

Journal of the Senate

TUESDAY, APRIL 26, 2011

The Senate was called to order by the President.

Devotional Exercises

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

Joint Resolution Adopted on the Part of the Senate

J.R.S. 30.

Joint Senate resolution entitled:

Joint resolution offering congratulations on the centennial anniversary of the Republic of China and supporting Taiwan's being granted observer or participation status in certain travel and tourism organizations.

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

Proposals of Amendment; Consideration Interrupted by Recess

H. 202.

House bill entitled:

An act relating to a universal and unified health system.

Was taken up.

Thereupon, pending third reading of the bill, Senator Galbraith moved to amend the Senate proposal of amendment as follows:

First: In Sec. 4, 33 V.S.A. chapter 18, in § 1802, by adding a new subdivision to be numbered subdivision (9) to read as follows:

(9) "Vermont Health" means the Vermont Health Insurance Corporation established in 8 V.S.A. chapter 118.

Second: In Sec. 4, 33 V.S.A. chapter 18, in § 1803(b)(1)(A), by inserting the words and plans offered by Vermont Health following the words "the Affordable Care Act"

Third: By inserting a new section to be numbered Sec. 4c to read as follows:

Sec. 4c. 8 V.S.A. chapter 118 is added to read:

CHAPTER 118. VERMONT HEALTH INSURANCE CORPORATION

§ 4401. VERMONT HEALTH INSURANCE CORPORATION

Vermont Health is established as a private, nonprofit corporation owned by the people of Vermont for the purpose of providing qualified health benefit plans to Vermont residents.

§ 4402. PURPOSE

Vermont Health shall have as its primary goal ensuring that all Vermont residents have access to health care, including treatment by qualified physicians, necessary surgery and surgical procedures, hospitalization, and prescribed medicines. All qualified Vermont residents shall have the right to participate in a qualified health benefit plan offered by Vermont Health, and no person shall be denied the right to participate because of illness, preexisting condition, or age. Vermont Health shall guarantee issuance of a qualified health plan to all qualified Vermont residents and their dependents.

§ 4403. DEFINITIONS

As used in this chapter:

(1) “Affordable Care Act” means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and as further amended.

(2) “Commissioner” means the commissioner of banking, insurance, securities, and health care administration.

(3) “Health benefit plan” means a policy, contract, certificate, or agreement offered or issued by a health insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health services. This term does not include coverage only for accident or disability income insurance, liability insurance, coverage issued as a supplement to liability insurance, workers’ compensation or similar insurance, automobile medical payment insurance, credit-only insurance, coverage for on-site medical clinics, or other similar insurance coverage where benefits for health services are secondary or incidental to other insurance benefits as provided under the Affordable Care Act. The term also does not include stand-alone dental or vision benefits; long-term care insurance; specific disease or other limited benefit coverage; Medicare supplemental health benefits; Medicare Advantage plans; or other similar benefits excluded under the Affordable Care Act.

(4) “Health care professional” means an individual, partnership, corporation, facility, or institution licensed or certified or otherwise authorized by law to provide professional health services.

(5) “Health service” means any medically necessary treatment or procedure to maintain an individual’s physical or mental health or to diagnose or treat an individual’s physical or mental health condition, including services ordered by a health care professional and medically necessary services to assist in activities of daily living.

(6) “Qualified health benefit plan” means a health benefit plan which meets the requirements set forth in 33 V.S.A. § 1806 and Section 1301 of the Affordable Care Act.

(7) “Qualified Vermont resident” means an individual, including a minor, who is a Vermont resident and at the time of enrollment:

(A) is not incarcerated or is only incarcerated awaiting disposition of charges; and

(B) is or is reasonably expected to be during the time of enrollment a citizen or national of the United States or an immigrant lawfully present in the United States as defined by federal law.

(8) “Vermont Health Insurance Corporation” or “Vermont Health” means a private, nonprofit health insurance corporation owned by the people of Vermont and providing qualified health benefit plans to Vermont residents.

(9) “Vermont resident” means an individual domiciled in Vermont as evidenced by an intent to maintain a principal dwelling place in Vermont indefinitely and to return to Vermont if temporarily absent, coupled with an act or acts consistent with that intent.

