

# Journal of the Senate

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TUESDAY, APRIL 14, 2009

The Senate was called to order by the President *pro tempore*.

## Devotional Exercises

Devotional exercises were conducted by the Reverend Kevin Rooney of Northfield.

## Pledge of Allegiance

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

## Message from the House No. 52

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 passed House bills of the following titles:

**H. 152.** An act relating to encouraging biomass energy production.

**H. 445.** An act relating to capital construction and state bonding.

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

## Bill Introduced

Senate bill of the following title was introduced, read the first time and referred:

### S. 143.

By Senator Mullin,

An act relating to a residency requirement for elected planning commission members.

To the Committee on Government Operations.

**Bills Referred**

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

**H. 152.**

An act relating to encouraging biomass energy production.

To the Committee on Natural Resources and Energy.

**H. 445.**

An act relating to capital construction and state bonding.

To the Committee on Institutions.

**Joint 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 Senator Shumlin,

**J.R.S. 29.** Joint resolution relating to weekend adjournment.

***Resolved by the Senate and House of Representatives:***

That when the two Houses adjourn on Friday, April 17, 2009, it be to meet again no later than Tuesday, April 21, 2009.

**President Assumes the Chair****Consideration Postponed**

Senate bills entitled:

**S. 99.**

An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.

**S. 117.**

An act relating to the date of the primary election.

Were taken up.

Thereupon, without objection consideration of the bills was postponed until the next legislative day.

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**Consideration Postponed**

House bill entitled:

**H. 348.**

An act relating to the Interstate Pest Control Compact.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

**Proposals of Amendment; Bill Referred****H. 11.**

House bill entitled:

An act relating to the disposition of property upon death, transfer of interest in vehicle upon death, and homestead exemption.

Having been called up, was taken up.

Thereupon, pending third reading of the bill, Senator Campbell moved that the Senate propose to the House to amend the bill in Sec. 2, by striking out 14 V.S.A. § 322 in its entirety and inserting in lieu thereof a new 14 V.S.A. § 322 to read as follows:

**§ 322. UNLAWFUL KILLING AFFECTING INHERITANCE**

Notwithstanding sections 311 through 314 of this title or provisions otherwise made, in any case in which an individual is entitled to inherit or receive property under the last will of a decedent, or otherwise, or stands to benefit under the terms of any trust of a decedent, such individual's share in the decedent's estate or benefits from any trust shall be forfeited and shall pass to the remaining heirs or beneficiaries of the decedent if the individual intentionally and unlawfully kills the decedent or intentionally and unlawfully kills another person and by doing so stands to inherit under the decedent's will, or otherwise, or to become a beneficiary under any trust of the decedent. In any proceedings to contest the right of an individual to inherit or receive property under a will, or otherwise, or to benefit under the terms of any trust, the record of that individual's conviction of intentionally and unlawfully killing the decedent or other person shall be admissible evidence for purposes of this section.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Campbell moved that the Senate propose to the House to amend the bill by striking out Sec. 6 in its entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

Sec. 6. EFFECTIVE DATE

(a) Sections 1, 2, and 4 of this act shall take effect upon passage. Sec. 2 of this act shall apply only to the estates of persons dying on or after the effective date of this act.

(b) Sections 3 and 5 of this act shall take effect July 1, 2009.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Illuzzi moved that the Senate propose to the House to amend the bill by adding a new section to be numbered Sec. 1a to read as follows:

Sec. 1a. 4 V.S.A. § 278 is added to read:

§ 278. AUTHORIZATION OF ASSISTANT JUDGES TO RUN FOR THE OFFICE OF PROBATE JUDGE

(a) Notwithstanding any law to the contrary, an assistant judge or a candidate for the office of assistant judge may also stand for election to the office of probate judge, and if elected to both offices, may serve both as an assistant judge and as probate judge.

(b) In the event a probate matter arises in the superior court over which an assistant judge is also the probate judge that presides, or has presided, over the same or related probate matter in the probate court, such assistant judge will be disqualified from sitting on such probate matter in the superior court.

(c) In the event a probate matter arises in the probate court over which a probate judge is also an assistant judge that presides, or has presided, over or sat on the same or related probate matter in the superior court, such probate judge will be disqualified from sitting on such probate matter in the probate court.

