Journal of the Senate

THURSDAY, MARCH 13, 2014

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Bill Referred to Committee on Finance

S. 208.

Senate 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 solid waste management.

Senate Resolution Referred

S.R. 8.

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

By Senator Hartwell,

S.R. 8. Senate resolution relating to reaffirming the friendly bilateral relationships between Taiwan and both the United States and Vermont and the important role of Taiwan in the international community.

Whereas, the Republic of China (Taiwan) and the United States share an important and close bilateral relationship based on common democratic and free market values, and

Whereas, President Ma Ying-jeou of Taiwan has worked tirelessly to uphold democratic principles to ensure the prosperity of his nation's 23 million citizens and promote Taiwan's international standing, and

Whereas, the bilateral relationship between Taiwan and Vermont includes cultural and educational exchanges, and

Whereas, trade relations between Vermont and Taiwan focus on computer and electronic products, chemicals, and electrical equipment, and in 2012, Taiwan was Vermont's 8th largest international export partner, and

Whereas, Taiwan and the United States both support peace in the East China Sea, and on August 5, 2012, Taiwan proposed an East China Sea Peace Initiative to resolve the disputes in this area, and

Whereas, Taiwan's membership in the U.S. Visa Waiver Program has made travel between the two nations more convenient resulting in mutual business and tourism advantages, and

Whereas, as a member of the Asia-Pacific Economic Cooperation forum, Taiwan is supportive of economic cooperation throughout the Asia-Pacific region, and

Whereas, Taiwan is concerned with the impact of climate change and has expressed strong interest to be included in the United Nations Framework Convention on Climate Control, *now therefore be it*

Resolved by the Senate of the State of Vermont:

That the Senate of the State of Vermont reaffirms the friendly bilateral relationships between Taiwan and both the United States and Vermont and the important role of Taiwan in the international community, *and be it further*

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to President Barack Obama, Governor Peter Shumlin, the Vermont Congressional Delegation, Taiwan President Ma Ying-jeou, and Director-General Anne Hung of the Taipei Economic and Cultural Office in Boston.

Thereupon, the President, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Economic Development, Housing and General Affairs.

Bills Referred

House bills of the following titles were read the first time and referred:

H. 227.

An act relating to licensing and regulating property inspectors.

To the Committee on Government Operations.

H. 631.

An act relating to lottery commissions.

To the Committee on Economic Development, Housing and General Affairs.

Bill Amended; Third Reading Ordered

S. 91.

Senator Zuckerman, for the Committee on Education, to which was referred Senate bill entitled:

An act relating to public funding of some approved independent schools.

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

Sec. 1. PRIVATIZATION OF PUBLIC SCHOOLS; MORATORIUM; REPEAL

(a) Privatization of public school. Notwithstanding the authority of a school district to cease operating an elementary or secondary school and to begin paying tuition on behalf of its resident students, a school district shall not cease operation of a school with the intention, for the purpose, or with the result of having the school building or buildings reopen as an approved independent school serving essentially the same population of students.

(b) State Board approval. The State Board of Education shall not approve an independent school under 16 V.S.A. § 166 if, on or after the effective date of this act, a school district votes to cease operating a school that at the time of the vote serves essentially the same population of students as the independent school proposes to serve and is located in the building or buildings in which the independent school proposes to operate.

(c) Publicly funded tuition. An approved independent school shall not be eligible to receive publicly funded tuition dollars if, on or after the effective date of this act, a school district votes to cease operating a school that at the time of the vote serves essentially the same population of students as the independent school proposes to serve and is located in the building or buildings in which the independent school proposes to operate.

(d) Repeal. This section is repealed on July 1, 2016.

Sec. 2. SECRETARY OF EDUCATION; PRIVATIZATION STUDY; REPORT

(a) The Secretary of Education shall research the constitutional and other legal consequences of a school district's decision to cease operating a school with the intention, for the purpose, or with the result of having the school building or buildings reopen as an approved independent school serving essentially the same population of students. Among other issues, the Secretary shall examine federal civil rights law and the Vermont Supreme Court's

decision in *Brigham v. State* and shall consider issues of delegation of authority and the proper use of State funds.

