

Journal of the Senate

FRIDAY, MAY 3, 2013

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Bill Referred

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

H. 270.

An act relating to providing access to publicly funded prekindergarten education.

To the Committee on Rules.

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. 136. An act relating to cost-sharing for preventive services.

H. 182. An act relating to search and rescue.

Bill Ordered to Lie

H. 522.

Senate bill entitled:

An act relating to strengthening Vermont's response to opioid addiction and methamphetamine abuse.

Was taken up.

Thereupon, pending the question Shall the bill pass in concurrence?, on motion of Senator Sears, the bill was ordered to lie.

Proposals of Amendment; Third Reading Ordered

H. 26.

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

An act relating to technical corrections.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: By inserting a new section to be numbered Sec. 6 to read as follows:

Sec. 6. 10 V.S.A. § 1106(a) is amended to read:

(a) There is hereby established a special fund to be known as the Vermont ~~unsafe dam revolving loan fund~~ Unsafe Dam Revolving Loan Fund which shall be used to provide grants and loans to municipalities, nonprofit entities, and private individuals, pursuant to rules ~~proposed~~ adopted by the ~~agency of natural resources and enacted by the general assembly~~ Agency of Natural Resources, for the reconstruction, repair, removal, breaching, draining, or other action necessary to reduce the threat of a dam or portion of a dam determined to be unsafe pursuant to section 1095 of this chapter.

* * *

Second: In Sec. 24 by striking out the introductory language “2012 Acts and Resolves No. 40, Sec. 12(b)” and inserting in lieu thereof of the following: 2011 Acts and Resolves No. 40, Sec. 12(b), as amended by 2012 Acts and Resolves No. 104, Sec. 8

Third: By inserting a new section to be numbered Sec. 30 to read as follows:

Sec. 30. LEGISLATIVE COUNCIL; STATUTORY REVISION; PHYSICIAN ASSISTANTS

The Office of Legislative Council, in its statutory revision capacity, is directed to make amendments to the Vermont Statutes Annotated as are necessary to change the term “physician’s assistant” to “physician assistant” and the term “physician’s assistants” to “physician assistants” and to correct any reference to physician assistant certification to refer instead to physician assistant licensure in order to conform with the change in the terminology of the title of physician assistants and their type of regulation as set forth in 2011 Acts and Resolves No. 61, Sec. 4. Such changes may also be made when new legislation is proposed or in preparing an individual act for codification in the Vermont Statutes Annotated or for publication in the Acts and Resolves.

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

And that the bill ought to pass in concurrence with such proposals of amendment.

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

Joint Resolution Adopted in Concurrence**J.R.H. 9.**

Joint House resolution entitled:

Joint resolution authorizing the 2013 Green Mountain Boys' State educational program to use the State House.

Having been placed on the Calendar for action, was taken up and adopted in concurrence.

Message from the House No. 58

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. 270. An act relating to providing access to publicly funded prekindergarten education.

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

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

S. 31. An act relating to prohibiting a court from consideration of interests in revocable trusts or wills when making a property settlement in a divorce proceeding.

S. 77. An act relating to patient choice and control at end of life.

S. 88. An act relating to telemedicine services delivered outside a health care facility.

S. 150. An act relating to miscellaneous amendments to laws related to motor vehicles.

And has passed the same in concurrence with proposals of amendment in the adoption of which the concurrence of the Senate is requested.

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

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.

And has adopted the same in concurrence with proposal of amendment in the adoption of which the concurrence of the Senate is requested.

The House has considered Senate proposals of amendment to the following House bills:

H. 2. An act relating to the Governor's Snowmobile Council.

H. 513. An act relating to the Department of Financial Regulation.

And has severally concurred therein.

Message from the House No. 59

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 entitled:

H. 530. An act relating to making appropriations for the support of government.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. Heath of Westford
Rep. Johnson of South Hero
Rep. O'Brien of Richmond.

The House has considered Senate proposal of amendment to House bill of the following title:

H. 95. An act relating to unclaimed life insurance benefits.

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

Appointments Confirmed

The following Gubernatorial appointments were confirmed separately by the Senate, upon full reports given by the Committees to which they were referred:

Ide, Robert of Peacham - Commissioner, Motor Vehicles, Department of - 3/1/2013, to 2/28/2015.

Searles, Brian of Burlington - Secretary, Transportation, Agency of - 3/1/2013, to 2/28/2015.

Flynn, Keith of Derby Line - Commissioner, Public Safety Department - 3/1/2013, to 2/28/2019.

Noonan, Annie of Montpelier - Commissioner, Labor, Department of - 1/7/2011, to 2/28/2013.

Appointment Confirmed

Under suspension of the rules (and particularly, Senate Rule 93), as moved by Senator White, the following Gubernatorial appointments were confirmed together as a group by the Senate, without reports given by the Committees to which they were referred and without debate:

Richardson, Cory of East Montpelier - Member, Vermont State Housing Authority - 3/1/2013, to 2/28/2018.

House Proposal of Amendment; Consideration Postponed

S. 14.

House proposal of amendment to Senate bill entitled:

An act relating to payment of fair-share fees.

Was taken up.

