

Journal of the Senate

TUESDAY, APRIL 2, 2024

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

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

Message from the House No. 38

A message was received from the House of Representatives by Ms. Courtney Reckord, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 687. An act relating to community resilience and biodiversity protection through land use.

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. 192. House concurrent resolution congratulating Trey Lee on his achievements as a Fair Haven Union High School wrestler.

H.C.R. 193. House concurrent resolution honoring Steve Mason for his dedicated and superb leadership of the Lowell School Board and the North Country Supervisory Union Board.

H.C.R. 194. House concurrent resolution in memory of Rutland City Police Officer Jessica Marie Ebbighausen of Ira.

H.C.R. 195. House concurrent resolution recognizing April 5, 2024 as Civilian Conservation Corps Day in Vermont.

H.C.R. 196. House concurrent resolution honoring Robert Bick for his remarkable three decades of leadership at the Howard Center.

H.C.R. 197. House concurrent resolution designating April 3, 2024 as Prevention Day in Vermont.

H.C.R. 198. House concurrent resolution designating April 18, 2024 as USS VERMONT (SSN 792) Day in Vermont.

H.C.R. 199. House concurrent resolution congratulating the Boys & Girls Clubs of Vermont's 2024 Youth of the Year honorees and designating April 4, 2024 as Boys & Girls Club Day at the State House.

H.C.R. 200. House concurrent resolution commemorating Vermont's historic April 8, 2024 total solar eclipse.

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

The House has considered concurrent resolution originating in the Senate of the following title:

S.C.R. 12. Senate concurrent resolution congratulating the educator, baker, peace activist, and writer Jules Rabin of Marshfield on his 100th birthday.

And has adopted the same in concurrence.

The Governor has informed the House that on March 29, 2024, he approved and signed bills originating in the House of the following titles:

H. 518. An act relating to the approval of amendments to the charter of the Town of Essex.

H. 801. An act relating to approval of the adoption of the charter of the Town of Waterbury.

Bill Referred to Committee on Finance

H. 543.

House bill of the following title, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule was referred to the Committee on Finance:

An act relating to Vermont's adoption of the Social Work Licensure Compact.

Joint Senate Resolution Adopted on the Part of the Senate

J.R.S. 51.

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

By Senator Baruth,

J.R.S. 51. Joint resolution relating to weekend adjournment on April 5, 2024.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, April 5, 2024, it be to meet again no later than Tuesday, April 9, 2024.

Bills Referred

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

H. 585.

An act relating to amending the pension system for sheriffs and certain deputy sheriffs.

To the Committee on Government Operations.

H. 612.

An act relating to miscellaneous cannabis amendments.

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

H. 630.

An act relating to boards of cooperative education services.

To the Committee on Education.

H. 687.

An act relating to community resilience and biodiversity protection through land use.

To the Committee on Natural Resources and Energy.

H. 721.

An act relating to expanding access to Medicaid and Dr. Dynasaur.

To the Committee on Health and Welfare.

H. 873.

An act relating to financing the testing for and remediation of the presence of polychlorinated biphenyls (PCBs) in schools.

To the Committee on Education.

H. 880.

An act relating to increasing access to justice and to corporate taxes and fees.

To the Committee on Judiciary.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 167. An act relating to miscellaneous amendments to education law.

S. 301. An act relating to miscellaneous agricultural subjects.

S. 304. An act relating to Vermont's career and technical education programs.

Bill Amended; Bill Passed**S. 310.**

Senate bill entitled:

An act relating to natural disaster government response, recovery, and resiliency.

Was taken up.

Thereupon, pending third reading of the bill, Senator Hardy moved to amend the bill as follows:

First: In Sec. 6, 20 V.S.A. chapter 181, in section 3173, monetary benefit, in subsection (a), after "for a payment of \$50,000.00", by striking out the words "up to"

Second: In Sec. 11, Vermont Emergency Management Division disaster preparedness review, in subsection (a), after "On or before June 30," by striking out "2024" and inserting in lieu thereof 2025

Which was agreed to.

Thereupon, the bill was read the third time and passed.

Bill Amended; Third Reading Ordered**S. 96.**

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

An act relating to privatization contracts.

