

# Senate Calendar

FRIDAY, FEBRUARY 24, 2012

SENATE CONVENES AT: 11:30 A.M.

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**ACTION CALENDAR  
UNFINISHED BUSINESS**

**Second Reading**

**Favorable**

**H.C.R. 255.**

House concurrent resolution urging the restoration of intercity bus service to Rutland City.

**Reported favorably by Senator Flory for the Committee on Transportation.**

(Committee vote: 5-0-0)

(No House amendments)

**Favorable with Recommendation of Amendment**

**S. 189.**

An act relating to expanding confidentiality of cases accepted by the court diversion project.

**Reported favorably with recommendation of amendment by Senator Snelling for the Committee on Judiciary.**

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. 3 V.S.A. § 164(c)(1) is amended to read:

(c) All adult court diversion projects receiving financial assistance from the attorney general shall adhere to the following provisions:

(1) The diversion project shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. The state's attorney shall notify, in writing, the diversion program and the court of his or her intention to refer the person to diversion. If the prosecuting attorney refers a case to diversion, the ~~information and affidavit files held by the court, the state's attorney, and the law enforcement agency~~ related to the charges shall be confidential and shall remain confidential unless:

(A) the board declines to accept the case;

(B) the person declines to participate in diversion; ~~or~~

(C) the board accepts the case, but the person does not successfully complete diversion;

(D) the state's attorney recalls the referral to diversion.

Sec. 2. 3 V.S.A. § 164a is added to read:

§ 164a. RESTITUTION

A diversion program may refer an individual who has suffered a pecuniary loss as a direct result of a delinquent act or crime alleged to have been committed by a juvenile or adult accepted to its program to the restitution unit established by 13 V.S.A. § 5362 for the purpose of application for an advance payment pursuant to 13 V.S.A. § 5363(d)(1). The restitution unit may enter into a repayment contract with a juvenile or adult accepted into diversion and shall have the authority to bring a civil action to enforce the repayment contract in the event that the juvenile or adult defaults in performing the terms of the contract.

(b) The restitution unit and the diversion program shall develop a process for documenting victim loss, information sharing between the unit and diversion programs regarding the amount of restitution paid by the unit and diversion participants' contractual agreements to reimburse the unit, transmittal of payments from participants to the unit, and maintenance of the confidentiality of diversion information.

Sec. 3. 13 V.S.A. § 5362 is amended to read:

§ 5362. RESTITUTION UNIT

\* \* \*

(c) The restitution unit shall have the authority to:

\* \* \*

(7) Enter into a repayment contract with a juvenile or adult accepted into a diversion program and to bring a civil action to enforce the contract when a diversion program has referred an individual pursuant to 3 V.S.A. § 164a.

Sec. 4. 13 V.S.A. § 5363 is amended to read:

§ 5363. CRIME VICTIMS' RESTITUTION SPECIAL FUND

(a) There is hereby established in the state treasury a fund to be known as the crime victims' restitution special fund, to be administered by the restitution unit established by section 5362 of this title, and from which payments may be made to provide restitution to crime victims.

(b)(1) There shall be deposited into the fund:

(A) All monies collected by the restitution unit pursuant to section 7043 and subdivision 5362(c)(7) of this title.

(B) All fees imposed by the clerk of court and designated for deposit into the fund pursuant to section 7282 of this title.

(C) All monies donated to the restitution unit or the crime victims' restitution special fund.

(D) Such sums as may be appropriated to the fund by the general assembly.

\* \* \*

(d)(1) The restitution unit is authorized to advance up to \$10,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

(A) was first ordered by the court to receive restitution on or after July 1, 2004;

(B) is a natural person or the natural person's legal representative; and

(C) has not been reimbursed under subdivision (2) of this subsection.

(D) is a natural person and has been referred to the restitution unit by a diversion program pursuant to section 164a of Title 3.

\* \* \*

Sec. 5. 13 V.S.A. § 7043(n) is amended to read:

(n) After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure of an offender aged 18 or older shall include copies of the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee vote: 5-0-0)

**Reported favorably by Senator Snelling for the Committee on Appropriations.**

(Committee vote: 5-0-2)

**S. 217.**

An act relating to closely held benefit corporations.