§ 4404. OWNERSHIP AND GOVERNANCE OF VERMONT HEALTH

(a) Vermont Health shall issue shares, all of which shall be owned by the people of Vermont and held in trust for them by the general assembly.

(b) The governor shall appoint, with the consent of the senate, a five-member board of Vermont Health, one of whom shall be designated by the governor as the chair. The board shall prepare the bylaws, regulations, and policies of Vermont Health. The general assembly, acting on behalf of the shareholders, shall approve by joint resolution the bylaws, regulations, and major policies of Vermont Health.

(c) The board shall appoint all officers of Vermont Health who shall be state employees and exempt from the state classified system. The board shall

determine compensation for the officers and employees of Vermont Health, provided that no officer or employee shall receive more in compensation than the highest paid state employee.

§ 4405. CERTIFICATE OF AUTHORITY

Notwithstanding the provisions of chapters 101 and 107 of this title, upon petition of the secretary of administration, the commissioner shall issue to Vermont Health a certificate of authority to operate as a health insurance corporation for purposes of providing qualified health benefit plans to Vermont residents.

§ 4406. APPROVAL OF PREMIUMS AND FORMS

Notwithstanding the provisions of section 4062 of this title, the commissioner shall approve all forms and premium rates for Vermont Health that he or she determines to be in the best interests of the people of the state of Vermont.

§ 4407. VERMONT HEALTH QUALIFIED BENEFIT PLANS

Vermont Health shall offer only qualified health benefit plans that meet the requirements of the Affordable Care Act, 33 V.S.A. chapter 18, subchapter 1, and applicable state laws. In the event that the Affordable Care Act is repealed or held invalid, Vermont Health shall continue to offer health benefit plans that provide essential benefits packages that meet or exceed the elements described in Section 1302(a) of the Affordable Care Act and that provide for all necessary medical care, including treatment by qualified health care professionals, hospital care, and prescription drugs. Plans offered by Vermont Health shall pay for all necessary medical expenses without annual or lifetime limits.

§ 4408. CHOICE OF PROVIDER

To the extent Vermont Health provides coverage for any particular type of health service or for any particular medical condition, it shall cover those health services and conditions when provided by any type of health care professional acting within the scope of practice authorized by law. Vermont Health may establish a term or condition that places a greater financial burden on an individual for access to treatment by the type of health care professional only if it is related to the efficacy or cost-effectiveness of the type of service.

§ 4409. REQUIRED CONTRACT PROVISIONS

Qualified health benefit plan contracts entered into by Vermont Health shall be in writing, one copy of which shall be furnished to the insured. The contract shall contain at least the following provisions:

(1) A statement of the amount payable to Vermont Health by the subscriber and the manner in which such amount is payable;

(2) A statement of the nature of the services to be furnished and the period during which they will be furnished and, if there are any services to be excepted, a detailed statement of such exceptions;

(3) A statement of the terms and conditions upon which the contract may be canceled or otherwise terminated at the option of either party;

(4) A statement that the contract includes the endorsements thereon and attached papers, if any, and contains the entire contract for services;

(5) A statement that no representation by the insured in his or her application shall void the contract or be used in any legal proceeding thereunder unless such application or an exact copy thereof is included in or attached to such contract and that no agent or representative of such corporation other than an officer or officers designated therein is authorized to change the contract or waive any of its provisions;

(6) A statement that if the insured defaults in making any payment under the contract, the subsequent acceptance of a payment by the corporation or by any of its duly authorized agents shall reinstate the contract;

(7) A statement of the period of grace which will be allowed the insured for making any payment due under the contract, to be not less than ten days;

(8) A statement that the insured shall be entitled to engage the services of a health care professional whom he or she chooses to perform services covered by the contract, provided that such health care professional is licensed or certified or otherwise authorized by law to provide professional health services in this state and agrees to be governed by the bylaws of the corporation with respect to payment of fees for his or her services.

Fourth: By adding a new section to be numbered Sec. 4d to read as follows:

Sec. 4d. 32 V.S.A. § 8556 is amended to read:

§ 8556. ~~EXEMPTION~~ EXEMPTIONS

(a) For the purposes of this subchapter, a continuing care retirement community certified under chapter 151 of Title 8 shall not be deemed to be an insurance company or other entity subject to the tax imposed by this subchapter.

(b) The Vermont Health Insurance Corporation established in chapter 118 of Title 8 shall be exempt from the tax imposed by this subchapter.

