

Senate Calendar

THURSDAY, MARCH 19, 2015

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ACTION CALENDAR

CONSIDERATION POSTPONED UNTIL MARCH 26, 2015

Second Reading

Favorable with Recommendation of Amendment

S. 29.

An act relating to election day registration.

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

(For text of report of the Committee on Government Operations, see Senate Calendar for March 18, 2015 page 340)

CONSIDERATION POSTPONED UNTIL MARCH 19, 2015

Third Reading

S. 93.

An act relating to disclosure of lobbying advertisements.

PENDING QUESTION: Shall the bill be amended as moved by Senators White, Benning, Bray, Collamore, and Pollina?

Text of recommendation of amendment:

First: By striking out Sec. 1 (findings) in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. FINDINGS

(a) The effective public disclosure of the identity and extent of the efforts of registered lobbyists, lobbying firms, and lobbyist employers to influence Vermont's legislators during the legislative session will increase public confidence in the integrity of the governmental process.

(b) Responsible representative government requires public awareness of the efforts of registered lobbyists, lobbying firms, and lobbyist employers to influence the public decision-making process in the Legislative Branch of Vermont's government.

(c) Requiring registered lobbyists, lobbying firms, and lobbyist employers to report significant advertising campaigns that are intended, designed, or calculated, to directly or indirectly influence legislative enables the public and

legislators to evaluate better the pressures and content of the message when considering that action.

(d) The lack of detail in current required lobbying disclosure filings does not provide the public and legislators with enough relevant information about who is attempting to influence the legislative process through advertising, and the timing of current required lobbying disclosure filings prevents the public and legislators from evaluating the pressures and content of lobbying advertising at the time public policy is being debated.

(e) Requiring registered lobbyists, lobbying firms, and lobbyist employers to designate clearly the name of the lobbyist, lobbying firm, or lobbyist employer paying for an advertisement within the advertisement allows the public and legislators to determine who is attempting to influence the legislative process through advertising, to evaluate the pressures and content of lobbying advertising at the time when public policy is being debated, to trace coordinated advertising buys, and to track such spending over time.

Second: By striking out Sec. 2, 2 V.S.A. § 264c (identification in and report of certain lobbying advertisements) in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. 2 V.S.A. § 264c is added to read:

§ 264c. IDENTIFICATION IN AND REPORT OF CERTAIN LOBBYING ADVERTISEMENTS

(a) Identification.

(1) An advertisement that is intended, designed, or calculated to directly or indirectly influence legislative action and made at any time prior to final adjournment of a biennial or adjourned legislative session shall contain the name of any lobbyist, lobbying firm, or lobbyist employer that made an expenditure for the advertisement and language that the advertisement was paid for, or paid in part, by the lobbyist, lobbying firm, or lobbyist employer; provided, however:

(A) if there are more than three such names, only the three lobbyists, lobbying firms, or lobbyist employers that made the largest expenditures for the advertisement shall be required to be identified; and

(B) if a lobbyist or lobbying firm made the expenditure on behalf of a lobbyist employer, the identification information set forth in subdivision (1) of this subsection shall be in the name of that lobbyist employer.

(2) This identification information shall appear prominently and in a manner such that a reasonable person would clearly understand by whom the expenditure has been made.

(b) Report.

(1) In addition to any other reports required to be filed under this chapter, a lobbyist, lobbying firm, or lobbyist employer shall file an advertisement report with the Secretary of State if he, she, or it makes an expenditure or expenditures:

(A) for any advertisement that is described in subsection (a) of this section and that has a cost totaling \$1,000.00 or more; or

(B) for any advertising campaign that contains advertisements described in subsection (a) of this section and that has a cost totaling \$1,000.00 or more.

(2) The report shall be made for each advertisement or advertising campaign described in subdivision (1) of this subsection and shall identify the lobbyist, lobbying firm, or lobbyist employer that made the expenditure; the amount and date of the expenditure and to whom it was paid; and a brief description of the advertisement or advertising campaign.

(3) The report shall be filed within 48 hours of the expenditure or the advertisement or advertising campaign, whichever occurs first.

(4) If a lobbyist or lobbying firm made an expenditure described in subdivision (1) of this subsection on behalf of a lobbyist employer and that lobbyist or lobbying firm filed the report required by this subsection, the report shall specifically identify the employer on whose behalf the expenditure was made.

(c) Definitions. As used in this section:

(1) "Advertisement" means any form of advertising, including television, radio, print, and electronic media.

(2) "Advertising campaign" means advertisements substantially similar in nature, regardless of the media in which they are placed.

