

Journal of the Senate

WEDNESDAY, APRIL 24, 2013

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 48

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 passed a House bill of the following title:

H. 536. An act relating to the Adjutant and Inspector General and the Vermont National Guard.

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

Message from the House No. 49

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 Senate proposal of amendment to House bill of the following title:

H. 510. An act relating to the State's transportation program and miscellaneous changes to the State's transportation laws.

And has severally concurred therein with a further proposal of amendment thereto, in the adoption of which the concurrence of the Senate is requested.

**Rules Suspended; House Proposals of Amendment to Senate Proposal of
Amendment Concurred In; Rules Suspended; Bill Messaged**

H. 510.

Appearing on the Calendar for notice, on motion of Senator Mazza, the rules were suspended and House proposals of amendment to Senate proposal of amendment to House bill entitled:

An act relating to the State's transportation program and miscellaneous changes to the State's transportation laws.

Was taken up for immediate consideration.

The House concurs in the Senate proposal of amendment with the following amendments thereto:

First: By striking out Secs. 22, 23, and 24 in their entirety and inserting in lieu thereof the following:

Sec. 22. 23 V.S.A. § 3003 is amended to read:

§ 3003. IMPOSITION OF TAX; EXCEPTIONS

(a) A tax of ~~\$0.27~~ \$0.28, a fee of \$0.01 established pursuant to the provisions of 10 V.S.A. § 1942, and a \$0.03 motor fuel transportation infrastructure assessment which for purposes of the International Fuel Tax Agreement only shall be deemed to be a surcharge, are imposed on each gallon of fuel:

- (1) sold or delivered by a distributor; or
- (2) used by a user.

* * *

Sec. 23. 23 V.S.A. § 3106 is amended to read:

§ 3106. IMPOSITION, RATE, AND PAYMENT OF TAX

(a)(1) Except for sales of motor fuels between distributors licensed in this ~~state~~ State, which sales shall be exempt from the ~~tax and from the motor fuel transportation infrastructure assessment taxes and assessments authorized under this section, in all cases not unless~~ exempt from the tax under the laws of the United States at the time of filing the report required by section 3108 of this title, each distributor shall pay to the ~~commissioner~~ Commissioner:

(A) a tax of ~~\$0.19~~ \$0.182 upon each gallon of motor fuel sold by the distributor; and

(B) the following assessments, which shall be levied on the tax-adjusted retail price of gasoline as defined herein:

~~(i) a motor fuel transportation infrastructure assessment in the amount of two percent of the tax-adjusted retail price upon each gallon of motor fuel sold by the distributor, exclusive of: all federal and state taxes, the petroleum distributor licensing fee established by 10 V.S.A. § 1942, and the motor fuel transportation infrastructure assessment authorized by this section. The retail price shall be based upon the average retail prices for regular gasoline determined and published by the department of public service. The retail price applicable for the January-March quarter shall be the average of the retail prices published by the department of public service the prior October, November, and December; and the retail price applicable in each succeeding calendar quarter shall be equal to the average of the retail prices published by the department of public service in the preceding quarter; and~~

~~(ii) a fuel tax assessment, which shall be used exclusively for transportation purposes and not be transferred from the Transportation Fund, that is the greater of:~~

~~(I) \$0.067 per gallon; or~~

~~(II) two percent of the tax-adjusted retail price or \$0.09 per gallon, whichever is less, upon each gallon of motor fuel sold by the distributor.~~

~~(2) For the purposes of subdivision (1)(B) of this subsection, the retail price applicable for a quarter shall be the average of the monthly retail prices for regular gasoline determined and published by the Department of Public Service for the three months of the preceding quarter. The tax-adjusted retail price applicable for a quarter shall be the retail price exclusive of all federal and state taxes and assessments, and the petroleum distributor licensing fee established by 10 V.S.A. § 1942, at the rates applicable in the preceding quarter.~~

~~(3) The consolidated executive branch fee report and request for transportation made pursuant to 32 V.S.A. § 605(b)(1) may recommend an adjustment in the tax specified in subdivision (1)(A) of this subsection to reflect changes in the Consumer Price Index for All Urban Consumers.~~