Fifth: By adding a new section to be numbered Sec. 4e to read as follows:

Sec. 4e. COST-EFFECTIVENESS EVALUATION

The secretary of administration or designee shall evaluate the cost-effectiveness of permitting a nonprofit insurance carrier licensed to do business in this state to provide some or all of the benefits and administration of the qualified health benefit plans offered by the Vermont Health Insurance Corporation in conjunction with, or in lieu of, involvement by state government. No later than February 15, 2012, the secretary or designee shall report to the house committee on health care and the senate committees on health and welfare and on finance on the advisability and cost-effectiveness of involving an insurance carrier in Vermont Health and shall propose the statutory modifications necessary to accomplish any such involvement.

Sixth: In Sec. 34, Effective Dates, in subsection (a), by inserting Sec. 4e (cost-effectiveness study); preceding the words “Secs. 8 (integration plan);” and by adding a subsection (h) to read:

(h) Secs. 4c (Vermont Health) and 4d (tax exemptions) shall take effect 180 days following a determination by the secretary of administration that Green Mountain Care will not become operational by July 1, 2017.

Which was disagreed to.

Thereupon, pending third reading of the bill, Senators Illuzzi, Brock and Miller move to amend the Senate proposal of amendment in Sec. 2, Strategic Plan; Universal and Unified Health System, by striking out subdivision (a)(4) in its entirety and inserting in lieu thereof the following:

(4) No later than January 1, 2014, the commissioner of banking, insurance, securities, and health care administration may require qualified health benefit plans to be sold to individuals and small groups through the Vermont health benefit exchange, provided that the commissioner shall also allow qualified and nonqualified plans that comply with the provisions of the Affordable Care Act to be sold to individuals and small groups outside the exchange. The commissioner may require large group insurance products to be aligned with the administrative requirements and essential benefits required in the exchange.

Which was disagreed to on a roll call, Yeas 11, Nays 19.

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

Roll Call

Those Senators who voted in the affirmative were: Benning, Brock, Doyle, Flory, Illuzzi, Kitchel, Mazza, Miller, Mullin, Starr, Westman.

Those Senators who voted in the negative were: Ashe, Ayer, Baruth, Campbell, Carris, Cummings, Fox, Galbraith, Giard, Hartwell, Kittell, Lyons, MacDonald, McCormack, Nitka, Pollina, Sears, Snelling, White.

Thereupon, pending third reading of the bill, Senators Brock and Illuzzi moved to amend the Senate proposal of amendment as follows:

First: In Sec. 2, Strategic Plan; Unified and Universal Health System, in subdivision (a)(2)(A), following “individuals and” by striking out the word “small” and following the word “employer” by adding the following: with 50 or fewer employees

Second: In Sec. 2, Strategic Plan; Unified and Universal Health System, in subdivision (a)(3), by striking out the following: “As provided in Sec. 4 of this act, no” and inserting in lieu thereof the following: No later than November 1, 2015, the Vermont health benefit exchange established in 33 V.S.A. chapter 18, subchapter 1 shall begin enrolling employers with 100 or fewer employees for coverage beginning January 1, 2016. No

Third: In Sec. 4, 33 V.S.A. chapter 18, subchapter 1, in § 1802, by striking out subdivision (5) in its entirety and inserting in lieu thereof the following:

(5) “Qualified employer” means:

(A) an entity which employed an average of not more than 50 employees during the preceding calendar year and which:

(i) has its principal place of business in this state and elects to provide coverage for its eligible employees through the Vermont health benefit exchange, regardless of where an employee resides; or

(ii) elects to provide coverage through the Vermont health benefit exchange for all of its eligible employees who are principally employed in this state.

(B) After January 1, 2016, the term “qualified employer” shall include an employer which meets the requirements in subdivision (A) of this subdivision (5) and which had an average of not more than 100 employees during the preceding calendar year. After January 1, 2017, the term shall include all employers which meet the requirements, regardless of size.

Fourth: In Sec. 4, 33 V.S.A. chapter 18, subchapter 1, by striking out § 1804 in its entirety and inserting in lieu thereof the following:

§ 1804. QUALIFIED EMPLOYERS

(a) A qualified employer shall be an employer who, on at least 50 percent of its working days during the preceding calendar quarter, employed at least one and no more than 50 employees, and the term “qualified employer” includes self-employed persons. Calculation of the number of employees of a qualified employer shall not include a part-time employee who works less than 30 hours per week.