Third: By striking out Sec. 3, 2 V.S.A. § 264 (reports of expenditures, compensation, and gifts; employers; lobbyists) in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

Sec. 3. 2 V.S.A. § 264 is amended to read:

**§ 264. REPORTS OF EXPENDITURES, COMPENSATION, AND GIFTS;
EMPLOYERS; LOBBYISTS**

(a) Every employer and every lobbyist registered or required to be registered under this chapter shall file disclosure reports with the Secretary of State as follows:

(1) on or before January 15, for the preceding period beginning on July 1 and ending with December 31;

(2) on or before February 15, for the preceding period beginning on January 1 and ending with January 31;

(3) on or before March 15, for the preceding period beginning on February 1 and ending with the last day of February;

(4) on or before April 25 15, for the preceding period beginning on January 1 March 1 and ending with March 31;

(2)(5) on or before May 15, for the preceding period beginning on April 1 and ending with April 30; and

(6) on or before July 25 15, for the preceding period beginning on April May 1 and ending with June 30;

(3) on or before January 25, for the preceding period beginning on July 1 and ending with December 31.

* * *

~~(h) Disclosure reports shall be made on forms published by the Secretary of State and shall be signed by the employer or lobbyist. The Secretary of State shall make those forms available to registered employers and lobbyists on the Secretary's website not later than 30 days before each filing deadline. [Repealed.]~~

* * *

Substitute amendment to S. 93 to be offered by Senators Sirotkin, Mullin, Sears, and Zuckerman for the recommendation of amendment of Senators White, Benning, Bray, Collamore, and Pollina

Senators Sirotkin, Mullin, Sears, and Zuckerman, move to substitute an amendment for the recommendation of amendment of Senators White, Benning, Bray, Collamore, and Pollina, as follows:

First: By striking out Sec. 1 (findings) in its entirety and inserting in lieu thereof a new Sec. 1 to read:

Sec. 1. FINDINGS

(a) The effective public disclosure of the identity and extent of the efforts of registered lobbyists, lobbying firms, and lobbyist employers to influence Vermont's legislators during the legislative session will increase public confidence in the integrity of the governmental process.

(b) Responsible representative government requires public awareness of the efforts of registered lobbyists, lobbying firms, and lobbyist employers to

influence the public decision-making process in the Legislative Branch of Vermont's government.

(c) Requiring registered lobbyists, lobbying firms, and lobbyist employers to report significant advertising campaigns that are intended, designed, or calculated, to directly or indirectly influence legislative enables the public and legislators to evaluate better the pressures and content of the message when considering that action.

(d) The lack of detail in current required lobbying disclosure filings does not provide the public and legislators with enough relevant information about who is attempting to influence the legislative process through advertising, and the timing of current required lobbying disclosure filings prevents the public and legislators from evaluating the pressures and content of lobbying advertising at the time public policy is being debated.

(e) Requiring registered lobbyists, lobbying firms, and lobbyist employers to designate clearly the name of the lobbyist, lobbying firm, or lobbyist employer paying for an advertisement within the advertisement allows the public and legislators to determine who is attempting to influence the legislative process through advertising, to evaluate the pressures and content of lobbying advertising at the time when public policy is being debated, to trace coordinated advertising buys, and to track such spending over time.

Second: By striking out in its entirety Sec. 2, 2 V.S.A. § 264c (identification in and report of certain lobbying advertisements), and inserting in lieu thereof the following:

Sec. 2. 2 V.S.A. § 264c is added to read:

§ 264c. IDENTIFICATION IN AND REPORT OF CERTAIN LOBBYING ADVERTISEMENTS

(a) Identification.

(1) An advertisement that is intended, designed, or calculated to directly or indirectly influence legislative action and made at any time prior to final adjournment of a biennial or adjourned legislative session shall contain the name of any lobbyist, lobbying firm, lobbyist employer, or political committee that made an expenditure for the advertisement and language that the advertisement was paid for, or paid in part, by the lobbyist, lobbying firm, lobbyist employer, or political committee; provided, however:

(A) if there are more than three such names, only the three lobbyists, lobbying firms, lobbyist employers, or political committees that made the largest expenditures for the advertisement shall be required to be identified; and

(B) if a lobbyist or lobbying firm made the expenditure on behalf of a lobbyist employer, the identification information set forth in subdivision (1) of this subsection shall be in the name of that lobbyist employer.

(2) This identification information shall appear prominently and in a manner such that a reasonable person would clearly understand by whom the expenditure has been made.

(b) Report.

(1) In addition to any other reports required to be filed under this chapter, a lobbyist, lobbying firm, lobbyist employer, or political committee shall file an advertisement report with the Secretary of State if he, she, or it makes an expenditure or expenditures:

(A) for any advertisement that is described in subsection (a) of this section and that has a cost totaling \$1,000.00 or more; or

(B) for any advertising campaign that contains advertisements described in subsection (a) of this section and that has a cost totaling \$1,000.00 or more.

(2) The report shall be made for each advertisement or advertising campaign described in subdivision (1) of this subsection and shall identify the lobbyist, lobbying firm, lobbyist employer, or political committee that made the expenditure; the amount and date of the expenditure and to whom it was paid; and a brief description of the advertisement or advertising campaign.