~~(4) The distributor shall also pay to the commissioner a tax and a motor fuel transportation infrastructure assessment in the same amounts Commissioner the tax and assessments specified in this subsection upon each gallon of motor fuel used within the state State by him or her.~~

* * *

Sec. 23a. 23 V.S.A. § 3106 is amended to read:

§ 3106. IMPOSITION, RATE, AND PAYMENT OF TAX

(a)(1) Except for sales of motor fuels between distributors licensed in this State, which sales shall be exempt from the taxes and assessments authorized under this section, unless exempt under the laws of the United States at the time of filing the report required by section 3108 of this title, each distributor shall pay to the Commissioner:

(A) a tax of ~~\$0.182~~ \$0.121 upon each gallon of motor fuel sold by the distributor; and

(B) the following assessments, which shall be levied on the tax-adjusted retail price of gasoline as defined herein:

(i) a motor fuel transportation infrastructure assessment in the amount of two percent of the tax-adjusted retail price upon each gallon of motor fuel sold by the distributor; and

(ii) a fuel tax assessment, which shall be used exclusively for transportation purposes and not be transferred from the Transportation Fund, that is the greater of:

(I) ~~\$0.067~~ \$0.134 per gallon; or

(II) ~~two~~ four percent of the tax-adjusted retail price or ~~\$0.09~~ \$0.18 per gallon, whichever is less, upon each gallon of motor fuel sold by the distributor.

* * *

Sec. 24. MOTOR FUEL ASSESSMENTS: MAY 1, 2013–
SEPTEMBER 30, 2013

Notwithstanding the provisions of 23 V.S.A. § 3106(a)(1)(B) and 3106(a)(2), from May 1, 2013 through September 30, 2013, the motor fuel transportation infrastructure assessment required under 23 V.S.A. § 3106(a)(1)(B)(i) shall be \$0.0656 per gallon, and the fuel tax assessment required under 23 V.S.A. § 3106(a)(1)(B)(ii) shall be \$0.067 per gallon.

Second: By striking out Sec. 31 in its entirety and inserting in lieu thereof the following:

* * * Effective Dates * * *

Sec. 31. EFFECTIVE DATES

(a) This section, Sec. 8a (Amtrak Vermont services), Sec. 10 (authority to issue transportation infrastructure bonds), Sec. 15a (addition to state highway

system), and Sec. 30a (school bus pilot program) of this act shall take effect on passage.

(b) Secs. 23, 24, 25, and 26 of this act shall take effect on May 1, 2013.

(c) Secs. 22 (taxation of diesel) and 23a (taxation of motor fuel) of this act shall take effect on July 1, 2014.

(d) All other sections of this act shall take effect on July 1, 2013.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment to the Senate proposal of amendment?, was decided in the affirmative.

Rules Suspended; Bill Committed

H. 107.

Pending entry on the Calendar for notice, on motion of Senator Ayer, the rules were suspended and House bill entitled:

An act relating to health insurance, Medicaid, and the Vermont Health Benefit Exchange.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Health and Welfare, Senator Ayer moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Finance with the report of the Committee on Health and Welfare *intact*,

Which was agreed to.

Thereupon, on motion of Senator Campbell, the rules were suspended, and the bill was ordered messaged to the House forthwith.

Bill Referred to Committee on Finance

H. 533.

House bill of the following title, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule was referred to the Committee on Finance:

An act relating to capital construction and state bonding.

Rules Suspended; Bill Committed

S. 37.

Appearing on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and Senate bill entitled:

An act relating to the creation of a tax increment financing district.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Finance, Senator Campbell moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Rules with the report of the Committee on Finance *intact*,

Which was agreed to.

Bill Referred

House bill of the following title was read the first time and referred:

H. 536.

An act relating to the Adjutant and Inspector General and the Vermont National Guard.

To the Committee on Rules.

Bill Passed in Concurrence with Proposals of Amendment

H. 39.

House bill entitled:

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

Was taken up.

