

Journal of the Senate

FRIDAY, JANUARY 14, 2011

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. 4

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 adopted the same in concurrence.

Senate Resolution Adopted

S.R. 5.

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

By Senator Campbell,

S.R. 5. Senate resolution relating to meeting dates of the Senate.

Resolved by the Senate:

That for the 2011 session, beginning with the week of January 5 and extending through the week ending February 26, Rule 7 of the Permanent Rules of the Senate, as adopted in 1989 and as amended in 1997, 2003, 2004, 2007 and 2008, is suspended and the following Temporary Rule 7 is adopted:

Temporary Senate Rule 7. The Senate shall meet every Tuesday at nine o'clock and thirty minutes in the forenoon and Friday at eleven o'clock and thirty minutes in the forenoon, unless otherwise ordered. In the discretion of

the President *pro tempore* additional sessions of the Senate may be called on short notice.

Joint Senate 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 Campbell,

J.R.S. 9. Joint resolution to provide for a Joint Assembly to hear the budget message of the Governor.

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Tuesday, January 25, 2011, at two o'clock in the afternoon to receive the budget message of the Governor.

**Message from the Governor
Appointments Referred**

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

Blanchard, Rene L. of Essex Junction - Member of the Transportation Board, - from May 14, 2010, to February 28, 2013.

To the Committee on Transportation.

Clark, Sarah of Wolcott - Commissioner of the Department of Forest, Parks and Recreation, - from May 16, 2010, to February 28, 2011.

To the Committee on Natural Resources and Energy.

Butterfield, Robert of St. Johnsbury - Member of the Human Services Board, - from June 8, 2010, to February 28, 2015.

To the Committee on Health and Welfare.

Bertrand, Michael of Montpelier – Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration, - from June 19, 2010, to February 28, 2011.

To the Committee on Finance.

Fraser, Richard of South Ryegate - Member of the Community High School of Vermont Board, - from July 2, 2010, to February 28, 2013.

To the Committee on Education.

Graves, Leon C. of Fairfield - Member of the Vermont Economic Development Authority, - from July 2, 2010, to June 30, 2016.

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

Kurzman, Daniel J. of Canaan - Member of the Vermont Economic Development Authority, - from July 2, 2010, to June 30, 2016.

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

Hashagen, John D., Jr. of Brattleboro - Member of the Vermont Economic Development Authority, - from July 2, 2010, to June 30, 2016.

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

Besio, Susan, Ph.D. of Jericho – Commissioner of the Department of Vermont Health Access, - from July 1, 2010, to February 28, 2011.

To the Committee on Health and Welfare.

Harper, Kevin of Bristol - Member of the Sustainable Jobs Fund Board of Directors, - from September 1, 2010, to August 31, 2015.

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

Shields, Bruce of Wolcott - Member of the Sustainable Jobs Fund Board, - from September 1, 2010, to August 31, 2015.

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

Adams, Steven of Hartland - Member of the Fish and Wildlife Board, - from July 27, 2010, to February 29, 2016.

To the Committee on Natural Resources.

Bernhardt, Anne of South Londonderry - Member of the Valuation Appeals Board, - from August 2, 2010, to January 31, 2013.

To the Committee on Finance.

Strano, Elizabeth of Bennington - Member of the State Board of Education, - from August 4, 2010, to June 30, 2012.

To the Committee on Education.

Gallant, Janice M., M.D. of South Burlington - Member of the Board of Medical Practices, - from August 9, 2010, to December 31, 2014.

To the Committee on Health and Welfare.

Fitzhugh, John of West Berlin - Member of the Board of Libraries, - from August 19, 2010, to February 29, 2012.

To the Committee on Education.

McIntire, Linda of Montpelier - Member of the State Labor Relations Board, - from September 1, 2010, to June 30, 2016.

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

Illuzzi, Eileen M. of Newport - Member of the Board of Medical Practice, - from September 3, 2010, to December 31, 2011.

To the Committee on Health and Welfare.

