

# Journal of the Senate

FRIDAY, FEBRUARY 22, 2019

The Senate was called to order by the President.

## Devotional Exercises

Devotional exercises were conducted by the Reverend Rick Swanson of Stowe.

## Message from the House No. 18

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 House bills of the following titles:

**H. 57.** An act relating to preserving the right to abortion.

**H. 79.** An act relating to eligibility for farm-to-school grant assistance.

In the passage of which the concurrence of the Senate is requested.

The House has adopted House concurrent resolutions of the following titles:

**H.C.R. 56.** House concurrent resolution honoring Floyd W. Van Alstynne for his six decades of civic leadership in the Town of Barnard.

**H.C.R. 57.** House concurrent resolution honoring former Pittsfield Town Clerk Patty Haskins for her exemplary municipal public service.

**H.C.R. 58.** House concurrent resolution in memory of former Rutland Herald reporter and Renaissance man Bernard H. Crosier.

In the adoption of which the concurrence of the Senate is requested.

## Bill Referred to Committee on Appropriations

### S. 54.

Senate bill of the following title, appearing on the Calendar for notice and carrying an appropriation or requiring the expenditure of funds, under the rule was referred to the Committee on Appropriations:

An act relating to the regulation of cannabis.

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**Bills Introduced**

Senate bills of the following titles were severally introduced, read the first time and referred:

**S. 121.**

By Senators White, Benning, Collamore, Kitchel, Lyons, Mazza, Pollina and Sears,

An act relating to Adjutant and Inspector General.

To the Committee on Government Operations.

**S. 122.**

By Senator Parent,

An act relating to nutrient management plans.

To the Committee on Agriculture.

**S. 123.**

By Senators Cummings and Kitchel,

An act relating to making clarifications to the State's grant acceptance process.

To the Committee on Appropriations.

**S. 124.**

By Senator White,

An act relating to miscellaneous law enforcement amendments.

To the Committee on Government Operations.

**S. 125.**

By Senators Lyons and Ingram,

An act relating to Vermont's adoption of the interstate Nurse Licensure Compact.

To the Committee on Health and Welfare.

**Bills Referred**

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

**H. 57.**

An act relating to preserving the right to abortion.

To the Committee on Health and Welfare.

**H. 79.**

An act relating to eligibility for farm-to-school grant assistance.

To the Committee on Agriculture.

**Bills Amended; Third Readings Ordered**

**S. 23.**

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)(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, an employer shall not employ any employee at a rate of less than \$10.50, and beginning \$10.78. Beginning on January 1, 2019 2020, an employer shall not employ any employee at a rate of less than \$11.50. Beginning on January 1, 2021, an employer shall not employ any employee at a rate of less than \$12.25. Beginning on January 1, 2022, an employer shall not employ any employee at a rate of less than \$13.10. Beginning on January 1, 2023, an employer shall not employ any employee at a rate of less than \$14.05. 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) 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.

(3) 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.

\* \* \*

(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.

Sec. 2. 21 V.S.A. § 383 is amended to read:

§ 383. DEFINITIONS

~~Terms used in this subchapter have the following meanings~~ As used in this subchapter, 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:

\* \* \*

(G) ~~taxi-cab~~ taxicab drivers;

(H) outside salespersons; and

(I) secondary school students under 18 years of age working during all or any part of the school year or regular vacation periods.

(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.

Sec. 3. CHILD CARE FINANCIAL ASSISTANCE PROGRAM; SLIDING SCALE

To the extent funds are appropriated, the Commissioner for Children and Families shall amend the Department for Children and Families' Child Care Financial Assistance Program's sliding fee scale in order 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 would not be lower than the percentage applied under the former minimum wage; and

(2) adjust the Child Care Financial Assistance Program rate paid to providers on behalf of families 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. 4. MINIMUM WAGE; ADJUSTMENT FOR INFLATION; REPORT

On or before January 15, 2023, the Office of 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. 5. TIPPED AND STUDENT MINIMUM WAGE STUDY COMMITTEE; STUDY; REPORT

(a) Creation. There is created the tipped and student minimum wage study committee to examine the effects of increasing or eliminating the basic wage rate for tipped employees in Vermont.

(b) Membership. The Committee shall be composed of the following members:

(1) one member appointed by the Speaker of the House;

(2) one member appointed by the Committee on Committees;

(3) the Commissioner of Labor or designee;

(4) the Commissioner for Children and Families or designee;

(5) one member representing employers, jointly appointed by the Speaker of the House and the Committee on Committees; and

(6) one member representing workers, jointly appointed by the Speaker of the House and the Committee on Committees.

