

Journal of the Senate

WEDNESDAY, FEBRUARY 29, 2012

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. 30

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. 556. An act relating to creating a private activity bond advisory committee.

H. 559. An act relating to health care reform implementation.

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

Bills Referred to Committee on Appropriations

Senate bills of the following titles, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule were severally referred to the Committee on Appropriations:

S. 121. An act relating to the higher education endowment trust fund.

S. 246. An act relating to preserving Vermont's working landscape.

Bills Referred

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

H. 556.

An act relating to creating a private activity bond advisory committee.

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

H. 559.

An act relating to health care reform implementation.

To the Committee on Health and Welfare.

Rules Suspended; Third Reading Ordered, Rules Suspended; Bill Passed in Concurrence; Bill Messaged**H. 755.**

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

An act relating to extending the deadline for adoption of certain health department rules.

Was taken up for immediate consideration.

Senator Ayer, for the Committee on Health and Welfare, to which the bill was referred, reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

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

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

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

Bill Passed in Concurrence with Proposals of Amendment; Bill Messaged**H. 630.**

House bill entitled:

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

Was taken up.

Thereupon, pending third reading of the bill, Senator Ayer, on behalf of the Committee on Health and Welfare, moved that the Senate proposal of amendment be amended follows:

First: In Sec. 1a, in 18 V.S.A. § 7251, by adding a new subdivision (9) to read as follows:

(9) Individuals with a mental health condition who are in the custody of the commissioner of mental health and who receive treatment in an acute inpatient hospital, intensive residential recovery facility, or a secure residential

facility shall be afforded the same rights and protections as those individuals cared for at the former Vermont State Hospital.

Second: In Sec. 1a, in 18 V.S.A. § 7252, by adding a new subdivision (14) to read as follows:

(14) “Serious bodily injury” means the same as in section 1912 of this title.

and by renumbering the current subdivision (14) to be (15)

Third: In Sec. 1a, by adding 18 V.S.A. § 7257 to read as follows:

§ 7257. REPORTABLE ADVERSE EVENTS

An acute inpatient hospital, an intensive residential recovery facility, or a secure residential facility shall report to the department of mental health instances of death or serious bodily injury to individuals with a mental health condition in the custody of the commissioner.

Fourth: In Sec. 9, by striking out subdivision (c)(2) in its entirety and inserting in lieu thereof the following:

(2) If a viable setting is identified by the commissioner and licensed by the department of health, the commissioner is authorized to provide acute inpatient services at a temporary location and shall discontinue services at that location when the hospital owned and operated by the state described in subsection (b) of this section is operational, but no later than September 1, 2015. At that time, the temporary facility shall no longer be used for a residential services program. The department shall pursue Medicare and Medicaid certification for any such temporary hospital. The temporary hospital shall be initially licensed for eight acute inpatient beds. Before an expansion of the number of beds at the temporary hospital may occur, the department shall confer with the host community to seek permission for such expansion.

Fifth: In Sec. 33, by adding a new subsection (d) to read as follows:

(d) On or before January 15, 2013, the department of mental health shall report to the senate committee on health and welfare and the house committee on human services with a plan for streamlining overlapping state and federal reporting requirements for providers in the mental health system, including recommendations for any statutory changes needed to do so.

Sixth: By adding a new Sec. 33a to read as follows:

Sec. 33a. RULEMAKING

On or before September 1, 2012, the commissioner of mental health shall initiate a rulemaking process that establishes standards that meet or exceed and are consistent with standards set by the Centers for Medicare and Medicaid Services and the Joint Commission for the use and reporting of involuntary emergency procedures on individuals within the custody of the commissioner, such as seclusion and restraint, and that require the personnel performing involuntary emergency procedures to receive training and certification on the use of these procedures. Standards established by rule shall be consistent with the recommendations made pursuant to Sec. 33(a)(3) of this act.

and by renumbering the current Sec. 33a to be Sec. 33b

Seventh: In Sec. 37a, by adding a new subsection (d) to read as follows:

(d)(1) Participating hospitals and designated agencies developing acute inpatient, secure residential, and intensive residential recovery services, as described in Secs. 8–10 of this act, shall provide the department of human resources with a description of the minimum qualifications for those open positions related to the care of individuals with mental health conditions. Participating hospitals and designated agencies shall be encouraged to hire former state employees who meet minimum requirements or have equivalent experience. The department shall use the most effective method to notify former employees of the Vermont State Hospital of these positions.

(2) The general assembly encourages the administration through its contracting process with participating hospitals and designated agencies to provide former employees of the Vermont State Hospital with the opportunity to apply for available positions.

(3) The provisions of this subsection shall not affect any existing collective bargaining agreement.

And that when so amended the bill ought to pass.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Ayer, on behalf of the Committee on Health and Welfare?, Senator Sears demanded pursuant to Rule 67 the *seventh* proposal of amendment be divided.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended by Senator Ayer, on behalf of the Committee on Health and Welfare in the *first* through *sixth* proposals of amendment?, was decided in the affirmative.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended by Senator Ayer, on behalf of the Committee on Health and Welfare in the *seventh* proposal of amendment?, was decided in the affirmative.