(b) On or before January 15, 2015, the Secretary shall report the results of the research required by this section to the Senate and House Committees on Education, together with any recommendations for legislative amendments.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: "An act relating to privatization of public schools".

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, and pending the question, Shall the bill be amended as recommended by the Committee on Education?, Senators Sears, Benning, and Nitka moved to amend the recommendation of the Committee on Education as follows:

By striking out Secs. 1 through 3 in their entirety and inserting in lieu thereof two new sections to be Secs. 1 and 2 to read as follows:

Sec. 1. SECRETARY OF EDUCATION; PRIVATIZATION STUDY; REPORT

(a) The Secretary of Education shall research:

(1) the constitutional and other legal consequences of a school district's decision to cease operating a school with the intention, for the purpose, or with the result of having the school building or buildings reopen as an approved independent school serving essentially the same population of students (privatization); and

(2) the constitutional and other legal consequences if the General Assembly chose to impose a moratorium on or prohibition of privatization of public schools.

(b) Among other issues, the Secretary shall examine the Vermont and U.S. Constitutions, federal civil rights law, and the Vermont Supreme Court's decision in *Brigham v. State* and shall consider issues of delegation of authority and the proper use of State funds.

(c) On or before January 15, 2015, the Secretary shall report the results of the research required by this section to the Senate and House Committees on Education and on Judiciary, together with any recommendations for legislative amendments.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

Which was disagreed to on a roll call, Yeas 10, Nays 18.

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

Roll Call

Those Senators who voted in the affirmative were: Benning, Flory, Hartwell, Kitchel, Mazza, McAllister, Mullin, Nitka, Sears, Westman.

Those Senators who voted in the negative were: Ashe, Ayer, Baruth, Bray, Campbell, Collins, Cummings, Doyle, French, Galbraith, Lyons, MacDonald, McCormack, Pollina, Sirotkin, Snelling, White, Zuckerman.

Those Senators absent and not voting were: Rodgers, Starr.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Education?, Senator White moved to amend the recommendation of the Committee on Education as follows:

By striking out Secs. 1 through 3 in their entirety and inserting in lieu thereof two new sections to be Secs. 1 and 2 to read as follows:

Sec. 1. 16 V.S.A. § 166a is added to read:

§ 166a. INDEPENDENT SCHOOL SERVING SAME POPULATION

(a) A school district may cease operation of a school with the intention, for the purpose, or with the result of having the school facilities reopen as an approved independent school serving essentially the same population of students (privatization), and an independent school may operate in the building or buildings, serve essentially the same student population, and receive publicly funded tuition payments (the privatized school) solely pursuant to the provisions of this section.

(b) Prior to presenting the question of privatization to the voters, the school board of the district and the proposed privatized school shall submit the following to the Secretary, who shall submit it with his or her recommendations to the State Board:

(1) The school board shall provide an itemized list of real and personal property that the proposed privatized school will purchase or lease from the school district, the assessed fair market value of that property, and the amount the proposed privatized school will pay to purchase or lease the property, which shall not be less than the assessed fair market value.

(2) If the proposed privatized school is not already an approved independent school pursuant to section 166 of this title, then the persons

intending to establish and operate the privatized school shall submit an application to the State Board pursuant to that section.

(3) The proposed privatized school shall provide assurance to the State Board that the school shall:

(A) make its operating budget available annually for public review prior to the day on which the voters are asked to approve the district's proposed budget;

(B) conduct the meetings of its governing body pursuant to 1 V.S.A. chapter 5, subchapter 2;

(C) enroll every student residing in the municipality in which the school is located who applies for admission;

(D) provide special education services in a manner comparable to a public school, within the legal processes and time periods required of a local education agency and with the involvement of the local education agency;

(E) meet requirements of section 2902 of this title and 29 U.S.C § 794, Section 504 of the Rehabilitation Act, so that the school will provide a comprehensive support system in a manner comparable to a public school;

(F) provide free and reduced-price meals to enrolled students pursuant to section 1264 of this title;

(G) employ licensed teachers and administrators and recognize the representative of the former employees of the district as the representative of the employees of the proposed privatized school under chapter 57 of this title; and

(H) offer a quality educational program consistent with Vermont educational quality standards pursuant to section 165 of this title.