* * * State Employees * * *

Sec. 1. 3 V.S.A. § 902 is amended to read:

§ 902. DEFINITIONS

~~For the purposes of~~ As used in this chapter:

* * *

(19) “Collective bargaining service fee” means a fee deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, which is paid to the employee organization which is the exclusive bargaining agent for the bargaining unit of the employee. The collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization, and shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization, and shall be used to defray the costs ~~incurred by the employee organization in fulfilling its duty to represent the employees in their employment relations with the state~~ of chargeable activities.

Sec. 2. 3 V.S.A. § 903 is amended to read:

§ 903. EMPLOYEES' RIGHTS AND DUTIES; PROHIBITED ACTS

(a) Employees shall have the right to self-organization; to form, join, or assist employee organizations; to bargain collectively through representatives of their own choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities, except as provided in ~~subsection (b)~~ subsections (b) and (c) of this section, and to appeal grievances as provided in this chapter.

(b) ~~No~~ A state employee may not strike or recognize a picket line of an employee or labor organization while in the performance of his or her official duties.

(c) An employee who exercises the right not to join the employee organization representing the employee's collective bargaining unit shall pay the collective bargaining service fee to the representative of the bargaining unit in the same manner as employees who pay membership fees to the representative. The employee organization shall indemnify and hold the employer harmless from any and all claims stemming from the implementation or administration of the collective bargaining service fee. Nothing in this section shall require an employer to discharge an employee who does not pay the collective bargaining service fee.

(d) All employers, their officers, agents, and employees or representatives shall exert every reasonable effort to make and maintain agreements concerning matters allowable under section 904 of this title and to settle all disputes, whether arising out of the application of those agreements, or growing out of any dispute between the employer and the employees thereof.

Sec. 3. 3 V.S.A. § 904 is amended to read:

§ 904. SUBJECTS FOR BARGAINING

(a) All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining except those matters which are prescribed or controlled by statute. Such matters appropriate for collective bargaining to the extent they are not prescribed or controlled by statute include ~~but are not limited to:~~

* * *

(9) ~~Rules~~ rules and regulations for personnel administration, except the following: rules and regulations relating to persons exempt from the classified service under section 311 of this title and rules and regulations relating to applicants for employment in state service and employees in an initial

probationary status, including any extension or extensions thereof provided such rules and regulations are not discriminatory by reason of an applicant's race, color, creed, sex, or national origin; and

(10) ~~A collective bargaining service fee~~ the manner in which to enforce an employee's obligation to pay the collective bargaining service fee.

* * *

Sec. 4. 3 V.S.A. § 941 is amended to read:

§ 941. UNIT DETERMINATION, CERTIFICATION, AND REPRESENTATION

* * *

(k) Nothing in this chapter requires an individual to seek the assistance of his or her collective bargaining unit or its representative(s) in any grievance proceeding. He or she may represent himself or herself or be represented by counsel of his or her own choice or may avail himself or herself of the unit representative in grievance proceedings. ~~Employees who are eligible for membership in a collective bargaining unit who exercise their right not to join such unit may upon agreement with the unit representative avail themselves of the services of the unit representative(s) in grievance proceedings upon payment to the unit of a fee established by the unit representative, provided that in the event a collective bargaining service fee is negotiated, the unit representative shall represent nonmember employees in grievance proceedings without charge.~~

Sec. 5. 3 V.S.A. § 962 is amended to read:

§ 962. EMPLOYEES

It shall be an unfair labor practice for an employee organization or its agents:

* * *

(10) To charge a collective bargaining fee ~~negotiated pursuant to section 904 of this title~~ unless such employee organization has established and maintained a procedure to provide nonmembers with:

(A) an audited financial statement that identifies the major categories of expenses, and divides them into chargeable and nonchargeable expenses;

(B) an opportunity to object to the amount of the agency fee sought, any amount reasonably in dispute to be placed in escrow;

(C) prompt arbitration by the board to resolve any objection over the amount of the collective bargaining fee.

Sec. 5a. 3 V.S.A. § 1008 is added to read:

§ 1008. CONTRACT RATIFICATION; ANNUAL VOTE

Annually, the employees of the bargaining unit shall meet and discuss whether employees who have chosen not to join the employee organization shall be allowed to vote on the ratification of any collective bargaining agreement entered into pursuant to this chapter. After discussion, employees that are members of the employee organization shall vote on whether to allow employees who have chosen not to join the employee organization to vote on the ratification of any collective bargaining agreement.

* * * Judiciary Employees * * *

Sec. 6. 3 V.S.A. § 1011 is amended to read:

§ 1011. DEFINITIONS

~~For the purposes of~~ As used in this chapter:

* * *

(4) “Collective bargaining service fee,” means a fee deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, and that fee is paid to the employee organization that is the exclusive bargaining agent for the bargaining unit of the employee. A collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization; shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization; and shall be used to defray the costs ~~incurred by the employee organization in fulfilling its duty to represent the employees in their employment relations with the employer~~ of chargeable activities.

* * *

Sec. 7. 3 V.S.A. § 1012 is amended to read:

§ 1012. EMPLOYEES’ RIGHTS AND DUTIES; PROHIBITED ACTS

(a) Employees shall have the right to self-organization; to form, join, or assist employee organizations; to bargain collectively through their chosen representatives; to engage in concerted activities of collective bargaining or other mutual aid or protection; to refrain from any or all those activities, except as provided in ~~subsection (b)~~ subsections (b) and (c) of this section; and to appeal grievances as provided in this chapter.