Burris, Laurey C. of Shelburne - Member of the Children and Family Council for Prevention Programs, - from September 8, 2010, to February 28, 2013.

To the Committee on Health and Welfare.

Tallon, Keith of Reading - Member of the Children and Family Council, - from September 8, 2010, to February 28, 2013.

To the Committee on Health and Welfare.

Schroeder, Wendy of South Burlington - Member of the Public Oversight Commission, - from September 16, 2010, to February 28, 2013.

To the Committee on Health and Welfare.

Westervelt, Jan of Cabot - Member of the Human Services Board, - from September 16, 2010, to February 28, 2011.

To the Committee on Health and Welfare.

Maron, Richard of Stowe - Member of the Public Oversight Commission, - from September 23, 2010, to February 28, 2011.

To the Committee on Health and Welfare.

Fleischer, Mitch of Richmond - Member of the Public Oversight Commission, - from October 1, 2010, to February 28, 2011.

To the Committee on Health and Welfare.

Tempesta, Catherine of Waitsfield - Member of the Public Oversight Commission, - from October 1, 2010, to February 28, 2011.

To the Committee on Health and Welfare.

van Wees, Hans of Burlington - Member of the Public Oversight Commission, - from October 1, 2010, to February 28, 2011.

To the Committee on Health and Welfare.

Hayward, Susan of Middlesex - Member of the Capitol Complex Commission, - from November 1, 2010, to October 31, 2013.

To the Committee on Institutions.

Shouldice, Heather of Calais - Member of the Capitol Complex Commission, - from November 1, 2010, to October 31, 2013.

To the Committee on Institutions.

Crowley, John P. of West Rutland - Member of the Public Oversight Commission, - from November 1, 2010, to February 28, 2011.

To the Committee on Health and Welfare.

Wilcox, Ronald of Manchester - Member of the Fish and Wildlife Board, - from November 3, 2010, to February 28, 2016.

To the Committee on Natural Resources and Energy.

Grillo, Amy W. of Dummerston - Member of the Community High School of Vermont Board, - from November 10, 2010, to February 29, 2012.

To the Committee on Education.

Jorge Quintana of Essex Junction - Member of the Public Oversight Commission, - from November 8, 2010, to February 28, 2011.

To the Committee on Health and Welfare.

Lindley, John M., III of Montpelier - Member of the Capitol Complex Commission, - from November 12, 2010, to February 28, 2012.

To the Committee on Institutions.

Post, Bruce of Essex Junction - Member of the Board of Libraries, - from November 12, 2010, to February 28, 2014.

To the Committee on Education.

Bucknam, Charlie of East Hardwick - Member of the Transportation Board, - from November 23, 2010, to February 28, 2013.

To the Committee on Transportation.

Hayward, Timothy of North Middlesex - Member of the Transportation Board, - from November 23, 2010, to February 28, 2013.

To the Committee on Transportation.

Bishop, Bethany of Montpelier - Member of the Vermont Economic Development Authority, - from December 1, 2010, to June 30, 2012.

To the Committee on Finance.

McLain, Elizabeth of West Berlin - Member of the Board of Health, - from December 2, 2010, to February 28, 2013.

To the Committee on Health and Welfare.

McLain, Elizabeth of West Berlin - Member of the Natural Resources Board, Land Use Panel, - from December 2, 2010, to January 31, 2013.

To the Committee on Natural Resources.

Brodsky, Mary K. of Essex - Member of the Human Rights Commission, - from December 3, 2010, to February 28, 2014.

To the Committee on Judiciary.

McLaughlin, Judith of Enosburg Falls - Member of the Public Oversight Commission, - from December 3, 2010, to February 28, 2013.

To the Committee on Health and Welfare.

Gibbs, Jason of Duxbury – Alternate Member of the Natural Resources Board, - from January 1, 2011, to January 31, 2013.

To the Committee on Natural Resources and Energy.