(3) The report shall be filed within 48 hours of the expenditure or the advertisement or advertising campaign, whichever occurs first.

(4) If a lobbyist or lobbying firm made an expenditure described in subdivision (1) of this subsection on behalf of a lobbyist employer and that lobbyist or lobbying firm filed the report required by this subsection, the report shall specifically identify the employer on whose behalf the expenditure was made.

(c) Definitions. As used in this section:

(1) "Advertisement" means any form of advertising, including television, radio, print, and electronic media.

(2) "Advertising campaign" means advertisements substantially similar in nature, regardless of the media in which they are placed.

(3) "Political committee" shall have the same meaning as in 17 V.S.A. § 2901.

Third: By striking out Sec. 3, 2 V.S.A. § 264 (reports of expenditures, compensation, and gifts; employers; lobbyists) in its entirety and inserting in lieu thereof a new Sec. 3 to read:

Sec. 3. 2 V.S.A. § 264 is amended to read:

§ 264. REPORTS OF EXPENDITURES, COMPENSATION, AND GIFTS;
EMPLOYERS; LOBBYISTS

(a) Every employer and every lobbyist registered or required to be registered under this chapter shall file disclosure reports with the Secretary of State as follows:

(1) on or before January 5, for the preceding period beginning on July 1 and ending with December 31;

(2) on or before February 5, for the preceding period beginning on January 1 and ending with January 31;

(3) on or before March 5, for the preceding period beginning on February 1 and ending with the last day of February;

(4) on or before April 25 5, for the preceding period beginning on January 1 March 1 and ending with March 31;

~~(2)(5)~~ on or before May 5, for the preceding period beginning on April 1 and ending with April 30; and

(6) on or before July 25 5, for the preceding period beginning on April May 1 and ending with June 30;

~~(3) on or before January 25, for the preceding period beginning on July 1 and ending with December 31.~~

* * *

~~(h) Disclosure reports shall be made on forms published by the Secretary of State and shall be signed by the employer or lobbyist. The Secretary of State shall make those forms available to registered employers and lobbyists on the Secretary's website not later than 30 days before each filing deadline. [Repealed.]~~

* * *

Fourth: By adding two new sections to be Secs. 6a and 6b to read:

Sec. 6a. 2 V.S.A. § 266 is amended to read:

§ 266. PROHIBITED CONDUCT

(a) It shall be prohibited conduct:

(1) to employ a lobbyist or lobbying firm, or accept employment as a lobbyist or lobbying firm, for compensation that is dependent on a contingency;

(2) for a legislator or administrative official to solicit a gift, other than a ~~political~~ contribution, from a registered employer or registered lobbyist or a lobbying firm engaged by an employer, except that charitable contributions for nonprofit organizations qualified under ~~Section 26 U.S.C. § 501(c)(3) of the federal Internal Revenue Code~~ may be solicited from registered employers and registered lobbyists or lobbying firms engaged by an employer; ~~or~~

(3) when the ~~general assembly~~ General Assembly is in session, until adjournment sine die, for a legislator or administrative official to solicit a ~~political campaign~~ contribution as ~~defined in 17 V.S.A. § 2801~~ from a registered lobbyist or a lobbying firm engaged by an employer or registered employer, or for a registered lobbyist or registered employer or a lobbying firm engaged by an employer to make or promise a ~~political campaign~~ contribution to any member of the ~~general assembly~~ General Assembly or any member's campaign committee; or

(4) at any time prior to final adjournment of a biennial or adjourned legislative session, for a political committee that has the primary purpose of electing or supporting legislators to solicit a contribution from a registered lobbyist or a lobbying firm engaged by an employer or registered employer, or for a registered lobbyist or a lobbying firm engaged by an employer or registered employer to make or promise a contribution to a political committee that has the primary purpose of electing or supporting legislators.

(b) As used in this section, "political committee" shall have the same meaning as in 17 V.S.A. § 2901.

Sec. 6b. 17 V.S.A. § 2941a is added to read:

§ 2941a. POLITICAL COMMITTEES; LEGISLATORS; CONTRIBUTION RESTRICTION

(a) At any time prior to final adjournment of a biennial or adjourned legislative session:

(1) a political committee that has the primary purpose of electing or supporting legislators shall not solicit or accept a contribution from another political committee;

(2) a member of the General Assembly shall not solicit or accept a contribution from a political committee; and

(3) a political committee shall not make or offer to make a contribution to a member of the General Assembly or a political committee that has the primary purpose of electing or supporting legislators.

(b) As used in this section, “lobbyist,” “lobbying firm,” and “lobbyist employer” shall have the same meaning as in 2 V.S.A. § 261.