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. § 341 is amended to read:

§ 341. DEFINITIONS

* * *

(3) "Privatization contract" means a contract or grant for services valued at \$25,000.00 or more per year, which is the same or substantially similar to and in lieu of services previously provided, in whole or in part, by permanent, classified State employees, ~~and which results in a reduction in force of at least one permanent, classified employee, or the elimination of a vacant position of an employee covered by a collective bargaining agreement.~~

* * *

Sec. 2. 3 V.S.A. §§ 342 and 343 are amended to read:

§ 342. CONTRACTING STANDARDS; CONTRACTS FOR SERVICES

Each contract for services valued at \$25,000.00 or more per year shall require certification by the Office of the Attorney General to the Secretary of Administration that such contract for services is not contrary to the spirit and intent of the classification plan and merit system and standards of this title. A contract for services is contrary to the spirit and intent of the classification plan and merit system and standards of this title, and shall not be certified by the Office of the Attorney General as provided in this section, unless the provisions of subdivisions (1), (2), and (3) of this section are met, or one or more of the exceptions described in subdivision (4) of this section apply.

(1) The agency will not exercise supervision over the daily activities or methods and means by which the contractor provides services other than supervision necessary to ensure that the contractor meets performance expectations and standards; and

(2) The services provided are not the same as those provided by classified State employees within the agency; and

(3) The contractor customarily engages in an independently established trade, occupation, profession, or business; or

(4) Any of the following apply:

(A) The services are not available within the agency or are of such a highly specialized or technical nature that the necessary knowledge, skills, or expertise is not available within the agency.

(B) The services are incidental to a contract for purchase or lease of real or personal property.

(C) There is a demonstrated need for an independent audit, review, or investigation; or independent management of a facility is needed as a result of, or in response to, an emergency such as licensure loss or criminal activity.

(D) The State is not able to provide equipment, materials, facilities, or support services in the location where the services are to be performed in a cost-effective manner.

(E) The contract is for professional services, such as legal, engineering, or architectural services, that are typically rendered on a case-by-case or project-by-project basis, and the services are for a period limited to the duration of the project, normally not to exceed two years or provided on an intermittent basis for the duration of the contract.

(F) The need for services is urgent, temporary, or occasional, such that the time necessary to hire and train employees would render obtaining the services from State employees imprudent. Such contract shall be limited to 90 days' duration, with any extension subject to review and approval by the Secretary of Administration.

(G) Contracts for the type of services covered by the contract are specifically authorized by law.

(H) Efforts to recruit State employees to perform work, authorized by law, have failed in that no applicant meeting the minimum qualifications has applied for the job.

(I) The cost of obtaining the services by contract is lower than the cost of obtaining the same services by utilizing State employees. When comparing costs, the provisions of section 343 of this title shall apply.

§ 343. PRIVATIZATION CONTRACTS; PROCEDURE

(a) An agency shall not enter into a privatization contract unless all of the following are satisfied:

(1)(A) Thirty-five days prior to the beginning of any open bidding process, the agency provides written notice to the collective bargaining representative of the intent to seek to enter a privatization contract. During those 35 days, the collective bargaining representative shall have the opportunity to discuss alternatives to contracting. Such alternatives may include amendments to the contract if mutually agreed upon by the parties. Notices regarding the bid opportunity may not be issued during the 35-day discussion period. The continuation of discussions beyond the end of the 35-day period shall not delay the issuance of notices.

(B) During this 35-day period, the agency shall prepare a specific written statement of the services proposed to be the subject of the privatization contract, including the specific quantity and standard or quality of the subject services. For each position in which a bidder will employ any person pursuant to a privatization contract and for which the duties are substantially similar to the duties performed by a permanent, classified State employee, the statement shall also include the prevailing wage rate to be paid for each position, which shall not be less than the average step of the grade under which the comparable State employee position is paid. This statement shall be provided to the collective bargaining representative, the Agency of Administration, and be posted where it is viewable to the public. This statement shall be subject to 1 V.S.A. chapter 5, subchapter 3 (Public Records Act).