Young, Peter F., Jr. Esq. of Northfield – Alternate Member of the Natural Resources Board, - from January 5, 2011, to January 31, 2014.

To the Committee on Natural Resources and Energy.

O'Rourke, Joseph R. of Rutland - Member of the Vermont Racing Commission, - from December 13, 2010, to January 31, 2015.

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

Davies, William of Orleans - Member of the Natural Resources Board, Water Resources Panel, - from December 15, 2010, to January 31, 2012.

To the Committee on Natural Resources and Energy.

Gibbs, Jason of Duxbury - Member of the Community High School of Vermont Board, - from January 1, 2011, to February 28, 2013.

To the Committee on Education.

Mello, Robert A. of Hinesburg – as Superior Court Judge, - from December 23, 2010, to March 31, 2016.

To the Committee on Judiciary.

O'Donnell, Patricia of Vernon – Alternative Member of the Natural Resources Board, - from December 23, 2010, to January 31, 2013.

To the Committee on Natural Resources and Energy.

Gerety, Robert P., Jr. of White River Junction – as Superior Court Judge, - from December 28, 2010, to March 31, 2013.

To the Committee on Judiciary.

Tomasi, Timothy B. of Montpelier - as Superior Court Judge, - from December 30, 2010, to March 31, 2013.

To the Committee on Judiciary.

Message from the Governor Appointments Referred

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

Besio, Susan of Jericho - Commissioner of Vermont Health Access, - from January 7, 2011, to February 28, 2013.

To the Committee on Health and Welfare.

Duffy, Kate of Williston - Commissioner of the Human Resources, - from January 7, 2011, to February 28, 2013.

To the Committee on Government Operations.

Ide, Robert D. of Peacham - Commissioner of the Department of Motor Vehicles, - from January 7, 2011, to February 28, 2013.

To the Committee on Transportation.

MacKay, Noelle of Burlington - Commissioner of the Community Development, - from January 7, 2011, to February 28, 2013.

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

Markowitz, Deb of Montpelier - Secretary of Natural Resources, - from January 7, 2011, to February 28, 2013.

To the Committee on Natural Resources and Energy.

Miller, Elizabeth of Burlington - Commissioner of the Department of Public Service, - from January 7, 2011, to February 28, 2013.

To the Committee on Finance.

Miller, Lawrence of Ripton - Secretary of Commerce and Community Development, - from January 7, 2011, to February 28, 2013.

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

Noonan, Annie of Montpelier - Commissioner of the Department of Labor, - from January 7, 2011, to February 28, 2013.

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

Obuchowski, Michael of Montpelier - Commissioner of the Buildings and General Services, - from January 7, 2011, to February 28, 2013.

To the Committee on Institutions.

Oliver, Christine of Montpelier - Commissioner of the Department of Mental Health, - from January 7, 2011, to February 28, 2013.

To the Committee on Health and Welfare.

Pallito, Andrew of Jericho - Commissioner of the Department of Corrections, - from January 7, 2011, to February 28, 2013.

To the Committee on Institutions.

Peterson, Mary of Williston - Commissioner of the Taxes, - from January 7, 2011, to February 28, 2013.

To the Committee on Finance.

Racine, Doug of Richmond - Secretary of Human Services, - from January 7, 2011, to February 28, 2013.

To the Committee on Health and Welfare.

Ross, Chuck of Hinesburg - Secretary of Agriculture, - from January 7, 2011, to February 28, 2013.

To the Committee on Agriculture.

Spaulding, Jeb of Montpelier – Secretary of Administration, - from January 7, 2011, to February 28, 2013.

To the Committee on Government Operations.

Yacovone, Dave of Morrisville - Commissioner of the Department of Children and Families, - from January 7, 2011, to February 28, 2013.

To the Committee on Health and Welfare.

Berry, Patrick of Middlebury - Commissioner of the Fish and Wildlife, - from January 7, 2011, to February 28, 2013.

To the Committee on Natural Resources and Energy.

Chen, Harry of Mendon - Commissioner of the Department of Health, - from January 7, 2011, to February 28, 2013.

