

Journal of the Senate

THURSDAY, FEBRUARY 15, 2018

The Senate was called to order by the President.

Joint Assembly

At ten o'clock and twenty-five minutes in the morning the hour having arrived for the meeting of the two Houses in Joint Assembly pursuant to:

J.R.S. 44. Joint resolution providing for a Joint Assembly for the election of two legislative Trustees of the Vermont State Colleges Corporation.

The Senate repaired to the hall of the House.

Having returned therefrom, at ten o'clock and fifty minutes in the morning the President assumed the Chair.

Adjournment

On motion of Senator Ashe, the Senate adjourned until one o'clock and in the afternoon.

Message from the House No. 16

A message was received from the House of Representatives by Ms. Rebecca Silbernagel, 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. 616. An act relating to thermal efficiency monies and biomass-led district heat.

In the passage 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. 47. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

The Governor has informed the House that on the February 13, 2018, he approved and signed a bill originating in the House of the following title:

H. 633. An act relating to fiscal year 2018 budget adjustments.

Afternoon**Called to Order**

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Rabbi Tobie M. Weisman of Montpelier.

Rules Suspended; Bill Committed**S. 260.**

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

An act relating to funding the cleanup of State waters.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Natural Resources and Energy, Senator Bray moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Agriculture with the report of the Committee on Natural Resources and Energy *intact*,

Which was agreed to.

Bill Referred

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

H. 616.

An act relating to thermal efficiency monies and biomass-led district heat.

To the Committee on Finance.

Senate Resolution Adopted**S.R. 11.**

Senate resolution entitled:

Senate resolution encouraging its members, in 2019, to initiate an amendment to the Vermont Constitution regarding equal rights

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

Bill Passed**S. 237.**

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

An act relating to providing representation to needy persons concerning immigration matters.

Bill Passed in Concurrence**H. 694.**

House bill of the following title was read the third time and passed in concurrence:

An act relating to captive insurance companies.

Bill Amended; Third Reading Ordered**S. 40.**

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

An act relating to increasing the minimum wage.

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

Sec. 1. 21 V.S.A. § 384 is amended to read:

§ 384. EMPLOYMENT; WAGES

(a) An employer shall not employ any employee at a rate of less than ~~\$9.15. Beginning January 1, 2016, an employer shall not employ any employee at a rate of less than \$9.60. Beginning January 1, 2017, an employer shall not employ any employee at a rate of less than \$10.00. Beginning on January 1, 2018, an employer shall not employ any employee at a rate of less than \$10.50; and beginning~~ Beginning on January 1, 2019, an employer shall not employ any employee at a rate of less than \$11.10. Beginning on January 1, 2020, an employer shall not employ any employee at a rate of less than \$11.75. Beginning on January 1, 2021, an employer shall not employ any employee at a rate of less than \$12.50. Beginning on January 1, 2022, an employer shall not employ any employee at a rate of less than \$13.25. Beginning on January 1, 2023, an employer shall not employ any employee at a rate of less than \$14.10. Beginning on January 1, 2024, an employer shall not employ any employee at a rate of less than \$15.00, and on each subsequent January 1, the minimum wage rate shall be increased by five percent or the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or

successor agency for the 12 months preceding the previous September 1, whichever is smaller, but in no event shall the minimum wage be decreased. The minimum wage shall be rounded off to the nearest \$0.01. An employer in the hotel, motel, tourist place, and restaurant industry shall not employ a service or tipped employee at a basic wage rate less than one-half the minimum wage. As used in this subsection, "a service or tipped employee" means an employee of a hotel, motel, tourist place, or restaurant who customarily and regularly receives more than \$120.00 per month in tips for direct and personal customer service. If the minimum wage rate established by the U.S. government is greater than the rate established for Vermont for any year, the minimum wage rate for that year shall be the rate established by the U.S. government.