(b) ~~No~~ An employee may not strike or recognize a picket line of an employee organization while performing the employee’s official duties.

(c) An employee who exercises the right not to join the employee organization representing the employee's certified unit pursuant to section 1021 of this title shall pay a collective bargaining service fee to the representative of the bargaining unit in the same manner as employees who pay membership fees to the representative. The employee organization shall indemnify and hold the employer harmless from any and all claims stemming from the implementation or administration of the collective bargaining service fee. Nothing in this section shall require an employer to discharge an employee who does not pay the collective bargaining service fee.

~~(e)~~(d) The employer and employees and the employee's representative shall exert every reasonable effort to make and maintain agreements concerning matters allowable under section 1013 of this title and to settle all disputes, whether arising out of the application of those agreements or growing out of any dispute between the employer and the employees.

Sec. 8. 3 V.S.A. § 1013 is amended to read:

§ 1013. SUBJECTS FOR BARGAINING

All matters relating to the relationship between the employer and employees are subject to collective bargaining, to the extent those matters are not prescribed or controlled by law, including:

* * *

(10) A collective bargaining service fee the manner in which to enforce an employee's obligation to pay the collective bargaining service fee.

Sec. 9. 3 V.S.A. § 1027 is amended to read:

§ 1027. EMPLOYEES

It shall be an unfair labor practice for an employee organization or its agents:

* * *

(10) To charge a ~~negotiated~~ collective bargaining fee unless the employee organization has established and maintained a procedure to provide nonmembers with all the following:

(A) An audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses.

(B) An opportunity to object to the amount of the fee requested and to place in escrow any amount reasonably in dispute.

(C) Prompt arbitration by the board to resolve any objection over the amount of the collective bargaining fee.

Sec. 9a. 3 V.S.A. § 1044 is added to read:

§ 1044. CONTRACT RATIFICATION; ANNUAL VOTE

Annually, the employees of the bargaining unit shall meet and discuss whether employees who have chosen not to join the employee organization shall be allowed to vote on the ratification of any collective bargaining agreement entered into pursuant to this chapter. After discussion, employees that are members of the employee organization shall vote on whether to allow employees who have chosen not to join the employee organization to vote on the ratification of any collective bargaining agreement.

* * * Teachers * * *

Sec. 10. 16 V.S.A. § 1981 is amended to read:

§ 1981. DEFINITIONS

As used in this chapter unless the context requires otherwise:

* * *

(7) ~~“Agency fee” means a fee for representation in collective bargaining, not exceeding teachers’ or administrators’ organization dues, payable to the organization which is the exclusive bargaining agent for teachers or administrators in a bargaining unit, from individuals who are not members of the organization~~ means a fee deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, which is paid to the employee organization that is the exclusive bargaining agent for the bargaining unit of the employee. The collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization and shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization and shall be used to defray the costs of chargeable activities.

* * *

Sec. 11. 16 V.S.A. § 1982 is amended to read:

§ 1982. RIGHTS

(a) Teachers shall have the right to or not to join, assist, or participate in any teachers’ organization of their choosing. However, ~~teachers may be required to pay an agency fee who choose not to join the teachers’ organization, recognized as the exclusive representative pursuant to an agreement negotiated under section 1992 of this chapter, shall pay the agency~~

fee in the same manner as teachers who choose to join the teachers' organization pay membership fees. The teachers' organization shall indemnify and hold the school board harmless from any and all claims stemming from the implementation or administration of the agency fee.

(b) Principals, assistant principals, and administrators other than superintendent and assistant superintendent shall have the right to or not to join, assist, or participate in any administrators' organization or as a separate unit of any teachers' organization of their choosing. However, subject to the provisions of subsection (d) of this section, administrators other than the superintendent and assistant superintendent may be required to pay an agency fee who choose not to join the administrators' organization, recognized as the exclusive representative pursuant to an agreement negotiated under section 1992 of this chapter, shall pay the agency fee in the same manner as administrators who choose to join the administrators' organization pay membership fees. The administrators' organization agrees to indemnify and hold the school harmless from any and all claims stemming from the implementation or administration of the agency fee.

(c) ~~Neither the~~ The school board ~~nor~~ or any employee of the school board serving in any capacity, ~~nor~~ or any other person or organization shall not interfere with, restrain, coerce, or discriminate in any way against or for any teacher or administrator engaged in activities protected by this legislation.

(d) A teachers' or administrators' organization shall not charge the agency fee unless it has established and maintained a procedure to provide nonmembers with:

(1) an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;

(2) an opportunity to object to the amount of the agency fee sought, and to place in escrow any amount reasonably in dispute;

(3) prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the teachers' or administrators' organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency fee. The costs of arbitration shall be paid by the teachers' or administrators' organization.

(e) Nothing in this section shall require an employer to discharge an employee who does not pay the agency fee.

Sec. 12. 16 V.S.A. § 2004 is amended to read:

§ 2004. AGENDA

The school board, through its negotiations council, shall, upon request, negotiate with representatives of the teachers' or administrators' organization negotiations council on matters of salary, related economic conditions of employment, ~~an~~ the manner in which it will enforce an employee's obligation to pay the agency service fee, procedures for processing complaints and grievances relating to employment, and any mutually agreed upon matters not in conflict with the statutes and laws of the state State of Vermont.