To the Committee on Health and Welfare.

Flynn, Keith of Derby Line - Commissioner of the Department of Public Safety - Commissioner, - from January 7, 2011, to February 28, 2013.

To the Committee on Transportation.

Kimball, Steve of Tunbridge - Commissioner of the Banking, Insurance, Securities and Health Care Administration, - from January 7, 2011, to February 28, 2013.

To the Committee on Finance.

Mears, David of Montpelier - Commissioner of the Department of Environmental Conservation, - from January 7, 2011, to February 28, 2013.

To the Committee on Natural Resources and Energy.

Reardon, Jim of Essex Junction - Commissioner of Finance and Management, - from January 7, 2011, to February 28, 2013.

To the Committee on Government Operations.

Searles, Brian of Burlington – Secretary of Transportation, - from January 7, 2011, to February 28, 2013.

To the Committee on Transportation.

Smith, Megan of Killington - Commissioner of Tourism and Marketing, - from January 7, 2011, to February 28, 2013.

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

Snyder, Michael of Stowe - Commissioner of the Department of Forests, Parks and Recreation, - from January 7, 2011, to February 28, 2013.

To the Committee on Natural Resources and Energy.

Wehry, Susan of Burlington - Commissioner of the Department of Disabilities, Aging and Independent Living, - from January 7, 2011, to February 28, 2013.

To the Committee on Health and Welfare.

Bills Introduced

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

S. 10.

By Senators Miller, Illuzzi, Carris and Lyons,

An act relating to recognition of the Elnu Abenaki tribe as a Native American Indian tribe.

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

S. 11.

By Senators Miller, Illuzzi, Carris and Lyons,

An act relating to recognition of the Nulhegan Band of the Coosuk Abenaki Nation as a Native American Indian tribe.

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

S. 12.

By Senator Brock,

An act relating to adding a member from the area agencies on aging to the governor's commission on Alzheimer's disease and related disorders.

To the Committee on Health and Welfare.

S. 13.

By Senators Miller, Kittell and White,
An act relating to prescription drug labels.
To the Committee on Health and Welfare.

S. 14.

By Senator Illuzzi,
An act relating to display of POW/MIA flag.
To the Committee on Government Operations.

S. 15.

By Senators Miller, Snelling and White,
An act relating to insurance coverage for midwifery services and home births.
To the Committee on Health and Welfare.

S. 16.

By Senators Sears and Benning,
An act relating to confidentiality of cases accepted by the court diversion project.
To the Committee on Judiciary.

S. 17.

By Senators Sears, Miller and White,
An act relating to medical marijuana dispensaries.
To the Committee on Health and Welfare.

S. 18.

By Senator Illuzzi,
An act relating to the disclosure of tax administration information to tax representatives.
To the Committee on Finance.

Bills Amended; Third Reading Ordered**S. 1.**

Senator Nitka, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to technical amendments to the judicial restructuring act of 2010.

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. § 479(h) is added to read:

(h) For purposes of entitlement to medical benefits in retirement, former county court employees hired by the counties to court positions on or before June 30, 2008 who became state employees on February 1, 2011 pursuant to No. 154 of the Acts of the 2009 Adj. Sess. (2010) shall be deemed to have been first included in membership of the system on or before June 30, 2008.

Sec. 2. 3 V.S.A. § 1011 is amended to read:

§ 1011. DEFINITIONS

For the purposes of this chapter:

* * *

(8) “Employee,” means any individual employed and compensated on a permanent or limited status basis by the judiciary department, including permanent part-time employees and any individual whose employment has ceased as a consequence of, or in connection with, any current labor dispute or because of an unfair labor practice. “Employee” does not include any of the following:

* * *

(H) ~~A register of probate.~~ [Repealed.]