UNFINISHED BUSINESS OF WEDNESDAY, MARCH 18, 2015

Second Reading

Favorable with Recommendation of Amendment

S. 44.

An act relating to creating flexibility in early college enrollment numbers.

Reported favorably by Senator Doyle for the Committee on Education.

(Committee vote: 6-0-0)

Reported favorably with recommendation of amendment by Senator Starr for the Committee on Appropriations.

The Committee recommends that the bill be amended in Sec. 1, 2013 Acts and Resolves No. 77, Section 11 subsection (a) subdivision (3) by adding at the end of the subdivision the following: The Chancellor of the Vermont State Colleges, in consultation with the Presidents of Johnson State College, Lyndon State College, and Castleton State College, shall develop a system to divide the annual number of students enrolled in early college programs fairly among those three colleges and within the total maximum enrollment of 54.

(Committee vote: 6-0-1)

S. 62.

An act relating to surrogate decision making for do-not-resuscitate orders and clinician orders for life-sustaining treatment.

Reported favorably with recommendation of amendment by Senator Lyons for the Committee on Health & Welfare.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. chapter 231 is amended to read:

CHAPTER 231. ADVANCE DIRECTIVES FOR
HEALTH CARE ~~AND~~ DISPOSITION OF REMAINS,
AND SURROGATE DECISION MAKING

§ 9700. PURPOSE AND POLICY

The ~~state~~ State of Vermont recognizes the fundamental right of an adult to determine the extent of health care the individual will receive, including treatment provided during periods of incapacity and at the end of life. This chapter enables adults to retain control over their own health care through the use of advance directives, including appointment of an agent and directions regarding health care and disposition of remains. During periods of incapacity, the decisions by the agent shall be based on the express instructions, wishes, or beliefs of the individual, to the extent those can be determined. This chapter also allows, in limited circumstances in which a patient without capacity has neither an agent nor a guardian, for a surrogate to provide or withhold consent on the patient's behalf for a do-not-resuscitate order or clinician order for life-sustaining treatment.

§ 9701. DEFINITIONS

As used in this chapter:

* * *

(17) "Informed consent" means the consent given voluntarily by an individual with capacity, on his or her own behalf or on behalf of another in the role of an agent, guardian, or surrogate, after being fully informed of the nature, benefits, risks, and consequences of the proposed health care, alternative health care, and no health care.

(18) "Interested individual" means:

(A) the principal's or patient's spouse, adult child, parent, adult sibling, adult grandchild, ~~reciprocal beneficiary,~~ or clergy person; or

(B) any adult who has exhibited special care and concern for the principal or patient and who is personally familiar with the principal's or patient's values.

(19) "Life sustaining treatment" means any medical intervention, including nutrition and hydration administered by medical means and antibiotics, which is intended to extend life and without which the principal or patient is likely to die.

* * *

(31) “DNR/COLST” means a do-not-resuscitate order (DNR) or a clinician order for life-sustaining treatment (COLST), or both.

(32) “Surrogate” means an interested individual who provides or withholds, pursuant to subchapter 2 of this chapter, informed consent for a do-not-resuscitate order or a clinician order for life-sustaining treatment.

(33) “Suspend” means to terminate the applicability of all or part of an advance directive for a specific period of time or while a specific condition exists.

~~(32)~~(34) “Patient representative” means the mental health patient representative established by section 7253 of this title.

Subchapter 1. Advance Directives and Disposition of Remains

§ 9702. ADVANCE DIRECTIVE

(a) An adult may do any or all of the following in an advance directive:

* * *

§ 9708. AUTHORITY AND OBLIGATIONS OF HEALTH CARE PROVIDERS, HEALTH CARE FACILITIES, AND RESIDENTIAL CARE FACILITIES REGARDING ~~DO-NOT-RESUSCITATE DNR ORDERS AND CLINICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT~~ COLST

(a) ~~As used in this section, “DNR/COLST” shall mean a do not resuscitate order (“DNR”) and a clinician order for life-sustaining treatment (“COLST”) as defined in section 9701 of this title. [Repealed.]~~

* * *

(d) A DNR order must:

(1) be signed by the patient’s clinician;

(2) certify that the clinician has consulted, or made an effort to consult, with the patient, and the patient’s agent or guardian, if there is an appointed agent or guardian;

(3) include either:

(A) the name of the patient; agent; guardian, in accordance with 14 V.S.A. § 3075(g); or ~~other individual~~ surrogate giving informed consent for the DNR and the individual’s relationship to the patient; or

(B) certification that the patient’s clinician and one other named clinician have determined that resuscitation would not prevent the imminent death of the patient, should the patient experience cardiopulmonary arrest; and

(4) if the patient is in a health care facility or a residential care facility, certify that the requirements of the facility's DNR protocol required by section 9709 of this title have been met.