(c) After review of the information provided pursuant to subsection (b) of this section and an opportunity for hearing, the State Board shall approve the proposed privatization plan for submission to the voters if the Board determines that:

(1) the proposed privatized school is an approved independent school pursuant to section 166; and

(2) the school district and the proposed privatized school have satisfied the requirements of subsection (b) of this section.

(d) After the State Board approves a privatization plan under this section, the privatized school shall provide assurance annually to the State Board that the school is continuing to comply with all requirements of subsection (b) of this section. If at any time the privatized school fails to comply with those

requirements, then the school shall be ineligible to receive publicly funded tuition payments or State grants for which it would otherwise be eligible.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

Which was disagreed to.

Thereupon, the recommendation of amendment of the Committee on Education, was agreed to on a division of the Senate, Yeas 19, Nays 9

Thereupon, third reading of the bill was ordered on a division of the Senate, Yeas 19, Nays 9.

Bill Passed

S. 295.

Senate bill entitled:

An act relating to pretrial services, risk assessments, and criminal justice programs.

Was taken up.

Thereupon, pending third reading of the bill, Senator McAllister moved to amend the bill by adding a Sec. 17a to read as follows:

Sec. 17a. HEROIN SALE, DISTRIBUTION, TRAFFICKING SENTENCING INFORMATION

The Vermont Center for Justice Research shall report to the General Assembly on or before November 1, 2014 regarding sentences for violations of 18 V.S.A. § 4233(b) and (c) (sale, distribution, trafficking of heroin) for the previous five years.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator McAllister?, Senator McAllister requested and was granted leave to withdraw the recommendation of amendment.

Thereupon, the bill was read the third time and passed.

Proposals of Amendment; Third Reading Ordered

H. 702.

Senator Lyons, for the Committee on Finance, to which was referred House bill entitled:

An act relating to self-generation and net metering.

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

First: In Sec. 1, 30 V.S.A. § 219a, in subdivision (e)(3) (excess generation; single nondemand meter), by striking out subdivision (A) and inserting in lieu thereof a new subdivision (A) to read:

(A) The electric company shall calculate a monetary credit to the customer by multiplying the excess kWh generated during the billing period by the kWh rate paid by the customer for electricity supplied by the company and shall apply the credit to any remaining charges on the customer's bill for that period~~;~~. If the applicable rate schedule includes inclining block rates**:**

(i) for a net metering system that does not use solar energy, the rate used for this calculation shall be a blend of those rates determined by adding together all of the revenues to the company during a recent test year from kWh sold under those block rates and dividing the sum by the total kWh sold by the company at those rates during that same year**;** and

(ii) for a solar net metering system, the rate used for this calculation:

(I) during the ten years immediately following the system's installation shall be the highest of those block rates and, after this ten-year period, shall be the blended rate in accordance with subdivision (i) of this subdivision (A); or

(II) if the electric company's highest block rate exceeds the adder sum described in subdivision (h)(1)(K) of this section, then for the first year immediately following the system's installation, the electric company may use the adder sum to calculate the credit in lieu of the highest block rate, provided that during the following nine years, the electric company shall adjust the system's credit by a percentage equal to the percentage of each change in its highest block rate during the same period, and after the first ten years following the system's installation, the rate used to calculate the credit shall be the blended rate in accordance with subdivision (i) of this subdivision (A).