Thereupon, pending third reading of the bill, Senator Rodgers moved to amend the Senate proposal of amendment as follows:

First: In Sec. 6, 30 V.S.A. § 248, by striking out subsection (f) and inserting in lieu thereof a new subsection (f) to read as follows:

(f) ~~However, the;~~

(1) The petitioner shall submit a notice of intent to construct such a facility within the State to the municipal and regional planning commissions at least six months prior to an application for a certificate of public good under this section. The Board shall specify by rule the content of such a notice of intent, which shall be designed to provide a reasonable description of the facility to be built, its size and location, and related infrastructure to be constructed. A notice of intent under this subdivision shall not be required for a facility that the Board determines to be eligible for treatment under subsection (j) (facilities of limited size and scope) of this section.

(2) The petitioner shall submit plans for the construction of such a facility within the state must be submitted by the petitioner State to the municipal and regional planning commissions no less than 45 days prior to

application for a certificate of public good under this section, unless the municipal and regional planning commissions shall waive such requirement. Such municipal or regional planning commission may hold a public hearing on the proposed plans. Such commissions ~~shall~~ may make recommendations, ~~if any,~~ to the ~~public service board~~ Public Service Board and to the petitioner ~~at least seven days prior to filing of the petition~~ within 21 days after the date the petition is filed with the ~~public service board~~ Board.

Second: By adding a new section to be numbered Sec. 6a to read as follows:

Sec. 6a. APPLICATION

(a) In Sec. 6, 30 V.S.A. § 248(f)(1) (notice of intent) shall apply to applications for a certificate of public good filed with the Public Service Board on or after January 1, 2014 and shall not apply to complete applications filed with the Board before that date.

(b) The Public Service Board shall commence rulemaking under 30 V.S.A. § 248(f)(1) (notice of intent) within 21 days after this act's effective date and shall make all reasonable efforts to adopt a final rule under that section before January 1, 2014.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Galbraith moved that the Senate proposal of amendment be amended as follows:

First: After Sec. 5, by striking out the internal caption and inserting in lieu thereof a new internal caption and inserting a new section to be numbered Sec. 5a to read as follows:

* * * CPG: Recommendations of Municipal and Regional Planning
Commissions; Wind Generation in Windham * * *

Sec. 5a. FINDINGS

The General Assembly finds that:

(1) In a 2006 survey, 287 residents of the Town of Windham opposed the siting of a wind generation plant, with 15 residents in favor.

(2) In 2008, the Town of Windham included the following statement in Sec. B.1 of its municipal plan adopted under 24 V.S.A. chapter 117:

Commercial wind energy systems (wind farms) are defined as those that are regulated under Section 248 of Title 30 of the Vermont Statutes but not including net metering applications (as per 30 V.S.A. §219a) or temporary meteorological towers. These are generally large-scale projects with multiple turbines designed

to generate electricity. It is the policy of the Town of Windham that commercial wind energy systems are prohibited throughout all of town.

(3) On June 2, 2012, Gov. Peter Shumlin, speaking on Vermont Public Television, stated:

I have always said and I will always say I believe that no energy project should be built in a town in Vermont where the residents of that community don't vote affirmatively to host it. We shouldn't send them into towns that don't want them. So the answer is, I've been clear on this right from the beginning. Lowell is a great example. The people of Lowell voted, overwhelmingly, to have the Lowell project built. I support the Lowell project. If the people of any other project in Vermont in their community, in that town vote no, I support it not going in that community. We shouldn't build energy projects where they are not wanted.

(4) On October 9, 2012, the Department of Public Service filed a letter with the Public Service Board in Docket No. 7905 that opposed granting a certificate of public good (CPG) for wind meteorological stations to be sited in Windham, stating that "the Board should defer to the clear mandate of the Town Plan and not grant a CPG for the temporary siting of any MET towers in Windham."