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**Reported favorably with recommendation of amendment by Senator Ashe for the Committee on Finance.**

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. 11A V.S.A. chapter 21 is amended to read:

CHAPTER 21. BENEFIT CORPORATIONS

\* \* \*

§ 21.03. DEFINITIONS

(a) As used in this chapter:

\* \* \*

(2) “Benefit director” means:

(A) a director designated as a benefit director of a benefit corporation as provided in section 21.10 of this title; or

(B) a person with one or more of the powers, duties, or rights of a benefit director to the extent provided in the articles of incorporation or shareholder agreement of a close corporation pursuant to section 21.10(e) of this title.

\* \* \*

§ 21.09. STANDARD OF CONDUCT FOR DIRECTORS

(a) Each director of a benefit corporation, in discharging his or her duties as a director, including the director’s duties as a member of a committee:

(1) shall, in determining what the director reasonably believes to be in the best interests of the benefit corporation, consider the effects of any action or inaction upon:

(A) the shareholders of the benefit corporation;

(B) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(C) the interests of customers to the extent they are beneficiaries of the general or specific public benefit purposes of the benefit corporation;

(D) community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(E) the local and global environment; and

(F) the long-term and short-term interests of the benefit corporation, including the possibility that those interests may be best served by the continued independence of the benefit corporation;

(2) may consider any other pertinent factors or the interests of any other group that the director determines are appropriate to consider;

(3) shall not be required to give priority to the interests of any particular person or group referred to in subdivisions (1) or (2) of this subsection over the interests of any other person or group unless the benefit corporation has stated in its articles of incorporation its intention to give priority to interests related to the accomplishment of its general or specific public benefit purpose in its articles of incorporation purposes; and

(4) shall not be subject to a different or higher standard of care when an action or inaction might affect control of the benefit corporation.

\* \* \*

~~(e) A director of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. A director of a benefit corporation shall not have any fiduciary duty to a person who is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary. If a benefit corporation has adopted a provision in its articles of incorporation authorized by section 2.02(b)(4) of this title, the provision shall also apply to a failure by a director to discharge his or her duties in accordance with this chapter.~~

#### § 21.10. BENEFIT DIRECTOR

(a) ~~The~~ Except as provided in subsection (e) of this section, the board of directors of a benefit corporation shall include at least one director who shall be designated a "benefit director" and shall have, in addition to all of the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

\* \* \*

(e) If the articles of incorporation of a benefit corporation that is a close corporation dispense with a or restrict the discretion or powers of the board of directors pursuant to sections 20.08 and 20.09 of this title, then the articles of incorporation shall provide that or the shareholder agreement shall specify the persons who perform the duties of a board of directors shall include at least one person with shall exercise the powers, duties, and rights, and immunities of a of the board of directors and the benefit director, as provided in this chapter. A person who exercises one or more of the powers, duties, or rights of a benefit director pursuant to this subsection:

- (1) is not required to be independent of the benefit corporation;
- (2) shall have the immunities of a benefit director;
- (3) may share the powers, duties, and rights of a benefit director with one or more other persons; and
- (4) shall not be subject to the procedures for election or removal of directors provided in subchapter 1 of chapter 8 of this title unless the person is also a director of the benefit corporation or the articles of incorporation or shareholder agreement make those procedures applicable.

\* \* \*

#### § 21.11. STANDARD OF CONDUCT FOR OFFICERS

\* \* \*

~~(e) An officer of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. An officer of a benefit corporation shall not have any fiduciary duty to a person that is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary.~~

(f) The articles of incorporation of a benefit corporation may set forth a provision eliminating or limiting the liability of an officer to the benefit corporation or its shareholders for money damages for any action taken, or any failure to take any action, solely as an officer, based on a failure to discharge his or her own duties in accordance with this chapter, except liability for:

- (1) the amount of a financial benefit received by an officer to which the officer is not entitled;
- (2) an intentional or reckless infliction of harm on the benefit corporation or its shareholders; or
- (3) an intentional or reckless criminal act.

\* \* \*

#### § 21.14. ANNUAL BENEFIT REPORT

\* \* \*

(e) If a benefit corporation is a close corporation that has dispensed with or restricted the discretion or powers of the board of directors, the annual benefit report shall describe the person or persons who exercise the powers, duties, and rights and have the immunities of the board of directors and the benefit director.