* * *

Sec. 2. CHILD CARE FINANCIAL ASSISTANCE PROGRAM; STATE PLAN

To the extent funds are appropriated, the Commissioner for Children and Families shall amend the Department for Children and Families' federal Child Care and Development Fund State Plan to:

(1) adjust the sliding scale of the Child Care Financial Assistance Program benefit to correspond with each minimum wage increase required pursuant to this act to ensure that the benefit percentage at each new minimum wage level remains the same as the percentage applied under the former minimum wage; and

(2) adjust the market rate used to inform the fee scale in a manner that offsets the estimated increased cost of child care in Vermont resulting from the increase in the minimum wage required pursuant to this act.

Sec. 3. MINIMUM WAGE; ADJUSTMENT FOR INFLATION; REPORT

On or before January 15, 2023, the Legislative Council and the Joint Fiscal Office shall submit a written report to the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs regarding potential mechanisms for indexing the minimum wage established pursuant to 21 V.S.A. § 384 to inflation after 2024. In particular, the report shall:

(1) identify and examine mechanisms that other jurisdictions use to index their minimum wages to inflation and the potential benefits and disadvantages of each mechanism; and

(2) identify and examine any alternative mechanisms to index the minimum wage to inflation, including alternative measures of inflation, and the potential benefits and disadvantages of each mechanism.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

And that when so amended the bill ought to pass.

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass when so amended.

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

Thereupon, pending the question, Shall the bill be read third time?, Senators Benning, Branagan and Collamore moved to amend the bill in Sec. 1, 21 V.S.A. § 384, by striking out Sec. 1 in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. 21 V.S.A. § 384 is amended to read:

§ 384. EMPLOYMENT; WAGES

~~(a)(1) An employer shall not employ any employee at a rate of less than \$9.15. Beginning on January 1, 2016, an employer shall not employ any employee at a rate of less than \$9.60. Beginning on January 1, 2017, an employer shall not employ any employee at a rate of less than \$10.00. Beginning on January 1, 2018~~ Except as otherwise provided in subdivision (2) of this subsection, an employer shall not employ any employee at a rate of less than \$10.50, and beginning on January 1, 2019 and on each subsequent January 1, the minimum wage rate shall be increased by five percent or the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous September 1, whichever is smaller, but in no event shall the minimum wage be decreased.

(2) An employer shall not employ any employee working in Chittenden County at a rate of less than:

(A) \$10.50;

(B) \$11.10 beginning on January 1, 2019;

(C) \$11.75 beginning on January 1, 2020;

(D) \$12.50 beginning on January 1, 2021;

(E) \$13.25 beginning on January 1, 2022;

(F) \$14.10 beginning on January 1, 2023;

(G) \$15.00 beginning on January 1, 2024; and

(H) a minimum wage rate on each subsequent January 1 that equals the previous minimum wage rate increased by five percent or the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous September 1, whichever is smaller, but in no event shall the minimum wage established pursuant to this subdivision (2) be decreased.

(3) The minimum wage shall be rounded off to the nearest \$0.01.

(4) An employer in the hotel, motel, tourist place, and restaurant industry shall not employ a service or tipped employee at a basic wage rate less than one-half the applicable minimum wage. As used in this subsection, “a service or tipped employee” means an employee of a hotel, motel, tourist place, or restaurant who customarily and regularly receives more than \$120.00 per month in tips for direct and personal customer service.

(5) If the minimum wage rate established by the U.S. government is greater than the rate established ~~for Vermont~~ established pursuant to subdivision (1) or (2) of this subsection for any year, the minimum wage rate pursuant to the affected subdivision for that year shall be the rate established by the U.S. government.

* * *

Which was disagreed to on a roll call, Yeas 6, Nays 24.

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

Roll Call

Those Senators who voted in the affirmative were: Benning, Branagan, Brock, Collamore, Flory, Westman.