(b) An employer with 50 or fewer employees that offers a qualified health benefit plan to its employees through the Vermont health benefit exchange may continue to participate in the exchange even if the employer’s size grows beyond 50 employees as long as the employer continuously makes qualified health benefit plans in the Vermont health benefit exchange available to its employees.

Which was disagreed to on a roll call, Yeas 10, Nays 20.

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

Roll Call

Those Senators who voted in the affirmative were: Benning, Brock, Doyle, Flory, Illuzzi, Mazza, Miller, Mullin, Starr, Westman.

Those Senators who voted in the negative were: Ashe, Ayer, Baruth, Campbell, Carris, Cummings, Fox, Galbraith, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, McCormack, Nitka, Pollina, Sears, Snelling, White.

Thereupon, pending third reading of the bill, Senator Snelling, moved that the Senate proposal of amendment be amended in Sec. 2(a), by striking out subdivision (4) in its entirety and by renumbering the remaining subdivisions to be numerically correct.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Miller moved to amend the Senate proposal of amendment as follows:

First: In the introductory language in subsection (a), following the word “shall”, by inserting the following present a factual report and

Second: In subdivision (a)(1)(B), by adding a subdivision (iii) to read:

(iii) The advantages and disadvantages for the state, for employers, for employees and for individuals of allowing qualified health benefit plans to be sold to individuals and small groups in the Vermont health benefit exchange while also allowing qualified and nonqualified plans that

comply with the provisions of the Affordable Care Act to be sold to individuals and small groups outside the exchange.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Brock moved to amend the Senate proposal of amendment in Sec. 4, 33 V.S.A. chapter 18, subchapter 2, in § 1824, in subsection (a), in subdivisions (2) and (3), by adding a subdivision (D) in both subdivisions to read:

(D) Nothing in this section shall be construed to limit or restrict prosecutions under any applicable provision of law.

Which was agreed to.

Thereupon, pending third reading of the bill, Senators Brock and Sears move to amend the Senate proposal of amendment in Sec. 4, 33 V.S.A. chapter 18, subchapter 2, in § 1823, in subdivision (12), by striking out the second sentence in its entirety and inserting in lieu thereof the following: An individual shall not be considered to be a Vermont resident if he or she is 18 years of age or older and is:

(A) claimed as a dependent on the tax return of a resident of another state; or

(B) not lawfully present in the United States.

Which was agreed to on a roll call, Yeas 22, Nays 8.

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, Benning, Brock, Campbell, Carris, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Lyons, Mazza, Miller, Mullin, Nitka, Sears, Snelling, Starr.

Those Senators who voted in the negative were: Baruth, Cummings, Kittell, MacDonald, McCormack, Pollina, Westman, White.

Thereupon, pending third reading of the bill, Senator Brock moved to amend the Senate proposal of amendment as follows:

First: In Sec. 3, 18 V.S.A. chapter 220, subchapter 1, in § 9375 (b)(6), following the words “rates for”, by inserting the following: hospitals and other health care facilities, and for other, and following the word “professionals”, by inserting the following in Green Mountain Care,

Second: In Sec. 3, 18 V.S.A. chapter 220, subchapter 1, in § 9376 (b)(1), following the first instance of the word “professionals”, by adding the following: participating in Green Mountain Care; following the word “persons”, by adding the following: for products and services provided to individuals enrolled in Green Mountain Care; before the second sentence, by adding a new sentence to read as follows: In addition, the board may set rates for hospitals and other health care facilities prior to the implementation of Green Mountain Care.; and by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

(2) Nothing in this subsection shall be construed to allow the board to set rates for health care professionals other than hospitals and other health care facilities prior to the implementation of Green Mountain Care or to set rates for health care practitioners who choose not to participate in Green Mountain Care.

Which was disagreed to.

Thereupon, pending third reading of the bill, Senator Brock moved to amend the Senate proposal of amendment in Sec. 9, Financing Plans, in subsection (a), by striking out the following: “January 15, 2013” and inserting in lieu thereof the following: September 15, 2012

Which was disagreed to on a roll call, Yeas 8, Nays 22.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Benning, Brock, Doyle, Flory, Illuzzi, Starr, Westman.

