

# Journal of the Senate

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THURSDAY, APRIL 30, 2009

The Senate was called to order by the President.

## Devotional Exercises

A moment of silence was observed in lieu of devotions.

## Message from the House No. 71

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 bill of the following title:

**H. 75.** An act relating to interim budget and appropriation adjustments.

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

The House has considered bills originating in the Senate of the following titles:

**S. 42.** An act relating to the Department of Banking, Insurance, Securities, and Health Care Administration.

**S. 69.** An act relating to digital campaign finance filings.

And has passed the same in concurrence with proposals of amendment in the adoption of which the concurrence of the Senate is requested.

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

**S. 96.** An act relating to unclaimed property.

And has passed the same in concurrence.

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

**J.R.S. 31.** Joint resolution urging Congress to address the dramatic rise of electronic payment interchange rates that merchants and consumers are assessed.

And has passed the same in concurrence.

**Rules Suspended; Bill Committed**

**H. 446.**

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

An act relating to renewable energy and energy efficiency.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Natural Resources and Energy, Senator Shumlin 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 Natural Resources and Energy *intact*,

Which was agreed to.

**Bill Referred**

House bill of the following title was read the first time and referred:

**H. 75.**

An act relating to interim budget and appropriation adjustments.

To the Committee on Rules.

**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:

Frisbie, Bartlett H. of Colchester - Member of the Vermont Housing Finance Agency, - from April 22, 2009, to January 31, 2013.

To the Committee on Finance.

Sanborn, Arthur of Kirby - Member of the Transportation Board, - from April 22, 2009, to February 28, 2012.

To the Committee on Transportation.

Hrydziusko, Wesley J. of Windsor - Member of the Transportation Board, - from April 22, 2009, to February 28, 2012.

To the Committee on Transportation.

Stern, Robin of Brattleboro - Member of the Transportation Board, - from April 22, 2009, to February 28, 2012.

To the Committee on Transportation.

**Rules Suspended; Proposal of Amendment; Third Reading Ordered**

**H. 436.**

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

An act relating to decommissioning and decommissioning funds of nuclear energy generation plants.

Was taken up for immediate consideration.

Senator Cummings, for the Committee on Finance, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 30 V.S.A. § 107 is amended to read:

**§ 107. ACQUISITION OF CONTROL OF ONE UTILITY COMPANY BY ANOTHER; SUPERVISION**

(a) No company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the public service board, or in any company which, directly or indirectly has a controlling interest in such a company, without the approval of the public service board. Nothing in this section shall be deemed to affect the direct or indirect acquisition of a controlling interest in a company as defined in subdivision 501(3) of this title. The direct acquisition of the voting securities of a company defined in subdivision 501(3) shall continue to be regulated pursuant to section 515 of this title.

(b) Any company seeking to acquire such a controlling interest shall file a petition with the public service board which describes the acquisition and sets forth the reasons why such an acquisition should be approved. The public service board shall give notice of the petition to the department of public service and other interested persons, and may conduct a hearing. The board may grant such approval only after due notice and opportunity for hearing and upon finding that such an acquisition will promote the public good.

(c) If the controlling interest sought to be acquired is in a company that owns or operates a nuclear power plant, the finding that the acquisition will

promote the public good shall include a determination that the nuclear plant's decommissioning fund and other funds and financial guarantees available solely for the purpose of decommissioning are adequate to pay for complete and immediate decommissioning at the time of the acquisition and that the means are in place to assure on at least an annual basis that these funds and financial guarantees will be adequate for such purpose at all times during the future operation of the plant. The board shall further determine that all such funds and guarantees, whenever furnished and wherever situated, are protected pursuant to Vermont law from any claims or uses other than application to the complete and immediate decommissioning of the plant. For the purpose of this section, "complete and immediate decommissioning" means return of the site to a "greenfield" state in which all equipment, structures, and foundations are removed beginning as soon as technically possible after cessation of operations, in which the facility is not placed in storage for later removal or decontamination, and in which the land is regraded or reseeded.

(d) If any company acquires such a controlling interest without the prior approval of the public service board, the board may then, after due notice and opportunity for hearing,

(1) approve the acquisition; or

(2) modify any existing certificates or orders authorizing either or both companies to own or operate a public utility business under the provisions of this title; or

(3) revoke any such existing certificates or orders, or revoke any orders approving the articles of association of such companies; or

(4) declare the acquisition null and void, all as necessary to promote the public good.

