

Journal of the Senate

TUESDAY, MARCH 15, 2011

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Marty Bascom of Randolph.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Rules Suspended; Bill Committed

S. 78.

Appearing on the Calendar for notice, on motion of Senator Cummings, the rules were suspended and Senate bill entitled:

An act relating to the advancement of cellular, broadband, smart grid, and other technology infrastructure in Vermont.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Economic Development, Housing and General Affairs and Natural Resources and Energy, Senator Cummings moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Finance with the report of the Committee on Economic Development, Housing and General Affairs and Natural Resources and Energy *intact*,

Which was agreed to.

Committee Relieved of Further Consideration; Bills Committed

S. 82.

On motion of Senator White, the Committee on Health and Welfare was relieved of further consideration of Senate bill entitled:

An act relating to vital records,

Thereupon, pending entry of the bill on the Calendar for notice the next legislative day, on motion of Senator White, the bill was committed to the Committee on Government Operations.

H. 275.

On motion of Senator Cummings, the Committee on Economic Development, Housing and General Affairs was relieved of further consideration of House bill entitled:

An act relating to the recently deployed veteran tax credit,

Thereupon, pending entry of the bill on the Calendar for notice the next legislative day, on motion of Senator Cummings, the bill was committed to the Committee on Finance.

Bills Referred to Committee on Finance

Senate bills of the following title, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule were severally referred to the Committee on Finance:

S. 9. An act relating to sales of vinous beverages.

S. 17. An act relating to medical marijuana dispensaries.

S. 34. An act relating to the collection and disposal of mercury-containing lamps.

**Message from the Governor
Appointments Referred**

A message was received from the Governor, by Alexandra MacLean, Secretary of Civil and Military Affairs, submitting the following appointments, which were referred to committees as indicated:

Cioffi, Frank of St. Albans - Member of the University of Vermont Board Trustees, - from March 1, 2011, to February 28, 2017.

To the Committee on Education.

Comstock-Gay, Lucy of New Haven - Member of the Vermont Board of Libraries, - from March 9, 2011, to February 28, 2015.

To the Committee on Education.

Hannum, Kraig B. of Dorset - Member of the Vermont State Colleges Board, - from March 1, 2011, to February 28, 2017.

To the Committee on Education.

Luneau, Karen Handy of St. Albans - Member of the Vermont State Colleges Board, - from March 1, 2011, to February 28, 2017.

To the Committee on Education.

O'Connor, Martha of Brattleboro - Member of the Vermont State Colleges Board, - from March 1, 2011, to February 28, 2017.

To the Committee on Education.

Oller, Sean-Marie Navin of Bennington - Member of the State Board of Education, - from March 1, 2011, to February 28, 2017.

To the Committee on Education.

Marthis, William J., Ph.D. of Brandon - Member of the State Board of Education, - from February 24, 2011, to February 28, 2015.

To the Committee on Education.

Mack, Mercedes of Burlington - Member of the Human Rights Commission, - from February 22, 2011, to February 28, 2015.

To the Committee on Judiciary.

Noonan, Annie of Montpelier - Chair of the Employment Security Board, - from February 16, 2011, to February 28, 2017.

To the Committee on Economic Development, Housing and General Affairs.

O'Connor, Martha of Brattleboro - Chair of the Vermont State Lottery Commission, - from March 1, 2011, to February 28, 2014.

To the Committee on Economic Development, Housing and General Affairs.

Rogers, Michael of Glover - Member of the Employment Security Board, - from March 1, 2011, to February 28, 2017.

To the Committee on Economic Development, Housing and General Affairs.

Vickers, Donald R. of Georgia - Member of the Human Rights Commission, - from March 1, 2011, to February 28, 2016.

To the Committee on Judiciary.

Russo-DeMara, Ellamarie, D.O. of Sharon - Member of the Vermont Board of Health, - from February 16, 2011, to February 28, 2013.

To the Committee on Health Welfare.

Joint Senate Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senators Carris and Mullin,

J.R.S. 22. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, March 18, 2011, it be to meet again no later than Tuesday, March 22, 2011.