(c) Powers and duties. The Committee shall study the effects of increasing or eliminating the basic wage rate for tipped employees and of eliminating the subminimum wage for secondary school students during the school year, including the following issues:

(1) the impact in states that have eliminated their subminimum wage for tipped employees on:

(A) jobs, prices, and the state economy; and

(B) the welfare of tipped workers, women, and working families with children;

(2) the impact in states that have increased their subminimum wage for tipped employees during the last 10 years on:

(A) jobs, prices, and the state economy; and

(B) the welfare of tipped workers, women, and working families with children;

(3) the projected impact in Vermont of increasing or eliminating the basic wage rate for tipped employees on:

(A) jobs, prices, and the State economy; and

(B) the welfare of tipped workers, women, and working families with children; and

(4) the projected impact in Vermont of eliminating the subminimum wage for secondary school students on jobs, prices, the State economy, and the welfare of individuals under 22 years of age.

(d) Assistance. The Committee shall have the administrative, technical, and legal assistance of the Department of Labor.

(e) Report. On or before January 15, 2020, the Committee 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 with its findings and any recommendations, if any, for

legislative action to increase or eliminate Vermont's basic wage for tipped employees.

(f) Meetings.

(1) The Commissioner of Labor shall call the first meeting of the Committee to occur on or before September 15, 2019.

(2) The Committee shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Committee shall cease to exist on January 30, 2020.

(g) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Committee serving in his or her capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than four meetings. These payments shall be made from monies appropriated to the General Assembly.

(2) Members of the Committee who are not employees of the State of Vermont shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than four meetings. These payments shall be made from monies appropriated to the Department of Labor.

Sec. 6. EFFECTIVE DATES

(a) In Sec. 1, 21 V.S.A. § 384, subdivision (a)(2) shall take effect on January 1, 2020. The remaining provisions of Sec. 1 shall take effect on July 1, 2019.

(b) In Sec. 2, 21 V.S.A. § 383, the amendments to subdivisions (2)(G), (H), and (I) shall take effect on January 1, 2020. The remaining provisions of Sec. 2 shall take effect on July 1, 2019.

(c) The remaining sections of this act shall take effect on July 1, 2019.

And that when so amended the bill ought to pass.

Senator McCormack, for the Committee on Appropriations, to which the bill was referred, reported the same and recommend that the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs with the following amendment thereto:

In Sec. 5, tipped and student minimum wage study committee, by striking out subdivision (g)(2) and inserting in lieu thereof a new subdivision (g)(2) to read as follows:

(2) Members of the Committee who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than four meetings. These payments shall be made from monies appropriated to the Department of Labor.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment of the Committee on Economic Development, Housing and General Affairs was amended as recommended by the Committee on Appropriations.

#### **Senator Ashe Assumes the Chair**

The President *pro tempore* assumed the Chair as the President became Acting Governor (in the absence of the Governor)

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs, as amended?, was decided in the affirmative, on a roll call, Yeas 19, Nays 8.

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

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Balint, Bray, Champion, Clarkson, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Pearson, Pollina, Sears, Sirotkin, White.

**Those Senators who voted in the negative were:** Benning, Brock, Collamore, McNeil, Parent, Rodgers, Starr, Westman.

**Those Senators absent or not voting were:** Ashe (presiding), Baruth, Perchlik.

Thereupon, third reading of the bill was ordered on a roll call, Yeas 19, Nays 8.

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:** Balint, Bray, Campion, Clarkson, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Pearson, Pollina, Sears, Sirotkin, White.

**Those Senators who voted in the negative were:** \*Benning, Brock, Collamore, McNeil, Parent, Rodgers, Starr, Westman.

**Those Senators absent or not voting were:** Ashe (presiding), Baruth, Perchlik.

\*Senator Benning explained his vote as follows:

“I appreciate that this bill seeks to address a growing disparity between those of means and those without. However, I'm concerned that it further exacerbates a growing disparity in job availability between what we have all heard described as the “two Vermonts”. It places the employers in my district, once again, at an extreme disadvantage trying to compete against those in New Hampshire who do not have such burdens. The empty storefronts in St. Johnsbury are now being seen in downtown Barre. There is a reason for that. It stems from government regulations that have serious unintended consequences. For that reason I feel I cannot support this bill.”

**S. 27.**

Senator Cummings, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to maintaining the home health agency provider tax.

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

Sec. 1. 2017 Acts and Resolves No. 73, Sec. 18d is amended to read:

Sec. 18d. REPEAL

33 V.S.A. § 1955a (home health agency assessment) is repealed on July 1, ~~2019~~ 2021.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

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

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**House Concurrent Resolutions**

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, were severally adopted in concurrence:

By Rep. Szott,

**H.C.R. 56.**

House concurrent resolution honoring Floyd W. Van Alstyne for his six decades of civic leadership in the Town of Barnard.

By Rep. Haas,

**H.C.R. 57.**

House concurrent resolution honoring former Pittsfield Town Clerk Patty Haskins for her exemplary municipal public service.

By Reps. Forguites and others,

By Senators Nitka, Clarkson and McCormack,

**H.C.R. 58.**

House concurrent resolution in memory of former Rutland Herald reporter and Renaissance man Bernard H. Crosier.

**Adjournment**

On motion of Senator Mazza, the Senate adjourned, to reconvene on Tuesday, February 26, 2019, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 16.