

Journal of the Senate

THURSDAY, MARCH 29, 2018

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Deadra Bachorik of Burlington.

Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment

H. 693.

House bill entitled:

An act relating to the Honor and Remember Flag.

Was taken up.

Thereupon, pending third reading of the bill, Senator Collamore moved that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 1 V.S.A. § 496a is added to read:

§ 496a. HONOR AND REMEMBER FLAG

The Honor and Remember Flag is designated as the flag that recognizes those Vermonters who died during or as the result of serving on active duty in the U.S. Armed Forces. This designation will recognize their bravery and educate Vermonters about the sacrifices their fellow citizens have made to protect our nation. The Department of Buildings and General Services shall establish a protocol for the flying of the Honor and Remember Flag and may accept donations of the flag to be flown on State-owned flagpoles. The Honor and Remember Flag may be flown on State-owned and municipally owned flagpoles, including those at military facilities, war memorials, and veterans cemeteries on such days as the Department of Buildings and General Services shall designate in the protocol.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment on a roll call, Yeas 29, Nays 0.

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: Ashe, Ayer, Balint, Baruth, Benning, Branagan, Bray, Brock, Brooks, Campion, Clarkson, Collamore, Cummings, Flory, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Pearson, Pollina, Sears, Sirotkin, Soucy, Starr, Westman, White.

Those Senators who voted in the negative were: None.

The Senator absent and not voting was: Rodgers.

Bill Passed

S. 285.

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

An act relating to universal recycling requirements.

Bills Passed in Concurrence

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

H. 585. An act relating to management of records.

H. 615. An act relating to prohibiting the use of drones near correctional facilities.

Bills Passed in Concurrence with Proposal of Amendment

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

H. 611. An act relating to compensation for victims of crime.

H. 836. An act relating to electronic court filings for relief from abuse orders.

Third Readings Ordered

H. 616.

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

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

Reported that the bill ought to pass in concurrence.

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

H. 620.

Senator Kitchel, for the Committee on Transportation, to which was referred House bill entitled:

An act relating to State-owned airports and economic development.

Reported that the bill ought to pass in concurrence.

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

Proposal of Amendment; Third Reading Ordered

H. 422.

Senator Sears, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to removal of firearms from a person arrested or cited for domestic assault.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 1048 is added to read:

§ 1048. REMOVAL OF FIREARMS

(a)(1) When a law enforcement officer arrests, cites, or obtains an arrest warrant for a person for domestic assault in violation of this subchapter, the officer may remove any firearm:

(A) that is contraband or will be used as evidence in a criminal proceeding; or

(B) that is in the immediate possession or control of the person being arrested or cited, in plain view of the officer at the scene of the alleged domestic assault, or discovered during a lawful search, including under exigent circumstances, if the removal is necessary for the protection of the officer, the alleged victim, the person being arrested or cited, or a family member of the alleged victim or of the person being arrested or cited.

(2) As used in this section, "family member" means any family member, a household member as defined in 15 V.S.A. § 1102(1), or a child of a family member or household member.

(b) A person cited for domestic assault shall be arraigned on the next business day after the citation is issued except for good cause shown. Unless the person is held without bail, the State's Attorney shall request conditions of release for a person cited or lodged for domestic assault.

(c)(1) At arraignment, the court shall issue a written order releasing any firearms removed pursuant to subdivision (a)(1)(B) of this section unless:

(A) the firearm is being or may be used as evidence in a pending criminal or civil proceeding;

(B) a court orders relinquishment of the firearm pursuant to 15 V.S.A. chapter 21 (abuse prevention) or any other provision of law consistent with 18 U.S.C. § 922(g)(8), in which case the weapon shall be stored pursuant to 20 V.S.A. § 2307;

(C) the person requesting the return is prohibited by law from possessing a firearm; or

(D) the court imposes a condition requiring the defendant not to possess a firearm.

(2) If the court under subdivision (1) of this subsection orders the release of a firearm removed under subdivision (a)(1)(B) of this section, the law enforcement agency in possession of the firearm shall make it available to the owner within three business days after receipt of the written order and in a manner consistent with federal law.