Committee Bills Introduced

Senate committee bills of the following titles were severally introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 93.

By the Committee on Agriculture,

An act relating to labeling maple products.

S. 94.

By the Committee on Transportation,

An act relating to miscellaneous amendments to the motor vehicle laws.

S. 95.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to exemptions for newspaper deliverers from the unemployment statutes; relieving an employer's experience rating record of charges; studying the receipt of unemployment compensation between academic terms; allowing school employees to be paid wages over the course of a year; and requiring employers to furnish required work apparel.

S. 96.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to technical corrections to the workers' compensation statutes.

S. 97.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to the study of carbon monoxide detectors in school buildings.

S. 98.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to authorizing owner-financed property sales.

Bills Amended; Third Readings Ordered**S. 16.**

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

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

Reported recommending 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. If the prosecuting attorney refers a case to diversion, the information and affidavit 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.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

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.

Consideration Interrupted by Adjournment

S. 67.

Senator Flory, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to the open meeting law.

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

Sec. 1. 1 V.S.A. § 310 is amended to read:

§ 310. DEFINITIONS

As used in this subchapter:

(1) “Deliberations” means weighing, examining, and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

(2) “Meeting” means a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action. “Meeting” shall not mean an electronic communication, including e-mail, telephone, or teleconferencing, between members of a public body for the purpose of scheduling a meeting, developing an agenda, or distributing materials to discuss at a meeting, provided that such an electronic communication that results in written or recorded information shall be available for inspection and copying under the public records act as set forth in chapter 5, subchapter 3 of this title.

(3) “Public body” means any board, council, or commission of the state or one or more of its political subdivisions, any board, council, or commission of any agency, authority, or instrumentality of the state or one or more of its political subdivisions, or any committee of any of the foregoing boards, councils or commissions, except that “public body” does not include councils or similar groups established by the governor for the sole purpose of advising the governor with respect to policy.

(4) “Publicly announced” means that notice is given to an editor, publisher, or news director of a newspaper or radio station serving the area of the state in which the public body has jurisdiction, and to any editor, publisher,

or news director who has requested under subdivision 312(c)(5) of this title to be notified of special meetings.

(5) “Quasi-judicial proceeding” means a proceeding which is:

(A) a contested case under the Vermont Administrative Procedure Act; or

(B) a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, and the result of which is appealable by a party to a higher authority.

Sec. 2. 1 V.S.A. § 312 is amended to read:

§ 312. RIGHT TO ATTEND MEETINGS OF PUBLIC AGENCIES

(a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under ~~section 313(a)(2)~~ subdivision 313(b)(1) of this title. ~~A meeting may be conducted by audio conference or other electronic means, as long as the provisions of this subchapter are met.~~ Any person with a disability as defined in 9 V.S.A. § 4501 who timely requests that the public body provide reasonable accommodation to mitigate the person’s disability shall be afforded such reasonable accommodation necessary to allow the person to attend and participate in a meeting. A public body shall electronically record ~~by audio tape~~, all hearings held to provide a forum for public comment on a proposed rule, pursuant to 3 V.S.A. § 840. The public shall have access to copies of ~~such tapes~~ electronic recordings as described in section 316 of this title.

(2) One or more of the members of a public body may participate in a meeting by electronic or other means of communication provided that:

(A) At least 24 hours before the meeting, the public body shall publicly announce the meeting and a municipal public body shall post notice of the meeting in or near the municipal clerk’s office and in at least two other public places in the municipality.

(B) The public announcement and posted notice of the meeting shall identify:

(i) at least one physical location where a member of the public can attend and participate in the meeting; or

(ii) an electronic or other means by which the public can access the meeting from a remote location.

(C) Each member participating by electronic or other means of communication shall:

(i) be audible to the public at the physical location identified in subdivision (2)(B)(i) of this subsection and to those members of the public participating by the electronic or other means identified in subdivision (2)(B)(ii) of this subsection; and

(ii) be able to simultaneously hear each member and speak to each member during the meeting.

(D) The public body meets all other requirements of this subchapter in holding a meeting.

(E) A vote of the public body shall be taken by roll call.