Those Senators who voted in the negative were: Ayer, Baruth, Campbell, Carris, Cummings, Fox, Galbraith, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Sears, Snelling, White.

Thereupon, pending third reading of the bill, Senator Benning moved to amend the Senate proposal of amendment as follows:

First: In Sec. 1a, Principles for Health Care Reform, in subdivision (7), by adding at the end of the subdivision, the following: However, it is not the intent of the general assembly to abandon Vermont’s cherished history as a champion of individual liberty. The state must not at any time enact a law or adopt a rule that would require individual rights to become subservient to the need to contain health care costs.

Second: In Sec. 3, 18 V.S.A. chapter 220, subchapter 1, in § 9371(7), by adding at the end of the subdivision, the following: However, it is not the intent of the general assembly to abandon Vermont's cherished history as a champion of individual liberty. The state must not at any time enact a law or adopt a rule that would require individual rights to become subservient to the need to contain health care costs.

Third: In Sec. 4, 33 V.S.A. chapter 18, subchapter 2, in § 1821, by designating the existing language as subsection (a) and by adding a subsection (b) to read as follows:

(b) Nothing in this section shall be construed to require individual rights to become subservient to the need to contain health care costs.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senator Benning?, Senator Benning requested and was granted leave to withdraw the proposal of amendment.

Thereupon, pending the question, Shall the bill pass in concurrence with proposal of amendment?, Senator Campbell moved that the Senate recess until two o'clock in the afternoon.

Called to Order

At two o'clock in the afternoon the Senate was called to order by the President.

Message from the House No. 54

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. 290. An act relating to adult protective services.

H. 455. An act relating to the enhanced 911 emergency response system.

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

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

S. 49. An act relating to commercial motor vehicle operation on the interstate system.

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

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

H. 88. An act relating to uniform child custody jurisdiction and enforcement.

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

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

H. 138. An act relating to executive branch fees.

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

The House has considered Senate proposal of amendment to House bill entitled:

H. 26. An act relating to limiting the application of fertilizer containing phosphorus or nitrogen to nonagricultural turf.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. McCullough of Williston
Rep. Leriche of Hardwick
Rep. Lewis of Derby

The House has considered Senate proposal of amendment to House bill entitled:

H. 275. An act relating to the recently deployed veteran tax credit.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. Weston of Burlington
Rep. Kitzmiller of Montpelier
Rep. Marcotte of Coventry

The House has considered Senate proposal of amendment to House bill entitled:

H. 436. An act relating to tax changes, including income taxes, property taxes, economic development credits, health care-related tax provisions, and miscellaneous tax provisions.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. Ancel of Calais
Rep. Branagan of Georgia
Rep. Sharpe of Bristol

The House has considered Senate proposal of amendment to House bill entitled:

H. 441. An act relating to making appropriations for the support of government.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. Heath of Westford
Rep. Johnson of South Hero
Rep. Acinapura

Message from the Governor

A message was received from His Excellency, the Governor, by Alexandra McLean, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the twenty-second day of April, 2011 he approved and signed a bill originating in the Senate of the following title:

S. 31. An act relating to the Agreement Among the States to Elect the President by National Popular Vote.

Consideration Resumed; Bill Passed in Concurrence with Proposal of Amendment

H. 202.

Consideration was resumed on House bill entitled:

An act relating to a universal and unified health system.

Thereupon, the pending question, Shall the bill pass in concurrence with proposal of amendment?, was agreed to on a roll call Yeas 21, Nays 9.

Senator Campbell 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, Baruth, Campbell, Carris, Cummings, Fox, Galbraith, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, McCormack, Miller, Mullin, Nitka, Pollina, Sears, White.

Those Senators who voted in the negative were: Benning, Brock, Doyle, Flory, Illuzzi, Mazza, *Snelling, Starr, Westman.

*Senator Snelling explained her vote as follows:

“I am voting “no” today but it’s not because I don’t believe in unified health care. I do. We must build a quality system that’s accessible, affordable, everyone is covered and everyone pays in. That’s the obligation of good government, responsible business and informed citizens.

“Is that what H. 202 will do? I don’t know. There are too many unanswered questions. I hope that the next phase of research and discovery will be inclusive and collaborative of all perspectives.

