

Journal of the Senate

WEDNESDAY, FEBRUARY 6, 2013

In the absence of the President (who was Acting Governor in the absence of the Governor) the Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 12

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered joint resolutions originating in the Senate of the following titles:

J.R.S. 10. Joint resolution providing for a Joint Assembly for the election of a Sergeant at Arms, an Adjutant and Inspector General, and three Trustees of the University of Vermont and State Agricultural College.

J.R.S. 11. Joint resolution establishing a procedure for the conduct of the election of UVM trustees by plurality vote by the General Assembly in 2013.

J.R.S. 12. Joint resolution supporting the return of the Battle of Winchester Memorial to its original battlefield location.

And has adopted the same in concurrence.

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 16. House concurrent resolution in memory of Margaret Munt of Williston.

H.C.R. 17. House concurrent resolution honoring former Representative Randolph and Beverly Major for their civic and community service in the town of Westminster.

H.C.R. 18. House concurrent resolution honoring Winifred Vogt on her receipt of a 2012 Successful Aging Award from Senior Solutions.

H.C.R. 19. House concurrent resolution designating January as National Mentoring Month in Vermont.

H.C.R. 20. House concurrent resolution congratulating *The Wake-up Crew with Bruce & Hobbes* radio show on receipt of the Alan P. Noyes Community Service Award from the Vermont Association of Broadcasters.

H.C.R. 21. House concurrent resolution recognizing the invaluable community contribution of ReBuild Waterbury to the post-Tropical Storm Irene recovery.

H.C.R. 22. House concurrent resolution honoring former Woodstock Union High School teacher and athletic director and retiring football coach Jim McLaughlin.

H.C.R. 23. House concurrent resolution in memory of former Representative and Senator Sanborn Partridge of Proctor.

H.C.R. 24. House concurrent resolution designating February 1, 2013 as Wear Red Day.

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

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

S.C.R. 12. Senate concurrent resolution honoring Amelia Boynton Robinson, the Matriarch of the Voting Rights Movement.

And has adopted the same in concurrence.

**Appointment of Senate Members of the Legislative Committee on
Administrative Rules**

Pursuant to the provisions of 3 V.S.A. §817, the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Legislative Committee on Administrative Rules for terms of two years ending February 1, 2015:

Senator MacDonald
Senator Hartwell
Senator Flory
Senator Snelling

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

S. 79.

By Senator Fox,

An act relating to the Office of Health Care Consumer Protection.

To the Committee on Health and Welfare.

S. 80.

By Senators Rodgers and Starr,

An act relating to mandatory community notification regarding registered sex offenders.

To the Committee on Judiciary.

S. 81.

By Senators Lyons, Ashe, Campbell, Fox, Galbraith, MacDonald, McCormack, Mullin, Pollina and Zuckerman,

An act relating to the regulation of octaBDE, pentaBDE, decaBDE, and flame retardant known as Tris in consumer products.

To the Committee on Health and Welfare.

S. 82.

By Senators White, Ayer, Baruth, Kitchel, Lyons, MacDonald, Mazza, McCormack and Starr,

An act relating to campaign finance law.

To the Committee on Government Operations.

S. 83.

By Senator Lyons,

An act relating to excellence in forestry, harvesting guidelines, and outreach, education, and training.

To the Committee on Natural Resources and Energy.

Joint Resolution Referred

J.R.S. 14.

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Committee on Agriculture,

J.R.S. 14. Joint resolution supporting the Agency of Agriculture, Food and Markets' proposal to adopt an administrative rule to implement international maple grading standards in Vermont.

Whereas, maple sugaring is important economically and culturally in Vermont, and

Whereas, the special status in Vermont of maple-flavored products is epitomized in 1 V.S.A. § 510, designating maple from the Vermont sugar maple tree as the state flavor, and

Whereas, the Agency of Agriculture, Food and Markets (the Agency) has estimated that in the year 2000, there were 2,000 maple syrup producers operating one million taps, and the comparable estimates for the year 2012 were 3,000 producers and 3.3 million taps, and

Whereas, the Agency further reported that with new technology, the average tap, over the course of a sugaring season, now yields approximately one-half gallon of maple syrup, double the former standard of one quart per tap, and

Whereas, according to the U.S. Department of Agriculture (USDA), Vermont exceeds any other American state in the production of maple syrup as indicated by the fact that in 2012, 750,000 gallons of maple syrup were produced in the State while the nearest competitors, Maine and New York, each produced 360,000 gallons, and

Whereas, the USDA also indicates that the revenue derived nationally from Vermont maple syrup sales in 2011 was approximately \$39.9 million, representing more than one-third of all sales of maple syrup produced in the United States, and

