

Journal of the Senate

WEDNESDAY, APRIL 11, 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. 46

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 a bill originating in the Senate of the following title:

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

And has passed the same in concurrence.

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

S. 181. An act relating to school resource officers.

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 the following House bill:

H. 634. An act relating to remedies for failure to pay municipal tickets.

And has severally concurred therein.

Message from the House No. 47

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 a House bill of the following title:

H. 789. An act relating to reapportioning the final representative districts of the House of Representatives.

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

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

J.R.S. 56. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

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

S. 179. An act relating to amending perpetual conservation easements.

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 the following House bill:

H. 449. An act relating to the designation of brook trout and walleye pike as the state fish of Vermont.

And has severally concurred therein.

Rules Suspended; Bill Committed

On motion of Senator Campbell, Senate Rule 49 was suspended and Senate bill entitled:

S. 137. An act relating to workers' compensation and unemployment compensation.

Was committed to the Committee on Rules with the report of the Committee on Economic Development, Housing and General Affairs *intact*,

Bill Referred to Committee on Appropriations

H. 496.

House bill of the following title, appearing on the Calendar for notice and carrying an appropriation or requiring the expenditure of funds, under the rule was referred to the Committee on Appropriations:

An act relating to preserving Vermont's working landscape.

Bill Referred to Committee on Finance**H. 773.**

House bill of the following title, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule was referred to the Committee on Finance:

An act relating to veterans' tax exemption.

Bill Referred

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

H. 789. An act relating to reapportioning the final representative districts of the House of Representatives.

To the Committee on Rules.

Consideration Resumed; Bill Amended; Third Reading Ordered**S. 28.**

Consideration was resumed on Senate bill entitled:

An act relating to consolidating land use and environmental permit administration, rulemaking, and appeals into a department of environmental quality headed by an environmental council.

Thereupon, the recommendation of amendment of the Committee on Natural Resources and Energy was amended as recommended by the Committee on Appropriations.

Thereupon, the question, Shall the bill be amended as recommended by the Committee on Natural Resources and Energy, as amended?, was decided in the affirmative.

Thereupon, the question, Shall the bill be read the third time?, was agreed to on a roll call, Yeas 20, Nays 9.

Senator Galbraith 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, Cummings, Doyle, Flory, Giard, Kitchel, Kittell, Lyons, Mazza, Miller, Mullin, Sears, Snelling, Starr, Westman.

Those Senators who voted in the negative were: Baruth, Galbraith, Hartwell, Illuzzi, MacDonald, McCormack, Nitka, Pollina, White.

The Senator absent and not voting was: Fox.

Joint Resolution Amended; Joint Resolution Adopted on the Part of the Senate

J.R.S. 11.

Senator Pollina, for the Committee on Government Operations, to which was referred joint Senate resolution entitled:

Joint resolution urging the United States Congress to propose an amendment to the United States Constitution for the states' consideration which provides that corporations are not persons under the laws of the United States or any of its jurisdictional subdivisions.

Reported recommending that the joint resolution be amended by striking out all after the title and inserting in lieu thereof the following:

Whereas, the U.S. Bill of Rights provides certain inalienable rights to natural persons, and

Whereas, corporations are not mentioned in the U.S. Constitution, and

Whereas, corporations are legal entities that governments create, and the rights they enjoy under the U.S. Constitution should be more narrowly defined than the rights that are afforded to natural persons, and

Whereas, the decision to regulate corporate financial campaign contributions is one that historically Congress and the states have been constitutionally allowed to address, and

Whereas, in 1907, Congress enacted the Tillman Act prohibiting corporate financial contributions to federal election campaigns for public office, and

Whereas, in 2010, the U.S. Supreme Court in *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (U.S. 2010), ruled that Congress and the states lacked the constitutional right to ban independent corporate expenditures to political campaigns for public office, and

Whereas, the U.S. Supreme Court in the *Citizens* decision relied on its previously issued opinion in the 1976 case *Buckley v. Valeo*, 424 U.S. 1 (U.S. 1976), in which it equated the spending of money for electing candidates to public office as speech, and

Whereas, the *Citizens* decision has allowed for the creation of super political action committees in election campaigns for public office that allow for unregulated campaign expenditures in unprecedented amounts, and

Whereas, as a result of the *Citizens* decision, Congress and the state legislatures were denied any legal authority to regulate independent corporate political expenditures, and

Whereas, a restoration of the guidelines established in the Bipartisan Campaign Reform Act of 2002 is imperative so that Congress and the state legislatures may exercise their historic authority to make their own decisions about whether to regulate corporate political expenditures, and

