

Journal of the Senate

Friday, January 16, 2009

Pursuant to Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the time for convening of the Senate having been set at 8:30 A.M., the Senate was called to order by David A. Gibson, Secretary of the Senate.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Presiding Officer Elected

Thereupon, pursuant to the provisions of Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the Senate proceeded to the election of an acting President *pro tempore* to preside.

Nominations being in order, Senator Campbell nominated Senator Richard T. Mazza to be acting President *pro tempore*. Senator Lyons seconded the nomination.

There being no further nominations, on motion of Senator Campbell, the nominations were closed, and the Assistant Secretary was instructed to cast one ballot for Senator Richard T. Mazza to serve as presiding officer until the return of the President or the President *pro tempore*.

Senator Mazza Assumes the Chair

Message from the House No. 6

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

Mr. President:

I am directed to inform the Senate that:

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

J.R.S. 8. Joint resolution relating to weekend adjournment.

And has passed the same in concurrence.

Message from the House No. 7

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

Mr. President:

I am directed to inform the Senate that:

The House has adopted joint resolution of the following title:

J.R.H. 1. Joint resolution relating to the construction of a proposed U.S. Border Patrol Station near the Beecher Falls Port of Entry.

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

Bills Introduced

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

S. 17.

By Senator Mullin,

An act relating to a local option Act 250 exemption for construction within a traditional industrial district.

To the Committee on Natural Resources and Energy.

S. 18.

By Senators McCormack, Ashe, Ayer and Kittell,

An act relating to limiting the power of municipalities or deeds to prohibit the installation of solar collectors, clotheslines, or other energy devices based on renewable resources.

To the Committee on Natural Resources and Energy.

S. 19.

By Senators Sears, Campbell and Shumlin,

An act relating to extension of filing deadlines for homestead declarations and property tax adjustment claims.

To the Committee on Finance.

Joint Resolution Referred**J.R.H. 1.**

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution relating to the construction of a proposed U.S. Border Patrol Station near the Beecher Falls Port of Entry.

Whereas, since the 1920s, a small, and now extremely inadequate, U.S. Border Patrol Station has been located at the Beecher Falls Port of Entry, and it provides administrative support services for an area containing multiple ports of entry along northern New England's border with Canada, and

Whereas, there is an urgent need for a new and far larger U.S. Border Patrol Station in this area that is designed to satisfy certain criteria, including: (1) appropriate emergency response time to the Canadian border; (2) a minimum 10-acre site; (3) appropriate site, shape, terrain, drainage, and soil conditions; (4) availability of utilities (water, sewer, power, gas, and communications); (5) location near the Canadian border with compatible vehicle traffic, construction patterns, access roads, and zoning; (6) reasonable site acquisition, construction, and (if necessary) demolition costs; (7) that a willing seller is prepared to make the site available in a timely manner; and (8) ability of the site to accommodate facilities for a minimum of 50 U.S. Border Patrol agents in order to enable effective and efficient operational control, and

Whereas, the U.S. Border Patrol has identified two potential sites for the new station, one in Colebrook, New Hampshire (the Clark site) and one in Canaan, Vermont (the Dupont site), and

Whereas, the U.S. Border Patrol recently issued a 250-plus-page Environmental Assessment (EA) that was intended to serve as an objective and factually accurate evaluation of each site's potential to serve as the proposed station's location, and

Whereas, the document contains significant inaccuracies and lacks sufficiently comprehensive data to support its conclusion that the Clark site is the preferred alternative for constructing the U.S. Border Patrol Station, and

Whereas, among the major errors in the EA are the placement of Van Dyke Mountain in New Hampshire instead of Vermont, misstatements concerning each site's relationship to the floodplain, and the stated existence of a private school in Vermont that was actually in New Hampshire and closed more than five years ago, and

Whereas, the EA includes basic mathematical errors with respect to the cost of the Clark parcel and lacks any explanation as to why the Clark site requires a three-acre development but the Dupont site needs a 10-acre project, and

Whereas, perhaps the most glaring example of a major error is the statement that the Clark parcel is located 6.5 miles from the existing Border Patrol Station although a local resident's repeated measurement of the distance was 8.3 miles, and

Whereas, discrepancies were also identified in measuring the distance between the Dupont site and the current station, although all measurements agreed that the distance was under three miles, and

