

Journal of the Senate

FRIDAY, APRIL 17, 2009

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Mark Pitton of Montpelier.

Message from the House No. 55

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. 93. An act relating to leasing state forestland for maple sugar production.

H. 331. An act relating to technical changes to the records management authority of the Vermont State Archives and Records Administration.

H. 430. An act relating to approval of an amendment to the charter of the town of St. Johnsbury.

H. 433. An act relating to approval of amendments to the charter of the town of Berlin.

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

The House has adopted joint resolution of the following title:

J.R.H. 11. Joint resolution urging Vermonters and public and private organizations in the state to institute a voluntary 20 percent reduction in energy use.

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

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

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

And has passed the same in concurrence.

Message from the House No. 56

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. 147. An act relating to the operation of a motor vehicle by junior operators and primary safety belt enforcement.

H. 192. An act relating to electronic benefit machines for farmers' markets.

H. 405. An act relating to K-12 and higher education partnerships.

H. 447. An act relating to wetlands protection.

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

The House has considered Senate proposals of amendment to House bill of the following title:

H. 91. An act relating to technical corrections to the juvenile judicial proceedings act of 2008.

And has severally concurred therein with a further proposal of amendment thereto, in the adoption of which the concurrence of the Senate is requested.

Message from the House No. 57

A message was received from the House of Representatives by Mr. William M. MaGill, its First Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bill of the following title:

H. 442. An act relating to miscellaneous tax provisions.

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

Bills Referred

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

H. 93.

An act relating to leasing state forestland for maple sugar production .

To the Committee on Rules.

H. 147.

An act relating to the operation of a motor vehicle by junior operators and primary safety belt enforcement.

To the Committee on Rules.

H. 192.

An act relating to electronic benefit machines for farmers' markets.

To the Committee on Rules.

H. 331.

An act relating to technical changes to the records management authority of the Vermont State Archives and Records Administration.

To the Committee on Rules.

H. 405.

An act relating to K-12 and higher education partnerships.

To the Committee on Rules.

H. 430.

An act relating to approval of an amendment to the charter of the town of St. Johnsbury .

To the Committee on Government Operations.

H. 433.

An act relating to approval of amendments to the charter of the town of Berlin.

To the Committee on Government Operations.

H. 442.

An act relating to miscellaneous tax provisions.

To the Committee on Finance.

H. 447.

An act relating to wetlands protection.

To the Committee on Rules.

Joint Resolution Referred**J.R.H. 11.**

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

Joint resolution urging Vermonters and public and private organizations in the state to institute a voluntary 20 percent reduction in energy use.

Whereas, energy costs in Vermont are continuing to rise dramatically, and

Whereas, at present, the overwhelming majority of Vermont's electrical generation is derived from fossil fuels, many of which are imported from unreliable overseas sources, and

Whereas, not only are energy costs rising, but the burning of fossil fuels increases the emission of greenhouse gases that contribute to the planet's increasingly severe global warming problems, and

Whereas, although switching to renewable energy sources will reduce the problems that imported fossil fuels cause, Vermont will remain largely dependent on fossil fuels for energy sources for the short term, and

Whereas, a concerted voluntary effort on the part of all individuals and institutions in this state to reduce would serve as a major step forward to achieving a 20 percent electric power reduction in Vermont, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges all individual Vermonters and all nonprofit organizations, educational institutions and hospitals, farms, for-profit businesses, schools and colleges, and levels of government to work to institute a voluntary 20 percent reduction in energy use by shutting off lights whenever walking out of a room that will be empty and by lowering thermostats by five degrees.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Natural Resources and Energy.

**Message from the Governor
Appointments Referred**

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

Goldstein, Joan of South Royalton - Member of the Sustainable Jobs Fund Board of Directors, - from March 20, 2009, to August 31, 2013.

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

**Rules Suspended; Proposals of Amendment; Rules Suspended; Bill Passed
in Concurrence with Proposals of Amendment**

H. 11.

Appearing on the Calendar for notice tomorrow, on motion of Senator Shumlin, the rules were suspended and House bill entitled:

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

Was taken up for immediate consideration.