Second: In Sec. 1, 30 V.S.A. § 219a, in subsection (e) (electric energy measurement), by striking out subdivision (4) (excess generation; demand

meter or time-of-use meter) and inserting in lieu thereof a new subdivision (4) to read:

(4) For a net metering system serving a customer on a demand or time-of-use rate schedule, the manner of measurement and the application of bill credits for the electric energy produced or consumed shall be substantially similar to that specified in this subsection for use with a single nondemand meter. However, if such a net metering system is interconnected directly to the electric company through a separate meter whose primary purpose is to measure the energy generated by the system:

(A) The bill credits shall apply to all kWh generated by the net metering system and shall be calculated as if the customer were charged the kWh rate component of the interconnecting company's general residential rate schedule that consists of two rate components: a service charge and a kWh rate, excluding time-of-use rates and demand rates.

(B) If a company's general residential rate schedule includes inclining block rates, the residential rate used for this calculation shall be ~~the highest of those block rates~~ a rate calculated in the same manner as under subdivision (3)(A) of this subsection (e).

Third: In Sec. 1, 30 V.S.A. § 219a, in subdivision (h)(1)(K)(i) (solar incentive calculation), by striking out subdivision (III) (inclining block rates) and inserting in lieu thereof a new subdivision (III) to read:

(III) If a company's general residential rate schedule includes inclining block rates, the residential rate shall be the highest of those block rates.

Fourth: In Sec. 1, 30 V.S.A. § 219a, by striking out subsection (m) and inserting in lieu thereof a new subsection (m) to read:

(m)(1) A facility for the generation of electricity to be consumed primarily by the Military Department established under 3 V.S.A. § 212 and 20 V.S.A. § 361(a) or the National Guard as defined in 32 U.S.C. § 101(3), and installed on property of the Military Department or National Guard located in Vermont, shall be considered a net metering system for purposes of this section if it has a capacity of 2.2 MW or less and meets the provisions of subdivisions ~~(a)(3)(B) through (E)~~ (a)(6)(B)–(D) of this section.

(2) If the interconnecting electric company agrees, a solar facility or group of solar facilities for the generation of electricity, to be installed by one or more municipalities on a capped landfill, shall be considered a net metering system for purposes of this section if the facility or group of facilities has a total capacity of 2.2 MW or less and meets the provisions of subdivisions (a)(6)(B)–(D) of this section. The facilities or group of facilities may serve as

a group net metering system that includes each participating municipality and may include members who are not a municipality. In this subdivision (2), "municipality" shall have the same meaning as under 24 V.S.A. § 4551.

(3) ~~Such a~~ A facility described in this subsection shall not be subject to and shall not count toward the capacity limits of subdivisions ~~(a)(3)(A)~~ (a)(6)(A) (no more than 500 kW) and (h)(1)(A) (~~four~~ 15 percent of peak demand) of this section.

Fifth: In Sec. 1, 30 V.S.A. § 219a(n), in the first sentence, after "facilities" by inserting to produce power and, before "installed," by inserting to be

Sixth: In Sec. 1, 30 V.S.A. § 219a (self-generation and net metering), in subdivision (o)(1) (renewable energy achievement requirements), by striking out subdivision (B) and inserting in lieu thereof a new subdivision (B) to read:

(B) the electric company owns and has retired tradeable renewable energy credits monitored and traded on the New England Generation Information System or otherwise approved by the Board equivalent to 90 percent of the company's total periodic retail sales of electricity calculated on a monthly basis commencing with the effective date of this subsection (o) and switching to an annual basis beginning one year after the effective date of this subsection; and

Seventh: In Sec. 4, 30 V.S.A. § 8010, in subsection (c), by striking out subdivision (3) and inserting in lieu thereof a new subdivision (3) to read:

(3) The rules shall establish standards and procedures governing application for and issuance or revocation of a certificate of public good for net metering systems under the provisions of section 248 of this title. In establishing these standards and procedures, the rules:

(A) may waive the requirements of section 248 of this title that are not applicable to net metering systems, including criteria that are generally applicable to public service companies as defined in this title;

(B) may modify notice and hearing requirements of this title as the Board considers appropriate;

(C) shall seek to simplify the application and review process as appropriate; and

(D) with respect to net metering systems that exceed 150 kW in plant capacity, shall apply the so-called "Quechee" test for aesthetic impact as described by the Vermont Supreme Court in the case of In re Halnon, 174 Vt. 515 (2002) (mem.). The rules and application form shall state the components of this test.