* * *

(4) Every bid for a privatization contract shall include:

(A) the wage rate for each position, which shall not be less than the prevailing wage rate contained in the statement described in subdivision (1)(B) of this subsection (a); and

(B) whether health, dental, and vision insurance coverage is provided to employees and, if applicable, the cost to employees for such coverage;

(5) The Agency and the Secretary of Administration shall each certify in writing that:

(A) they have complied with all provisions of this section and with all other applicable laws;

(B) the quality of the services to be provided by the designated bidder is likely to satisfy the quality requirements of the statement prepared pursuant to subdivision (1) of this subsection (a);

(C) the designated bidder and its supervisory employees, while in the employ of the designated bidder, have no record of substantial or repeated willful noncompliance with any relevant federal or State regulatory statute, including statutes concerning labor relations, occupational safety and health, nondiscrimination and affirmative action, environmental protection, and conflicts of interest; and

(D) the proposed privatization contract is in the public interest in that it meets the applicable quality and fiscal standards set forth in this section.

(b) Each privatization contract shall include:

(1) the wage rate for each position, which shall not be less than the prevailing wage rate contained in the statement described in subdivision (a)(1) of this section;

(2) a provision that the cost and coverage of the health, dental, and vision insurance provided to employees is substantially similar to the cost and coverage of the health, dental, and vision insurance provided to State employees;

(3) a provision that the contractor shall submit quarterly payroll records to the agency, which lists the hours worked and the hourly wage paid for each employee in the previous quarter;

(4) a provision that the agency shall not amend any privatization contract if the amendment has the purpose or effect of voiding any requirement of this section;

(5) a provision requiring the contractor to comply with a policy of nondiscrimination and equal opportunity for all persons and to take affirmative steps to provide such equal opportunity for all persons;

(6) a provision granting all employees employed under the contract just cause employment protection; and

(7) a provision requiring the contractor to comply with a policy of whistleblower protection equal to those defined in sections 971–978 of this title.

~~(b)(c)~~(1) A privatization contract shall contain specific performance measures regarding quantity, quality, and results and guarantees regarding the services performed.

(2) The agency shall provide information in the State's Workforce Report on the contractor's compliance with the specific performance measures set out in the contract.

(3) The agency may not renew the contract if the contractor fails to comply with the specific performance measures set out in the contract as required by subdivision (1) of this subsection.

~~(e)(d)~~(1) Before an agency may renew a privatization contract for the first time, the Auditor of Accounts shall review the privatization contract, along with employer payroll and benefits records, analyzing whether it is achieving:

(A) the ~~10 percent~~ cost-savings requirement set forth in subdivision (a)(2) of this section; and

(B) the performance measures incorporated into the contract as required under subdivision ~~(b)(c)~~(1) of this section.

(2) If the Auditor of Accounts finds that a privatization contract has not achieved the cost savings required under subdivision (a)(2) of this section or complied with performance measures required under subdivision ~~(b)(c)~~(1) and subdivision (d)(1) of this section, the Auditor of Accounts shall file a report with the agency and the House Committee on Government Operations and Military Affairs and Senate ~~Committees~~ Committee on Government Operations, and the agency shall not renew the privatization contract ~~review whether to renew the privatization contract or perform the work with State employees.~~

Sec. 3. 3 V.S.A. § 343(a)(2) is amended to read:

(2) The proposed contract is projected to result in overall cost savings to the State of at least ~~10~~ 20 percent above the projected cost of having the services provided by classified State employees.

Sec. 4. FISCAL AND OPERATIONAL IMPACT OF PRIVATIZATION
CONTRACT CHANGES

(a) The Agency of Administration, in consultation with the Joint Fiscal Office, shall assess the fiscal and operational impacts of:

- (1) modifying the definition of “privatization contract”; and
- (2) increasing the required cost savings of a privatized contract from 10 percent to 20 percent, as set forth in this act.

(b) The Agency shall submit a written report to the House Committees on Appropriations and on Government Operations and Military Affairs and the Senate Committees on Appropriations and on Government Operations with its analysis conducted pursuant to this section on or before January 15, 2025.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage, except that Sec. 1 and Sec. 3 shall take effect on July 1, 2025.

And that when so amended the bill ought to pass.

