

Journal of the House

Monday, May 13, 2019

At three o'clock in the afternoon the Speaker called the House to order.

Devotional Exercises

A moment of silence was held in lieu of devotions.

Bill Referred to Committee on Appropriations

S. 105

Senate bill, entitled

An act relating to miscellaneous judiciary procedures

Appearing on the Calendar, carrying an appropriation, under rule 35(a), was referred to the committee on Appropriations.

Bill Referred to Committee on Appropriations

S. 146

Senate bill, entitled

An act relating to substance misuse prevention

Appearing on the Calendar, carrying an appropriation, under rule 35(a), was referred to the committee on Appropriations.

Bill Referred to Committee on Ways and Means

S. 163

Senate bill, entitled

An act relating to housing safety and rehabilitation

Affecting the revenue of the state, under rule 35(a), was referred to the committee on Ways and Means.

Bill Referred to Committee on Appropriations

S. 160

Senate bill, entitled

An act relating to agricultural development

Carrying an appropriation, under rule 35(a), was referred to the committee on Appropriations.

**Third Reading; Bill Passed in Concurrence
With Proposal of Amendment**

S. 41

Senate bill, entitled

An act relating to regulating entities that administer health reimbursement arrangements

Was taken up, read the third time and passed in concurrence with proposal of amendment.

**Third Reading; Bill Passed in Concurrence
With Proposal of Amendment**

S. 108

Senate bill, entitled

An act relating to employee misclassification

Was taken up, read the third time and passed in concurrence with proposal of amendment.

**Third Reading; Bill Passed in Concurrence
With Proposal of Amendment**

S. 110

Senate bill, entitled

An act relating to data privacy and consumer protection

Was taken up, read the third time and passed in concurrence with proposal of amendment.

Third Reading; Bill Passed in Concurrence

S. 111

Senate bill, entitled

An act relating to the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry

Was taken up, read the third time and passed in concurrence.

**Second Reading; Proposal of Amendment Agreed to;
Third Reading Ordered; Rules Suspended; Third Reading; Bill Passed in
Concurrence with Proposal of Amendment**

S. 134

Rep. Gardner of Richmond, for the committee on Government Operations, to which had been referred Senate bill, entitled

An act relating to background investigations for State employees with access to federal tax information

Reported in favor of its passage in concurrence with proposal of amendment by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Background Investigations * * *

Sec. 1. 3 V.S.A. § 241 is amended to read:

§ 241. BACKGROUND INVESTIGATIONS

* * *

(b) As used in this chapter, “Recipient” means the following authorities of the Executive Branch of State government that receive FTI:

(1) Agency of Human Services, including the:

(A) Department for Children and Families;

(B) Department of Health;

(C) Department of Mental Health; and

(D) Department of Vermont Health Access.

(2) Department of Labor.

(3) Department of Motor Vehicles.

(4) Department of Taxes.

(5) Agency of Digital Services.

(6) Department of Buildings and General Services.

(c)(1) The Recipient shall conduct an initial background investigation of any individual, including a current or prospective employee, volunteer, contractor, or subcontractor, to whom the Recipient will permit access to FTI for the purpose of assessing the individual’s fitness to be permitted access to FTI.

(2) The Recipient shall, at least every 10 years, conduct a periodic background reinvestigation of any employee, volunteer, contractor, or subcontractor to whom the Recipient permits access to FTL.

(3) The impact of the results of a background investigation performed pursuant to subdivision (1) of this subsection shall be the subject of impact bargaining between the State and the collective bargaining representative for the employee's bargaining unit to the extent required by any collective bargaining agreements between the parties.

* * *

* * * State Temporary and Seasonal Employees * * *

Sec. 2. 3 V.S.A. § 323 is amended to read:

§ 323. DEFINITIONS

As used in this chapter, unless the context clearly requires otherwise:

* * *

(2) "Bona fide emergency" means an unanticipated need for short-term staffing:

(A) to prevent significant disruption to the continued operation of State government;

(B) to avoid serious or imminent harm to the public, critical services, or other staff; or

(C) to avoid jeopardizing public safety.

(3) "Class" means one or more positions sufficiently similar in nature, scope, and accountability that the same title, test of fitness, and schedule of compensation may be applied to each position.