Whereas, these production and revenue statistics demonstrate the importance to our State's economy of Vermont maple syrup sales beyond the State's borders, and

Whereas, historically, Vermont has used a system of grading unique to this State which is familiar to in-state purchasers of Vermont maple syrup, and

Whereas, although Vermont maple syrup producers are proud of the State's unique maple grading standards, Vermont should adopt the international standards in order to enable our state to remain the nation's leading source for maple syrup, and

Whereas, the Agency is initiating a rule adoption process to adopt the international standards, and

Whereas, the Agency's proposal would preserve important marketing attributes of Vermont maple syrup, including the retention of the existing density requirement which is higher than the standard of any other state or Canadian province and the inclusion of the word Vermont on the label as is presently required; and for sales within Vermont, maple syrup producers would be allowed to list both the international and traditional Vermont grades, and

Whereas, the 1,000-member Vermont Maple Sugar Makers' Association, the Vermont Maple Industry Council, the Franklin County Sugar Makers'

Association, and the Vermont Farm Bureau are each supportive of the Agency's adoption of the international maple grading standard, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly supports the Agency of Agriculture, Food and Markets' proposal to adopt an administrative rule to implement international maple grading standards in Vermont, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to Chuck Ross, Secretary of Agriculture, Food and Markets, to the Vermont Maple Sugar Makers' Association, to the Franklin County Maple Sugar Makers' Association, to the Vermont Agricultural and Forest Product Development Board, and to the Vermont Farm Bureau.

Thereupon, the President, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Agriculture.

Bill Amended; Bill Passed

S. 14.

Senate bill entitled:

An act relating to payment of agency fees by teachers, school administrators, and municipal employees.

Was taken up.

Thereupon, pending third reading of the bill, Senator Benning moved to amend the bill by as follows:

First: In Sec. 4, 3 V.S.A. § 941(k), at the end of the first sentence before the period, by inserting the following: or may avail himself or herself of the unit representative in grievance proceedings

Second: In Sec. 14, 21 V.S.A. § 1502(14), at the end of the subsection by inserting the following: Fair-share fees shall not be commingled with fees or dues collected for political activities, lobbying that is not germane to either collective bargaining or employer-employee relations, or community service activities undertaken by the employee organization.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Benning?, Senator Benning requested that the question be divided, which was agreed to

Thereupon, the question, Shall the bill be amended as recommended in the *first* recommendation of amendment?, was agreed to.

Thereupon, the question, Shall the bill be amended as recommended in the *second* recommendation of amendment?, which was disagreed to.

Thereupon, pending third reading of the bill, Senator Bray moved to amend the bill by as follows:

Senator Bray moves that the bill be amended as follows:

First: By striking out the following: Secs. 1, 5, 6, 9, 10, 11, and 17 in their entirety.

Second: In Sec. 2, 3 V.S.A. § 903(c), by striking out the words “fair-share fee” in each instance they occur and inserting in lieu thereof the words collective bargaining service fee

Third: In Sec. 3, 3 V.S.A. § 904(a)(10), by striking out the words “fair-share fee” and inserting in lieu thereof the words collective bargaining service fee

Fourth: In Sec. 7, 3 V.S.A. § 1012(c), by striking out the words “fair-share fee” in each instance they occur and inserting in lieu thereof the words collective bargaining service fee

Fifth: In Sec. 8, 3 V.S.A. § 1013(10), by striking out the words “fair-share fee” and inserting in lieu thereof the words collective bargaining service fee

Sixth: In Sec. 12, 16 V.S.A. § 1982, by striking out the words “fair-share fee” in each instance they occur and inserting in lieu thereof the words agency fee

Seventh: In Sec. 13, 16 V.S.A. § 2004, by striking out the words “fair-share fee” and inserting in lieu thereof the words agency service fee

Eighth: In Sec. 14, 21 V.S.A. § 1502(14), by striking out the words “Fair-share fee” and inserting in lieu thereof the words Agency fee

Ninth: In Sec. 15, 21 V.S.A. § 1503, by striking out the words “fair-share fee” in each instance they occur and inserting in lieu thereof the words agency fee

Tenth: In Sec. 16, 21 V.S.A. § 1621(b)(5), by striking out the words “fair-share fee” and inserting in lieu thereof the words agency fee

Eleventh: In Sec. 18, 21 V.S.A. § 1726, by striking out the words “fair-share fee” in each instance they occur and inserting in lieu thereof the words agency service fee

Twelfth: In Sec. 19, 21 V.S.A. § 1734(d), by striking out the words “fair-share fee” where it twice occurs and inserting in lieu thereof the words agency service fee

Thirteenth: In Sec. 20, EFFECTIVE DATES, by striking out the words “a fair-share fee” and inserting in lieu thereof the words an agency fee

And by renumbering the sections of the bill to be numerically correct.