~~(d)~~(e) The board may by rule specify terms and conditions upon which companies shall give prior notice of acquisitions regulated by this section. Any such rule may specify categories of acquisitions that may be deemed to be approved if timely notice has been filed and an investigation has not been initiated by the board.

~~(e)~~(f) For the purposes of this section:

(1) "Controlling interest" means ten percent or more of the outstanding voting securities of a company; or such other interest as the public service board determines, upon notice and opportunity for hearing following its own investigation or a petition filed by the department of public service or other interested party, to constitute the means to direct or cause the direction of the management or policies of a company. The presumption that ten percent or

more of the outstanding voting securities of a company constitutes a controlling interest may be rebutted by a company under procedures established by the board by rule.

(2) "Voting security" means any stock or security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company or any security issued under or pursuant to any agreement, trust or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such a security are presently entitled to vote in the direction or management of the affairs of a company.

(3) A specified per centum of the "outstanding voting securities of a company" means such amount of outstanding voting securities of such company as entitles the holder or holders thereof to cast that specified per centum of the aggregate votes which the holders of all the outstanding voting securities of such company are entitled to cast in the direction or management of the affairs of such company.

Sec. 2. 30 V.S.A. § 248(e) is amended to read:

(e)(1) Before a certificate of public good is issued for the construction of a nuclear energy generating plant within the state, the public service board shall obtain the approval of the general assembly and the assembly's determination that the construction of the proposed facility will promote the general welfare. The public service board shall advise the general assembly of any petition submitted under this section for the construction of a nuclear energy generating plant within this state, by written notice delivered to the speaker of the house of representatives and to the president of the senate. The department of public service shall submit recommendations relating to the proposed plant, and shall make available to the general assembly all relevant material. The requirements of this subsection shall be in addition to the findings set forth in subsection (b) of this section.

(2) No nuclear energy generating plant within this state may be operated beyond the date permitted in any certificate of public good granted pursuant to this title, including any certificate in force as of January 1, 2006, unless the general assembly approves and determines that the operation will promote the general welfare, and until the public service board issues a certificate of public good under this section.

(A) The public service board shall not issue a certificate of public good for the operation of a nuclear energy generating plant beyond the date permitted in an existing certificate of public good unless it determines that the funds available for decommissioning the plant will be adequate to pay for complete and immediate decommissioning, without onsite storage of plant

components, at the outset of the extended period and that a mechanism is in place to assure that such funds will be adequate for complete and immediate decommissioning at all times during the extended operation of the plant. The board further shall determine that all such funds and guarantees, whenever furnished and wherever situated, are protected pursuant to Vermont law from any claims or uses other than application to the complete and immediate decommissioning of the plant. For the purpose of this section, "complete and immediate decommissioning" means return of the site to a "greenfield" state in which all equipment, structures, and foundations are removed beginning as soon as technically possible after cessation of operations, in which the facility is not placed in storage for later removal or decontamination, and in which the land is regraded or reseeded.

(B) If the general assembly has not acted under this subsection by July 1, 2008, the board may commence proceedings under this section and under 10 V.S.A. chapter 157, relating to the storage of radioactive material, but may not issue a final order or certificate of public good until the general assembly determines that operation will promote the general welfare and grants approval for that operation.

### Sec. 3. EFFECTIVE DATE

This act shall take effect from passage and shall apply to any petition for approval or for a certificate of public good filed with the public service board on or after January 1, 2008.

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, and the proposal of amendment was agreed to, and third reading of the bill was ordered.

### **Consideration Postponed**

Senate bill entitled:

#### **S. 99.**

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

Was taken up.

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

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**Consideration Postponed**

Joint House resolution entitled:

**J.R.H. 15.**

Joint resolution relating to the designation of commemorative observances in concurrent resolutions.

Was taken up.

Thereupon, without objection consideration of the joint House resolution was postponed until the next legislative day.

**Bill Passed in Concurrence with Proposals of Amendment****H. 6.**

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

An act relating to the sale of engine coolants and antifreeze.