Second: In Sec. 6, 30 V.S.A. § 248, after the second ellipsis, by inserting subsection (q) to read as follows:

(q) Notwithstanding the Board's assessment of the general good of the State under subsection (a) of this section or the requirement of subdivision (b)(1) of this section to give due consideration to the land conservation measures in the plan of any affected municipality, the Board may issue a certificate of public good for a wind generation plant to be located in the Town of Windham only if it finds, in addition to all other criteria of this section, that the plant is in conformance with the duly adopted municipal plan under 24 V.S.A. chapter 117. For the purpose of this subsection, "plant" shall have the same meaning as under section 8002 of this title.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senator Galbraith?, Senator Rodgers moved to substitute a proposal of amendment for the proposal of amendment of Senator Galbraith, as follows:

First: In Sec. 6, 30 V.S.A. § 248, after the first ellipsis, by inserting subsection (b) to read as follows:

(b) Before the ~~public service board~~ Public Service Board issues a certificate of public good as required under subsection (a) of this section, it shall find that the purchase, investment, or construction:

(1) with respect to an in-state facility, will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. However, with respect to an in-state wind generation plant exceeding 2.2 megawatts, the plant shall be in conformance with the duly adopted plan under 24 V.S.A. chapter 117 for the municipality in which the plant is to be located if the plan was adopted prior to the effective date of this section. However, with respect to a natural gas transmission line subject to ~~board~~ Board review, the line shall be in conformance with any applicable provisions concerning such lines contained in the duly adopted regional plan; and, in addition, upon application of any party, the ~~board~~ Board shall condition any certificate of public good for a natural gas transmission line issued under this section so as to prohibit service connections that would not be in conformance with the adopted municipal plan in any municipality in which the line is located;

* * *

Second: By adding a new section to be numbered Sec. 6a to read as follows:

Sec. 6a. 30 V.S.A. § 248(b) is amended to read:

(b) Before the Public Service Board issues a certificate of public good as required under subsection (a) of this section, it shall find that the purchase, investment, or construction:

(1) with respect to an in-state facility, will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. ~~However, with respect to an in-state wind generation plant exceeding 2.2 megawatts, the plant shall be in conformance with the duly adopted plan under 24 V.S.A. chapter 117 for the municipality in which the plant is to be located if the plan was adopted prior to the effective date of this section.~~ However, with respect to a natural gas transmission line subject to Board review, the line shall be in conformance with any applicable provisions concerning such lines contained in the duly adopted regional plan; and, in addition, upon application of any party, the Board shall condition any

certificate of public good for a natural gas transmission line issued under this section so as to prohibit service connections that would not be in conformance with the adopted municipal plan in any municipality in which the line is located;

* * *

Third: By striking out Sec. 16 (effective date) in its entirety and inserting in lieu thereof a new Sec. 16 to read as follows:

Sec. 16. EFFECTIVE DATES

This act shall take effect on passage except that Sec. 6a (Board findings for a certificate of public good) shall take effect on July 1, 2014.

Thereupon, pending the question, Shall the proposal of amendment of Senator Rodgers be substituted for the proposal of amendment of Senator Galbraith?, Senator Ashe moved that the bill be ordered to lie.

Thereupon, Senator Ashe requested and was granted leave to withdraw his motion.

Thereupon, Senator Rodgers requested and was granted leave to withdraw his proposal of amendment.

Thereupon, Senator Galbraith requested and was granted leave to withdraw his proposal of amendment.

Thereupon, pending third reading of the bill, Senators Bray and Ayer moved that the Senate proposal of amendment be amended as follows:

First: In Sec. 6, 30 V.S.A. § 248, before the first ellipsis, by inserting the following:

(a)(1) No company, as defined in section 201 of this title, may:

* * *

(4)(A) With respect to a facility located in the ~~state~~ State, the ~~public service board~~ Public Service Board shall hold a nontechnical public hearing on each petition for such finding and certificate in at least one county in which any portion of the construction of the facility is proposed to be located.

(B) The ~~public service board~~ Public Service Board shall hold technical hearings at locations which it selects.