* * * Certain Private Sector Employees * * *

Sec. 13. 21 V.S.A. § 1502 is amended to read:

§ 1502. DEFINITIONS

~~In~~ As used in this chapter the following words shall have the following meaning:

* * *

(14) "Agency fee" means a fee deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, which is paid to the employee organization that is the exclusive bargaining agent for the bargaining unit of the employee. A collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization and shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization and shall be used to defray the costs of chargeable activities.

Sec. 13a. 16 V.S.A. § 2028 is added to read:

§ 2028. CONTRACT RATIFICATION; ANNUAL VOTE

Annually, the employees of the bargaining unit shall meet and discuss whether employees who have chosen not to join the employee organization shall be allowed to vote on the ratification of any collective bargaining agreement entered into pursuant to this chapter. After discussion, employees that are members of the employee organization shall vote on whether to allow employees who have chosen not to join the employee organization to vote on the ratification of any collective bargaining agreement.

Sec. 14. 21 V.S.A. § 1503 is amended to read:

§ 1503. RIGHTS OF EMPLOYEES; MUTUAL DUTY TO BARGAIN

(a) Employees shall have the right to self-organization; to form, join, or assist labor organizations; to bargain collectively through representatives of

their own choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in ~~section~~ subsection 1621(a) of this title. An employee who exercises the right not to join the labor organization representing the employee's certified unit pursuant to section 1581 of this title shall, subject to subsection (b) of this section, pay the agency fee to the representative of the bargaining unit in the same manner as employees who pay membership fees to the representative. The labor organization agrees to indemnify and hold the employer harmless from any and all claims stemming from the implementation or administration of the agency fee.

(b) A labor organization shall not charge the agency fee unless it has established and maintained a procedure to provide nonmembers with:

(1) an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;

(2) an opportunity to object to the amount of the agency fee sought, and to place in escrow any amount reasonably in dispute;

(3) prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the teachers' or administrators' organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency fee. The costs of arbitration shall be paid by the labor organization.

Sec. 15. 21 V.S.A. § 1621 is amended to read:

§ 1621. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer:

* * *

(6) Nothing in this chapter or any other statute of this state shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this subsection (a) as an unfair labor practice) to require as a condition of employment membership in such labor organization on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 1583 of this chapter, in the appropriate collective bargaining unit covered by such agreement when made; and (ii) unless following an election held as provided in section 1584 of

this chapter within one year preceding the effective date of such agreement, the ~~board~~ Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement. Nothing in this section shall require an employer to discharge an employee in the absence of such an agreement. ~~No~~ An employer shall not justify any discrimination against an employee for nonmembership in a labor organization:

(A) ~~If~~ if the employer has reasonable grounds for believing that membership was not available to the employee on the same terms and conditions generally applicable to other members; or

(B) ~~If~~ if the employer has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

* * *

(b) It shall be an unfair labor practice for a labor organization or its agents:

* * *

(5) To require employees covered by a the agency fee requirement or other union security agreement authorized under subsection (a) of this section to pay, as a condition precedent to becoming a member of such organization, a fee in an amount which the ~~board~~ Board finds excessive or discriminatory under all the circumstances. In making such a finding, the ~~board~~ Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected.

* * *

Sec. 15a. 21 V.S.A. § 1624 is added to read:

§ 1624. CONTRACT RATIFICATION; ANNUAL VOTE

Annually, the employees of the bargaining unit shall meet and discuss whether employees who have chosen not to join the employee organization shall be allowed to vote on the ratification of any collective bargaining agreement entered into pursuant to this chapter. After discussion, employees that are members of the employee organization shall vote on whether to allow employees who have chosen not to join the employee organization to vote on the ratification of any collective bargaining agreement.

* * * Municipal Employees * * *

Sec. 16. 21 V.S.A. § 1722 is amended to read;

§ 1722. DEFINITIONS

~~For the purposes of~~ As used in this chapter:

(1) “Agency service fee” means a fee ~~for representation in collective bargaining not exceeding employee organization dues, payable to an employee organization which is the exclusive bargaining agent for employees in a bargaining unit from individuals who are not members of the employee organization~~ a fee deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, which is paid to the employee organization that is the exclusive bargaining agent for the bargaining unit of the employee. A collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization and shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization and shall be used to defray the costs of chargeable activities.

* * *

Sec. 17. 21 V.S.A. § 1726 is amended to read:

§ 1726. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer:

* * *

(8) ~~Nothing in this chapter or any other statute of this state shall preclude a municipal employer from making an agreement with the exclusive bargaining agent to require an agency service~~ A municipal employer and the exclusive bargaining agent may agree to require the agency service fee to be paid as a condition of employment, or to require as a condition of employment membership in such employee organization on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is the later. Nothing in this section shall require an employer to discharge an employee in the absence of such an agreement. No ~~A~~ A municipal employer shall not discharge or discriminate against any employee for nonpayment of ~~an~~ the agency service fee or for nonmembership in an employee organization:

(A) ~~If~~ if the employer has reasonable grounds for believing that membership was not available to the employee on the same terms and conditions generally applicable to other members; or

(B) ~~If~~ if the employer has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

(b) It shall be an unfair labor practice for an employee organization or its agents:

* * *

(6) ~~To~~ to require employees covered by ~~an~~ the agency service fee ~~agreement~~ requirement or other union security agreement authorized under subsection (a) of this section to pay an initiation fee which the ~~board~~ Board finds excessive or discriminatory under all the circumstances, including the practices and customs of employee organizations representing municipal employees; and the wages paid to the employees affected.