Whereas, this policy change will require that the U.S. Constitution be amended to authorize congressional or state regulation of individual and corporate financial participation in political campaigns, and

Whereas, on Vermont town meeting day, March 6, 2012, 64 Vermont towns and cities passed resolutions urging the Vermont congressional delegation and the U.S. Congress to propose legislative or congressional action to address the issues raised by *Citizens* including that money is not speech and corporations are not persons under the U.S. Constitution, and

Whereas, these resolutions, passed by towns on town meeting day, also urged the general assembly to pass a similar resolution directed at the Vermont congressional delegation, and

Whereas, U.S. Senator Tom Udall of New Mexico with 22 cosponsors has introduced Senate Joint Resolution 29, “proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections,” that would give the Congress and the states the authority to regulate the raising and spending of moneys with respect to elections, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly expresses its disagreement with the holdings of the U.S. Supreme Court in *Buckley* and in *Citizens* that money is speech and urges Congress to adopt Senate Joint Resolution 29, *and be it further*

Resolved: That the General Assembly urges Congress to consider the request of many Vermont cities and towns to propose a U.S. constitutional amendment for the state’s consideration that provides that money is not speech and corporations are not persons under the U.S. Constitution and that also affirms the constitutional rights of natural persons, *and be it further*

Resolved: That the General Assembly does not support an amendment to the U.S. Constitution that would abridge the constitutional rights of any person or organization including freedom of religion or freedom of the press, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vermont Congressional Delegation.

After adoption, the title of the joint resolution be amended to read:

Joint resolution urging the United States Congress to propose amendments to the United States Constitution for the states' consideration relating to contributions and expenditures intended to affect elections and relating to the rights of corporations.

And that when so amended the joint resolution ought to be adopted.

Thereupon, the joint resolution was read the second time by title only pursuant to Rule 43, and the recommendation of amendment was agreed to

Thereupon, the question, Shall the bill be read the third time?, was agreed to on a roll call, Yeas 26, Nays 3.

Senator Lyons 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, Doyle, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, *McCormack, Miller, Mullin, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

Those Senators who voted in the negative were: *Benning, *Brock, Flory.

The Senator absent and not voting was: Fox.

*Senator Benning explained his vote as follows:

“Mr. President, I voted against this resolution for two reasons. First, it seeks to restrict only speech by corporations, ignoring the fact that Citizens United also addressed spending by nonprofits and unions. By calling upon Congress to allow continued spending by "organizations," this resolution targets only those entities traditionally associated with one political party. This is party politics at its worst.

“Secondly, and far more importantly, this resolution chips away at freedom of speech, a fundamental constitutional right Vermonters have long cherished. Witness the efforts of Vermont Congressman Matthew Lyon, whose portrait hangs in the hallway below this chamber. Challenging the federal government's attempt to restrict speech deemed offensive by the Alien & Sedition Acts, Congressman Lyon went to jail for criticizing then President

John Adams. Vermonters re-elected him while he was still in jail, because even then they understood that freedom could be lost to tyranny if the people were not constantly vigilant in the protection of their rights.

“Mr. President, our senate oaths require us to maintain that vigilance, even when a tide of public emotion tempts us to do otherwise. We're charged with guarding the sanctity of a Constitution which protects our right to pool resources when expressing speech. Proponents of this amendment ask us to restrict that speech by claiming it has become too expensive. But curtailing even one of our freedoms is a direct attack on the document which protects all of our freedoms. For these reasons, Mr. President, I cannot support this resolution.”

*Senator Brock explained his vote as follows:

“Mr. President, This resolution is overly broad and linguistically imprecise. Were the Congress to enact a constitutional amendment based upon this resolution as drafted, it could lead to unintentional consequences that would throw into question two hundred years of law and precedent.”

*Senator McCormack explained his vote as follow:

“Mr. President, I cast my vote in honor of Mathew Lyon who, in defense of free speech, defied those who used their wealth and power to abuse that right.”

Bill Passed

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

S. 180. An act relating to the universal service fund and establishment of a high-cost program.

Bills Passed in Concurrence with Proposals of Amendment

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

H. 403. An act relating to foreclosure of mortgages.

H. 459. An act relating to approval of amendments to the charter of the town of Brattleboro.

H. 765. An act relating to the mental health needs of the corrections population.

Bills Passed in Concurrence

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

H. 565. An act relating to regulating licensed lenders and mortgage loan originators.

H. 613. An act relating to governance of the Community High School of Vermont .

Bill Amended; Bill Passed

S. 142.

Senate bill entitled:

An act relating to pet merchants.

Was taken up.