(e) A COLST must:

(1) be signed by the patient's clinician; and

(2) include the name of the patient; agent; guardian, in accordance with 14 V.S.A. § 3075(g); or ~~other individual~~ surrogate giving informed consent for the COLST and the individual's relationship to the patient.

~~(f) The Department of Health shall adopt by rule on or before July 1, 2016, criteria for individuals who are not the patient, agent, or guardian, but who are giving informed consent for a DNR/COLST order. The rules shall include the following:~~

~~(1) other individuals permitted to give informed consent for a DNR/COLST order who shall be a family member of the patient or a person with a known close relationship to the patient; and~~

~~(2) parameters for how decisions should be made, which shall include at a minimum the protection of a patient's own wishes in the same manner as in section 9711 of this title. [Repealed.]~~

(g) A patient's clinician issuing a DNR/COLST order shall:

(1) place a copy of the completed DNR/COLST order in the patient's medical record; and

(2) provide instructions to the patient as to the appropriate means of displaying the DNR/COLST order.

(h) A clinician who issues a DNR order shall authorize issuance of a DNR identification to the patient. Uniform minimum requirements for DNR identification shall be determined ~~by rule~~ by the Department of Health by rule no later than ~~July 1, 2014~~ January 1, 2016.

* * *

§ 9713. IMMUNITY

(a) No individual acting as an agent ~~or~~, guardian, or surrogate shall be subjected to criminal or civil liability for making a decision in good faith pursuant to the terms of an advance directive, or DNR order, or COLST order and the provisions of this chapter.

(b)(1) No health care provider, health care facility, residential care facility, or any other person acting for or under such person's control shall, if the

provider or facility has complied with the provisions of this chapter, be subject to civil or criminal liability for:

(A) ~~providing~~ Providing or withholding treatment or services in good faith pursuant to the direction of a principal or patient, the provisions of an advance directive, a DNR order, a COLST order, a DNR identification, the consent of a principal or patient with capacity or of the principal's or patient's agent ~~or~~, guardian, or surrogate, or a decision or objection of a principal or patient; or

(B) ~~relying~~ Relying in good faith on a suspended or revoked advance directive, suspended or revoked DNR order, or suspended or revoked COLST order, unless the provider or facility knew or should have known of the suspension, or revocation.

(2) ~~No~~ A funeral director, crematory operator, cemetery official, procurement organization, or any other person acting for or under such person's control, shall, if the director, operator, official, or organization has complied with the provisions of this chapter, not be subject to civil or criminal liability for providing or withholding its services in good faith pursuant to the provisions of an advance directive, whether or not the advance directive has been suspended or revoked.

(3) Nothing in this subsection shall be construed to establish immunity for the failure to follow standards of professional conduct and to exercise due care in the provision of services.

(c) No employee shall be subjected to an adverse employment decision or evaluation for:

(1) ~~providing~~ Providing or withholding treatment or services in good faith pursuant to the direction of a principal or patient, the provisions of an advance directive, a DNR order, a COLST order, a DNR identification, the consent of the principal or patient with capacity or principal's or patient's agent ~~or~~, guardian, or surrogate, a decision or objection of a principal or patient, or the provisions of this chapter. This subdivision shall not be construed to establish a defense for the failure to follow standards of professional conduct and to exercise due care in the provision of services;.

(2) ~~relying~~ Relying on an amended, suspended, or revoked advance directive, unless the employee knew or should have known of the amendment, suspension, or revocation; ~~or~~.

(3) ~~providing~~ Providing notice to the employer of a moral or other conflict pursuant to subdivision 9707(b)(3) of this title, so long as the employee has provided ongoing health care until a new employee or provider has been found to provide the services.

* * *

Subchapter 2. Surrogate Consent

§ 9731. INFORMED CONSENT BY SURROGATE FOR DNR/COLST ORDER

(a)(1) One or more interested individuals may be eligible to act as the surrogate for an adult without capacity in order to provide or withhold informed consent for a do-not-resuscitate order or clinician order for life-sustaining treatment pursuant to this subchapter. Only one surrogate may act at a time.

(2)(A) A patient's health care provider shall not be considered an interested individual and shall not serve as a patient's surrogate to provide or withhold informed consent for a DNR/COLST order pursuant to this chapter unless related to the patient by blood, marriage, civil union, or adoption.

(B) The owner, operator, employee, agent, or contractor of a residential care facility, health care facility, or correctional facility in which the patient resides at the time the DNR/COLST order is written shall not be considered an interested individual and shall not act as the patient's surrogate to provide or withhold consent for a DNR/COLST order pursuant to this chapter unless related to the patient by blood, marriage, civil union, or adoption.

(b) A surrogate may provide or withhold informed consent only if all of the following conditions are met:

(1) the patient's clinician determines that the patient lacks capacity to provide informed consent;

(2) the patient has not appointed an agent through an advance directive;

(3) the patient has not indicated in an advance directive that the interested individual or individuals seeking to serve as surrogate should not be consulted on health care decisions or otherwise provided instructions in an advance directive contrary to allowing such individual or individuals to serve as surrogate;

(4) the patient does not have a guardian who is authorized to make health care decisions; and

(5) the patient does not object to the surrogate providing or withholding consent for a DNR/COLST order, even if the patient lacks capacity.