* * *

(12) to charge the agency service fee unless the employee organization has established and maintained a procedure to provide nonmembers with all the following:

(A) an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;

(B) an opportunity to object to the amount of the fee requested and to place in escrow any amount reasonably in dispute; and

(C) prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the employee organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency service fee. The costs of arbitration shall be paid by the employee organization.

Sec. 18. 21 V.S.A. § 1734 is amended to read:

§ 1734. MISCELLANEOUS

(a) Municipal employees and exclusive bargaining agents are authorized to negotiate provisions in a collective bargaining agreement calling for:

(1) ~~Payroll~~ payroll deduction of employee organization dues and initiation fees; ~~or an agency service fee;~~

(2) ~~Binding~~ binding arbitration of grievances involving the interpretation or application of a written collective bargaining agreement. The cost of arbitration shall be shared equally by the parties.

* * *

(d) In the absence of an agreement requiring an employee to be a member of the employee organization, an employee choosing not to be a member of the employee organization shall pay the agency service fee in the same manner as employees who choose to join the employee organization pay dues. The employee organization shall indemnify and hold the employer harmless from any and all claims stemming from the implementation or administration of the agency service fee.

Sec. 18a. 21 V.S.A. § 1736 is added to read:

§ 1736. CONTRACT RATIFICATION; ANNUAL VOTE

Annually, the employees of the bargaining unit shall meet and discuss whether employees who have chosen not to join the employee organization shall be allowed to vote on the ratification of any collective bargaining agreement entered into pursuant to this chapter. After discussion, employees that are members of the employee organization shall vote on whether to allow employees who have chosen not to join the employee organization to vote on the ratification of any collective bargaining agreement.

* * * Moderation of Union Dues * * *

Sec. 19. MODERATION OF UNION DUES

An employee organization shall use any increased revenue resulting from the implementation of this act solely for the purpose of moderating its existing membership dues.

Sec. 19a. SCHOOL EMPLOYEES; MERIT PAY; ANALYSIS

(a) The Secretary of Education shall analyze whether and in what ways public education in Vermont would benefit from including merit pay provisions in school employee contracts under 16 V.S.A. chapter 57 and 21 V.S.A. chapter 22. Among other considerations, the Secretary shall examine whether merit pay would improve the quality of education and increase opportunities available to Vermont students.

(b) The Secretary shall consult with members of the House Committee on General, Housing and Military Affairs, the Senate Committee on Economic Development, Housing and General Affairs, and the House and Senate Committees on Education, with stakeholders, and with other interested parties.

(c) On or before January 15, 2014, the Secretary shall submit a report to the committees identified in subsection (b) of this section regarding the analysis, including the factors considered, the results of the analysis, whether merit pay provisions would benefit Vermont students, and recommendations, if any.

* * * Effective Dates * * *

Sec. 20. EFFECTIVE DATES

This act shall take effect on June 30, 2013 and apply to employees subject to 3 V.S.A. chapters 27 and 28, 16 V.S.A. chapter 57, and 21 V.S.A. chapters 19 and 22 on the date following the expiration date stated in the collective bargaining agreement, if any, then in effect, but in no event shall an employee be required to pay an agency fee under this act for any period prior to July 1, 2013 unless an existing collective bargaining agreement requires payment of the fee. In the event that no collective bargaining agreement is in effect on June 30, 2013, this act shall take effect on June 30, 2013 and apply to employees subject to 3 V.S.A. chapters 27 and 28, 16 V.S.A. chapter 57, and 21 V.S.A. chapters 19 and 22 on July 1, 2013.

And that after passage the title of the bill be amended to read:

An act relating to payment of agency fees and collective bargaining service fees.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Baruth moved that the Senate concur in the House proposal of amendment with an amendment as follows:

First: In Sec. 10, 16 V.S.A. § 1981, in subdivision (7) in the second sentence by striking out the following: “collective bargaining service fee” and inserting in lieu thereof the following: agency fee

Second: In Sec. 13, 21 V.S.A. § 1502, in subdivision (14) in the second sentence by striking out the following: “A collective bargaining service fee” and inserting in lieu thereof the following: An agency fee

Third: In Sec. 16, 21 V.S.A. § 1722, in subdivision (1) in the second sentence by striking out the following: “A collective bargaining service fee” and inserting in lieu thereof the following: An agency service fee

Thereupon, pending the question, Shall the House proposal of amendment be amended as recommended by Senator Baruth?, on motion of Senator Campbell consideration of the bill was postponed until later in the day.

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:

H. 136, H. 182.

Election of Senate Members to Judicial Nominating Board

The President announced that the next order of business was the election of three members of the Senate to serve on the Judicial Nominating Board pursuant to 4 V.S.A. §601.

Senator Campbell, on behalf of the Committee on Committees, placed in nomination the names of the following Senators to serve on the Board:

JOHN S. RODGERS

of Essex-Orleans District, as the majority party member of the Board.