(C) At the time of filing its application with the ~~board~~ Board, copies shall be given by the petitioner to the ~~attorney general~~ Attorney General and the ~~department of public service~~ Department of Public Service, and, with respect to facilities within the ~~state~~ State, the ~~department of health, agency of natural resources, historic preservation division, agency of transportation, the~~

~~agency of agriculture, food and markets~~ Department of Health, Agency of Natural Resources, Division for Historic Preservation, Agency of Transportation, and Agency of Agriculture, Food and Markets and to the chairperson or director of the municipal and regional planning commissions and the municipal legislative body for each town and city in which the proposed facility will be located. At the time of filing its application with the ~~board~~ Board, the petitioner shall give the ~~byways advisory council~~ Byways Advisory Council notice of the filing.

(D) Notice of the public hearing shall be published and maintained on the board's website for at least 12 days before the day appointed for the hearing. Notice of the public hearing shall be published once in a newspaper of general circulation in the county or counties in which the proposed facility will be located, and the notice shall include an Internet address where more information regarding the proposed facility may be viewed.

(E) The ~~agency of natural resources~~ Agency of Natural Resources shall appear as a party in any proceedings held under this subsection, shall provide evidence and recommendations concerning any findings to be made under subdivision (b)(5) of this section, and may provide evidence and recommendations concerning any other matters to be determined by the ~~byways advisory council~~ Byways Advisory Council in such a proceeding.

(F) With respect to an in-state facility, the legislative body and municipal and regional planning commissions for each municipality in which the proposed facility will be located shall be parties to any proceedings held under this subsection (a) and may provide evidence and recommendations on any findings to be made under this section.

(i) If requested by letter submitted to the Board by such a body or commission on or before 15 days after filing of an application for a certificate of public good under this subsection (a), the Board shall stay any proceedings on the application for a period of 45 days from the date on which the application was filed. Such body or commission shall provide a copy of the letter to the petitioner and to those persons entitled to receive a copy of the application under subdivision (C) of this subdivision (4).

(ii) During the 45-day period under this subdivision (4)(F), the Board may schedule a prehearing conference to occur after the end of the period and may issue a notice of that prehearing conference.

(iii) The 45-day period under this subdivision (4)(F) shall not be required for a facility that the Board determines to be eligible for treatment under subsection (j) (facilities of limited size and scope) of this section.

(G) The Public Service Board shall provide written guidance on participation in proceedings under this section to the legislative body and municipal and regional planning commissions for each municipality in which the proposed facility will be located and to all persons who seek to become a party to such a proceeding.

Second: In Sec. 6, 30 V.S.A. § 248, in subsection (f), after the last sentence, by inserting the following: However, if the 45-day period under subdivision (a)(4)(F) of this section is invoked, such recommendations may be made at the end of that period.

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment.

Bill Passed

S. 119.

Senate bill of the following title was read the third time and passed:

An act relating to amending perpetual conservation easements.

Bills Passed in Concurrence with Proposals of Amendment

House bills of the following titles were severally read the third time and passed in concurrence with proposals of amendment:

H. 401. An act relating to municipal and regional planning and flood resilience.

H. 406. An act relating to listers and assessors.

Bills Passed in Concurrence

House bills of the following titles were severally read the third time and passed in concurrence:

H. 527. An act relating to approval of the adoption and the codification of the charter of the Town of Northfield.

Third Reading Ordered

H. 518.

Senator White, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to miscellaneous amendments to Vermont retirement laws.

Reported that the bill ought to pass in concurrence.

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

House Proposal of Amendment Concurred In

S. 73.

House proposal of amendment to Senate bill entitled:

An act relating to the moratorium on home health agency certificates of need.

Was taken up.

The House proposes to the Senate to amend the bill as follows:

In Sec. 1, 2010 Acts and Resolves No. 83, Sec. 2, subsection (d), before the period, by inserting the following: or to a licensed home for the terminally ill as defined in 33 V.S.A. § 7102

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Rules Suspended; Bills Messaged

On motion of Senator Campbell, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 119, H. 401, H. 406, H. 527.

Adjournment

On motion of Senator Campbell, the Senate adjourned until one o'clock in the afternoon on Thursday, April 25, 2013.