(3)(4) "Job evaluation" means the systematic method used to determine the value of each job in relation to other jobs within the State service.

(5) "Seasonal employment" means employment in a temporary position with a specific start date and anticipated end date for a period of not more than seven months in any 12-month period or employment in a temporary position with a specific start date and anticipated end date for a period of more than seven months that has been approved by the Commissioner of Human Resources pursuant to subdivision 331(c)(3) of this chapter. Seasonal employment includes employment in temporary positions that are available on a reoccurring basis from year to year.

Sec. 3. 3 V.S.A. § 331 is amended as follows:

§ 331. TEMPORARY EMPLOYEES

(a) The State shall not employ any person in a temporary capacity except in accordance with the provisions of this section.

(b)(1) On request of the appointing authority, the Commissioner of Human Resources may approve, in writing, the creation of a temporary position and the hiring of a person to fill such temporary position only if the position and person are needed:

(A) to meet a seasonal employment need of State government;

(B) to respond to a bona fide emergency;

(C) to fill in for the temporary absence of an existing employee, or a vacancy in an existing position; or

(D) to perform a governmental function that requires only intermittent, sporadic, or ongoing employment ~~that averages less than 20 hours per week during any one calendar year~~, provided that such employment does not exceed 1,280 work hours in any one calendar year.

* * *

(c)(1) The Commissioner may authorize the continued employment of a person in a temporary capacity for more than 1,280 work hours in any one calendar year if the Commissioner determines, in writing, that a bona fide emergency exists for the appointing authority that requires such continued employment. Authorization of temporary employment for more than 1,280 work hours in a calendar year shall not be required for seasonal employment, as that term is defined pursuant to section 323 of this chapter. Annually, on or before January 15, the Commissioner shall submit a report to the House Committee on General, Housing, and Military Affairs and the House and Senate Committees on Government Operations:

* * *

(2) It shall be the responsibility of the head of each department to provide to the Department of Human Resources a detailed justification for each waiver to exceed the 1,280-work-hour limit within his or her department and such other information as may be required in order to enable that department to carry out its responsibility under this section.

(3) The Commissioner may authorize seasonal employment in a specific position for a period of between seven and 12 months if the Commissioner determines, in writing, that the nature and duties of the position require the employment of a person for a period of more than seven months in a 12-month period. The Commissioner shall not authorize seasonal employment for a

period of more than seven months in a 12-month period if the authorization is intended to circumvent, or has the effect of circumventing, the policies and purposes of the classified service under this chapter. Annually, on or before January 15, the Commissioner shall submit a report to the House and Senate Committees on Government Operations regarding:

(A) the total number of positions in seasonal employment that have been authorized for a period of between seven and 12 months during the prior calendar year;

(B) the agency or department that each position identified in subdivision (A) of this subdivision (c)(3) is assigned to; and

(C) the period of time that each identified position is authorized for.

(d) The Commissioner may transfer and convert existing, vacant positions in the Executive Branch of State government to replace the temporary positions of long-term temporary employees who are performing ongoing and continuing functions of State government ~~for more than an average of 20 hours per week during any one calendar year or for more than 1,280 work hours in any one calendar year.~~

* * *

(f) An individual employed in a temporary or seasonal capacity shall be entitled to the whistleblower protections, rights, and remedies provided to State employees pursuant to sections 971–978 of this title.

Sec. 4. STATE TEMPORARY AND SEASONAL EMPLOYEES; REPORT

On or before January 15, 2020, the Secretary of Administration shall submit a written report to the House and Senate Committees on Appropriations and on Government Operations regarding:

(1) the number of temporary employees, not including individuals working in seasonal employment as defined pursuant to 3 V.S.A. § 323(5), who, during the prior calendar year, were employed by each agency and department in a temporary capacity pursuant to 3 V.S.A. § 331;

(2) the number of temporary positions in each agency or department identified pursuant to subdivision (1) of this section that are performing ongoing and continuing functions of State government for which a permanent classified position would better meet the needs of the State;

(3) the number of temporary positions during the prior calendar year, organized by agency and department, not including individuals working in seasonal employment as defined pursuant to 3 V.S.A. § 323(5), in which one

or more individuals have been employed for a combined total of more than 1,280 hours per year for a period of two years;

(4) the projected cost and the potential impact of replacing the temporary positions identified in subdivision (3) of this section with permanent, classified positions on the relevant department or agency's efficiency and ability to fulfill its mission and duties; and

(5) the number of individuals working in seasonal employment as defined pursuant to 3 V.S.A. § 323(5) during the prior calendar year organized by agency and department, including the start and end date for each position and the total number of hours worked by the individual employed in each position.