Which was agreed to on a roll call, Yeas 15, Nays 14.

Senator Sears having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ayer, Benning, Bray, Flory, French, Hartwell, Kitchel, MacDonald, Mazza, McAllister, Nitka, Rodgers, Snelling, Starr, Westman.

Those Senators who voted in the negative were: Ashe, Baruth, Collins, Cummings, Doyle, Fox, Galbraith, Lyons, McCormack, Mullin, Pollina, Sears, White, Zuckerman.

The Senator absent or not voting was: Campbell (presiding).

Thereupon, pending third reading of the bill, Senator Bray moved to amend the bill by as follows:

First: In Sec. 1, 3 V.S.A. § 902(19), by striking out the following: “85” and inserting in lieu thereof the following 49

Second: In Sec. 6, 3 V.S.A. § 1011(4), by striking out the following: “85” and inserting in lieu thereof the following: 49

Third: In Sec. 11, 16 V.S.A. § 1981(7), after the word “exceeding” by inserting the following: 49 percent of

Fourth: In Sec. 14, 21 V.S.A. § 1502(14), by adding a sentence at the end to read as follows: The fee shall not exceed 49 percent of the amount payable as dues by members of the employee organization.

Fifth: In Sec. 17, 21 V.S.A. § 1722(1), after the word “exceeding” by inserting the following: 49 percent of

Which was disagreed to on a roll call, Yeas 8, Nays 21.

Senator Collins having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ayer, Benning, Bray, Flory, Mazza, McAllister, Nitka, Rodgers.

Those Senators who voted in the negative were: Ashe, Baruth, Collins, Cummings, Doyle, Fox, French, Galbraith, Hartwell, Kitchel, Lyons, MacDonald, McCormack, Mullin, Pollina, Sears, Snelling, Starr, Westman, White, Zuckerman.

The Senator absent or not voting was: Campbell (presiding).

Thereupon, the bill was read the third time and passed on a roll call, Yeas 24, Nays 5.

Senator Nitka having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Collins, Cummings, Doyle, Fox, French, Galbraith, Hartwell, Kitchel, Lyons, MacDonald, McCormack, Mullin, Nitka, Pollina, Rodgers, Sears, Snelling, Starr, Westman, White, Zuckerman.

Those Senators who voted in the negative were: Benning, Bray, Flory, Mazza, McAllister.

The Senator absent or not voting was: Campbell (presiding).

Bill Amended; Third Reading Ordered

S. 1.

Senator Ashe, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to consideration of financial cost of criminal sentencing options.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. CRIMINAL JUSTICE CONSENSUS COST-BENEFIT WORKING GROUP

(a)(1) A Criminal Justice Consensus Cost-Benefit Working Group is established to develop collaboratively a criminal and juvenile justice cost-benefit model for Vermont for the purpose of providing policymakers with the information necessary to weigh the pros and cons of various strategies and programs, and enable them to identify options that are not only cost-effective, but also have the greatest net social benefit. The model will be used to estimate the costs related to the arrest, prosecution, defense, adjudication, and correction of criminal and juvenile defendants, and victimization of citizens by defendants.

(2) The Working Group shall:

(A) develop estimates of costs associated with the arrest, prosecution, defense, adjudication, and correction of criminal and juvenile defendants in Vermont by using the cost-benefit methodology developed by the Washington State Institute for Public Policy and currently used collaboratively by the Joint Fiscal Office and the PEW Charitable Trust for the Vermont Results First Project;

(B) estimate costs incurred by citizens who are the victims of crime by using data from the Vermont Center of Crime Victim Services, supplemented where necessary with national survey data;

(C) assess the quality of justice data collection systems and make recommendations for improved data integration, data capture, and data quality as appropriate;

(D) develop a throughput model of the Vermont criminal and juvenile justice systems which will serve as the basic matrix for calculating the cost and benefit of Vermont justice system programs and policies;

(E) investigate the utility of making the Working Group an ongoing entity within state government which would be responsible for:

(i) revising the statewide cost benefit model in light of legislative or policy changes, or both, in the criminal or juvenile justice systems;

(ii) updating cost estimates; and

(iii) updating throughput data for the model.

(3) The Working Group shall be convened and staffed by the Vermont Center for Justice Research.

(4) The costs associate with staffing the Working Group shall be underwritten through December 31, 2013 by funding previously obtained by the Vermont Center for Justice Research from the Bureau of Justice Statistics, U.S. Department of Justice.

(b) The Working Group shall be composed of the following members:

(1) The Administrative Judge or designee.

(2) The Chief Legislative Fiscal Officer or designee.

(3) The Attorney General or designee.

(4) The Commissioner of Corrections or designee.