KEVIN J. MULLIN

of Rutland District, as the minority party member of the Board.

JOHN F. CAMPBELL

of Windsor District, as the third member of the Board.

There being no further nominations, on motion of Senator Mazza, the nominations were closed, and the Secretary was instructed to cast one ballot for

JOHN S. RODGERS

of Essex-Orleans District, as the majority party member of the Board, for a term of two years or until his successor is elected and has qualified.

KEVIN J. MULLIN

of Rutland District, as the minority party member of the Board, for a term of two years or until his successor is elected and has qualified.

JOHN F. CAMPBELL

of Windsor District, as the third member of the Board, for a term of two years or until his successor is elected and has qualified.

Committee of Conference Appointed**H. 530.**

An act relating to making appropriations for the support of government.

Was taken up. Pursuant to the request of the House, the President announced the appointment of

Senator Kitchel
Senator Sears
Senator Snelling

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

Recess

On motion of Senator Campbell the Senate recessed until one o'clock in the afternoon.

Called to Order

The Senate was called to order by the President.

Message from the House No. 60

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. 533. An act relating to capital construction and state bonding.

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

Message from the House No. 61

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. 535. An act relating to the approval of the adoption and to the codification of the charter of the Town of Woodford.

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

The House has considered a bill originating in the Senate of the following title:

S. 59. An act relating to independent direct support providers.

And has passed the same in concurrence with proposal of amendment in the adoption of which the concurrence of the Senate is requested.

The House has adopted joint resolutions of the following titles:

J.R.H. 10. Joint resolution opposing the recalculation of Social Security benefits.

J.R.H. 11. Joint resolution approving a land exchange or sale in the town of Plymouth and a land transfer in the town of Grand Isle.

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

The House has considered Senate proposal of amendment to the following House bill:

H. 105. An act relating to adult protective services reporting requirements.

And has severally concurred therein.

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

H.C.R. 123. House concurrent resolution designating April 25, 2013 as Victims' Awareness Day.

H.C.R. 124. House concurrent resolution in memory of Vermont senior forensic chemist Marcia J. LaFountain.

H.C.R. 125. House concurrent resolution commemorating the sestercentennial anniversary of the Town of Sudbury.

H.C.R. 126. House concurrent resolution honoring *Burlington Free Press* reporter Candace Page for her outstanding journalism career.

H.C.R. 127. House concurrent resolution designating April 27 as Vermont Youth Appreciation Day.

H.C.R. 128. House concurrent resolution designating June 22, 2013 as Town Hall Theater Day in Vermont.

H.C.R. 129. House concurrent resolution congratulating the 2013 Vermont Prudential Spirit of Community Award Winners.

H.C.R. 130. House concurrent resolution congratulating Hartland Winter Trails on the 40th anniversary of its system of cross-country skiing and snowshoeing trails.

H.C.R. 131. House concurrent resolution honoring the career and community service of Dr. Walter J. Griffiths of Bellows Falls.

H.C.R. 132. House concurrent resolution congratulating the 2013 Essex Hornets' state gymnastics champions.

H.C.R. 133. House concurrent resolution commemorating the designation of Birsky-Wyman Field in Springfield.

H.C.R. 134. House concurrent resolution congratulating the 2013 Hildene Lincoln Essay Competition Winners.

H.C.R. 135. House concurrent resolution honoring West Rutland municipal official Jayne Pratt.

H.C.R. 136. House concurrent resolution commemorating the centennial anniversary of the Lothrop School.

H.C.R. 137. House concurrent resolution honoring David Clark for his outstanding leadership as Director of the Ilsley Library in Middlebury.

H.C.R. 138. House concurrent resolution honoring the 2013 winners of the Working Forests Essay Contest.

H.C.R. 139. House concurrent resolution designating May as Older Americans Month in Vermont.

H.C.R. 140. House concurrent resolution designating May 1, 2013 as Poverty Awareness Day in Vermont.

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. 24. Senate concurrent resolution designating September 2013 as River Green Up Month.

And has adopted the same in concurrence.

**Consideration Resumed; House Proposal of Amendment Concurred In
S. 14.**

Consideration was resumed on Senate bill entitled:

An act relating to payment of fair-share fees.

Thereupon, the question, Shall the Senate propose to the House to amend the House proposal as proposed by Senator Baruth?, Senator Baruth requested and was granted leave to withdraw the proposal.

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

**House Proposal of Amendment Concurred In
S. 30.**

House adoption of amendment to Senate bill entitled:

An act relating to siting of electric generation plants.

Was taken up.

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

Sec. 1. LEGISLATIVE REVIEW; SITING POLICY COMMISSION REPORT

During adjournment between the 2013 and 2014 sessions of the General Assembly:

(1) The House and Senate Committees on Natural Resources and Energy (the Committees) jointly shall review the report and recommendations of the Governor's Energy Siting Policy Commission created by Executive Order No. 10-12 dated October 2, 2012; may consider any issue related to electric generation plants, including their development, siting, and operation; and may recommend legislation to the General Assembly concerning electric generation plants.

(2) The Committees shall meet jointly for the purposes of this section no more than six times at the call of the chairs. For attendance at these meetings, members of the Committees shall be entitled to compensation and reimbursement for expenses as provided in 2 V.S.A. § 406.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

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

Rules Suspended; Joint Resolutions Referred

J.R.H. 10.