Senator White, for the Committee on Government Operations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as follows:

First: 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 as both an assistant judge and a 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, the assistant judge will be disqualified from sitting on the 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, the probate

judge will be disqualified from sitting on the 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 as it pertains to subsection (a) of this section prior to and following the enactment of this law.

Second: In Sec. 2, 14 V.S.A. § 314, in subdivision (b)(2), by striking out the word "or" and inserting in lieu thereof the word and

Third: In Sec. 2, 14 V.S.A. § 322, by striking out § 322 in its entirety and inserting in lieu thereof a new § 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, the 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.

Fourth: In Sec. 2, 14 V.S.A. § 336, by striking out the last sentence in its entirety and inserting in lieu thereof a new sentence to read: Before an order is made for the payment or distribution of any money or estate as authorized in this section, notice shall be given as provided by the Vermont Rules of Probate Procedure.

Fifth: 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) Secs. 1, 1a, 2, 4, and 6 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 Sec. 2 of this act.

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

And that the bill ought to pass in concurrence with such proposals of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Government Operations?, Senator Illuzzi moved to amend the proposal of amendment of the Committee on Government Operations as follows:

By striking out Sec. 1a in its entirety and inserting in lieu thereof a new 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 provision of law to the contrary, an assistant judge or a candidate for the office of assistant judge may also seek 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, the assistant judge shall be disqualified from hearing and deciding the 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 the same or related probate matter in the superior court, the probate judge shall be disqualified from hearing and deciding the probate matter in the probate court.

Which was agreed to.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Government Operations, as amended?, Senator Sears moved to amend the proposal of amendment of the Committee on Government Operations, as amended, as follows:

In Sec. 2, 14 V.S.A. § 322, by striking out § 322 in its entirety and inserting in lieu thereof a new § 322 to read as follows:

§ 322. UNLAWFUL KILLING AFFECTING INHERITANCE

(a) 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, the 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.

(b) This section shall apply retroactively to any individual who stands to inherit or receive property under a will or otherwise or benefit under the terms of any trust as the result of committing an intentional and unlawful killing prior to or after the effective date of this section.

Which was agreed to.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Government Operations, as amended?, Senator Sears moved to amend the proposal of amendment of the Committee on Government Operations, as amended, as follows:

First: By adding a new section to be numbered Sec. 7 to read as follows:

Sec. 7. 27 V.S.A. § 1270 is amended to read:

§ 1270. DECEASED OWNERS; MULTIPLE CLAIMANTS

(a) If the treasurer holds unclaimed property in the name of a deceased owner, the treasurer may deliver the property as follows:

(1) In the case of an open estate, to the administrator or executor.

(2) In the case of a closed estate and the unclaimed property is valued at less than ~~\$2,500.00~~ \$5,000.00, in accordance with the probate court decree of distribution.

(3) In the absence of an open estate or probate court decree of distribution, and the unclaimed property is valued at less than ~~\$2,500.00~~ \$5,000.00 to the surviving spouse of the deceased owner, or, if there is no surviving spouse, then to the next of kin according to section 551 of Title 14.

(4) In all other cases where the treasurer holds property in the name of a deceased owner, a probate estate shall be opened by the claimant, or other interested party, in order to determine the appropriate distribution of the unclaimed property. Where an estate is opened solely to distribute unclaimed property under this section, the probate court may waive any filing fees.

(b) If the treasurer holds unclaimed property valued at ~~\$100.00~~ \$250.00 or less which more than one person owns, the treasurer may deliver the property as follows:

(1) If the property has been listed on the treasurer's website for less than one year, a proportionate share to each of the persons who owns the property and who files a claim.

(2) If the property has been listed on the treasurer's website for a year or more, to the first person who files a claim and who owns at least a share of the property.

Second: By adding a new section to be numbered Sec. 8 to read as follows:

Sec. 8. REPEAL

Sec. 2a of No. 161 of the Acts of the 2005 Adj. Sess. (2006) is repealed.

Which was agreed to.

Thereupon, the proposal of amendment of the Committee on Government Operations, as amended, was agreed to and third reading of the bill was ordered.