Those Senators who voted in the negative were: Ashe, Ayer, Balint, Baruth, Bray, Brooks, Campion, Clarkson, Cummings, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Pearson, Pollina, Rodgers, Sears, Sirotkin, Soucy, Starr, White.

Thereupon, pending the question, Shall the bill be read third time?, Senators Sears, Ashe, Kitchel, McCormack, Nitka, Starr and Westman moved to amend the bill as follows:

First: In Sec. 1, 21 V.S.A. § 384, after the ellipsis, by inserting a subsection (e) to read as follows:

(e)(1) A tip shall be the sole property of the employee or employees to whom it was paid, given, or left. An employer that permits patrons to pay tips by credit card shall pay an employee the full amount of the tip that the customer indicated, without any deductions for credit card processing fees or costs that may be charged to the employer by the credit card company.

(2) An employer shall not collect, deduct, or receive any portion of a tip left for an employee or credit any portion of a tip left for an employee against the wages due to the employee pursuant to subsection (a) of this section.

(3) This subsection shall not be construed to prohibit the pooling of tips among service or tipped employees as defined pursuant to subsection (a) of this section.

Second: After Sec. 3, report regarding adjusting the minimum wage for inflation, by inserting a new Sec. 4 to read as follows:

Sec. 4. 21 V.S.A. § 383 is amended to read:

§ 383. DEFINITIONS

Terms used in this subchapter have the following meanings, unless a different meaning is clearly apparent from the language or context:

(1) “Commissioner;” means the Commissioner of Labor or designee;

(2) “Employee;” means any individual employed or permitted to work by an employer except:

* * *

(3) “Occupation;” means an industry, trade, ~~or~~ business or branch thereof, or a class of work in which workers are gainfully employed.

(4) “Tip” means a sum of money gratuitously and voluntarily left by a customer for service, or indicated on a bill or charge statement, to be paid to a service or tipped employee for directly and personally serving the customer in a hotel, motel, tourist place, or restaurant. An employer-mandated service charge shall not be considered a tip.

And by renumbering the remaining section to be numerically correct.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read third time?, Senators Flory, Branagan, Brock, Collamore and Westman moved to amend the bill in Sec. 1, 21 V.S.A. § 384, by striking out the section in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. 21 V.S.A. § 384 is amended to read:

§ 384. EMPLOYMENT; WAGES

(a)(1) ~~An~~ Except as otherwise provided pursuant to subdivision (2) of this subsection, an employer shall not employ any employee at a rate of less than \$9.15. Beginning January 1, 2016, an employer shall not employ any employee at a rate of less than \$9.60. Beginning January 1, 2017, an employer shall not employ any employee at a rate of less than \$10.00. Beginning on January 1, 2018, an employer shall not employ any employee at a rate of less than \$10.50, and beginning Beginning on January 1, 2019, an employer shall not employ any employee at a rate of less than \$11.10. Beginning on January 1, 2020, an employer shall not employ any employee at a rate of less than \$11.75. Beginning on January 1, 2021, an employer shall not employ any employee at a rate of less than \$12.50. Beginning on January 1, 2022, an employer shall not employ any employee at a rate of less than \$13.25. Beginning on January 1, 2023, an employer shall not employ any employee at a rate of less than \$14.10. Beginning on January 1, 2024, an employer shall not employ any employee at a rate of less than \$15.00, and on each subsequent January 1, the minimum wage rate shall be increased by five percent or the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous September 1, whichever is smaller, but in no event shall the minimum wage be decreased. The minimum wage shall be rounded off to the nearest \$0.01.

(2)(A) An employer may employ an employee at a rate equal to not less than 90 percent of the minimum wage rate established pursuant to subdivision (1) of this subsection (a) if:

(i) the employer offers one or more of the following benefits to the employee:

(I) contributions to employer-sponsored health insurance benefits;

(II) contributions to retirement benefits;

(III) contributions to life, disability, or similar insurance benefits;

(IV) paid time off in excess of the minimum required by law;

(V) other tangible employment benefits that have a fixed value, including complimentary services or products; and

(ii) the aggregate monetary value of the benefits is, on a monthly basis, equal to or greater than 15 times the minimum wage rate established pursuant to subdivision (1) of this subsection (a).