Whereas, only the Dupont site is within eight miles of the Beecher Falls Port of Entry as the U.S Border Patrol requires, and

Whereas, this inaccurate EA unfairly and arbitrarily labels the New Hampshire site as preferable without any stated rationale, and

Whereas, despite the announced January 16, 2009 deadline for receipt of comments, this deadline should be extended to allow for great scrutiny of the sites for a U.S. Border Patrol Station that will serve as a major source of local employment, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly requests the U.S. Border Patrol to extend the original deadline for comments on the selection of a site for the proposed U.S. Border Patrol Station near the Beecher Falls Port of Entry, and be it further

Resolved: That the General Assembly requests the Vermont Congressional Delegation to work to assure that the Dupont site for the proposed U.S. Border Patrol Station is given accurate, fair, and unbiased consideration, and be it further

Resolved: That the secretary of state be directed to send a copy of this resolution to the commissioner of the U.S. Border Patrol and to the Vermont Congressional Delegation.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Economic Development, Housing and General Affairs.

Message from the Governor

A message was received from the Governor, by Heidi Tringe, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the thirteenth day of January, 2009, pursuant to 3 V.S.A. §2002(b), I am herewith enclosing the following Executive Order:

01-09. Merger of Department of Housing and Community Affairs and Department of Economic Development within the Agency of Commerce and Community Development.

Executive Order Referred

The President laid before the Senate an Executive Order relating to a merger of the Department of Housing and Community Affairs and the Department of Economic Development.

**STATE OF VERMONT
EXECUTIVE DEPARTMENT
EXECUTIVE ORDER**

WHEREAS, the Governor, pursuant to 3 V.S.A. § 2001, may make such changes in the organization of the executive branch or in the assignment of functions among its units as he considers necessary for efficient administration; and

WHEREAS, it is desirable to reorganize the departments and divisions of government by better coordinating certain activities and improving the coordination and effectiveness of services to the public; and

WHEREAS, the Department of Economic Development and the Department of Housing and Community Affairs administer programs and provide services that share common policy interests and objectives; and

WHEREAS, the Department of Economic Development and the Department of Housing and Community Affairs have demonstrated effective collaboration as separate divisions within the Agency of Commerce and Community Development on a variety of issues serving Vermonters, municipalities and businesses throughout the state, including the pressing issue of providing and maintaining an adequate supply of housing for Vermont's workforce; and

WHEREAS, the related and intersecting areas of responsibility of the Department of Economic Development and the Department of Housing and Community Affairs provide a solid foundation on which to achieve meaningful efficiencies without compromising the quality or effectiveness of the services they have consistently provided.

NOW, THEREFORE, by virtue of the power vested in me by 3 V.S.A. Chapter 41 as Governor, I, James H. Douglas, do hereby create a Department of Economic, Housing, and Community Development by merging the Department of Economic Development and the Department of Housing and Community Affairs within the Agency of Commerce and Community Development. The Department of Economic, Housing, and Community

Development shall be successor to and a continuation of the Department of Economic Development and the Department of Housing and Community Affairs.

1. All duties, responsibilities and authority, including all contracts and grant agreements, of the Department of Economic Development and the Department of Housing and Community Affairs, including its Division for Historic Preservation established in 22 V.S.A. Chapter 14, are hereby transferred to the Department of Economic, Housing and Community Development and shall continue in force and effect without any interruption in their functions.
2. The positions of Commissioner of Economic Development and Commissioner of Housing and Community Affairs are abolished and all the duties, responsibilities and authority of those Commissioners are hereby transferred to the Commissioner of the Department of Economic, Housing and Community Development.
3. All other authorized positions and equipment of the Department of Economic Development and the Department of Housing and Community Affairs are transferred to the Department of Economic, Housing and Community Development.
4. The rules of each of the former Departments in effect on the effective date of this Executive Order shall be the rules of the Department of Economic, Housing and Community Development, until amended or repealed.
5. All Boards, Commissions, and Councils of the former Departments shall be attached to the Department of Economic, Housing, and Community Development for administrative purposes including, but not be limited to: Vermont Community Development Board; Vermont Downtown Development Board; Scenery Preservation Council; Vermont Advisory Council on Historic Preservation; Vermont Commission on Native American Affairs; Council of Regional Commissions; Vermont Housing Council; Vermont Business Recruitment Partnership Advisory Committee; Vermont Economic Incentive Review Board; and Commission on the Future of Economic Development.
6. The Department of Economic, Housing, and Community Development shall administer all programs formerly administered by the Department of Economic Development and the Department of Housing and Community Affairs and its Division for Historic Preservation, including, but not limited to:

