.C.R. 97-104** (For text of Resolutions, see Addendum to House Calendar for April 11, 2013)

### 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.

Patrick Berry of Middlebury – Commissioner, Fish and Wildlife – By Sen. Hartwell for the Committee on Natural Resources and Energy. (3/27/13)

Ron Shems of Moretown – Chair of the Natural Resources Board – By Sen. Hartwell for the Committee on Natural Resources and Energy. (4/3/13)

### **PUBLIC HEARINGS**

**Tuesday, April 16, 2013** – House Chamber – 5:30 – 7:30 P.M. – Re: S.77 – Patient Choice and Control at End of Life – House Committee on Human Services and House Committee on Judiciary.

**Wednesday, April 17, 2013** – Room 11 – 5:30 – 7:30 P.M. – Re: H.225 - Statewide Policy on Training Requirements for Electronic Control Devices (Tasers) - House Committee on Government Operations.

**Thursday, April 18, 2013** - Room 11 - 6:00 - 8:00 P.M. Re: H. 208 - Earned Sick Days - House Committee on General, Housing and Military Affairs.

### **REPORTS ON FILE**

#### **Reports 2013**

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 Legislative webpage.

1. Report by Secretary of Administration pursuant to Act 156, Adj. Sess. (2012), Sec. 8 regarding supervisory union size and structure.

### **FOR INFORMATION ONLY**

#### **STATE OF VERMONT**

#### **EXECUTIVE DEPARTMENT**

#### **EXECUTIVE ORDER NO. 03-13**

[Governor's Business Advisory Council on Health Care Financing]

WHEREAS, the prosperity of Vermonters depends on business competitiveness and a robust Vermont economy is of the utmost importance;

WHEREAS, health care costs in Vermont are rising at an unsustainable rate, and threaten Vermont's prosperity if the health care system is not reformed;

WHEREAS, as set forth in Act 48, Green Mountain Care, Vermont's publicly funded, universal health care system, requires enactment of a law establishing its financing prior to implementation;

WHEREAS, the Governor desires the counsel of private citizens knowledgeable about the needs of Vermont businesses to inform the discussion of how to finance Green Mountain Care.

NOW, THEREFORE, BE IT RESOLVED that I, Peter Shumlin, by virtue of the authority vested in me as Governor of the State of Vermont, do hereby create the Governor's Business Advisory Council on Health Care Financing.

### **I. Composition, Appointments, and Process**

The Governor's Business Advisory Council on Health Care Financing shall consist of no less than 10 and no more than 25 members, all of whom shall be appointed by the Governor and serve at his pleasure.

The Council shall meet with the Governor at least four times annually.

The Governor shall annually appoint one member to serve as Chair and one member to serve as Vice Chair.

The Agency of Administration shall provide administrative support to the Council as requested.

### **II. Charge**

The Council shall provide the Governor advice and information on health care financing based on the business experience of its members.

### **III. Effective Date**

This Executive Order shall take effect upon signing and shall expire on July 15, 2015.

Witness my name hereunto  
subscribed and the Great Seal of  
the State of Vermont hereunto  
affixed at Montpelier, this 3RD  
day of April, 2013.

/s/ Peter E. Shumlin

PETER E. SHUMLIN

Governor

**STATE OF VERMONT**  
**EXECUTIVE DEPARTMENT**  
**EXECUTIVE ORDER NO. 04-13**

[Governor's Emergency Preparedness Advisory Council]

WHEREAS, the tragic events of September 11, 2001, will exist forever in the hearts and memories of our nation; and

WHEREAS, federal, state, and local governments reacted quickly with tighter security and additional resources; the military boosted readiness and training; first responders expanded training and coordinated communications; law enforcement augmented protection in the State and along the borders; emergency managers developed new plans to address new threats; and public health officials and organizations improved and broadened education on bio-terrorism and family safety; and

WHEREAS, the devastation of Tropical Storm Irene on August 28, 2011, demonstrated that natural disasters also present a strong threat to Vermont;

WHEREAS, it is the policy of this state, as set forth in 20 V.S.A. § 1, that the Governor coordinate, to the maximum extent, the protection of the public health and safety as threats remain compelling; and

WHEREAS, to attain the greatest benefit of this protection, it is imperative that there be improved coordination and communication between federal, state, and local governments, the Vermont National Guard, first responders, law enforcement, emergency managers, public health officials, and private community organizations; and

WHEREAS, these key groups should remain in regular contact with the Governor and provide advice and counsel on approaches to strengthen and improve our homeland security preparedness.

NOW, THEREFORE, BE IT RESOLVED that I, Peter Shumlin, by virtue of the authority vested in me as the Governor of the State of Vermont, do hereby order and direct that:

The "Governor's Homeland Security Advisory Council" is renamed the "Governor's Emergency Preparedness Advisory Council" and is reconstituted as set forth below.

**I. Composition and Appointments**

The Council shall include members from the following communities, appointed by the Governor: volunteer firefighters; EMTs; professional firefighters; career fire chiefs; Vermont State Police; municipal police; sheriffs;

federal government; municipal government; private community organizations; the Vermont utility industry; and health care workers, including representatives from Vermont's hospitals.

The Council shall include the following members or their designees: The Adjutant General; Director of the Division of Emergency Management and Homeland Security; Secretary of Administration; Speaker of the House; Lieutenant Governor, and a member of the Senate appointed by the Committee on Committees.

The Secretary of Civil and Military Affairs, the Commissioner of Health, the Commissioner of Public Safety, the Secretary of Agriculture, the Secretary of Transportation, the Commissioner of Information and Innovation and the E-911 Director shall be ex officio members of the Council.

The Governor may request participation of other public or private persons, including agency or department heads, the Attorney General, and the State's Attorneys as needs dictate.

The Governor shall appoint the Chair of the Council.

## **II. Charge**

The mission of the Council shall be to assess the State's overall homeland security preparedness, policies, and communications and to advise on strategies to improve our current system.

Further, the Council shall carefully consider the interdependencies between federal, state, and local governments, the Vermont National Guard, first responders, law enforcement, emergency managers, public health officials, and private community organizations and the programs these groups administer and advise on strategies to strengthen and bolster those relationships. The Council shall be mindful of available financial resources and advise on strategies that are consistent with existing fiscal realities.

## **III. Council Process**

The Council shall meet at the call of the Chair and shall advise the Governor as needed on the State's overall homeland security preparedness, policies, and communications.

Administrative and staff support shall be provided by the Department of Public Safety.

## **IV. Effective Date**

This Executive Order shall take effect upon signing and shall expire on July 15, 2019.

This Executive Order supersedes and replaces Executive Order # 01-03 (codified as No. 20-29).

Witness my name hereunto subscribed and the Great Seal of the State of Vermont hereunto affixed at Montpelier, this 4TH day of April, 2013.

/s/ Peter E. Shumlin

PETER E. SHUMLIN

Governor