Sec. 5. CREATION OF NEW CORRECTIONAL OFFICER POSITIONS

On or before June 30, 2020, the Secretary of Administration shall create 30 new Correctional Officer I positions in the Department of Corrections, which shall be funded within existing departmental appropriations.

Sec. 6. 4 V.S.A. § 40 is added to read:

§ 40. REPORT ON TEMPORARY EMPLOYEES

Annually, on or before January 15, the State Court Administrator shall submit a report to the House Committee on General, Housing, and Military Affairs and the House and Senate Committees on Government Operations identifying for each of the two prior calendar years:

(1) the total number of individuals employed by the Judiciary Department on a temporary basis who have worked in excess of 1,280 hours in the prior calendar year, excluding employees identified in 3 V.S.A. § 1011(7), (8)(A)–(D), (8)(F)–(G), and (8)(I)–(K);

(2) the total number of temporary positions in which one or more individuals have been employed for a combined total of more than 1,280 hours, excluding positions filled by employees identified in 3 V.S.A. § 1011(7), (8)(A)–(D), (8)(F)–(G), and (8)(I)–(K);

(3) the total number of hours worked by each temporary employee identified pursuant to subdivision (1) of this subsection; and

(4) the total number of years during which each temporary employee identified pursuant to subdivision (1) of this subsection has worked for the Judiciary Department.

* * * Expansion and Codification of Position Pilot Program* * *

Sec. 7. 2014 Acts and Resolves No. 179, Sec. E.100(d), as amended by 2015 Acts and Resolves No. 4, Sec. 74, by 2016 Acts and Resolves No.172, Sec. E.100.2, 2017 Acts and Resolves No. 85, Sec. E.100.1, and by 2018 (Sp. Sess.) Acts and Resolves No. 11, Sec. E.100.1 is further amended to read:

(d) Position Pilot Program. A Position Pilot is hereby created to assist participating departments in more effectively managing costs of overtime, compensatory time, temporary employees, and contractual work by removing the position cap with the goal of maximizing resources to the greatest benefit of Vermont taxpayers.

* * *

(7) This Pilot shall sunset on ~~July 1, 2020, unless extended or modified by the General Assembly~~ July 2, 2019.

* * *

Sec. 8. 3 V.S.A. § 328 is added to read:

§ 328. CREATION OF NEW POSITIONS

(a) Intent. It is the intent of the General Assembly to maximize the resources of the State to the greatest benefit of Vermont taxpayers by eliminating the cap on the total number of authorized State positions in the Department of State's Attorneys and Sheriffs, the Vermont Veterans Home, and the State agencies and departments under the Office of Governor to allow those agencies and departments to more effectively manage costs of overtime, compensatory time, temporary employees, and contractual work by permitting the creation of new positions pursuant to the provisions of subsection (b) of this section.

(b) Creation of positions.

(1) On request of an appointing authority, the Secretary of Administration may approve, in writing, the creation of a new permanent position in the Department of State's Attorneys and Sheriffs, the Vermont Veterans Home, and the State agencies and departments under the Office of Governor in order to address a specific need identified by the appointing authority.

(2) The Secretary of Administration may only approve the creation of a new position pursuant to subdivision (1) of this subsection if the creation of the requested permanent position is anticipated to be more cost-effective than meeting the identified need with existing departmental resources, including through the use of overtime or compensatory time for existing State employees.

(3) Any new position created pursuant to this subsection shall be funded within existing departmental appropriations and shall not be transferrable outside the agency or department in which it is created.

(c) Reporting requirements.