(c)(1) A surrogate shall be an interested individual who is designated by the patient by personally informing the patient's clinician. If the patient designates

a surrogate to the clinician orally, the clinician shall document the designation in the patient's medical record at the time the designation is made.

(2) If the patient has not designated a surrogate pursuant to subdivision (1) of this subsection, or if the surrogate designated by the patient is not reasonably available or is unwilling to serve, then a surrogate shall be an interested individual who is:

(A) willing to provide or withhold informed consent for a DNR/COLST order for the patient in accordance with the patient's wishes and values, if known; and

(B) willing and available to consult with the patient's clinician.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, an individual shall not serve as a surrogate over the patient's objection, even if the patient lacks capacity.

(d) The patient's clinician, health care provider, or residential care provider may rely on the decision of a surrogate identified pursuant to this section as long as the clinician or provider documents in the patient's medical record that the surrogate has confirmed that one of the following circumstances applies:

(1)(A) All interested individuals agree on the decision to provide or withhold consent for a DNR/COLST order, in which case they shall designate one surrogate, as well as an alternate, if available, who is authorized to provide or withhold consent and whose name will be identified on the DNR/COLST form and in the patient's medical record.

(B) All interested individuals agree that a specific interested individual may make the decision regarding whether to provide or withhold consent for a DNR/COLST order, in which case they shall designate the individual as the surrogate, as well as an alternate, if available, who is authorized to provide or withhold consent and whose name will be identified on the DNR/COLST form and in the patient's medical record.

(C) The surrogate or alternate, if applicable, is not reasonably available, in which case the clinician shall consult the interested individuals to request designation of another surrogate and alternate.

(2) If at any time the interested individuals are unable to agree on the designation of a surrogate, any interested individual may file a petition for guardianship in the Probate Division of the Superior Court.

(e) A surrogate providing informed consent for a DNR/COLST order shall use substituted judgment consistent with the patient's wishes and values and consistent with the parameters described in subsection 9711(d) of this title. The surrogate shall consult with the patient to the extent possible, and with the

patient's clinician and any other appropriate health care providers and shall provide or withhold informed consent for a DNR/COLST order by attempting to determine what the patient would have wanted under the circumstances.

(f) The patient's clinician shall make reasonable efforts to inform the patient of any proposed treatment, or of any proposal to withhold or withdraw treatment, based on the decisions made by the surrogate.

(g) If the patient's clinician determines that the patient no longer lacks capacity and the DNR/COLST order was based on informed consent provided by a surrogate, the clinician shall seek the informed consent of the patient for any DNR/COLST order, which shall supersede the surrogate's consent.

(h) A surrogate shall have the same rights as a patient with capacity would have to the following, to the extent that it is related to providing or withholding informed consent for a DNR/COLST order:

(1) request, receive, review, and copy any oral or written information regarding the patient's physical or mental health, including medical and hospital records;

(2) participate in any meetings, discussions, or conferences concerning health care decisions related to the patient;

(3) consent to the disclosure of health care information; and

(4) file a complaint on behalf of the patient regarding a health care provider, health care facility, or residential care facility.

Sec. 2. 33 V.S.A. § 7306 is amended to read:

§ 7306. RESIDENT'S REPRESENTATIVE

(a) ~~The~~ Except as provided in subsection (b) of this section, the rights and obligations established under this chapter shall devolve to a resident's ~~reciprocal beneficiary~~, guardian, next of kin, sponsoring agency, or representative payee (except when the facility itself is a representative payee) if the resident:

(1) has been adjudicated incompetent;

(2) has been found by his or her physician to be medically incapable of understanding or exercising the rights granted under this chapter; or

(3) exhibits a communication barrier.

(b) Notwithstanding the provisions of subsection (a) of this section, consent for a do-not-resuscitate order or a clinician order for life-sustaining treatment shall be provided or withheld only by the resident, by the resident's guardian or agent, or by a surrogate designated pursuant to 18 V.S.A. chapter 231, subchapter 2.

(c)(1) A resident's representative identified in subsections (a) and (b) of this section shall make decisions for the resident by attempting to determine what the resident would have wanted under the circumstances. In making the determination, the resident's representative shall consider the following:

(A) the resident's specific instructions or wishes as expressed to a spouse, adult child, parent, adult sibling, adult grandchild, clergy person, health care provider, or any other adult who has exhibited specific care or concern for the resident; and

(B) the representative's knowledge of the resident's personal preferences, values, or religious or moral beliefs.