On motion of Senator Campbell, the rules were suspended and Joint House Resolution entitled:

Joint resolution opposing the recalculation of Social Security benefits.

Was taken up for immediate consideration and referred.

Whereas, on August 14, 1935, President Franklin D. Roosevelt signed the Social Security Act, Pub.L. No. 74-271, into law, and

Whereas, one of the stated goals of the Social Security Act was "to provide for the general welfare by establishing a system of Federal old-age benefits," and

Whereas, Social Security has a special tie to Vermont as the first ever recipient of Social Security benefits was Ida May Fuller from Ludlow who received her first monthly check of \$22.54 in 1940, and

Whereas, since that date not a single benefit payment has been missed, and

Whereas, according to the Social Security Administration, as of February 2013, there are approximately 53,880,000 Social Security recipients, of whom approximately 38,662,000 are 65 years of age or older, and

Whereas, a Social Security recipient's monthly benefit amount is adjusted annually by the percentage increase, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers (C.P.I.) from the third quarter of the previous year to the third quarter of the current year, and

Whereas, on April 10, 2013, President Obama presented to Congress his proposed FY 2014 federal budget, and

Whereas, with respect to Social Security, the President proposed that beginning in 2015, the current broad-based C.P.I. be replaced with a chained C.P.I. with a mathematical formulation that would slow the increase in benefits, and

Whereas, according to an editorial published on March 30, 2013 in *The New York Times*, fewer than one-half of Americans between the ages of 55 and 64 have any retirement savings, and of those persons who have established retirement savings, one-half have less than \$120,000.00 saved for this purpose, and

Whereas, the majority of retirees with an annual income of up to \$32,600.00 rely on Social Security for two-thirds or more of their income, and

Whereas, the current financial challenges associated with the federal debt have no connection to Social Security, and

Whereas, without any changes, Social Security will meet 100 percent of its obligations for the next 20 years, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly requests that President Obama and Congress seek an alternative to the proposed adjustment to the Social Security C.P.I. formula as a way to address the long-term financial problems of the Social Security System, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to President Obama and the Vermont Congressional Delegation.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Health and Welfare.

J.R.H. 11.

On motion of Senator Campbell, the rules were suspended and Joint House Resolution entitled:

Joint resolution approving a land exchange or sale in the town of Plymouth and a land transfer in the town of Grand Isle.

Was taken up for immediate consideration and referred.

Whereas, 10 V.S.A. § 2606(b) authorizes the Commissioner of Forests, Parks and Recreation to exchange or lease certain lands, with the approval of the General Assembly, and

Whereas, the General Assembly considers the following actions to be in the best interest of the State, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly authorizes the Commissioner of Forests, Parks and Recreation:

First: If a 78-acre parcel, which is currently a private inholding in the Arthur Davis Wildlife Management Area in the town of Plymouth (the inholding parcel), is available for Markowski Excavation to purchase and to exchange, to enter into an exchange with Markowski Excavation in which the Department of Forests, Parks and Recreation (Department) shall convey a 38-acre portion of Coolidge State Forest (Coolidge parcel), also in the town of Plymouth, to Markowski Excavation in exchange for Markowski Excavation's conveying the inholding parcel to the State of Vermont. If this exchange of land is entered into, the inholding parcel shall be added to the Arthur Davis Wildlife Management Area.

Any exchange of state forestland with Markowski Excavation shall be contingent on the following: (1) the Coolidge parcel conveyed to Markowski Excavation shall not include any land that, in the opinion of the Agency of Natural Resources, includes important wildlife habitat, ecological or other significant natural resources, or outdoor recreation values; (2) the Department shall hold a public meeting in the town of Plymouth on this proposal and gain the support of the Plymouth Selectboard for the exchange; (3) an independent appraiser shall determine the value of the exchange parcels; (4) the Department and Markowski Excavation shall enter into an agreement for the Department to obtain 10,000 cubic yards of crushed stone from Markowski Excavation at no cost for an agreed-upon period of time, 5,000 cubic yards of which shall be made available to the Department immediately upon the conveyance of the Coolidge parcel to Markowski Excavation, with the remaining 5,000 cubic yards of material to become available to the Department upon Markowski

Excavation's receipt of all necessary permits for development of the Coolidge parcel; (5) upon the Department's conveyance of the Coolidge parcel, Markowski Excavation shall convey to the Department a permanent access easement providing access from Route 100, across lands of Markowski Excavation, to adjacent state forestland located in the Calvin Coolidge State Forest; (6) the conveyance of the Coolidge parcel to Markowski Excavation shall be subject to restrictions that ensure that a 100-foot undeveloped buffer is retained around the perimeter of the parcel that abuts state forestland; (7) Markowski Excavation shall be responsible for all associated costs, including appraising, surveying, permitting, and legal; (8) Markowski Excavation shall be responsible for securing all permits and approvals necessary for any subsequent development of the Coolidge parcel; and (9) authorization to enter into this exchange shall not be interpreted as state approval of any development proposal for the Coolidge parcel.