(1) No later than 15 days before a position created pursuant to subsection (b) of this section will be established, the Secretary of Administration, in consultation with the Commissioner of Human Resources and the appointing authority, shall submit to the Joint Fiscal Committee, the Government Accountability Committee, and the House and Senate Committees on Government Operations a written report identifying the position to be created, the reason for the creation of the position, the method used to evaluate the cost-effectiveness of creating the position, and the expected short- and long-term impact of creating the position on the agency or department's budget.

(2) Annually, as part of its budget presentation, an agency or department in which, during the prior fiscal year, one or more new positions was created pursuant to this section shall report on the number and type of positions created, the source of funds used to support each position created, the performance and cost outcomes associated with each position created, and whether the projected budgetary outcomes identified pursuant to subdivision (1) of this subsection have been realized.

Sec. 9. AUTHORIZATION FOR CREATION OF NEW POSITIONS

Notwithstanding any provision of law enacted during the 2019 legislative session to the contrary, the Department of State's Attorneys and Sheriffs, the Vermont Veterans Home, and the State agencies and departments under the Office of Governor may create new positions in conformance with the provisions of 3 V.S.A. § 328.

* * * Repeal of Report on Temporary Employees * * *

Sec. 10. 3 V.S.A. § 331 is amended to read:

§ 331. TEMPORARY EMPLOYEES

* * *

(c)(1) The Commissioner may authorize the continued employment of a person in a temporary capacity for more than 1,280 hours in any one calendar year if the Commissioner determines, in writing, that a bona fide emergency exists for the appointing authority that requires such continued employment. ~~Annually, on or before January 15, the Commissioner shall submit a report to the House Committee on General, Housing, and Military Affairs and the House and Senate Committees on Government Operations:~~

~~(A) identifying the total number of temporary employees who have worked;~~

~~(i) 1,280 hours in the prior calendar year; or~~

~~(ii) in excess of 1,280 hours in the prior calendar year;~~

~~(B) identifying the agency or department that is assigned the temporary position;~~

~~(C) identifying the total number of hours worked by each temporary employee; and~~

~~(D) including a statement:~~

~~(i) recommending the conversion of the position to a permanent classified position; or~~

~~(ii) stating the reasons why the temporary position should be continued.~~

* * *

* * * Effective Dates * * *

Sec. 11. EFFECTIVE DATES

(a) Secs. 7, 8, and 9 shall take effect on July 2, 2019.

(b) Sec. 10 shall take effect on July 1, 2024.

(c) This section and the remaining sections of this act shall take effect on July 1, 2019.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, the report of the committee on Government Operations agreed to and third reading ordered.

Thereupon, on motion of **Rep. McCoy of Poultney**, the rules were suspended and the bill placed on all remaining stages of passage. The bill was read the third time and passed in concurrence with proposal of amendment.

**Rules Suspended; Second Reading;
Bill Amended; Third Reading Ordered**

H. 547

On Motion of **Rep. McCoy of Poultney**, the rules were suspended and House bill, entitled

An act relating to approval of an amendment to the charter of the City of Montpelier

Appearing on the Calendar for Notice, was taken up for immediate consideration.

Rep. Kitzmiller of Montpelier, for the committee on Government Operations, to which had been referred the bill reported in favor of its passage when amended as follows:

In Sec. 2, 24 V.S.A. chapter 5, § 301, in subdivision (b)(2), by striking out subdivision (D) in its entirety and inserting in lieu thereof the following:

(D) Regulation and enforcement of energy efficiency disclosure requirements for existing and new commercial and residential properties at the time a property is listed for sale.

Which was agreed to. Thereupon, the bill was read the second time, the report of the committee on Government Operations was agreed to and third reading was ordered.

Rules Suspended; Bills Messaged to Senate Forthwith

On motion of **Rep. McCoy of Poultney**, the rules were suspended and the following bills were ordered messaged to the Senate forthwith.

S. 134

Senate bill, entitled

An act relating to background investigations for State employees with access to federal tax information

S. 41

Senate bill, entitled

An act relating to regulating entities that administer health reimbursement arrangements

S. 108

Senate bill, entitled

An act relating to employee misclassification

S. 110

Senate bill, entitled

An act relating to data privacy and consumer protection

Adjournment

At three o'clock and fifty-one minutes in the afternoon, on motion of **Rep. McCoy of Poultney**, the House adjourned until tomorrow at ten o'clock in the forenoon.