(5) The Commissioner for Children and Families or designee.

(6) The Executive Director of State's Attorneys and Sheriffs or designee.

(7) The Defender General or designee.

(8) The Commissioner of Public Safety or designee.

(9) The Director of the Vermont Center for Crime Victim Services or designee.

(10) The President of the Chiefs of Police Association of Vermont or designee.

(11) The President of the Vermont Sheriffs' Association or designee.

(12) The Director of the Vermont Center for Justice Research.

(c) On or before November 15, 2013, the Working Group shall report its preliminary findings to the Senate Committee on Judiciary, the House Committee on Judiciary, and the House Committee on Corrections and Institutions. The Working Group shall issue a final report to the General Assembly on or before January 1, 2014.

Sec. 2. 13 V.S.A. § 7030 is amended to read:

§ 7030. SENTENCING ALTERNATIVES

(a)(1) In determining which of the following should be ordered, the court shall consider the nature and circumstances of the crime, the history and character of the defendant, the need for treatment, and the risk to self, others, and the community at large presented by the defendant:

~~(1)~~(A) A deferred sentence pursuant to section 7041 of this title.

~~(2)~~(B) Referral to a community reparative board pursuant to 28 V.S.A. chapter 12 in the case of an offender who has pled guilty to a nonviolent felony, a nonviolent misdemeanor, or a misdemeanor that does not involve the subject areas prohibited for referral to a community justice center under 24 V.S.A. § 1967. Referral to a community reparative board pursuant to this subdivision does not require the court to place the offender on probation. The offender shall return to court for further sentencing if the reparative board does not accept the case or if the offender fails to complete the reparative board program to the satisfaction of the board in a time deemed reasonable by the board.

~~(3)~~(C) Probation pursuant to 28 V.S.A. § 205.

~~(4)~~(D) Supervised community sentence pursuant to 28 V.S.A. § 352.

~~(5)~~(E) Sentence of imprisonment.

(2)(A) In determining a sentence upon conviction for a nonviolent misdemeanor or a nonviolent felony, in addition to the factors identified in subdivision (a)(1) of this section, the court shall consider the approximate financial cost of available sentences.

(B) The Department of Corrections shall develop and maintain a database on the approximate costs of sentences, including incarceration, probation, deferred sentence, supervised community sentence, participation in the Restorative Justice Program, and any other possible sentence. The database information shall be made available to the courts for the purposes of this subdivision (a)(2).

(b) When ordering a sentence of probation, the court may require participation in the ~~restorative justice program~~ Restorative Justice Program established by 28 V.S.A. chapter 12 as a condition of the sentence.

Sec. 3. 13 V.S.A. § 15 is added to read:

§ 15. NONVIOLENT MISDEMEANOR AND NONVIOLENT FELONY DEFINED

As used in this title:

(1) “Nonviolent felony” means a felony offense which is not a listed crime as defined in section 5301 of this title or an offense listed in chapter 64 of this title (sexual exploitation of children).

(2) “Nonviolent misdemeanor” means a misdemeanor offense which is not a listed crime as defined in section 5301 of this title or an offense listed in chapter 64 of this title (sexual exploitation of children) or section 1030 of this title (violation of a protection order).

Sec. 4. EFFECTIVE DATES

(a) Sec. 1 of this act and this section shall take effect on passage.

(b) Secs. 2 and 3 of this act shall take effect on March 1, 2014.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Bill Amended; Third Reading Ordered

S. 3.

Senator Collins, for the Committee on Economic Development, Housing and General Affairs, to which was referred Senate bill entitled:

An act relating to allowing participation in out-of-state contests requiring a fee to enter.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. § 2481x is added to read:

§ 2481x. ENTRY FEES; GAMES NOT BASED ON CHANCE

Nothing in this chapter shall be construed to prohibit a person from requiring or paying any kind of entry fee, service charge, purchase, or similar consideration in order to enter, or continue to remain eligible for, a game of skill or other promotion that is not based on chance.

Sec. 2. 13 V.S.A. § 2143b is amended to read:

§ 2143b. CONTESTS AND SWEEPSTAKES

Notwithstanding the provisions of this chapter, a person may organize, execute, or participate in a contest or game of chance, including a sweepstakes, provided that persons who enter the contest or game of chance are not required to venture money or other valuable things. The cost of mailing an entry shall not be considered a venture of money or other valuable things. This section shall not be construed to prohibit a person from organizing, executing, or participating in a contest that is not a contest of chance.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Consideration Postponed

S.R. 6.

Senate resolution entitled:

Senate resolution relating to amending the permanent rules of the Senate.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until tomorrow.

Adjournment

On motion of Senator Mazza, the Senate adjourned until one o'clock in the afternoon on Thursday, February 7, 2013.