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- Vermont Community Development Program (10 V.S.A. §§ 681 – 690a);
 - Vermont Downtown Program (24 V.S.A. §§ 2790 – 2797 including Village Centers, Growth Centers, and New Town Centers);
 - Historic Barns Preservation Grant Program (24 V.S.A. § 5603);
 - HOME Program (42 U.S.C.A. Chapter 130, Subchapter II; 10 V.S.A. § 321(b));
 - Certified Local Government Program (16 U.S.C. § 470a(c)(1));
 - Employment Training Program (10 V.S.A. § 531);
 - Vermont Employment Growth Initiative Program (32 V.S.A. § 5930b);
 - Vermont Procurement Technical Assistance Center Program (3 V.S.A. §§ 2471a - 2471b); and
 - Vermont World Trade Office and Vermont Global Trade Partnership (10 V.S.A. §§ 25 – 33).
7. The Department of Economic, Housing, and Community Development shall be headed by the Commissioner who shall be appointed by the Secretary with the approval of the Governor and who shall be the chief executive and administrative officer and head of the department and shall serve at the pleasure of the Secretary. The Commissioner of Economic, Housing, and Community Development may appoint the following exempt positions: a deputy commissioner of Economic Development, a deputy commissioner of Housing, and an executive assistant.
8. The Secretary of the Agency of Commerce and Community Development and the Commissioner of Economic, Housing, and Community Development together shall further study the effectiveness, priority and delivery of services and shall report to the governor by November 15, 2009, any further recommendation for restructuring and/or statutory changes.

This Executive Order shall take effect on July 1, 2009, unless disapproved by the General Assembly pursuant to 3 V.S.A. § 2002. This Executive Order shall be submitted to the General Assembly pursuant to 3 V.S.A. § 2002(b).

Witness my name hereunto subscribed and the Great Seal of the State of Vermont hereunto affixed at Montpelier this 13th day of January, 2009.

/s/James H. Douglas
Governor

By the Governor:
/s/Heidi M. Tringe
Secretary of Civil and Military Affairs
EXECUTIVE ORDER NO. 01-09

Thereupon, pursuant to the rules of the Senate, Executive Order No. 01-09 was referred to the Committee on Economic Development, Housing and General Affairs.

Recess

On motion of Senator Campbell the Senate recessed until eleven o'clock and forty-five minutes.

Called to Order

At eleven o'clock and forty-five minutes the Senate was called to order by the acting President *pro tempore*.

Message from the House No. 8

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

Mr. President:

I am directed to inform the Senate that:

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

J.R.S. 7. Joint resolution providing for release of payments to towns for highway aid.

And has passed the same in concurrence.

Rules Suspended; Bill Committed

S. 13.

Pending entry on the Calendar for notice, on motion of Senator Sears, the rules were suspended and Senate bill entitled:

An act relating to improving Vermont's sexual abuse response system.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Judiciary, Senator Sears moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Appropriations with the report of the Committee on Judiciary *intact*,

Which was agreed to.

Rules Suspended; Third Reading Ordered; Rules Suspended; Joint Resolution Adopted in Concurrence; Joint Resolution Messaged

J.R.H. 1.

Pending entry on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and Joint House Resolution entitled:

Joint resolution relating to the construction of a proposed U.S. Border Patrol Station near the Beecher Falls Port of Entry.

Was taken up for immediate consideration.

Senator Illuzzi, for the Committee on Economic Development, Housing and General Affairs, to which the resolution was referred, reported that the joint resolution ought to be adopted in concurrence.

Thereupon, the joint resolution was read the second time by title only pursuant to Rule 43, and third reading of the joint resolution was ordered.

Thereupon, on motion of Senator Campbell, the rules were suspended and the joint resolution was placed on all remaining stages of its adoption in concurrence forthwith.

Thereupon, on motion of Senator Campbell, the rules were suspended, and the joint resolution was ordered messaged to the House forthwith.

Adjournment

On motion of Senator Campbell, the Senate adjourned, to reconvene on Tuesday, January 20, 2009, nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 8.