(d)(1) A law enforcement officer shall not be subject to civil or criminal liability for acts or omissions made in reliance on the provisions of this section. This section shall not be construed to create a legal duty to a victim or to any other person, and no action may be filed based upon a claim that a law enforcement officer removed or did not remove a firearm as authorized by this section.

(2) A law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of firearms removed, stored, or transported pursuant to this section. This subdivision shall not apply if the damage or deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the law enforcement agency.

(3) This section shall not be construed to limit the authority of a law enforcement agency to take any necessary and appropriate action, including disciplinary action, regarding an officer's performance in connection with this section.

(e) This section shall not be construed:

(1) to prevent a court from prohibiting a person from possessing firearms under any other provision of law;

(2) to prevent a law enforcement officer from searching for and seizing firearms under any other provision of law; or

(3) to authorize a warrantless search under any circumstances other than those permitted by this section.

Sec. 2. EFFECTIVE DATE

This act shall take effect on September 1, 2018.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposal of amendment was agreed to, and third reading of the bill was ordered on a roll call, Yeas 29, Nays 0.

Senator Sears 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, Benning, Branagan, Bray, Brock, Campion, Clarkson, Collamore, Cummings, Flory, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Pearson, Pollina, Rodgers, Sears, Sirotkin, Soucy, Starr, Westman, White.

Those Senators who voted in the negative were: None.

The Senator absent and not voting was: Brooks.

Proposal of Amendment; Third Readings Ordered

H. 563.

Senator Benning, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to repealing the crimes of vagrancy.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The General Assembly finds:

(1) At common law, a vagrant is someone who refuses to work or goes about begging. Throughout the 19th and 20th centuries, Vermont and most other states criminalized this status. An 1864 Vermont statute focused on a “person, who, having his face painted, discolored, covered, or concealed, or being otherwise disguised in a manner calculated to prevent him from being identified and his true character discovered.” Other versions of the law targeted persons who were “unable to give a good account of themselves.”

(2) Vermont’s vagrancy laws are very likely unconstitutional. Similar laws in other states have been struck down by the courts for vagueness and overbreadth, for failure to provide fair notice of what conduct is forbidden, and for encouraging arbitrary and erratic arrests.

(3) Vermont’s vagrancy laws criminalize a person’s status as someone who “roves from place to place and [lives] without visible means of support...” Any conduct prohibited in the vagrancy chapter is covered by other statutes in current law such as disorderly conduct, trespass, and assault.

Sec. 2. REPEAL

13 V.S.A. chapter 83 (Vagrants) is repealed.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

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

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

H. 771.

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

An act relating to the Vermont National Guard.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 20 V.S.A. § 428 is added to read:

§ 428. RECRUITMENT, RETENTION, AND PROMOTION OF WOMEN;
REPORT

(a) Notwithstanding 2 V.S.A. § 20(d), the Adjutant and Inspector General shall make a report to the General Assembly on or before January 15, 2019

and annually thereafter regarding the Vermont National Guard's efforts to recruit and retain women and to increase the number of women serving as senior noncommissioned officers, warrant officers, and senior commissioned officers.

(b) The report shall contain:

(1) the numbers of men and women serving in the Vermont National Guard;

(2) the numbers, by rank, of men and women serving in the Vermont National Guard as senior noncommissioned officers, E-7 and above; as warrant officers, W-1 to W-5; and as senior commissioned officers, O-4 and above;

(3) the change during the previous five years in the numbers of men and women serving in the Vermont National Guard as senior noncommissioned officers, E-7 and above; as warrant officers, W-1 to W-5; and as senior commissioned officers, O-4 and above;

(4) the numbers of men and women recruited to serve in the Vermont National Guard during the past calendar year;

(5) the numbers of men and women recruited or promoted to serve in the Vermont National Guard as senior noncommissioned officers, E-7 and above, during the past calendar year;

(6) the numbers of men and women recruited or promoted to serve in the Vermont National Guard as warrant officers, W-1 to W-5, during the past calendar year;

(7) the numbers of men and women recruited or promoted to serve in the Vermont National Guard as senior commissioned officers, O-4 and above, during the past calendar year;

(8) a summary of the current policies, initiatives, and programs to increase the number of women recruited and retained by the Vermont National Guard, any changes made by the Guard since the prior report, and any recommendations for legislative action to increase further the number of women recruited and retained by the Vermont National Guard; and

(9) a summary of the current policies, initiatives, and programs to increase the number of women serving in the Vermont National Guard as senior noncommissioned officers, warrant officers, and senior commissioned officers; any changes made by the Guard since the prior report; and any recommendations for legislative action to increase further the number of women serving in the Vermont National Guard as senior noncommissioned officers, warrant officers, and senior commissioned officers.