(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Minutes shall include at least the following minimal information:

(A) All members of the public body present;

(B) All other active participants in the meeting;

(C) All motions, proposals, and resolutions made, offered, and considered, and what disposition is made of same; and

(D) The results of any votes, with a record of the individual vote of each member if a roll call is taken.

(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five days from the date of any meeting.

(c)(1) The time and place of all regular meetings subject to this section shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution, or other determining authority of the public body, and this information shall be available to any person upon request. The time and place of all public hearings and meetings scheduled by all executive branch state agencies, departments, boards, or commissions shall be available to the public as required under 3 V.S.A. § 2222(c).

(2) The time, place, and purpose of a special meeting subject to this section shall be publicly announced at least 24 hours before the meeting.

Municipal public bodies shall post notices of special meetings in or near the municipal clerk's office and in at least two other public places in the municipality, at least 24 hours before the meeting. In addition, notice shall be given, either orally or in writing, to each member of the public body at least 24 hours before the meeting, except that a member may waive notice of a special meeting.

(3) Emergency meetings may be held without public announcement, without posting of notices and without 24-hour notice to members, provided some public notice thereof is given as soon as possible before any such meeting. Emergency meetings may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body.

(4) Any adjourned meeting shall be considered a new meeting, unless the time and place for the adjourned meeting is announced before the meeting adjourns.

(5) An editor, publisher, or news director of any newspaper, radio station, or television station serving the area of the state in which the public body has jurisdiction may request in writing that a public body notify the editor, publisher, or news director of special meetings of the public body. The request shall apply only to the calendar year in which it is made, unless made in December, in which case it shall apply also to the following year.

(d) The agenda for a regular or special meeting shall be:

(1) posted to the public body's website, if one exists;

(2) posted by a municipal public body in or near the municipal office and in at least two other public places in the municipality; and

(3) made available to the news media or concerned persons prior to the meeting upon specific request.

(e) Nothing in this section or in section 313 of this title shall be construed as extending to the judicial branch of the government of Vermont or of any part of the same or to the public service board; nor shall it extend to the deliberations of any public body in connection with a quasi-judicial proceeding; nor shall anything in this section be construed to require the making public of any proceedings, records, or acts which are specifically made confidential by the laws of the United States of America or of this state.

(f) A written decision issued by a public body in connection with a quasi-judicial proceeding need not be adopted at an open meeting if the decision will be a public record.

(g) The provisions of this subchapter shall not apply to site inspections for the purpose of assessing damage or making tax assessments or abatements, clerical work, or work assignments of staff or other personnel. Routine day-to-day administrative matters that do not require action by the public body, may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered.

(h) At an open meeting the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting as long as order is maintained. Public comment shall be subject to reasonable rules established by the chairperson. This subsection shall not apply to quasi-judicial proceedings.

(i) Nothing in this section shall be construed to prohibit the parole board from meeting at correctional facilities with attendance at the meeting subject to rules regarding access and security established by the superintendent of the facility.

Sec. 3. 1 V.S.A. § 313 is amended to read:

§ 313. EXECUTIVE SESSIONS

(a) No public body described in section 312 of this title may hold an executive session from which the public is excluded, except by the affirmative vote of two-thirds of its members present in the case of any public body of state government or of a majority of its members present in the case of any public body of a municipality or other political subdivision. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session except for actions relating to the securing of real estate options under subdivision ~~(2)~~ (b)(1) of this ~~subsection~~ section. Minutes of an executive session need not be taken, but if they are, shall not be made public subject to subsection 312(b) of this title. ~~A public body may not hold an executive session except to consider one or more of the following:~~

~~(1) Contracts, labor relations agreements with employees, arbitration, mediation, grievances, civil actions, or prosecutions by the state, where premature general public knowledge would clearly place the state, municipality, other public body, or person involved at a substantial disadvantage;~~

(b) A public body may hold an executive session only for one or more of the following purposes:

~~(2) The negotiating or securing of~~ (1) To negotiate or secure real estate purchase options;

~~(3)(2) The~~ To consider the appointment or employment or evaluation of a public officer or employee other than the appointment of a person to a public board, council, or commission;