(d) This section shall take effect immediately and shall also be applied retroactively and is intended to validate and authorize any person's contemporaneous election to both offices of assistant judge and probate judge prior to and following the enactment of this law.

Which was agreed to on a division of the Senate, Yeas 14, Nays 14.

There being a tie, the Secretary took the casting vote of the President, who voted "Yea".

Thereupon, pending third reading of the bill, on motion of Senator Shumlin, the bill was referred to the Committee on Government Operations.

### **Bills Amended; Third Readings Ordered**

#### **S. 134.**

Senate committee bill entitled:

An act relating to the reduction and consolidation of certain nonstanding legislative committees.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time?, Senator White moved to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 2 V.S.A. § 653(c) is added to read:

(c)(1) The legislative advisory committee on the state house shall oversee the administration of the art acquisition fund. Specifically, the committee shall:

(A) oversee the administration of chapter 2 of Title 29;

(B) establish guidelines for the selection of works of art; and

(C) establish guidelines for the composition of the art selection panel.

(2) The selection of works of art to be installed under this chapter in facilities of the University of Vermont and State Agricultural College and of the Vermont State Colleges shall be made pursuant to procedures of these institutions for this purpose.

Sec. 2. 2 V.S.A. 902(b) is amended to read:

(b) Nothing in this section shall modify the jurisdiction of the health access oversight committee to monitor Medicaid and Medicaid-waiver programs. The commission shall carry on a continuing review of the operation of the Medicaid program and all Medicaid waiver programs that may affect the administration and beneficiaries of these programs. The commission shall work with, assist, and advise other committees of the general assembly, members of the executive branch, and the public on matters relating to the state Medicaid program and other state health care programs. Annually, no later than January 15, the committee shall report to the governor and the general assembly. In conducting its review and in order to fulfill its duties, the commission shall consult the following:

(1) Consumers and advocacy groups regarding their satisfaction and complaints.

(2) Health care providers regarding their satisfaction and complaints.

(3) The office of Vermont health access.

(4) The department of banking, insurance, securities, and health care administration.

(5) The agency of human services.

(6) The attorney general.

(7) The health care ombudsman.

(8) The Vermont program for quality in health care.

(9) Any other person or entity as determined by the commission.

Sec. 3. 16 V.S.A. § 2886 is amended to read:

§ 2886. COMMISSION ON HIGHER EDUCATION FUNDING

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Sec. 4. REPEAL

(a) 2 V.S.A. chapter 24 (health access oversight committee); 10 V.S.A. §§ 425 (scenery preservation council); 2223 (forest resources advisory council); and 2224 (powers and duties of the forest resources advisory council); 29 V.S.A. § 47(advisory committee to oversee the administration of the art acquisition fund); and 30 V.S.A. § 212b (review board on retail sales of electricity) are repealed.

(b) Sec. 28 of No. 43 of the Acts of 2005 (state house committee) is repealed.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

### **S. 111.**

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

An act relating to legislative apportionment board appointments.

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

Sec. 1. 17 V.S.A. § 1904(a) is amended to read:

(a) There is hereby created the legislative apportionment board, consisting of: a special master designated by the chief justice of the supreme court; ~~one freeman,~~ a resident of the state of Vermont for five years immediately preceding the appointment, appointed by the governor from each political party ~~which polled at least twenty-five percent of the votes cast for governor at the last preceding general election,~~ that has had more than three members serve as members of the general assembly, who are not all from the same county, for at least three of the five biennial legislative sessions since the taking of the previous decennial census of the United States; and one ~~freeman,~~ a resident of the state of Vermont for the five years immediately preceding the appointment, elected by the state committee of each of those political parties, a quorum of each committee being present and voting. No member of the board shall serve as a member or employee of the general assembly, or of either house thereof. The special master so designated shall be ~~chairman~~ chair of the board, and shall call such meetings as may be necessary for the accomplishment of the duties of the board hereafter set forth. The secretary of state of Vermont shall be secretary of the board, but shall have no vote.