“I have great respect for the Senate Health and Welfare Committee and their work and also for the very informed lawyers and analysts who wrote this legislation.

“However, I remain unconvinced that we need to move this fast in this direction at this time.

“There’s a fundamental issue that I keep thinking about.

“How can we know what the savings are before we understand the costs?

“It’s clear that we must control health care costs and I sincerely hope that this legislation will do that.

“I realize my vote won’t stop this bill nor is that my intention. I would like to support the concepts of H. 202 without endorsing a plan that can’t be verified right now.

“I will look forward to voting “yes” next year.

“Thank you.”

Bill Passed in Concurrence with Proposal of Amendment

H. 38.

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

An act relating to ensuring educational continuity for children of military families.

Thereupon, the recurring question, Shall the bill pass in concurrence with proposal of amendment?, was decided in the affirmative.

Bill Passed in Concurrence with Proposal of Amendment

H. 91.

House bill entitled:

An act relating to the management of fish and wildlife.

Was taken up.

Thereupon, pending the question, third reading of the bill?, Senator Starr moved to amend the Senate proposal of amendment as follows:

First: In Sec. 5(c)(2)(B), by striking out the following: “a three-year period” and inserting in lieu thereof the following: an eight-year period

Second: In Sec. 5(c)(2)(B)(i)(II), by striking out the following: “three years” and inserting in lieu thereof the following: eight years and by striking out the following: “third year” and inserting in lieu thereof the following: eighth year

Third: In Sec. 5(c)(2)(B)(i)(III) by striking out the following: “three-year period” and inserting in lieu thereof the following: eight-year period

Which was disagreed to.

Thereupon, the bill was read the third time.

Thereupon, the question, Shall the bill pass in concurrence with proposal of amendment?, was decided in the affirmative.

Bill Passed in Concurrence**H. 442.**

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

An act relating to amending the charter of the city of Rutland.

House Proposal of Amendment Concurred In with Amendment**S. 2.**

House proposal of amendment to Senate bill entitled:

An act relating to sexual exploitation of a minor and the sex offender registry.

Was taken up.

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

Sec. 1. 13 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

As used in this subchapter:

* * *

(10) "Sex offender" means:

* * *

(B) A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old:

* * *

(ix) sexual exploitation of a minor as defined in 13 V.S.A. § ~~3258(b)~~ 3258.

* * *

Sec. 2. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding 20 V.S.A. §§ 2056a-2056e, the department shall electronically post information on the Internet in accordance with subsection

(b) of this section regarding the following sex offenders, upon their release from confinement:

(1) Sex offenders who have been convicted of:

* * *

(I) ~~Sexual~~ A felony violation of sexual exploitation of a minor (13 V.S.A. § ~~3258(b)~~ 3258(c)).

* * *

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

* * *

~~(6) except as provided in subsection (1) of this section, the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:~~ the date and nature of the offender's conviction;

* * *

Sec. 3. 16 V.S.A. § 255 is amended to read:

§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES; CONTRACTORS

(a) Superintendents, headmasters of recognized or approved ~~Vermont~~ independent schools, and their contractors shall request criminal record information for the following:

(1) The person a superintendent or headmaster is prepared to recommend for any full-time, part-time or temporary employment.

(2) Any person directly under contract to an independent school or school district who may have unsupervised contact with school children.

(3) Any employee of a contractor under contract to an independent school or school district who is in a position that may result in unsupervised contact with school children.

(4) Any student working toward a degree in teaching who is a student teacher in a school within the superintendent's or headmaster's jurisdiction.

(b) After signing a user agreement, a superintendent or a headmaster shall make a request directly to the Vermont criminal information center. A contractor shall make a request through a superintendent or headmaster.

(c) A request made under subsection (b) of this section shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont criminal information center which shall reflect the cost of obtaining the record from the FBI. The fee shall be paid in accordance with adopted school board policy.

* * *

(h) A superintendent or headmaster shall request and obtain information from the child protection registry maintained by the department for children and families and from the vulnerable adult abuse, neglect, and exploitation registry maintained by the department of disabilities, aging, and independent living (collectively, the "registries") for any person for whom a criminal record check is required under subsection (a) of this section. The department for children and families and the department of disabilities, aging, and independent living shall adopt rules governing the process for obtaining information from the registries and for disseminating and maintaining records of that information under this subsection.