~~(4)(3) A~~ To conduct a disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;

~~(5)(4) A~~ To consider a clear and imminent peril to the public safety;

~~(6)(5) Discussion or consideration of~~ To discuss or consider records or documents ~~exempted~~ exempted from the access to public records provisions of ~~subsection~~ section 317(b) of this title. Discussion or consideration of the ~~exempted~~ record or document shall not itself permit an extension of the executive session to the general subject to which the record or document pertains;

~~(7)(6) The~~ To consider academic records or suspension or discipline of students;

~~(8)(7) Testimony~~ To take or hear testimony from a person in a parole proceeding conducted by the parole board if public disclosure of the identity of the person could result in physical or other harm to the person;

~~(9)(8) Information~~ To consider information relating to a pharmaceutical rebate or to supplemental rebate agreements, which is protected from disclosure by federal law or the terms and conditions required by the Centers for Medicare and Medicaid Services as a condition of rebate authorization under the Medicaid program, considered pursuant to 33 V.S.A. §§ 1998(f)(2) and 2002(c);

(9) To discuss or consider municipal or school security or emergency response measures, the disclosure of which could jeopardize public safety;

(10) Where the public body determines that premature general public knowledge would place the public body or a person involved at a substantial disadvantage when addressing one of the following:

(A) Consideration or negotiation of contracts;

(B) Consideration or negotiation of labor relations agreements with employees;

(C) Conduct of arbitration or mediation;

(D) To hear grievances, other than tax grievances; or

(E) Consideration of civil actions or prosecutions.

~~(b)~~(c) Attendance in executive session shall be limited to members of the public body, and, in the discretion of the public body, its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed.

~~(e)~~(d) The senate and house of representatives, in exercising the power to make their own rules conferred by Chapter II of the Vermont Constitution, shall be governed by the provisions of this section in regulating the admission of the public as provided in Chapter II, § 8 of the Constitution.

Sec. 4. 1 V.S.A. § 314 is amended to read:

§ 314. PENALTY AND ENFORCEMENT

(a) A person who is a member of a public body and who knowingly and intentionally violates the provisions of this subchapter or who knowingly and intentionally participates in the wrongful exclusion of any person or persons from any meeting for which provision is herein made, shall be guilty of a misdemeanor and shall be fined not more than \$500.00.

(b) The attorney general or any person aggrieved by a violation of the provisions of this subchapter may apply to the superior court in the county in which the violation has taken place for appropriate injunctive relief or for a declaratory judgment. Except as to cases the court considers of greater importance, proceedings before the superior court, as authorized by this section and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(c) After receipt by the public body of written notice that alleges a specific violation of this subchapter and that requests a specific cure of such violation, the public body may cure the violation, subject to the following:

(1) Upon receipt of written notice of an alleged violation of this subchapter, the public body shall have 21 calendar days to respond publicly to the alleged violation and:

(A) Acknowledge the open meeting violation and state an intent to cure the violation; or

(B) State that the public body has determined that no violation has occurred and that no cure is necessary.

(2) Failure of a public body to respond to a notice of alleged violation shall be treated as a denial of the violation for purposes of enforcement of the requirements of this subchapter.

(3) Following a public body's acknowledgment of a violation under subdivision (1)(A) of this subsection, the public body shall have 14 calendar days to cure the violation by declaring as void an action or actions taken at or resulting from a meeting in violation of this subchapter.

(4) A public body that cures an alleged violation of this subchapter under this subsection shall not be subject to a civil penalty under subsection (a) of this section or assessment of attorney's fees and litigation costs under subsection (d) of this section.

(d) The court shall assess against a public body found to have violated the requirements of this subchapter reasonable attorney's fees and other litigation costs reasonably incurred in any case under this subchapter in which the complainant has substantially prevailed, unless the court finds that:

(1) The public body's position was objectively reasonable; and

(2) The public body acted in good faith.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

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, and pending the question, Shall the bill be amended as recommended by the Committee on Government Operations?, on motion of Senator Campbell, the Senate adjourned until one o'clock on Wednesday, March 16, 2011.