**Bills Passed in Concurrence**

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

**H. 69.** An act relating to approval of amendments to the charter of the city of Rutland.

**H. 205.** An act relating to reporting to the Vermont criminal justice training council.

**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.

**Proposals of Amendment; Third Reading Ordered****H. 15.**

Senator Snelling, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to aquatic nuisance control.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, 10 V.S.A. § 1455(i)(4), by striking out the word “three” where it appears and inserting in lieu thereof the word five

Second: In Sec. 8, by striking out the words “regarding water pollution, use of state waters, hunting, or fishing” where they appear and inserting in lieu thereof the words regarding the use of state waters for hunting, fishing, or other recreational uses

Third: In Sec. 9, by striking out the words “that address or relate to the use of state surface waters” and inserting in lieu thereof the words regarding the use of state waters for hunting, fishing, or other recreational uses

Fourth: By adding Sec. 10a to read as follows:

Sec. 10a. 10 V.S.A. § 7113(b) is amended to read:

(b) The advisory committee shall be terminated on January 1, ~~2010~~ 2015, unless extended by the general assembly.

Fifth: In Sec. 11, by striking out subsection (a) in its entirety and inserting in lieu thereof:

(a) This section and Secs. 8 (ANR materials), 9 (department of tourism and marketing materials), 10 (ANR report on financing aquatic nuisance control), and 10a (extension of mercury advisory committee sunset) of this act shall take effect July 1, 2009.

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

Senator Hartwell, for the Committee on Finance, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Natural Resources and Energy with the following amendments thereto:

First: By adding a new section to be numbered Sec. 10b to read as follows:

Sec. 10b. 3 V.S.A. § 2822(j)(13) is amended to read:

(13) For aquatic nuisance control permits issued under 10 V.S.A. § ~~1263a~~ 1455:

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Second: In Sec. 11, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) Secs. 1 (ANR aquatic nuisance control chapter), 2 (ANR enforcement), 3 (ANR appeals), 4 (repeal of existing aquatic nuisance control authority), 5 (agency of transportation aquatic nuisance educational materials), 6 (boating



safety rules educational materials), 7 (special fund for motor vehicle registration), and 10b (aquatic nuisance permit fee) of this act shall take effect July 1, 2010.

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 the pending question, Shall the proposal of amendment of the Committee on Natural Resources and Energy be amended as recommended by the Committee on Finance?, was agreed to.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by Committee on Natural Resources and Energy, as amended?, Senator McCormack, on behalf of the Committee on Natural Resources and Energy, moved to amend the proposals of amendment of the Committee on Natural Resources and Energy, as amended, as follows:

First: By adding a new section to be numbered Sec. 10c to read as follows:

**Sec. 10c. INVASIVE SPECIES WORKING GROUP**

(a) An invasive species working group is established to study the economic and environmental impacts of invasive species in Vermont and to recommend strategies for prevention, early detection, control, and management of invasive species in Vermont.

(b) The working group shall consist of the following members:

(1) The secretary of natural resources or his or her designee;

(2) The secretary of agriculture, food and markets or his or her designee;

(3) The state entomologist;

(4) A staff member of the agency of natural resources aquatic nuisance control program designated by the secretary of natural resources;

(5) Two persons with experience in the research and study of the impact of invasive species, one appointed by the speaker of the house and one appointed by the committee on committees;

(5) A representative of the nursery or landscape industry, appointed by the governor; and

(6) A representative of an environmental organization, appointed by the committee on committees.

(c) The secretary of natural resources shall promptly convene the first meeting of the commission at which time the members of the commission shall

elect a chair. A majority of the members of the commission shall constitute a quorum.

(d) On or before January 15, 2010, the invasive species advisory commission shall submit to the house and senate committees on natural resources and energy, the house and senate committees on agriculture, and the house committee on fish, wildlife and water resources a report that shall include the following:

(1) A summary of the economic and environmental impact of invasive species on the state;

(2) A summary of how invasive species are currently regulated in the state;

(3) A summary of how state agencies and affected state industry respond to invasive species outbreaks in the state;

(4) Recommendations for improving state regulation of and response to the threat and spread of invasive species, including a recommended lead state agency for coordinating state response to invasive species and recommended draft legislation or draft rules to improve state response to invasive species; and

(5) Recommendations for providing and coordinating public education and outreach regarding invasive species.