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill be amended as recommended by the Committee on Government Operations, with further amendment thereto:

By striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FISCAL AND OPERATIONAL IMPACT OF PRIVATIZATION
CONTRACT CHANGES

(a) The Agency of Administration, in consultation with the Joint Fiscal Office, the State Auditor, and the Office of the Attorney General, shall assess the fiscal and operational impacts of:

(1) modifying the definition of “privatization contract” as set forth in 3 V.S.A. § 341, to:

(A) require that grants be included in privatization contracts; and

(B) remove the requirement that a privatization contract result in:

(i) the reduction in force of at least one permanent, classified employee; or

(ii) the elimination of a vacant position of an employee covered by a collective bargaining agreement;

(2) increasing the required cost savings of a privatization contract from 10 percent to 20 percent;

(3) requiring that contractors subject to a privatized contract pay their employees performing work pursuant to a privatized contract either the prevailing wage rate for such work as set by the U.S. Department of Labor, or the same wage rate as a State employee performing a substantially similar task would receive;

(4) requiring that contractors subject to a privatized contract offer their employees performing work pursuant to a privatized contract health benefits that are substantially similar to health benefits provided to State employees; and

(5) removing exceptions set forth in 3 V.S.A. § 342(4) that, after review, are used excessively or arbitrarily to certify privatized contracts by the Office of the Attorney General.

(b) The Agency shall submit a written report to the General Assembly with its analysis conducted pursuant to this section on or before February 1, 2025.

Sec. 2. 3 V.S.A. § 342 is amended to read:

§ 342. CONTRACTING STANDARDS; CONTRACTS FOR SERVICES

Each contract for services valued at \$25,000.00 or more per year shall require certification by the Office of the Attorney General to the Secretary of Administration that such contract for services is not contrary to the ~~spirit and~~ intent of the classification plan and merit system and standards of this title. A contract for services is contrary to the ~~spirit and~~ intent of the classification plan

and merit system and standards of this title, and shall not be certified by the Office of the Attorney General as provided in this section, unless the provisions of subdivisions (1), (2), and (3) of this section are met, or one or more of the exceptions described in subdivision (4) of this section apply.

* * *

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2024.

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 the recommendation of the Committee on Government Operations was amended as recommended by the Committee on Appropriations.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Government Operations, as amended? was agreed to and third reading of the bill was ordered.

Proposed Amendment to the Constitution Amended; Proposed Amendment to the Constitution Adopted

The report of the Committee on Economic Development, Housing and General Affairs, on Proposed Amendment to the Constitution designated as Proposal 3.

Was taken up.

Senator Harrison for the Committee on Economic Development, Housing and General Affairs, to which was referred the proposed amendment, reported that the committee had considered Proposal 3, which is printed in full below:

Thereupon, Proposal 3, having appeared on the Calendar for five legislative days pursuant to Rule 77, was read the second time in full pursuant to Rule 77,

PROPOSAL 3

Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont to provide that the citizens of the State have a right to collectively bargain.

Sec. 2. Article 23 of Chapter I of the Vermont Constitution is added to read:

Article 23. [Right to collectively bargain]

That employees have a right to organize or join a labor organization for the purpose of collectively bargaining with their employer through an exclusive representative of their choosing for the purpose of negotiating wages, hours,

and working conditions and to protect their economic welfare and safety in the workplace, and that a labor organization chosen to represent a group of employees shall have the right to collect dues from its members. Therefore, no law shall be adopted that interferes with, negates, or diminishes the right of employees to collectively bargain with respect to wages, hours, and other terms and conditions of employment and workplace safety, or that prohibits the application or execution of an agreement between an employer and a labor organization representing the employer's employees that requires membership in the labor organization as a condition of employment.

Sec. 3. EFFECTIVE DATE

The amendment set forth in this proposal shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2026 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

Senator Harrison, for the Committee on Economic Development, Housing and General Affairs to which was referred Proposal 3, reported that Proposal 3 to the Constitution of the State of Vermont be amended by striking out the proposal in its entirety and inserting in lieu thereof the following:

PROPOSAL 3

Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont to provide that the citizens of the State have a right to collectively bargain.

Sec. 2. Article 23 of Chapter I of the Vermont Constitution is added to read:

Article 23. [Right to collectively bargain]

That employees have a right to organize or join a labor organization for the purpose of collectively bargaining with their employer through an exclusive representative of their choosing for the purpose of negotiating wages, hours, and working conditions and to protect their economic welfare and safety in the workplace. Therefore, no law shall be adopted that interferes with, negates, or diminishes the right of employees to collectively bargain with respect to wages, hours, and other terms and conditions of employment and workplace safety, or that prohibits the application or execution of an agreement between an employer and a labor organization representing the employer's employees that requires membership in the labor organization as a condition of employment.