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposals of amendment.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment.

Consideration Postponed

Senate bills entitled:

S. 54.

An act relating to clean energy assessment districts.

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.

Proposal of Amendment; Third Reading Ordered**H. 287.**

Senator Ayer, for the Committee on Finance, to which was referred House bill entitled:

An act relating to Uniform Prudent Management of Institutional Funds Act.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 2, by striking out 14 V.S.A. § 3419 in its entirety and inserting in lieu thereof the following:

§ 3419. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103 of that act, 15 U.S.C. Section 7003.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposal 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. 89. An act relating to a maximum retail price for milk.

Bill Passed in Concurrence with Proposal of Amendment**H. 34.**

House bill of the following title was read the third time and passed in concurrence with proposal of amendment:

An act relating to automated external defibrillators.

Bills Passed in Concurrence

House bills of the following titles were severally read the third time and passed in concurrence:

H. 135. An act relating to wireless communication facilities and project approvals for municipal and cooperative utilities.

H. 160. An act relating to approval of the charter of the Town of Hartford.

H. 348. An act relating to the Interstate Pest Control Compact.

Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment**H. 186.**

House bill entitled:

An act relating to authorizing the department of fish and wildlife to administer polygraph examinations to applicants for law enforcement positions.

Was taken up.

Thereupon, pending third reading of the bill, Senator Sears moved to amend the bill in Sec. 1, 21 V.S.A. § 494b(1), by inserting after the following: "for applicants for law enforcement positions;" the following: the department of liquor control and the liquor control board for applicants for investigator positions;

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

Rules Suspended; Bills Messaged

On motion of Senator Mazza, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 89, H. 11, H. 34, H. 135, H. 160, H. 186, H. 348.

Recess

On motion of Senator Shumlin the Senate recessed until three o'clock and thirty minutes in the afternoon.

Called to Order

At three o'clock and forty minutes the Senate was called to order by the President *pro tempore*.

Bill Introduced

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

S. 144.

By Senators Lyons, Snelling, Ashe, Ayer, Bartlett, Choate, Flanagan, MacDonald, McCormack, Miller, Racine, Shumlin and White,

An act relating to patient choice and control at end of life.

To the Committee on Health and Welfare.

Committee Bill Introduced; Rules Suspended; Third Reading Ordered; Rules Suspended; Bill Passed; Rules Suspended; Bill Messaged

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 145.

By the Committee on Transportation,

An act relating to town highway aid payments in April 2009.

Thereupon, pending entry of the bill on the Calendar for notice tomorrow, on motion of Senator Mazza, the rules were suspended and the bill taken up for immediate consideration.

Senator Campbell Assumes the Chair

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered on a roll call, Yeas 26, Nays 0.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Bartlett, *Brock, Carris, Choate, Cummings, Doyle, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, Maynard, Mazza, McCormack, Miller, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr, White.

Those Senators who voted in the negative were: None.

Those Senators absent or not voting were: Campbell (presiding), Flanagan, MacDonald, Mullin.

*Senator Brock explained his vote as follows:

“I am 100% in favor of meeting the state’s obligations to our towns and cities. I know how important this is, but I have great concerns about how we’ve done it. I am concerned that we’ve solved this problem by simply passing the buck to the Secretary of Administration, without an adequate explanation of a plan to implement it. Nowhere is it explained where the money is coming from.”

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was placed on all remaining stages of its passage forthwith.

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

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was ordered messaged to the House forthwith.

****During debate of the measure, Senator Shumlin addressed the Chair and on motion of Senator Sears, his remarks were ordered enter in the Journal, and are as follows:

“Mr. President:

“The bill before us restores the legislature’s commitment to the cities and towns by fully funding the town highway aid payments in April 2009. It is unfortunate that misinformation distorted the Senate’s original intent to fully fund the towns. We are rectifying this distortion by putting forward our original proposal to fully fund the April town highway aid payments.”

Adjournment

On motion of Senator Shumlin, the Senate adjourned, to reconvene on Tuesday, April 21, 2009, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 29.