(2) If the resident's representative cannot determine what the resident would have wanted under the circumstances, the representative shall make a determination through an assessment of the resident's best interests. When making a decision for the resident on this basis, the representative shall not authorize the provision or withholding of health care on the basis of the resident's economic status or a preexisting, long-term mental or physical disability.

(3) When making a determination under this section, representatives shall not consider their own interests, wishes, values, or beliefs.

(d) Notwithstanding the provisions of subsection (a) of this section, the facility shall make every reasonable effort to communicate the rights and obligations established under this chapter directly to the resident.

Sec. 3. RULEMAKING

The Department of Disabilities, Aging, and Independent Living shall amend its nursing home rules to comply with 33 V.S.A. § 7306 as amended by this act.

Sec. 4. EFFECTIVE DATE

This act shall take effect on January 1, 2016.

(Committee vote: 5-0-0)

S. 133.

An act relating to an employee's use of benefits.

Reported favorably with recommendation of amendment by Senator Baruth for the Committee on Economic Development, Housing & General Affairs.

The Committee recommends that the bill be amended in Sec. 2, 21 V.S.A. § 495j by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) An employer, employment agency, or labor organization shall not discharge or penalize an employee because the employee has used, or attempted to use, accrued employer-provided sick leave or other employer-provided benefits.

(Committee vote: 3-0-2)

NEW BUSINESS

Third Reading

S. 66.

An act relating to persons who are deaf or hard of hearing.

S. 122.

An act relating to miscellaneous changes to laws related to motor vehicles, motorboats, and other vehicles.

Committee Bills for Second Reading

S. 137.

An act relating to penalties for selling and dispensing marijuana.

By the Committee on Judiciary.

S. 141.

An act relating to possession of firearms.

By the Committee on Judiciary.

Second Reading

Favorable with Recommendation of Amendment

S. 58.

An act relating to requiring that the Defender General receive the same early retirement benefit as a State's Attorney.

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

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 5254 is amended to read:

§ 5254. PERSONNEL DESIGNATION AND EXPENDITURES

(a) The ~~defender general~~ Defender General, ~~deputy defender general~~ Deputy Defender General, public defenders and deputy public defenders shall be exempt from the classified ~~state~~ State service.

(b) Clerical and office staff in the ~~office of the defender general~~ Office of the Defender General and in all local offices shall be hired by the ~~defender general~~ Defender General. Clerical and office staff shall be ~~state~~ State employees paid by the ~~state~~ State, and shall receive those benefits and compensation available to classified ~~state~~ State employees who are similarly situated, unless otherwise covered by the provisions of a collective bargaining agreement setting forth the terms and conditions of employment, negotiated pursuant to the provisions of 3 V.S.A. chapter 27 of Title 3. Clerical and office staff employed by the ~~office of the defender general~~ Office of the Defender General shall not be part of the classified service as set forth in 3 V.S.A. chapter 13 of Title 3.

(c) The ~~deputy defender general~~ Deputy Defender General shall be entitled to compensation at an annual rate that does not exceed an amount \$500.00 less than the salary of the ~~defender general~~ Defender General. The public defenders and deputy public defenders shall be entitled to compensation at annual rates not to exceed an amount \$1,000.00 less than the salary of the ~~defender general~~ Defender General.

(d) The ~~defender general~~ Defender General is responsible for assuming expenses for his or her office and all local offices. The entirety of expenditures shall not exceed those set in the annual budget of the ~~office of the defender general~~ Office of the Defender General and such expenditures shall be subject to the provisions of ~~section 32 V.S.A. § 702 of Title 32~~.

(e) The Defender General shall receive an early retirement allowance equal to that of a State's Attorney or sheriff.

Sec. 2. 3 V.S.A. § 455 is amended to read:

§ 455. DEFINITIONS

(a) Unless a different meaning is plainly required by the context, the following words and phrases as used in this subchapter shall have the following meanings:

* * *

(4) "Average final compensation" shall mean:

* * *

(C) For purposes of determining average final compensation for group A or group C members, a member who has accumulated unused sick

leave at retirement shall be deemed to have worked the full normal working time for his or her position for 50 percent of such leave, at his or her full rate of compensation in effect at the date of his or her retirement. For purposes of determining average final compensation for group F members, unused annual or sick leave, termination bonuses and any other compensation for service not actually performed shall be excluded. The average final compensation for a State's Attorney and the Defender General shall be determined by the State's Attorney's or the Defender General's highest annual compensation earned during his or her creditable service.