(Committee vote: 6-0-1)



**S. 237.**

An act relating to the genuine progress indicator.

**Reported favorably with recommendation of amendment by Senator Pollina 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. PURPOSE AND INTENT

(a) Purpose. The purpose of the genuine progress indicator (“GPI”) is to measure the state of Vermont’s economic, environmental, and societal well-being as a supplement to the measurement derived from the gross state product.

(b) Intent. It is the intent of the general assembly that once established, the GPI will assist state government in decision-making by providing an additional basis for budgetary decisions, including outcomes-based budgeting; measuring progress in the application of policy and programs; and as a tool to identify public policy priorities.

Sec. 2. GENUINE PROGRESS INDICATOR

(a) Establishment; maintenance.

(1) The secretary of administration shall accept the offer of the Gund Institute for Ecological Economics of the University of Vermont (the “Gund Institute”) to work in cooperation to establish, and shall thereafter make use of and maintain, the genuine progress indicator (GPI). In establishing the GPI, the secretary of administration, in cooperation with the Gund Institute, shall create a Vermont data committee to inventory existing datasets and to make recommendations that may be useful to all data users in Vermont’s state government, nonprofits, and businesses.

(2) The GPI shall add positive factors and subtract negative factors that are not counted by standard gross state product accounting practices.

(3) The GPI shall use standard genuine progress indicator methodology and additional factors to enhance the indicator, including basic human rights principles.

(b) Accessibility. Once established, the GPI and its underlying datasets that are submitted by the Gund Institute to the secretary of administration shall be posted on the state of Vermont website.

(c) Updating data. The secretary of administration shall cooperate in providing data to the Gund Institute as necessary in order to update and maintain the GPI.

Sec. 3. REPORT

By January 1, 2019, the secretary of administration shall report to the house and senate committees on government operations regarding the usefulness of the genuine progress indicator.

Sec. 4. DATASETS

Any datasets submitted by the Gund Institute to the secretary of administration pursuant to this act shall be considered a public record under chapter 5 of Title 1.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 4-1-0)

And that when so amended the bill ought to pass.

**NEW BUSINESS**

**Third Reading**

**H. 630.**

An act relating to reforming Vermont's mental health system.

**PROPOSAL OF AMENDMENT TO H. 630 TO BE OFFERED BY  
SENATOR SEARS, ON BEHALF OF THE COMMITTEE ON  
APPROPRIATIONS, BEFORE THIRD READING**

Senator Sears, on behalf of the Committee on Appropriations, moves that the Senate proposal of amendment be amended in Sec. 33, subdivision (b)(2), by striking out subparagraph (B) in its entirety and inserting in lieu thereof the following:

(B)(i) the number of declined referrals to inpatient psychiatric hospitals due to lack of capacity; and

(ii) the number of declined referrals to inpatient psychiatric hospitals due to patient or unit acuity;

**PROPOSAL OF AMENDMENT TO H. 630 TO BE OFFERED BY  
SENATORS BARUTH AND ASHE BEFORE THIRD READING**

Senators Ashe and Baruth move that the Senate proposal of amendment be amended in Sec. 9, subdivision (b)(1), by striking out the following: 16-bed and inserting in lieu thereof the following 25-bed

**PROPOSAL OF AMENDMENT TO H. 630 TO BE OFFERED BY  
SENATOR BENNING BEFORE THIRD READING**

Senator Benning moves that the Senate proposal of amendment be amended in Sec. 9, Inpatient Hospital Beds, subdivision (b)(1), by inserting after the first sentence the following: The design shall include the capacity for expansion to 30 beds, including the infrastructure needed in the first phase of construction to support such a future expansion. Permitting shall be based on a 30-bed design. The administration shall take no action, nor fail to take action, that would preclude a decision of the general assembly in 2013 or thereafter to expand the hospital to 30 beds. Notwithstanding 18 V.S.A. chapter 221, subchapter 5, the administration may develop the project without obtaining a certificate of need.

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 112.**

An act relating to bail for persons charged with lewd and lascivious conduct with a child.

**Reported favorably with recommendation of amendment by Senator Sears for the Committee on Judiciary.**

The Committee recommends that the bill be amended by striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. EFFECTIVE DATE

This act shall taken effect on passage.