Thereupon, pending third reading of the bill, Senator Sears, on behalf of the Committee on Appropriations, moved that the Senate proposal of amendment be amended in Sec. 9, subdivision (a)(2), by striking out the number "10" and inserting in lieu thereof the number four.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Sears, on behalf of the Committee on Appropriations, moved that the Senate proposal of amendment be amended in Sec. 33, subdivision (b)(2), by striking out subparagraph (B) in its entirety and inserting in lieu thereof the following:

(B)(i) the number of declined referrals to inpatient psychiatric hospitals due to lack of capacity; and

(ii) the number of declined referrals to inpatient psychiatric hospitals due to patient or unit acuity;

Which was agreed to.

Thereupon, pending third reading of the bill, Senators Baruth and Ashe moved that the Senate proposal of amendment be amended in Sec. 9, subdivision (b)(1), by striking out the following: "16-bed" and inserting in lieu thereof the following 25-bed

Which was disagreed to on a roll call, Yeas 10, Nays 19.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Baruth, Benning, Brock, Cummings, Doyle, Flory, McCormack, Pollina, Westman.

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

The Senator absent and not voting was: Fox.

Thereupon, pending third reading of the bill, Senator Benning moved that the Senate proposal of amendment be amended in Sec. 9, Inpatient Hospital Beds, subdivision (b)(1), after the first sentence, by inserting the following:

The design shall include the capacity for expansion to 25 beds, including the infrastructure needed in the first phase of construction to support such a future expansion. Permitting shall be based on a 25-bed design. The administration shall take no action nor fail to take action that would preclude a decision of the general assembly in 2013 or thereafter to expand the hospital to 25 beds if deemed necessary.

Which was disagreed to on a roll call, Yeas 10, Nays 19.

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

Roll Call

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

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

The Senator absent and not voting was: Fox.

Thereupon, pending third reading of the bill, Senator Illuzzi moved that the Senate proposal of amendment be amended as follows:

First: In Sec. 9, in subdivision (a)(2), by striking out the period at the end of subdivision (a)(2)(F) and inserting in lieu thereof a semicolon, and by striking out the period at the end of subdivision (a)(2)(G) and inserting in lieu thereof ; and, and by adding subdivision (a)(2)(H) to read as follows:

(H)(i) The general assembly finds that the state entered into a stipulation and agreement with the Vermont State Employees' Association on July 30, 1996 for the purpose of furthering a public-private partnership with the department of corrections. The stipulation and agreement enabled current classified service employees to continue employment in classified positions when the contractor commenced its correctional mental health care services to the state. The stipulation and agreement specified that the contractor would provide immediate supervision of classified employees and that the commissioner of corrections would impose corrective and disciplinary actions.

(ii) Participating hospitals shall be required to identify the number of positions needed to staff patients under the custody of the commissioner of mental health. These positions shall be first offered to current state hospital employees and state hospital employees who have been subject to a reduction in force, and if accepted, the employees shall be hired as state employees and shall retain their wages, benefits, and rights under any collective bargaining

agreement. Upon the employees' separation through attrition, retirement, or other just cause, the participating hospital shall be entitled to fill positions with nonstate employees.

Second: In Sec. 9, subdivision (b)(1), by adding (A) after “(b)(1)”, and in the first sentence, by adding before the period , which shall temporarily be called the New Vermont State Hospital and thereafter renamed by the administration and mental health care providers, and by striking out the second and third sentences, and by adding a new subdivision (b)(1)(B) to read as follows:

(B) In the event the department of mental health reaches an agreement with one or more Vermont medical hospitals to operate a centrally located psychiatric hospital under their licenses, the department of buildings and general services shall design and construct a psychiatric hospital containing 50 beds. The hospital shall be designed and constructed in a manner that fosters off-unit treatment and recreational opportunities on its campus.

Third: By adding a new section to be numbered Sec. 24a to read as follows:
Sec. 24a. 18 V.S.A. § 7610 is added to read:

§ 7610. LEGAL REPRESENTATION

On or before September 1, 2012, paralegals shall be empowered to provide legal representation to individuals within the custody of the commissioner of mental health in proceedings before the family court, where a licensed attorney supervises the paralegal.

Fourth: By adding a new section to be numbered Sec. 25a to read as follows:

Sec. 25a. 18 V.S.A. § 7712 is added to read:

§ 7712. OFF-UNIT TREATMENT AND RECREATION

The commissioner of mental health shall establish by rule protocols for ensuring that individuals with a mental health condition who receive treatment in an acute inpatient setting have access to a recreational area outside the confines of the building that houses the psychiatric unit or hospital, consistent with each individual's treatment plan.