Thereupon, pending third reading of the bill, Senator Flory moved that the bill be amended: in Sec. 2, 20 V.S.A. § 3683, after the words, “between 9:00 a.m. and 5:00 p.m.” by striking out the words “in the presence of or” and that when so amended the bill ought to pass.

Which was agreed to.

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

Third Reading Ordered

H. 760.

Senator Mullin, for the Committee on Education, to which was referred House bill entitled:

An act relating to lowering to 16 the age of consent for blood donation.

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.

Proposal of Amendment; Third Reading Ordered

H. 761.

Senator Westman, for the Committee on Finance, to which was referred House bill entitled:

An act relating to executive branch fees, including motor vehicle and fish and wildlife fees.

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

First: By adding an internal caption and Sec. 2a to read:

* * * Motor vehicle racing * * *

Sec. 2a. 26 V.S.A. § 4806 is amended to read:

§ 4806. FEES; DISPOSITIONS

(a) Notwithstanding the fee provisions of 3 V.S.A. § 125, applicants and persons regulated under this chapter shall pay the following fees:

(1) Annual event permit applications:

- | | |
|---|------------|
| (A) Auto racing | \$ 800.00; |
| (B) Go-cart, snowmobile, or motorcycle racing | \$ 500.00; |

(2) Unlimited event permit applications:

- | | |
|---|--------------|
| (A) Auto racing | \$ 1,250.00; |
| (B) Go-cart, snowmobile, or motorcycle racing | \$ 1,250.00; |

(3) Single event permit applications:

- | | |
|---|------------|
| (A) Auto racing | \$ 500.00; |
| (B) Go-cart, snowmobile, or motorcycle racing | \$ 500.00; |

(4) Annual event permit biennial ~~renewal~~ renewals:

- | | |
|---|------------|
| (A) Auto racing | \$ 500.00; |
| (B) Go-cart, snowmobile, or motorcycle racing | \$ 500.00; |

(5) Unlimited event permit biennial ~~renewal~~ renewals:

- | | |
|---|--------------|
| (A) Auto racing | \$ 2,500.00; |
| (B) Go-cart, snowmobile, or motorcycle racing | \$ 2,500.00. |

(b) A municipality where a race is to be held may charge an additional fee, not to exceed the municipality's costs associated with the race.

(c) A single event permit shall authorize any number of events within a 10-day period in the same location and on the same racing track. An annual-event permit shall authorize any number of events within two 10-day periods in consecutive years and may be renewed every two years.

(d) Notwithstanding the provisions of subsection (a) of this section, a person in good standing incorporated or authorized to transact business as a nonprofit corporation under Title 11B shall pay a fee of \$100.00 for an annual event permit application under subdivisions (a)(1)(A) and (B) of this section;

an annual event permit biennial renewal under subdivisions (a)(4)(A) and (B); or for any five events within a one-year period.

Second: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read:

Sec. 7. REPEAL

18 V.S.A. § 4463 (regarding salvage food facility license) is repealed.

Third: By adding a new Sec. 35a to read:

Sec. 35a. 10 V.S.A. § 4255 is amended to read:

§ 4255. LICENSE FEES

(a) Vermont residents may apply for licenses on forms provided by the commissioner. Fees for each license shall be:

* * *

(4) Big game licenses (all require a hunting license)

* * *

(G) ~~second~~ additional bear tag \$5.00

* * *

(1) If the board determines that it is in the interest of bear management, it may authorize the department to issue ~~a second bear tag for the taking of bear bear tags~~ in addition to ~~that~~ those allowed by a hunting license issued under this chapter.

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

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

Proposal of Amendment; Bill Ordered to Lie

H. 412.

Senator Baruth, for the Committee on Education, to which was referred House bill entitled:

An act relating to harassment and bullying in educational settings.

Reported recommending that the Senate propose to the House to amend the title to read:

An act relating to harassment in educational settings.

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

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

Thereupon, pending the question shall the Senate proposed to the House to amend the bill as recommended by the Committee on Education, on motion of Senator Mazza, the bill was ordered to lie.

Rules Suspended; Bills Messaged

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

S.142., S.180, H.403, H.459, H.565, H.613, H.765

Rules Suspended; Bill Committed

S. 233.

On motion of Senator Campbell, Senate Rule 49 was suspended and Senate bill entitled:

An act relating to gradually increasing the mandatory age of school attendance.

Was committed to the Committee on Rules with the reports of the Committee on Education and the Committee on Appropriation *intact*,

Adjournment

On motion of Senator Campbell, the Senate adjourned until one o'clock and thirty minutes in the afternoon on Thursday, April 12, 2012.