(Committee vote: 5-0-0)

**Joint Resolution For Action**

**J.R.H. 24.**

Joint resolution strongly supporting continuing and enhancing the mutually beneficial bilateral economic and trade relationship between the state of Vermont and Canada.

(For text of resolution, see Senate Journal of February 23, 2012, page 197.)

## NOTICE CALENDAR

### Second Reading

#### Favorable

#### H. 365.

An act relating to designating skiing and snowboarding as the official state sports.

**Reported favorably by Senator Galbraith for the Committee on Economic Development, Housing and General Affairs.**

(Committee vote: 5-0-0)

#### Favorable with Recommendation of Amendment

#### S. 209.

An act relating to naturopathic physicians.

**Reported favorably with recommendation of amendment by Senator Miller for the Committee on Health and 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. 8 V.S.A. § 4088d(a) is amended to read:

(a) A health insurance plan shall provide coverage for medically necessary health care services covered by the plan when provided by a naturopathic physician licensed in this state for treatment within the scope of practice described in ~~chapter 81 of Title 26 V.S.A. chapter 81~~ and shall recognize naturopathic physicians who practice primary care to be primary care physicians. Health care services provided by naturopathic physicians may be subject to reasonable deductibles, co-payment and co-insurance amounts, and fee or benefit limits, consistent with those applicable to other primary care physicians under the plan, as well as practice parameters, cost-effectiveness and clinical efficacy standards, and utilization review consistent with any applicable regulations published by the department of banking, insurance, securities, and health care administration. Any amounts, limits, standards, and review shall not function to direct treatment in a manner unfairly discriminative against naturopathic care, and collectively shall be no more restrictive than those applicable under the same policy to care or services provided by other primary care physicians, but may allow for the management of the benefit consistent with variations in practice patterns and treatment modalities among different types of health care providers. A health insurance plan may require that the naturopathic physician's services be provided by a licensed naturopathic physician under contract with the insurer or shall be

covered in a manner consistent with out-of-network provider reimbursement practices for primary care physicians; however, this shall not relieve a health insurance plan from compliance with the applicable Rule ~~40~~ H-2009-3 network adequacy requirements adopted by the commissioner. Nothing contained herein shall be construed as impeding or preventing either the provision or the coverage of health care services by licensed naturopathic physicians, within the lawful scope of naturopathic practice, in hospital facilities on a staff or employee basis.

Sec. 2. 8 V.S.A. § 4080f is amended to read:

§ 4080f. CATAMOUNT HEALTH

(a) As used in this section:

\* \* \*

(8) “Primary care” means health services provided by health care professionals, including naturopathic physicians licensed pursuant to 26 V.S.A. chapter 81, who are specifically trained for and skilled in first-contact and continuing care for individuals with signs, symptoms, or health concerns, not limited by problem origin, organ system, or diagnosis, and shall include prenatal care and the treatment of mental illness.

\* \* \*

Sec. 3. 18 V.S.A. § 704 is amended to read:

§ 704. MEDICAL HOME

(a) Consistent with federal law to ensure federal financial participation, a health care professional providing a patient’s medical home shall:

\* \* \*

(b) A naturopathic physician licensed pursuant to 26 V.S.A. chapter 81 may serve as a patient’s medical home.

Sec. 4. 18 V.S.A. § 706(c) is amended to read:

(c)(1) The Blueprint payment reform methodologies shall include per-person per-month payments to medical home practices by each health insurer and Medicaid for their attributed patients and for contributions to the shared costs of operating the community health teams. Per-person per-month payments to practices shall be based on the official National Committee for Quality Assurance’s Physician Practice Connections - Patient Centered Medical Home (NCQA PPC-PCMH) score to the extent practicable and shall be in addition to their normal fee-for-service or other payments.

(2) Consistent with the recommendation of the Blueprint expansion design and evaluation committee, the director of the Blueprint may implement

changes to the payment amounts or to the payment reform methodologies described in subdivision (1) of this subsection, including by providing for enhanced payment to health care professional practices which operate as a medical home, including primary care naturopathic physicians' practices; payment toward the shared costs for community health teams; or other payment methodologies required by the Centers for Medicare and Medicaid Services (CMS) for participation by Medicaid or Medicare.