Eighth: After Sec. 9, by inserting a reader guide and Sec. 9a to read:

* * * Advocacy; Regional Electric System * * *

Sec. 9a. 30 V.S.A. § 2(f) is added to read:

(f) In all forums affecting policy and decision making for the New England region's electric system, including matters before the Federal Energy Regulatory Commission and the Independent System Operator of New England, the Department of Public Service shall advance positions that are consistent with the statutory policies and goals set forth in 10 V.S.A. §§ 578, 580, and 581 and sections 202a, 8001, and 8005 of this title. This subsection shall not compel the Department to initiate or participate in litigation and shall not preclude the Department from entering into agreements that represent a reasonable advance to these statutory policies and goals.

Ninth: In Sec. 10 (effective dates, applicability; implementation), in subsection (a), after the first parenthetical phrase, by striking out "and" and inserting a new comma and after the second parenthetical phrase, by inserting , and 9a (advocacy; regional electric system)

Tenth: In Sec. 10 (effective dates; applicability; implementation), in subsection (b), by striking out the first sentence and inserting in lieu thereof:

In this subsection, "amended subdivisions" means 30 V.S.A. § 219a(e)(3)(A) (credits), (e)(4)(B)(credits), and (h)(1)(K) (mandatory solar incentive) as amended by Sec. 1 of this act.

Eleventh: In Sec. 10 (effective dates; applicability; implementation), by adding a subsection (h) to read:

(h) During statutory revision, the Office of Legislative Council shall substitute the actual dates for the phrases, in 30 V.S.A. § 219a(o)(1)(B), "effective date of this subsection" and "one year after the effective date of this subsection."

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 were collectively agreed to.

Thereupon, pending the question, Shall the bill be read the third time?, Senator Mullin moved to amend the Senate proposal of amendment as follows::

First: In Sec. 1, 30 V.S.A. § 219a, in subdivision (e)(3) (excess generation; single nondemand meter), by striking out subdivision (A) and inserting in lieu thereof a new subdivision (A) to read:

(A) The electric company shall calculate a monetary credit to the customer by multiplying the excess kWh generated during the billing period by the ~~kWh rate paid by the customer for electricity supplied by the company~~ average real time locational marginal price of electric energy for the Vermont load zone during the billing period and shall apply the credit to any remaining charges on the customer's bill for that period~~;~~.

Second: In Sec. 1, 30 V.S.A. § 219a, in subsection (e) (electric energy measurement), by striking out subdivision (4) (excess generation; demand meter or time-of-use meter) and inserting in lieu thereof a new subdivision (4) to read:

(4) For a net metering system serving a customer on a demand or time-of-use rate schedule, the manner of measurement and the application of bill credits for the electric energy produced or consumed shall be substantially similar to that specified in this subsection for use with a single nondemand meter. ~~However, if such a net metering system is interconnected directly to the electric company through a separate meter whose primary purpose is to measure the energy generated by the system:~~

~~(A) The bill credits shall apply to all kWh generated by the net metering system and shall be calculated as if the customer were charged the kWh rate component of the interconnecting company's general residential rate schedule that consists of two rate components: a service charge and a kWh rate, excluding time-of-use rates and demand rates.~~

~~(B) If a company's general residential rate schedule includes inclining block rates, the residential rate used for this calculation shall be the highest of those block rates.~~

Which was disagreed to on a roll call, Yeas 4, Nays 25.

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

Roll Call

Those Senators who voted in the affirmative were: Flory, Hartwell, Mullin, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Baruth, Benning, Bray, Campbell, Collins, Cummings, Doyle, French, Galbraith, Kitchel, Lyons, MacDonald, Mazza, McAllister, McCormack, Nitka, Pollina, Sears, Sirotkin, Snelling, Westman, White, Zuckerman.

The Senator absent and not voting was: Rodgers.

Thereupon, third reading of the bill was ordered.

Adjournment

On motion of Senator Campbell, the Senate adjourned until ten o'clock and thirty minutes in the morning.