(B) In determining the aggregate monetary value of an employee's benefits pursuant to subdivision (A)(ii) of this subdivision (2), the value of any paid time off in excess of the minimum required by law shall be equal to the monthly amount of paid time off that is provided or accrues in excess of the minimum required by law multiplied by the employee's wage rate.

(3) An employer in the hotel, motel, tourist place, and restaurant industry shall not employ a service or tipped employee at a basic wage rate less than one-half the minimum wage. As used in this subsection, "a service or tipped employee" means an employee of a hotel, motel, tourist place, or restaurant who customarily and regularly receives more than \$120.00 per month in tips for direct and personal customer service.

(4) If the minimum wage rate established by the U.S. government is greater than the rate established for Vermont for any year, the minimum wage rate for that year shall be the rate established by the U.S. government.

* * *

Which was disagreed to on a roll call, Yeas 11, Nays 19.

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

Roll Call

Those Senators who voted in the affirmative were: Benning, Branagan, Brock, Collamore, Cummings, Flory, Mazza, Rodgers, Soucy, Westman, White.

Those Senators who voted in the negative were: Ashe, Ayer, Balint, Baruth, Bray, Brooks, Campion, Clarkson, Ingram, Kitchel, Lyons, MacDonald, McCormack, Nitka, Pearson, Pollina, Sears, Sirotkin, Starr.

Senator Ashe Assumes the Chair

Thereupon, pending the question, Shall the bill be read third time?, Senators Brock and Flory moved to amend the bill in Sec. 1, 21 V.S.A. § 384, after the ellipsis by inserting a subsection (e) to read as follows:

(e)(1) Notwithstanding 2 V.S.A. § 20(d), on or before December 1, 2018, and on or before each subsequent December 1 until the minimum wage established pursuant to subsection (a) of this section reaches \$15.00:

(A) the Commissioner shall submit a written report to the Governor and the General Assembly regarding whether seasonally adjusted total

nonfarm, private employment for the State decreased over the 12-month period ending on September 30 of that year; and

(B) the Commissioner of Taxes shall submit a written report to the Governor and the General Assembly regarding whether the inflation adjusted revenues from the sales tax imposed pursuant to 32 V.S.A. § 9771 and the use tax imposed pursuant to 32 V.S.A. § 9773 for the 12-month period ending on September 30 of that year are less than the revenues from the sales tax and use tax for the 12-month period ending on September 30 of the previous year.

(2)(A) If the Commissioner's report indicates that seasonally adjusted total nonfarm, private employment for the State decreased over the 12-month period ending on September 30 and the Commissioner of Taxes' report indicates that the inflation adjusted revenues from the sales tax imposed pursuant to 32 V.S.A. § 9771 and the use tax imposed pursuant to 32 V.S.A. § 9773 for the 12-month period ending on September 30 of that year are less than the revenues from the sales tax and use tax for the 12-month period ending on September 30 of the previous year, the scheduled future increases in the minimum wage pursuant to subsection (a) of this section shall be delayed by one year.

(B) The scheduled increases in the minimum wage shall not be delayed more than two times pursuant to this subsection (e).

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

President Resumes the Chair

Thereupon, third reading of the bill was ordered on a roll call, Yeas 20, Nays 10.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Balint, Baruth, Bray, Brooks, Champion, Clarkson, Cummings, Ingram, Kitchel, Lyons, MacDonald, McCormack, Nitka, Pearson, Pollina, Sears, Sirotkin, White.

Those Senators who voted in the negative were: Benning, Branagan, Brock, Collamore, Flory, Mazza, Rodgers, Soucy, Starr, Westman.

Adjournment

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