

# Journal of the Senate

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TUESDAY, FEBRUARY 21, 2012

In the absence of the President (who was Acting Governor in the absence of the Governor) the Senate was called to order by the President *pro tempore*.

## Devotional Exercises

Devotional exercises were conducted by the Reverend Terry Dorsett of Barre.

## Pledge of Allegiance

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

## Rules Suspended; Bill Committed

### H. 630.

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

An act relating to reforming Vermont's mental health system.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Health and Welfare, Senator Mazza moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Institutions with the report of the Committee on Health and Welfare *intact*,

Which was agreed to.

## Bill Referred

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

### H. 39.

An act relating to persons authorized to direct disposition of service members' remains.

To the Committee on Government Operations.

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**Bill Amended; Third Reading Ordered****S. 116.**

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

An act relating to probate proceedings.

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

Sec. 1. Rule 4(e) of the Vermont Rules of Probate Procedure is amended to read:

(e) Service by publication. When service by publication is required by this rule or by order of the court, the person directed by the court shall cause the substance of the notice prescribed by subdivision (a) of this rule, and a brief statement of the object of the petition, to be published ~~once a week for two successive weeks and at least seven days apart~~ in a designated newspaper of general circulation in the probate district where the petition was filed, or such other location as the court may direct. The ~~first~~ publication of the notice shall be made within 20 days after the petition is filed or the order is granted. Service by publication is complete on the day of ~~the last~~ publication.

Sec. 2. Rule 17 of the Vermont Rules of Probate Procedure is amended to read:

Rule 17. PARTIES GENERALLY

(a) Parties at commencement. At the commencement of a probate proceeding all interested persons shall be considered parties and shall be served with notice pursuant to Rule 4.

(1) Decedent's estates. At commencement of a probate proceeding involving a decedent's estate, the term "interested person" includes heirs, devisees, legatees, children, spouses, and such other persons as the court directs. The term "interested person" also includes the trustees of any trusts to which assets of the decedent's estate may be distributed. Notice to a trustee shall be sufficient to notify the trust's beneficiaries. It also includes persons having priority for appointment as executor or administrator, and other fiduciaries representing interested persons. Notwithstanding this rule, in a proceeding involving a testate decedent's estate, the court shall have discretion to determine that an interested party need not be served with notice pursuant to Rule 4 if the court finds that not providing such notice is in the best interests of the decedent and the estate.

\* \* \*

Sec. 3. 14 V.S.A. § 3504 is amended to read:

§ 3504. SCOPE OF AUTHORITY

(a)(1) The agent shall have the authority to act on the principal's behalf as to all lawful subjects and purposes, but only to the extent such authority is given under the terms of the power of attorney, subject to section 3506 of this title and subsections (b) through (g) of this section.

(2) A general power of attorney created under this subchapter may be construed to grant powers that are not expressly delineated in the terms of the power of attorney if it appears from the relevant facts and circumstances that the principal intended the agent to have general authority to act on the principal's behalf with respect to all lawful subjects and purposes.

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Sec. 4. 24 V.S.A. § 133 is amended to read:

§ 133. COUNTY TAX; AMOUNT; ASSESSMENT

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(e) The proposed budget shall contain any cost estimates and preliminary plans for capital construction in the county pursuant to subchapter 2 of chapter 3 of this title, estimates of the indebtedness of the county, estimates of the probable ordinary expenses of the county for the ensuing year, and any and all other expenses and obligations of the county. The budget may contain provision for additions to a an operations reserve fund and the accumulated total reserve fund shall not at any time exceed an amount equal to ~~ten~~ 15 percent of the current budget presented. Pursuant to a capital program, as described in section 4426 of this title, the budget may also include a provision for a separate reserve fund for capital construction, reconstruction, remodeling, repairs, renovation, design, or redesign which shall not at any time exceed an amount equal to ~~50~~ 75 percent of the current budget presented. However, if capital construction, reconstruction, remodeling, repairs, renovation, design, or redesign is necessitated by an insured loss or damage to a county building, the separate reserve fund may also include the amount of insurance proceeds received as a result of the loss or damage. All county budgets shall be presented on the form prescribed by the auditor of accounts, after consultation with the association of assistant judges, and shall include the amounts currently budgeted for each item included in the proposed budget.

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**Sec. 5. EFFECTIVE DATE**

This act 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.

**Senate Resolution Adopted****J.R.S. 47.**

Senate resolution entitled:

Joint resolution urging the United States Postal Service not to implement its proposed major reductions and urging Congress to enact the Postal Service Protection Act

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

**Bill Passed**

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

**S. 122.** An act relating to human trafficking and prostitution.

**Points of Order, Third Reading Ordered****H. 629.**

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

An act relating to reapportioning the initial districts of the house of representatives.

Reported the bill without recommendation.

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Flory raised a *point of order* under Secs. 101 and 114 of Mason's Manual of Legislative Procedure on the grounds that the questioning was not confined to the question before the Senate.

Thereupon, the President *sustained* the point of order and cautioned that the questioning should be confined to the question before the Senate.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Sears raised a *point of order* under Sec. 111 of Mason's Manual of

Legislative Procedure on the grounds that the Senate should not be taking into consideration the action of the other body.

Thereupon, the President *sustained* the point of order and cautioned that the vote or action of the other body should not be referred to during the debate.

Thereupon, the recurring question, Shall the bill be read the third time?, was decided in the affirmative on a roll call, Yeas 21, Nays 6.

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:** Ayer, Benning, Brock, Carris, Cummings, Doyle, Flory, Fox, Giard, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Starr, White.

**Those Senators who voted in the negative were:** Ashe, Baruth, Galbraith, Hartwell, Sears, Westman.

**Those Senators absent or not voting were:** Campbell (presiding), Illuzzi, Snelling.

#### **Message from the House No. 25**

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. 512.** An act relating to banking, insurance, securities, and health care administration.

**H. 758.** An act relating to divorce and dissolution proceedings.

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

#### **Adjournment**

On motion of Senator Mazza, the Senate adjourned until three o'clock and thirty minutes in the afternoon on Wednesday, February 22, 2012.