(i) A person convicted of a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13 shall not be eligible for employment under this section.

(j) The board of trustees of a recognized or approved independent school shall request a criminal record check and a check of the registries pursuant to the provisions of this section prior to offering employment to a headmaster.

Sec. 4. 4 V.S.A. § 952 is amended to read:

§ 952. RULES OF COURT ADMINISTRATOR

(a) The court administrator, subject to the approval of the supreme court, shall make rules regarding the qualifications, lists, and selection of all jurors and prepare questionnaires for prospective jurors. Each superior court clerk shall, in conformity with the rules, prepare a list of jurors from residents of its unit. The rules shall be designed to assure that the list of jurors prepared by the ~~jury commission~~ superior court clerk shall be representative of the citizens of its unit in terms of age, sex, occupation, economic status, and geographical distribution.

(b) Rules adopted under this section shall be consistent with the provisions of this chapter.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

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

By adding a new section to be numbered Sec. 5 to read as follows:

Sec 5. 20 V.S.A. § 2056b is amended to read:

§ 2056b. DISSEMINATION OF CRIMINAL HISTORY RECORDS TO PERSONS CONDUCTING RESEARCH

(a) The Vermont criminal information center may provide Vermont criminal history records as defined in section 2056a of this title to bona fide persons conducting research related to the administration of criminal justice, subject to conditions approved by the commissioner of public safety to assure the confidentiality of the information and the privacy of individuals to whom the information relates. Bulk criminal history data requested by descriptors other than the name and date of birth of the subject may only be provided in a format that excludes the subject's name and any unique numbers that may reference the identity of the subject, except that court docket numbers and the state identification number may be provided. Researchers ~~must~~ shall sign a user agreement which specifies data security requirements and restrictions on use of identifying information.

(b) No person shall confirm the existence or nonexistence of criminal history record information to any person other than the subject and properly designated employees of an organization who have a documented need to know the contents of the record.

(c) A person who violates the provisions of this section with respect to unauthorized disclosure of confidential criminal history record information obtained from the center under the authority of this section shall be fined not more than \$5,000.00. Each unauthorized disclosure shall constitute a separate civil violation.

and by renumbering the remaining section to be numerically correct.

Which was agreed to.

Committees of Conference Appointed

H. 26.

An act relating to limiting the application of fertilizer containing phosphorus or nitrogen to nonagricultural turf.

Was taken up. Pursuant to the request of the House, the President announced the appointment of

Senator Lyons
Senator MacDonald
Senator Brock

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

H. 441.

An act relating to making appropriations for the support of government.

Was taken up. Pursuant to the request of the House, the President announced the appointment of

Senator Kitchel
Senator Sears
Senator Snelling

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

H. 436.

An act relating to tax changes, including income taxes, property taxes, economic development credits, health care-related tax provisions, and miscellaneous tax provisions.

Was taken up. Pursuant to the request of the House, the President announced the appointment of

Senator Cummings
Senator MacDonald
Senator Ashe

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

Rules Suspended; Bills Messaged

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

S.2, H. 38, H. 91, H. 202, H. 442.

Rules Suspended; Joint Resolution Messaged

On motion of Senator Campbell, the rules were suspended, and the following joint Senate resolution was ordered messaged to the House forthwith:

J.R.S. 30.

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 considered joint resolution originating in the Senate of the following title:

J.R.S. 30. Joint resolution offering congratulations on the centennial anniversary of the Republic of China and supporting Taiwan's being granted observer or participation status in certain travel and tourism organizations.

And has adopted the same in concurrence.

The Governor has informed the House that on the April 22, 2011, he approved and signed bills originating in the House of the following titles:

H. 85. An act relating to recognition of the Nulhegan Band of the Coosuk Abenaki Nation as a Native American Indian tribe.

H. 86. An act relating to recognition of the Elnu Abenaki tribe as a Native American Indian tribe.

The Governor has informed the House that on the April 26, 2011, he approved and signed a bill originating in the House of the following title:

H. 172. An act relating to repealing the sale or lease of the John F. Boylan airport.

Adjournment

On motion of Senator Campbell, the Senate adjourned until one o'clock in the afternoon on Wednesday, April 27, 2011.