* * *

(9) "Employee" shall mean:

* * *

(B) any regular officer or employee of the Department of Public Safety assigned to police and law enforcement duties, including the Commissioner of Public Safety appointed before July 1, 2001; but, irrespective of the member's classification, shall not include any member of the General Assembly as such, any person who is covered by the Vermont Teachers' Retirement System, any person engaged under retainer or special agreement or C beneficiary employed by the Department of Public Safety for not more than 208 hours per year, or any person whose principal source of income is other than State employment. In all cases of doubt, the Retirement Board shall determine whether any person is an employee as defined in this subchapter. Also included under this subdivision are employees of the Department of Liquor Control who exercise law enforcement powers, employees of the Department of Fish and Wildlife assigned to law enforcement duties, motor vehicle inspectors, full-time deputy sheriffs employed by the State of Vermont, full-time members of the Capitol Police force, investigators employed by the Criminal Division of the Office of the Attorney General, Department of State's Attorneys, Department of Health, or Office of the Secretary of State, who have attained full-time certification from the Vermont Criminal Justice Training Council, who are required to perform law enforcement duties as the primary function of their employment, and who may be subject to mandatory retirement permissible under 29 U.S.C. § 623(j), who are first included in membership of the system on or after July 1, 2000. Also included under this subdivision are full-time firefighters employed by the State of Vermont and the Defender General.

* * *

Sec. 3. 3 V.S.A. § 459 is amended to read:

§ 459. NORMAL AND EARLY RETIREMENT

* * *

(d) Early retirement allowance.

* * *

(5) Notwithstanding subdivisions (1) and (2) of this subsection, a State's Attorney, the Defender General, or sheriff who has completed 20 years of creditable service, of which 15 years has been as a State's Attorney, the Defender General, or sheriff, shall receive an early retirement allowance equal to the normal retirement allowance, at age 55, without reductions.

* * *

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

(Committee vote: 5-0-0)

Reported favorably by Senator McCormack for the Committee on Appropriations.

(Committee vote: 7-0-0)

CONCURRENT RESOLUTIONS FOR NOTICE

Concurrent Resolutions for Notice under Joint Rule 16

The following joint concurrent resolutions have been introduced for approval by the Senate and House and will be adopted by the Senate unless a Senator requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration should be communicated to the Secretary's Office.

H.C.R. 68-80 (For text of Resolutions, see Addendum to House Calendar for March 19, 2015)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Robert Ide of Peacham – Commissioner, Department of Motor Vehicles – By Sen. Kitchel for the Committee on Transportation. (3/12/15)

Sue Minter of Waterbury Center – Secretary, Agency of Transportation – By Sen. Westman for the Committee on Transportation. (3/13/15)

William Hoser of Chester – Member of the Vermont Board of Medical Practice – By Sen. McCormack for the Committee on Health and Welfare. (3/13/15)

Sarah Flynn of Burlington – Member of the Community High School of Vermont Board – By Sen. Zuckerman for the Committee on Education. (3/13/15)

Churchill Hinds of Colchester – Member, Vermont State Colleges Board of Trustees – By Sen. Zuckerman for the Committee on Education. (3/13/15)

Michael Pieciak of Winooski – Member, Vermont State Colleges Board of Trustees – By Sen. Zuckerman for the Committee on Education. (3/13/15)

Patricia Boucher of Enosburg Falls – Member of the Parole Board – Sen. McAllister for the Committee on Institutions. (3/17/15)

PUBLIC HEARINGS

Tuesday, March 24, 2015 – Room 11 – 6:00 P.M. – 8:00 P.M. – Re: Renewable Energy Siting – Jt. Mtg. Senate and House Committees on Natural Resources and Energy.

REPORTS ON FILE

Reports 2015

Pursuant to the provisions of 2 V.S.A. §20(c), one (1) hard copy of the following report is on file in the office of the Secretary of the Senate. Effective January 2010, pursuant to Act No. 192, Adj. Sess. (2008) §5.005(g) some reports will automatically be sent by electronic copy only and can be found on the State of Vermont Legislative webpage.

1. Working Lands Enterprise Initiative Annual Report: Fiscal Year 2014. (Vermont Agency of Agriculture, Food and Markets) (March 2015)

NOTICE OF JOINT ASSEMBLY

Thursday, March 19, 2015 - 10:30 A.M. – House Chamber - Retention of four Superior Court Judges and two Magistrates.

FOR INFORMATION ONLY

CROSSOVER DEADLINES

The Senate Rules Committee established the following Crossover deadlines:

(1) All **Senate** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 13, 2015**, and filed with the Secretary of the Senate so that they may be placed on the Calendar for Notice the next legislative day.

(2) All **Senate** bills referred pursuant to Senate Rule 31 to the Committees on Appropriations and Finance must be reported out by the last of those committees on or before **Friday, March 20, 2015**, and filed with the Secretary of the Senate so that they may be placed on the Calendar for Notice the next legislative day.

These deadlines may be waived for any bill or committee only with the consent of the Committee on Rules.

Note: Pursuant to Senate Rule 44A, the Senate will not act on House bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

Exceptions to the foregoing deadlines include the major money bills (Appropriations “Big Bill”, Transportation Spending Bill, Capital Construction Bill, and Miscellaneous Tax Bill).