And that when so amended the bill ought to pass.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Government Operations?, Senators Brock and Doyle moved to substitute a recommendation of amendment for the recommendation of amendment of the Committee on Government Operations as follows:

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

Sec. 1. 17 V.S.A. § 1904(a) is amended to read:

(a) There is hereby created the legislative apportionment board, consisting of: a special master designated by the chief justice of the supreme court; ~~one freeman,~~ a resident of the state of Vermont for five years immediately preceding the appointment, appointed by the governor from each political party which polled at least ~~twenty-five~~ ten percent of the votes cast for governor at the last preceding general election, and one ~~freeman,~~ a resident of the state of Vermont for the five years immediately preceding the appointment, elected by the state committee of each of those political parties, a quorum of each committee being present and voting. No member of the board shall serve as a member or employee of the general assembly, or of either house thereof. The special master so designated shall be ~~chairman~~ chair of the board, and shall call such meetings as may be necessary for the accomplishment of the duties of the

board hereafter set forth. The secretary of state of Vermont shall be secretary of the board, but shall have no vote.

Thereupon, pending the question, Shall the recommendation of amendment of the Committee on Government Operations be substituted as recommended by Senators Brock and Doyle?, Senator Brock requested and was granted leave to withdraw the substitute recommendation of amendment.

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

### **Bill Passed**

Senate bill of the following title was read the third time and passed:

**S. 126.** An act relating to digital forensic specialists.

### **Third Readings Ordered**

#### **H. 36.**

Senator Brock, for the Committee on Education, to which was referred House bill entitled:

An act relating to repealing the charter of the Enosburg Falls Incorporated School District.

Reported that the bill ought to pass in concurrence.

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

#### **H. 131.**

Senator Brock, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to the codification of and approval of an amendment to the charter of Cold Brook Fire District No. 1.

Reported that the bill ought to pass in concurrence.

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

### **Rules Suspended; Bill Committed**

House bill entitled:

**H. 145.** An act relating to composting.

Was taken up.



Thereupon, pending the reading of the report of the Committee on Agriculture, Senator Lyons moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Natural Resources and Energy with the report of the Committee on Agriculture *intact*,

Which was agreed to.

### **Joint Resolution Adopted on the Part of the Senate**

#### **J.R.S. 26.**

Joint Senate resolution entitled:

Joint resolution relating to the legalization of industrial hemp.

Having been placed on the Calendar for action, was taken up and adopted on the part of the Senate.

### **Joint Resolutions Adopted in Concurrence**

Joint House resolutions entitled:

**J.R.H. 16.** Joint resolution designating April as Fair Housing Month in Vermont .

**J.R.H. 19.** Joint resolution authorizing the 2009 Boys' State program to use the state house.

Having been placed on the Calendar for action, were taken up.

Thereupon, the resolutions were adopted collectively in concurrence.

### **Senate Concurrent Resolutions**

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

By All Members of the Senate,

By All Members of the House,

#### **S.C.R. 17.**

Senate concurrent resolution in memory of former Representative and Senator George E. Little, Jr. of Burlington.

By Senators Choate and Kitchel,

By Representatives Reis and South,

**S.C.R. 18.**

Senate concurrent resolution congratulating the organizers of the 2009 St. Johnsbury Maple Sugar Festival.

**House Concurrent Resolutions**

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

By Representative Morrissey and others,

By Senators Hartwell and Sears,

**H.C.R. 99.**

House concurrent resolution congratulating Joseph Wassick on completing 50 years of outstanding volunteer service at the Bennington Fire Department.

By Representative Sharpe and others,

By Senators Ayer and Giard,

**H.C.R. 100.**

House concurrent resolution honoring Dr. David Henderson for his exemplary work as a primary care physician in Bristol and at the Porter Medical Center, Inc.

By Representative Marek and others,

**H.C.R. 101.**

House concurrent resolution honoring Effie (Bartlett) Chamberlain in recognition of her outstanding nursing and administrative career at the Grace Cottage Hospital.

By Representatives French and Townsend,

By Senators Ayer and Giard,

**H.C.R. 102.**

House concurrent resolution congratulating Brooke Werner of Granville on winning the 2009 Miss Vermont USA competition.

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**Message from the House No. 53**

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:

Pursuant to Senate request, the House returns custody of a bill originating in the House of the following title:

**H. 232.** An act relating to fiscal year 2009 budget adjustment.

**Adjournment**

On motion of Senator Shumlin, the Senate adjourned until five o'clock and thirty minutes in the afternoon on Wednesday, April 15, 2009.