\* \* \*

Sec. 5. 26 V.S.A. § 4131 is added to read:

§ 4131. SUPERVISION

A naturopathic physician licensed pursuant to this chapter shall be authorized to work independently and shall not require supervision by any other health care professional; provided, however, that this section shall not be construed to limit the regulatory authority of the director or office of professional regulation.

Sec. 6. 33 V.S.A. § 1823 is amended to read:

§ 1823. DEFINITIONS

For purposes of this subchapter:

\* \* \*

(10) "Primary care" means health services provided by health care professionals, including naturopathic physicians licensed pursuant to 26 V.S.A. chapter 81, who are specifically trained for and skilled in first-contact and continuing care for individuals with signs, symptoms, or health concerns, not limited by problem origin, organ system, or diagnosis, and shall include family planning, prenatal care, and mental health and substance abuse treatment.

\* \* \*

Sec. 7. HEALTH INFORMATION TECHNOLOGY

Vermont's health information technology coordinator shall actively seek to secure electronic health record funding opportunities and incentives for naturopathic physician practices comparable to those available to other health care practitioners.

Sec. 8. EFFECTIVE DATES

(a) Secs. 1 and 2 (insurance provisions) of this act shall take effect on October 1, 2012, and shall apply to all health benefit plans on and after October 1, 2012 on such date as a health insurer offers, issues, or renews the health benefit plan, but in no event later than October 1, 2013.

(b) The remaining sections of this act shall take effect on passage.

(Committee vote: 5-0-0)

### **Report of Committee of Conference**

#### **H. 558.**

An act relating to fiscal year 2012 budget adjustment.

#### To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon House Bill entitled:

#### **H. 558. An act relating to fiscal year 2012 budget adjustment.**

**(For text of Committee of Conference Report, see Addendum to Senate Calendar for Friday, February 24, 2012)**

### **CONCURRENT RESOLUTIONS FOR ACTION**

**S.C.R. 38** (For text of Resolution, see Page 232 of Senate Calendar for February 23, 2012)

**H.C.R. 272-277** (For text of Resolutions, see Addendum to House Calendar for February 23, 2012)

### **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.

David Luce of Waterbury Center – Member of the Community High School of Vermont Board- By Sen. Kittell for the Committee on Education. (1/13/12)

Patrick Flood of East Calais – Commissioner of the Department of Mental Health – By Sen. Mullin for the Committee on Health and Welfare. (2/8/12)

John Snow of Charlotte – Member of the Vermont Economic Development Authority – By Sen. Fox for the Committee on Finance. (2/8/12)

Martin Maley of Colchester – Superior Court Judge – By Sen. Sears for the Committee on Judiciary. (2/9/12)

Alison Arms of South Burlington – Superior Court Judge – By Sen.

Snelli8ng for the Committee on Judiciary. (2/16/12)

Thomas Walsh of Charlotte – Environmental Judge – By Sen. Nitka for the Committee on Judiciary. (2/16/12)

Robert Bishop of St. Johnsbury – Member of the State Infrastructure Bank Board – By Sen. MacDonald for the Committee on Finance. (2/21/12)

John Valente of Rutland – Member of the Vermont Municipal Bond Bank – By Sen. McCormack for the Committee on Finance. (2/21/12)

James Volz of Plainfield – Chair of the Public Service Board – By Sen. Cummings for the Committee on Finance. (2/21/12)

Ed Amidon of Charlotte – Member of the Valuation Appeals Board – By Sen. Ashe for the Committee on Finance. (2/21/12)

### **PUBLIC HEARINGS**

**Tuesday, February 28, 2012** – Room 11 – 7:00 P.M. – Re Judicial Retention of Superior Court Judge Karen Carroll, Superior Court Judge Dennis Pearson, and Superior Court Judge Barry Peterson – By the Joint Committee on Judicial Retention.

### **REPORTS ON FILE**

#### **Reports 2012**

Pursuant to the provisions of 2 V.S.A. §20(c), one (1) hard copy of the following reports 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 webpage.

6. Vermont State Housing Authority 2011 Annual Report. (February 2012)

7. Agency of Natural Resources – 2012 E-Cycles Report to the Legislature – Vermont Department of Environmental Conservation. (February 2012)