Second: By amending the *Fifth* proposal of amendment, in Sec. 11(a), by striking out the following: “and 10a (extension of mercury advisory committee sunset) of this act shall take effect July 1, 2009.” and inserting in lieu thereof the following: 10a (extension of mercury advisory committee sunset), and 10c (invasive species working group) shall take effect July 1, 2009).

Which was agreed to.

Thereupon, the proposals of amendment recommended by the Committee on Natural Resources and Energy, as amended, were agreed to and third reading of the bill was ordered.

### **Consideration Postponed**

House bills entitled:

#### **H. 86.**

An act relating to the regulation of professions and occupations.

#### **H. 427.**

An act relating to making miscellaneous amendments to education law.

**H. 435.**

An act relating to palliative care.

Were taken up.

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

**House Proposal of Amendment Not Concurred In; Committee of Conference Requested****S. 7.**

House proposal of amendment to Senate bill entitled:

An act to prohibit the use of lighted tobacco products in the workplace.

Was taken up.

The House proposes to the Senate to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 1421 is amended to read:

**§ 1421. DEFINITIONS SMOKING IN THE WORKPLACE; PROHIBITION**

~~As used in this subchapter:~~

~~(1) "Smoking area" means an area that nonsmoking employees are not required to visit on a regular basis where smoking is permitted pursuant to a policy established under this subchapter. Up to 30 percent of employee cafeteria and lounge areas may be designated as a smoking area.~~

~~(2) "Workplace" (a) The use of lighted tobacco products is prohibited in any workplace.~~

~~(b)(1) For the purposes of this subchapter, "workplace" means an enclosed structure where employees perform services for an employer or, in the case of an employer who assigns employees to departments, divisions, or similar organizational units, the enclosed portion of a structure where the unit to which the employee is assigned is located.~~

~~(2) Except for schools, workplace does not include areas commonly open to the public nor or any portion of a structure which that also serves as the employee's or employer's personal residence.~~

~~(3) For schools, workplace shall include includes any enclosed location at which where instruction or other school-sponsored functions are occurring and students are present.~~

(c) Nothing in this section shall be construed to restrict the ability of residents of the Vermont veterans' home to use lighted tobacco products in the indoor area of the facility in which smoking is permitted until June 30, 2014. Beginning July 1, 2014, the use of lighted tobacco products shall be prohibited in all indoor areas of the Vermont veterans' home.

Sec. 2. 18 V.S.A. § 1426 is amended to read:

§ 1426. ENFORCEMENT

(a) An employee aggrieved by an employer's failure to comply with the provisions of this subchapter may file a complaint with the department of health.

~~(b) If the complaint is based on an employer's alleged failure to establish a smoking policy or post the policy and summary as required under section 1424 of this title, the department shall not initiate an action under this section until it has given the employer written notice of the alleged violation and ten days to come into voluntary compliance with the provisions of this subchapter.~~

~~(e) In addition to any other authority provided by law, the commissioner of health or a hearing officer designated by the commissioner may, after notice and an opportunity for hearing, impose an administrative penalty of \$100.00 against an employer who violates a provision of this chapter. The hearing before the commissioner shall be a contested case subject to the provisions of chapter 25 of Title 3 (Administrative Procedure Act).~~

Sec. 3. 18 V.S.A. § 1743 is amended to read:

§ 1743. EXCEPTIONS

The restrictions in this chapter on possession of lighted tobacco products ~~shall~~ do not apply to:

~~(1) Workplace smoking areas designated under subchapter 2 of chapter 28 of this title.~~

~~(2) Areas~~ areas not commonly open to the public of owner-operated businesses with no employees.

Sec. 4. REPEAL

18 V.S.A. §§ 1422, 1423, 1424, and 1425 (relating to employer smoking policies) are repealed.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Mullin, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

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**House Proposal of Amendment Concurred In with Amendment****S. 94.**

House proposal of amendment to Senate bill entitled:

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

Was taken up.

The House proposes to the Senate to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 2606b is added to read:

§ 2606b. LICENSE OF FORESTLANDS FOR MAPLE SUGAR PRODUCTION

(a) The general assembly finds and declares that:

(1) Maple sugaring is an important cultural tradition of Vermont life that should be maintained and encouraged.