Sec. 2. 20 V.S.A. § 363 is amended to read:

§ 363. OFFICERS GENERALLY

(a)(1) ~~The general assembly~~ General Assembly shall biennially elect an ~~adjutant and inspector general~~ Adjutant and Inspector General, who shall also be ~~quartermaster general~~ Quartermaster General with the rank of a major general.

(2) A candidate for Adjutant and Inspector General shall:

(A) be a resident of Vermont;

(B) have attained the rank of lieutenant colonel (O-5) or above;

(C) be a current member of the U.S. Army, the U.S. Air Force, the U.S. Army Reserve, the U.S. Air Force Reserve, the Army National Guard, or the Air National Guard or be eligible to return to active service in the Army National Guard or the Air National Guard; and

(D) be a graduate of a Senior Service College, currently be enrolled in a Senior Service College, or be eligible to be enrolled in a Senior Service College during the biennium in which the candidate would first be appointed.

(3) A candidate for Adjutant and Inspector General shall, at the time he or she notifies the Secretary of State of his or her candidacy pursuant to 2 V.S.A. § 12, certify under oath to the Secretary that he or she meets the qualifications set forth in subdivision (2) of this subsection.

(b)(1) ~~Such officer~~ The Adjutant and Inspector General may appoint a deputy with appropriate rank, an ~~assistant adjutant general~~ Assistant Adjutant General for ~~army~~ Army, an ~~assistant adjutant general~~ Assistant Adjutant General for ~~air~~ Air, an ~~assistant adjutant general~~ Assistant Adjutant General for ~~joint operations~~ Joint Operations, a sergeant major, and a chief master sergeant, without pay, with the approval of the ~~governor~~ Governor.

(2) ~~The adjutant general~~ Adjutant and Inspector General may remove the appointed assistant adjutant generals and sergeants and shall be responsible for their acts.

(3) Upon appointment, each assistant adjutant general shall be a federally recognized officer of the ~~national guard~~ National Guard of the rank of lieutenant colonel or above, and shall have a rank of colonel or brigadier general, and the sergeant major shall be a federally recognized noncommissioned officer of the ~~national guard~~ National Guard of the rank of master sergeant or first sergeant, and the chief master sergeant shall be a federally recognized noncommissioned officer of the rank of senior master sergeant or first sergeant.

(4) The deputy, assistants, and sergeants shall perform duties as the ~~adjutant and inspector general and quartermaster general~~ Adjutant and Inspector General shall direct. In the absence or disability of the ~~officer~~ Adjutant and Inspector General, the deputy shall perform the duties of that office.

(c) In case a vacancy occurs in the office of ~~adjutant and inspector general and quartermaster general~~ Adjutant and Inspector General, the deputy shall assume and discharge the duties of the office until the vacancy is filled.

(d) ~~The appointments~~ Appointments made pursuant to subsection (b) of ~~this section~~ shall be in writing and recorded in the office of the ~~secretary of state~~ Secretary of State.

(e) All other officers of the ~~national guard~~ National Guard shall be chosen in accordance with ~~such regulations as~~ rules adopted by the ~~governor may prescribe~~ Governor consistent with the laws of this ~~state~~ State and the United States.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

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

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

Rules Suspended; Bill Committed

On motion of Senator Cummings, the Committee on Finance was relieved of further consideration of House bill entitled:

H. 904. An act relating to miscellaneous agricultural subjects.

Thereupon, pending entry of the bill on the calendar for notice the next legislative day, Senator Cummings moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Natural Resources and Energy with the report of the Committee on Finance *intact*,

Which was agreed to.

Adjournment

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