Sec. 3. EFFECTIVE DATE

The amendment set forth in this proposal shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2026 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

Thereupon, the pending question, Shall the Proposed Amendment to the Constitution designated as Proposal 3 be amended as recommended by the Committee on Economic Development, Housing and General Affairs?, was decided in the affirmative on a roll call, pursuant to Rules 77 and 80, Yeas 29, Nays 0 (the necessary majority vote having been attained).

Roll Call

Those Senators who voted in the affirmative were: Baruth, Bray, Brock, Campion, Chittenden, Clarkson, Collamore, Cummings, Gulick, Hardy, Harrison, Hashim, Ingalls, Kitchel, Lyons, MacDonald, McCormack, Norris, Perchlik, Ram Hinsdale, Sears, Starr, Vyhovsky, Watson, Weeks, Westman, White, Williams, Wrenner.

Those Senators who voted in the negative were: None.

The Senator absent and not voting was: Mazza.

Thereupon, the pending question, Shall the Senate adopt the Proposal of Amendment to the Constitution (as amended) as recommended by the Committee on Economic Development, Housing and General Affairs and request the concurrence of the House?, was decided in the affirmative on roll call pursuant to the Vermont Constitution and Rule 80, Yeas 29, Nays 0 (the necessary two-thirds vote having been attained).

Roll Call

Those Senators who voted in the affirmative were: Baruth, Bray, Brock, Campion, Chittenden, Clarkson, Collamore, Cummings, Gulick, Hardy, Harrison, Hashim, Ingalls, Kitchel, Lyons, MacDonald, McCormack, Norris, Perchlik, Ram Hinsdale, Sears, Starr, Vyhovsky, Watson, Weeks, Westman, White, Williams, Wrenner.

Those Senators who voted in the negative were: None.

The Senator absent and not voting was: Mazza.

Bill Amended; Bill Passed**S. 259.**

Senate bill entitled:

An act relating to climate change cost recovery.

Was taken up.

Thereupon, pending third reading of the bill, Senators Sears and Kitchel moved to amend the bill as follows:

First: In Sec. 2, 10 V.S.A. chapter 24A, by striking out section 599b in its entirety and inserting in lieu thereof a new section 599b to read as follows:

§ 599b. CLIMATE CHANGE COST RECOVERY PROGRAM AUDIT

Beginning on January 1, 2031 and every five years thereafter, the State Auditor shall evaluate the operation and effectiveness of the Climate Superfund Cost Recovery Program. The Auditor shall make recommendations to the Agency on ways to increase program efficacy and cost-effectiveness. The Auditor shall submit the results of the audit to the Senate Committees on Natural Resources and Energy and on Judiciary and the House Committees on Environment and Energy and on Judiciary. The State Auditor shall be reimbursed from the Climate Superfund Cost Recovery Program Fund for any costs associated with hiring technical expertise necessary to complete the audits required under this section.

Second: In Sec. 2, 10 V.S.A. chapter 24A, in section 599, in subdivision (b)(1)(B), after “the Program” and before the semicolon, by inserting , including the cost to the State Auditor associated with hiring technical expertise necessary to complete the audits required under section 599b of this title

Which was agreed to.

Thereupon, the bill was read the third time and passed, on a roll call, Yeas 26, Nays 3.

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

Roll Call

Those Senators who voted in the affirmative were: Baruth, Bray, Brock, Campion, Chittenden, Clarkson, Collamore, Cummings, Gulick, Hardy, Harrison, Hashim, Kitchel, Lyons, MacDonald, McCormack, Norris, Perchlik, Ram Hinsdale, Sears, Starr, Vyhovsky, Watson, Westman, *White, Wrenner.

Those Senators who voted in the negative were: Ingalls, Weeks, Williams.

The Senator absent and not voting was: Mazza.

*Senator White explained her vote as follows:

“I am proud to vote yes to respond to the greatest overarching existential threat of our time.”

Adjournment

On motion of Senator Baruth, the Senate adjourned until one o'clock in the afternoon on Wednesday, April 3, 2024.