(2) Maple sugaring is an important component of the agricultural and forest products economy in Vermont and is increasingly necessary for farmers that must diversify in order to continue to farm in Vermont.

(3) Maple sugaring is a sustainable use of forestland.

(4) State forestland should be managed and used for multiple uses including maple sugar production.

(5) It is hereby adopted as state policy to permit limited use of designated state-owned land under the jurisdiction of the department for maple sugar production.

(b) Beginning on July 1, 2009, pursuant to guidelines developed jointly by the department of forests, parks and recreation and the Vermont maple sugar makers' association, the department shall issue licenses for the use of state forestland for the tapping of maple trees, the collection of maple sap, and the right to transport such sap to a processing site located off state forestland or to sites located on state forestland if approved by the commissioner. All tapping of maple trees authorized under a license shall be conducted according to the guidelines for tapping maple trees agreed to by the department and the Vermont maple sugar makers' association. Each person awarded a license under this section shall maintain and repair any road, water crossing, or work area according to requirements set by the department in the license. Each license shall include such additional terms and conditions set by the department as may be necessary to preserve forest health and to assure

compliance with the requirements of this chapter and applicable rules. A license shall be issued for a fixed term not to exceed five years and shall be renewable for two five-year terms subsequent to the initial license. Subsequent renewals shall be allowed where agreed upon by the department and the licensee. The department shall have power to terminate or modify a license for cause, including damage to forest health.

(c) The commissioner may adopt rules to implement the requirements of this section.

(d) There is hereby established a maple advisory board to provide the commissioner of forests, parks and recreation with guidance on licensing of state forest land for maple sugar production, including identification of potential sites on state lands for licensure. The board shall be composed of:

(1) Three employees of the department of forests, parks and recreation, appointed by the commissioner.

(2) Three members of the maple sugar makers association designated by the association.

(3) One member of the Vermont forest products association designated by the association.

(4) One member of either the University of Vermont Proctor maple research center or the University of Vermont agricultural extension service, appointed by the commissioner.

(e) There shall be an annual license fee imposed based on the number of taps installed in the license area. The per tap fee for a license issued under this section shall be one-quarter of the average of the per pound price of Vermont fancy grade syrup and the per pound price of Vermont commercial grade syrup as those prices are set on May 1 of each year. The fee set each May 1 shall apply to licenses issued by the department for the succeeding period beginning June 1 and ending May 31. Fees collected under this section shall be deposited in the forest parks revolving fund established under 10 V.S.A. § 2609 and shall be used by the department to implement the license program established by this section.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Choate moved that the Senate concur in the House proposal of amendment with an amendment as follows:

First: In Sec. 1, 10 V.S.A. § 2606b(b), by striking out the words “right to transport” where they appear in the first sentence before the words “such sap” and inserting in lieu thereof the following: transportation of

Second: In Sec. 1, 10 V.S.A. § 2606b(d), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

(2) Three sugar makers, at least one of which is an independent sugar maker unaffiliated with an association, appointed by the secretary of agriculture, food and markets.

Third: In Sec. 1, 10 V.S.A. § 2606b, by adding subsection (f) to read as follows:

(f) On or before January 15, 2010, the commissioner of forests, parks and recreation shall submit to the senate and house committees on natural resources and energy and the senate and house committees on agriculture a report regarding the implementation of the requirements of this section. The report shall include:

(1) A copy of the guidelines required by this section for issuing licenses for the use of state forestland for maple sap collection and production.

(2) A summary of the process used to identify parcels of state forestland suitable for licensing for maple sap collection and production and the process by which the department allocated licenses.

(3) A summary of the licenses issued for maple sap collection and production on state forestland.

(4) An estimate of the fees collected for licenses issued under this section.

(5) A copy of any rules adopted by or proposed for adoption by the commissioner to implement the requirements of this section.

Which was agreed to.

### **Senate Resolution Adopted**

#### **S.R. 12.**

Senate resolution entitled:

Senate resolution designating the third week in October of 2009 as disability history week.

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

**Rules Suspended; Bills Messaged**

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

**S.94, H. 6, H. 69, H. 205, H. 430, H. 433.**

**Adjournment**

On motion of Senator Shumlin, the Senate adjourned until eight o'clock and thirty minutes in the morning.