Second: If the inholding parcel is not available, to sell the Coolidge parcel to Markowski Excavation for the sum of \$150,000.00, contingent on conditions (1), (2), (4), (5), (6), (7), (8), and (9) as set forth in the first section of this Resolved clause, and the following additional conditions:

(1) notwithstanding the provisions of 29 V.S.A. § 166(b), the Department of Buildings and General Services may sell the Coolidge parcel to Markowski Excavation; (2) the Department of Buildings and General Services shall be reimbursed for all costs incurred; and (3) pursuant to 29 V.S.A § 166(d), the General Assembly authorizes the Department of Forests, Parks and Recreation to use the net proceeds of this transaction to cover all of its expenses associated with the sale of this property with the balance to be deposited in the Department of Forests, Parks and Recreation's Land Acquisition Account.

Third: To convey for public outdoor recreational purposes to the town of Grand Isle a parcel of up to 23.4 acres of Grand Isle State Park, currently licensed to the town of Grand Isle. Any conveyance of this parcel to the town shall be contingent on the following: (1) the town of Grand Isle shall not further subdivide or convey the parcel to another party, or develop or use the parcel for any purposes other than public outdoor recreational purposes; (2) the State shall retain a reversionary interest in the parcel, and the parcel shall revert to state ownership should the parcel not be used for public outdoor recreational purposes; (3) the conveyance to the town of Grand Isle shall include any covenants or deed restrictions the Vermont Division for Historic Preservation deems necessary to protect potential historic or archeological resources on the transferred parcel; (4) the National Park Service shall approve this conveyance; (5) the transfer to the town of Grand Isle shall include all responsibilities for this parcel that are associated with the federal Land and Water Conservation Fund program; and (6) the town of Grand Isle shall be

responsible for all associated costs of the exchange, including surveying, permitting, and legal.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Institutions.

Rules Suspended; Action Messaged

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

S. 14, S. 30.

Appointment Confirmed

The following Gubernatorial appointment was confirmed separately by the Senate, upon full report given by the Committee to which it was referred:

Berry, Patrick of Middlebury - Commissioner, Fish and Wildlife, Department of - 3/1/2013, to 2/28/2015.

Senate Concurrent Resolution

The following joint concurrent resolution, having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, was adopted on the part of the Senate:

S.C.R. 24.

Senate concurrent resolution designating September 2013 as River Green Up Month.

House Concurrent Resolutions

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, were severally adopted in concurrence:

By Representative Fay and others,

H.C.R. 123.

House concurrent resolution designating April 25, 2013 as Victims' Awareness Day.

By Representative Ancel,

By Senator Campbell,

H.C.R. 124.

House concurrent resolution in memory of Vermont senior forensic chemist Marcia J. LaFountain.

By Representatives Shaw and Carr,

By Senators Flory, French and Mullin,

H.C.R. 125.

House concurrent resolution commemorating the sescentennial anniversary of the Town of Sudbury.

By All Members of the House,

By All Members of the Senate,

H.C.R. 126.

House concurrent resolution honoring *Burlington Free Press* reporter Candace Page for her outstanding journalism career.

By Representative Campion and others,

H.C.R. 127.

House concurrent resolution designating April 27 as Vermont Youth Appreciation Day.

By Representative Nuovo,

H.C.R. 128.

House concurrent resolution designating June 22, 2013 as Town Hall Theater Day in Vermont.

By Representative Pugh and others,

H.C.R. 129.

House concurrent resolution congratulating the 2013 Vermont Prudential Spirit of Community Award Winners.

By Representatives Bartholomew and Sweaney,

By Senators Campbell, McCormack and Nitka,

H.C.R. 130.

House concurrent resolution congratulating Hartland Winter Trails on the 40th anniversary of its system of cross-country skiing and snowshoeing trails.

By Representatives Partridge and Trieber,

H.C.R. 131.

House concurrent resolution honoring the career and community service of Dr. Walter J. Griffiths of Bellows Falls.

By Representative Myers and others,

H.C.R. 132.

House concurrent resolution congratulating the 2013 Essex Hornets' state gymnastics champions.

By Representative Martin and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 133.

House concurrent resolution commemorating the designation of Birsky-Wyman Field in Springfield.

By Representative Rachelson and others,

H.C.R. 134.

House concurrent resolution congratulating the 2013 Hildene Lincoln Essay Competition Winners.

By Representatives Burditt and Potter,

By Senators Flory, French and Mullin,

H.C.R. 135.

House concurrent resolution honoring West Rutland municipal official Jayne Pratt.

By Representatives Shaw and Carr,

By Senators Flory, French and Mullin,

H.C.R. 136.

House concurrent resolution commemorating the centennial anniversary of the Lothrop School.

By Representatives Nuovo and Ralston,

By Senators Ayer and Bray,

H.C.R. 137.

House concurrent resolution honoring David Clark for his outstanding leadership as Director of the Ilsley Library in Middlebury.

By Representative Gallivan and others,

H.C.R. 138.

House concurrent resolution honoring the 2013 winners of the Working Forests Essay Contest.

By Representative Poirier,

H.C.R. 139.

House concurrent resolution designating May as Older Americans Month in Vermont.

By Representative Stuart and others,

By Senators Pollina and White,

H.C.R. 140.

House concurrent resolution designating May 1, 2013 as Poverty Awareness Day in Vermont.

Adjournment

On motion of Senator Campbell, the Senate adjourned, to reconvene on Monday, May 6, 2013, at eleven o'clock in the forenoon pursuant to J.R.S. 29.