Fifth: In Sec. 37b, by adding two new subsections (c) and (d) to read as follows:

(c)(1) The general assembly finds that under Title XIX of the Social Security Act, Medicaid has historically excluded from participation institutions

for mental diseases (IMDs), with the exception of those hospitals containing 16 beds or less. While the Brattleboro Retreat, an IMD exceeding 16 beds, has received an exception under the state's Global Commitment waiver, the waiver is set to expire on December 31, 2013.

(2) It is the intent of the general assembly that the department of mental health and the secretary of administration investigate all potential opportunities for ensuring that inpatient psychiatric units not be classified as IMDs in order to maximize the availability of federal matching Medicaid funds for patients served in those units. Such efforts could include seeking federal waivers or working with the affected hospitals to determine if the units could be operated in such a way as to avoid classification as IMDs.

(d)(1) The general assembly finds that Central Vermont Medical Center and Fletcher Allen Health Care presented a proposal to the senate committee on health and welfare on February 15, 2012 regarding the joint operation of a psychiatric unit in Berlin, to the extent such an arrangement would avoid the unit's classification as an IMD.

(2) It is the intent of the general assembly that the secretary of administration continue to negotiate and seek an agreement with Central Vermont Medical Center and Fletcher Allen Health Care regarding their joint operation of a psychiatric unit in Berlin. On or before September 15, 2012, the secretary of administration shall report to the mental health oversight committee regarding the status of these negotiations.

Thereupon, pending the question, Shall the Senate proposal of amended be amended as recommended by Senator Illuzzi?, Senator Nitka demanded pursuant to Rule 67 the *first* proposal of amendment be divided.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended by Senator Illuzzi in the *first* proposal of amendment?, was disagreed to on a roll call, Yeas 10, Nays 18.

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, Baruth, Benning, Brock, Doyle, Illuzzi, McCormack, Nitka, Pollina, Westman.

Those Senators who voted in the negative were: Ayer, Campbell, Carris, Cummings, Flory, Galbraith, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, Mullin, Sears, Snelling, Starr, White.

Those Senators absent and not voting were: Fox, Miller.

Thereupon, pending the question, Shall the Senate proposal of amended be amended as recommended by Senator Illuzzi?, Senator Ashe demanded pursuant to Rule 67 the *fifth* proposal of amendment be divided.

Thereupon, pending the question, Shall the Senate proposal of amended be amended as recommended by Senator Illuzzi?, Senator Galbraith demanded pursuant to Rule 67 the *second, third* and *fourth* proposals of amendment be divided.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended by Senator Illuzzi in the *second* proposal of amendment?, was disagreed to.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended by Senator Illuzzi in the *third* proposal of amendment?, was disagreed to.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended by Senator Illuzzi in the *fourth* proposal of amendment?, was disagreed to.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended by Senator Illuzzi in the *fifth* proposal of amendment?, was disagreed to.

Thereupon, pending third reading of the bill, Senator Kitchel moved that the Senate proposal of amendment be amended as follows:

First: In Sec. 1a, in 18 V.S.A. § 7252, by adding a new subdivision (14) to read as follows:

(14) “Serious bodily injury” means the same as in section 1912 of this title.

and by renumbering the current subdivision (14) to be (15)

Second: In Sec. 1a, by adding 18 V.S.A. § 7257 to read:

§ 7257. ADVERSE COMMUNITY EVENTS

The department of mental health shall establish a system that ensures the comprehensive review of a death or serious bodily injury occurring outside of an acute inpatient hospital when the individual causing or victimized by the death or serious bodily injury is in the custody of the commissioner or had been in the custody of the commissioner within six months of the event. The department shall review each event for the purpose of determining whether the death or serious bodily injury was the result of inappropriate or inadequate

services within the mental health system and, if so, how the failure shall be remedied.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator White moved that the Senate proposal of amendment be amended in Sec. 37a by inserting a new subsection to be subsection (c) to read as follows:

(c)(1) The department of mental health shall be responsible for mental health services in the corrections system.

(2) Notwithstanding the limitations in subsections (a) and (b) of this section regarding what positions may be offered to a permanent status classified employee officially subjected to a RIF from the employee's position with the Vermont State Hospital, such an employee, whether or not reemployed with the state during the two-year reduction in force reemployment rights period, shall be offered by the department of mental health a mental health position in the corrections system for which the employee is qualified.

(3) After offering and filling mental health positions with the RIF employees as set forth in subdivision (2) of this subsection, the department may then fill any remaining mental health positions in the corrections system with nonstate employees.

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

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment on a roll call, Yeas 28, Nays 0.

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, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

Those Senators who voted in the negative were: None.

Those Senators absent and not voting were: Fox, Miller.

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

Senate Concurrent Resolution

The following joint concurrent resolution, having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, was adopted on the part of the Senate:

By All Members of the Senate,

By All Members of the House,

S.C.R. 39.

Senate concurrent resolution honoring former Representative and Senator Robert T. Gannett on his 95th birthday.

Adjournment

On motion of Senator Campbell, the Senate adjourned until one o'clock and thirty minutes in the afternoon on Wednesday, March 1, 2012.