* * *

Sec. 3. 4 V.S.A. § 363 is added to read:

§ 363. POWERS

(a) A probate judge may issue warrants, subpoenas, and processes in conformity with the law necessary to compel the attendance of witnesses or to produce books, papers, documents, or tangible things, or to carry into effect the orders, sentences, or decrees of the probate division or the powers granted it by law.

(b) A probate judge may appoint not more than three masters to report on a particular issue or to do or perform particular acts or to receive and report evidence.

Sec. 4. 12 V.S.A. § 2553 is added to read:

§ 2553. APPEALS TO CIVIL DIVISION; APPELLATE JURISDICTION

The civil division of the superior court shall have appellate jurisdiction of matters originally within the jurisdiction of the probate division of the superior court, except as herein otherwise provided.

Sec. 5. 12 V.S.A. § 2555 is added to read:

§ 2555. APPEAL TO CIVIL DIVISION

Except as otherwise provided, a person interested in an order, sentence, decree or denial issued by the probate division of the superior court, who considers himself or herself injured thereby, may appeal therefrom to the civil division of the superior court.

Sec. 6. Subsection (c) of Sec. 199 of No. 154 of the Acts of the 2009 Adj. Sess. (2010), in 32 V.S.A. § 1142, is amended to read:

(c) A probate judge whose salary is less than \$45,701.00 shall be eligible only for the least expensive medical benefit plan option available to state employees or may apply the state share of the premium for which the judge is eligible toward the purchase of another state or private health insurance plan. A probate judge whose salary is less than \$45,701.00 may participate in other state employee benefit plans.

Sec. 7. REPEAL

4 V.S.A. § 436a (relating to a special circuit court at Waterbury to hear applications for treatment of mentally ill individuals) is repealed.

Sec. 8. EFFECTIVE DATE

This act shall take effect on February 1, 2011, except for Sec. 6 and this section, which shall take effect on passage.

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

Message from the House No. 5

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 House concurrent resolutions of the following titles:

H.C.R. 6. House concurrent resolution honoring the Dean of the House of Representatives, Michael Obuchowski of Rockingham.

H.C.R. 7. House concurrent resolution congratulating the 2010 Hartford High School Hurricanes Division I championship football team.

H.C.R. 8. House concurrent resolution congratulating the Leland & Gray Union High School baseball Rebels on winning their third consecutive Division III championship.

H.C.R. 9. House concurrent resolution congratulating the 2010–2011 NewBrook Elementary School Vermont State Spelling Bee championship team.

H.C.R. 10. House concurrent resolution congratulating retired Orleans County physician Dr. Frank Fiermonte on his 90th birthday.

H.C.R. 11. House concurrent resolution welcoming the exhibition *The Hale Street Gang: Portraits in Writing* to the State House.

H.C.R. 12. House concurrent resolution honoring the bravery and dedication of the members of the Vermont National Guard.

H.C.R. 13. House concurrent resolution in memory of the American military personnel who have died in the service of their nation in Iraq or Afghanistan from April 11, 2010 to December 27, 2010.

H.C.R. 14. House concurrent resolution honoring John Nelson as a respected advocate for public education in Vermont.

H.C.R. 15. House concurrent resolution congratulating the 2010 Essex Hornets Division I championship boys' soccer team.

H.C.R. 16. House concurrent resolution honoring John T. Stoodley on his amazing journey to umpiring the 2010 College Softball World Series.

H.C.R. 17. House concurrent resolution congratulating the 2010 Bellows Falls Union High School Terriers Division III championship football team.

H.C.R. 18. House concurrent resolution congratulating Chroma Technology Corporation of Rockingham on being honored for its democratic managerial practices.

H.C.R. 19. House concurrent resolution wishing United States Representative Gabrielle Giffords and the other surviving victims of the tragic Tucson shooting incident a successful recovery, and expressing sincere condolences to the families of those who died.

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. 1. Senate concurrent resolution in memory of Secretary of the Senate David A. Gibson.

And has adopted the same in concurrence.

Adjournment

On motion of Senator Carris, the Senate adjourned, to reconvene on Tuesday, January 18, 2011, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 8.